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When the Exception Makes the Rules: Public Order Policing in the aftermath of Covid-19

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Abstract

In England, Covid-19 was treated at the outset as a public order threat rather than a public health priority through emergency legislation that targeted people as suspects in need of policing, rather than as patients in need of protection. Trawling through policing legislation in the aftermath of Covid-19, this chapter demonstrates how a pandemic disease paved the way for law-making practices that contradict dominant conceptions of 'the law' as an apolitical arbiter of justice. What is revealed instead, is the normalisation of exceptional legislative powers which threaten to transform human rights and civil liberties into criminal offences. This chapter therefore challenges dominant conceptions of 'the law' as an apolitical arbiter of justice, reintroducing it instead as an instrument of state violence, coercion and social control—in ways that raise urgent ontological and epistemological questions for criminology and legal studies.

Keywords

Public order policing in the UK, COVID-19 regulations, state violence, authoritarianism

In an atmosphere of political indifference towards, inadequate healthcare provision for, or public debate on Covid-19 and the legacy of ill health it ushered in (Honigsbaum, 2024), what was once a global emergency is now treated as a thing of the past. The punitive approach that the UK government adopted to arrest its spread, however, is still with us. Treated from the outset as a public order priority rather than a public health emergency, the outbreak of Covid-19 was seen by the UK government as an exceptional circumstance that necessitated policing people *as* the virus, rather than protect us *from* the virus (Fatsis and Lamb, 2022). In so doing, the government made law(s) that did more to attack civil liberties and human rights (Ewing, 2020; Bradley, 2021; Liberty, 2021: 6; Grez Hidalgo *et al.*, 2022) than keep ‘the public’¹ safe from infectious disease. Extreme and uncharitable though such a statement may sound, it is nevertheless true—if it is judged by record numbers of avoidable deaths (Lawrence, 2020; Stewart and Sample, 2020; Toynbee, 2021; Calvert and Arbuthnott, 2021; Sridhar, 2023) that resulted from the UK government’s *choice* to ignore, downplay or wave aside warnings of a “public health emergency of international concern” by the Director General of the World Health Organization in January 2020 (WHO, 2020). To avoid any misunderstanding, none of the above is intended to express denial of or disbelief in the real danger that Covid-19 posed. What is voiced instead is a genuine concern with the way a previously unknown, but now notorious, pathogen served as an excuse to legislate in an alarmingly heavy-handed, authoritarian, undemocratic and often unlawful manner that became normalised

¹ Although the word ‘public’ is used here as a convenient, but admittedly problematic, shorthand and a synonym for the word ‘people’, it is by no means (mis)taken for the neutral or apolitical entity that it is not. Rather, ‘the public’ is understood here as a term that can express a sense of empowering collective self-identification (e.g. ‘we, the people’)—while also functioning as a label to identify a population as a target of (bio)political management, governance, disciplinary supervision and control (see, Foucault, 2002: 416; Foucault, 2004: 245; Foucault, 2007: 70, 75). For a discussion of various competing interpretations of who and what ‘the public’ is and isn’t, see Carrigan and Fatsis (2021: 7–29).

since the first “health protection” regulations² came into force in 2020 “without parliamentary approval” and with “far-reaching consequences” for “personal liberty”, “police powers” and “political freedom” (Ewing, 2020: 2, 1).

Simply put, there is no convincing or sensible reason why the onset of Covid-19 *had* to be responded to *primarily*, if not exclusively, through penal tactics (i.e. legislation which creates new criminal offences and widens police powers) rather than healthcare and welfare provision (e.g. investment in better ventilation, less crowding, increased air purification and sterilisation, more access to green spaces, changed work practices/culture, improved sick pay, housing and healthcare support)³. Recognising the obvious dissonance between what Covid-19 is (a medical threat to the public) and what the British state did (criminalise the public as the threat), should not be taken as a sign of naivety about or ignorance of how or why public health and public order shade seamlessly into each other (Fatsis and Lamb, 2022: 3-5 and 45-77). The ideological and political history of policing in Europe warrants against such an analytical error, reminding us of how policing was introduced as an institution that combines “protection from danger” and a “concern with matters of welfare” and folds up “order, security and welfare” (Knemeyer and Trib, 1980: 182). It is nevertheless important to reflect on why the state reaches for policing, surveillance and other penal, carceral and disciplinary mechanisms in response to a medical emergency.

