Use of conspiracy law in direct action cases

Mr Brian Hilliard, a former police inspector, claimed to examine the choices Chief Constables face in policing such threats as the recent fuel blockade (NLJ 2000, p. 1325). Unfortunately he failed to mention the most potent weapon in the police and CPS armoury, which is to proceed against the organisers for the indictable offence of criminal conspiracy. For some undisclosed reason this weapon is not nowadays used.

I have been fighting for its use for the past thirty years. My battle began when in 1970 I set up Freedom Under Law, an organization opposed to unlawful direct action by protesters. It had a go at several targets, including the Hunt Saboteurs, but its chief claim to fame was the successful prosecution of Peter Hain, now a Labour Government Minister, for disruption of sporting fixtures in the UK involving South Africans. The offence of which Hain was convicted at the Old Bailey was criminal conspiracy. The jury convicted despite a remarkably sympathetic summing-up by Judge Gillis (featured by criminals in the cells by the graffito "Gillis is good for you").

The principle governing the prosecution of criminal conspiracy was laid down by the Court of Appeal in the case of the so-called Shrewsbury Six, ***R v Jones*** (59 Cr. App. R. (1974) 120). James L.J. said-

"The question whether a conspiracy charge is properly included in an indictment cannot be answered by the application of any rigid rules. Each case must be considered on its own facts. There are, however, certain guiding principles. The offences charged on the indictment should not only be supported by the evidence on the deposition or witness statements, but they should represent the criminality disclosed by that evidence. It is not desirable to include a charge of conspiracy which adds nothing to an effective charge of a substantive offence. But where charges of substantive offences do not adequately represent the overall criminality, it may be appropriate and right to include a charge of conspiracy."

Support for conspiracy charges was expressed to the Law Commission by the Society of Public Teachers of Law in the statement that they can be used "to charge in one count a number of persons who had taken part in various ways in the commission of a crime, or series of crimes, and the gravity of whose acts could only be judged in the light of the whole criminal enterprise, particularly where the exact extent of individual participation was not clear" (cited The Law Commission: Report on Conspiracy and Criminal Law Reform (1976) LAW COM. No. 76, para. 1.68).

The Law Commission held that the only justification for indicting as conspiracy an agreement to commit summary offences is "the social danger involved in the deliberate planning of offences on a widespread scale" (***loc. cit.***, para. 1.85; cf. para. 1.128). An advantage of conspiracy charges was pointed out by the Law Commission as follows-

"Another reason adduced for the retention of conspiracy as a crime is that it provides a useful means whereby persons who plan or organise crimes but take no active part in them can more easily be brought to justice. It is, of course, true that, strictly, proof that someone has planned or organised crime is all that is needed to make him guilty of the offence itself if it is committed, but it is said to be easier to explain to a jury the simple requirement of proof of an agreement than to make it clear that someone who has not actually 'done' anything can be

guilty, by reason of complicity, of the substantive crime. We accept that there is some merit in this argument." (*loc. cit.*, para. 1.6.).

It seems that the police and CPS have adopted a deliberate policy of not prosecuting offences of criminal conspiracy, even though the adoption of such a policy by them is unlawful (***R. v. Commr. of Police for the Metropolis, ex p. Blackburn*** [1968] 2 Q.B. 118). There are many examples of this neglect. I single out a few.

Recently the port of Shoreham in Sussex was overwhelmed by animal rights protesters objecting to shipments of live animals. In ***R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd*** [1999] 1 All ER 129 at 146 Lord Nolan said: "The result may be seen as the acceptance by the courts of a victory for the violent elements in the crowds at Shoreham over the forces of law. I would describe it myself as an acceptance of the plain fact that there are limits to the extent to which the police can control unlawful violence in any given situation. If these limits are felt to be too narrow, the remedy lies in increasing the resources of the police". Lord Nolan inexcusably failed to mention that an answer may be found in reducing the violence by prosecuting the main organisers for criminal conspiracy.

Last year there occurred the biggest triumph of lawlessness in recent Oxfordshire history, the forcible closure of the cat-breeding Hillgrove Farm by animal rights demonstrators. These highly organised protesters broke the law incessantly over several years, and by brute force compelled Chris Brown, the law-abiding owner of the farm, to close down. Mr Brown is reported as saying that this was a loss to medical research, upon which we all depend. The organizers of these mobs should have been prosecuted, but Thames Valley Police ignored this important aspect of the criminal law. Did the Home Office criticise them for this neglect? Not so far as I am aware.

A final example is the recent scheme of digging up the turf of Parliament Square by "guerrilla gardening". It was plotted in advance on the internet and widely known. The organisers of this criminal conspiracy should have been apprehended well before May Day 2000, when the acts of vandalism were committed, but this did not happen.

In a democracy, a minority is not entitled to use illegal force where no force is used against it. To use such force in the promotion of a private opinion is tyrannous. As José Marti said, the dagger plunged in the name of Freedom is truly plunged into the breast of Freedom.