² The full name of these new laws was: The Health Protection (Coronavirus, Restrictions) (England) Regulations)

³ See, Pagel (2022). More specifically, this could include investment in sufficient quantities of ventilators and Personal Protective Equipment (PPE), enough healthcare staff and hospital beds, comprehensive and functioning test and trace systems, generously supported isolation and a well-thought-out long-term exit strategy once lockdowns. As public health experts, David McCoy (2020) among them, noted: a “greatly expanded testing regime combined with aggressive case detection and contact tracing, coupled with continued physical distancing and improved hygiene” would have helped us “avoid the harms of draconian, population-wide lockdown”. This important realisation is not to offer a booster dose of Covid-scepticism, but a reality check reminding us that limiting the spread of infectious diseases cannot rely solely or primarily on carceral logics and punitive measures—if at all. What is required instead, is a robust public health policy informed by “scientific input, strong political commitment, and decisive action” (Baker *et al.*, 2020: 2; Robert, 2020).

Alas, this chapter is not a historical exploration of how policing blends welfare and order maintenance functions. What is attempted instead is an analysis of how “the Covid excuse” (Stierl and Dadusc, 2022) created a dangerous precedent for subsequent law-making that continues to crack down on protest, criminalises dissent and legalises undemocratic and unlawful violations of fundamental human rights—exposing a state of affairs –variously considered as states of emergency, martial law and “the state of exception” (Agamben, 2005)– that is not the exception, but the rule. Drawing on selected public order legislation made in the aftermath of the Covid-19 pandemic and in the image of the regulations that accompanied it, this chapter aims at demonstrating how the exception became the norm in the UK government’s approach to legislation—auguring ill for the present state of human rights protections in Britain. It will therefore be argued that the normalisation of exceptional law-making power(s) ought to be understood as a form of state lawfare (=legal warfare) against civil society, that behoves criminologists and legal scholars to commit to a radical rethinking of what the state and ‘the law’ *are* and *do*, who *to* and who *for*—thereby questioning the very legitimacy of ‘the law’ and liberal state politics too, when a (purportedly) democratic state uses the rule of law to exercise undemocratic power through law.

From Covid Exceptions to Police Crackdowns

Hard though it might be for many to imagine ‘Great’ Britain as anything other than a shining shrine of modern, progressive, fair and democratic government where the rule of law reigns supreme, a closer look at the way(s) in which law is actually made in “this sceptred isle” (Shakespeare, *Richard II, Act Two, Scene One*) paints a different picture. If the Human Rights Watch Submission to the UN Human Rights Committee is anything to go by, the concerns it raises about how the “current UK government has been severely backsliding on domestic human rights protections and sought to renege on its international obligations” (HRW, 2024) should raise a few quizzical eyebrows

about the state of rule of law in the very country where liberal philosophies of state and law took root (see, e.g. Locke, 2003; esp. p.161).

While none of this is new, if we cast our mind back to the Gagging Acts of 1817 (Adi, 2022: 148-158), the tenor, tone and content of current legislation nevertheless resemble the exceptional legislation that became normalised during and after the global outbreak of Covid-19. It is therefore fitting to start with an overview of the Covid regulations before we explore subsequent public order legislation. Before doing so, however, a disclaimer is in order—to clarify that none of what follows is intended to be an exhaustive or comprehensive account of *all* public order legislation post-Covid-19. The point, rather, is to give a flavour of a few indicative pieces of public order legislation that have followed in the ideological footsteps of the 2020 Coronavirus Act, which will be discussed in turn.

Coronavirus Act 2020

After dithering for two months since the World Health Organisation sounded the alarm on Covid-19, the UK government introduced The Health Protection (Coronavirus, Restrictions) (England) Regulations) 2020 as emergency legislation which created new offences and widened police powers, to limit the spread of this previously unknown strain (SARS-CoV-2) of the coronavirus disease (COVID-19). These new regulations came in the form of a Coronavirus Bill which passed through Parliament on March 25, 2020 and was accompanied by a statutory instrument which gave legal force to new social distancing rules. These rules prohibited people from “leav[ing] the place where they are living without reasonable excuse”, during an imposed lockdown and empowered the police to “direct” or “remove” individuals “to the place where they are living”, allowing the use of “reasonable force, if necessary”. Breaching the prohibition amounted to “commit[ting] an offence” which was “punishable on summary conviction by a fine”⁴. Put simply, failure to comply

⁴ The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, Available at: <https://www.legislation.gov.uk/uksi/2020/350/made/data.pdf>

with these instructions meant breaking the law and, therefore, committing a criminal offence. Such a response might seem reasonable to many, especially if we internalise the punitive logic that justifies legal-penal solutions to healthcare and welfare matters. The aforementioned regulations, however, were passed by ministerial decree *without* parliamentary approval or scrutiny—raising grave concerns about how a “public health emergency” became the “occasion for a suspension of constitutional government” (Ewing, 2020: 2). Even after sixty-four revisions (Syal, 2021), these laws retained their status as law enforcement measures that “proved a recipe for injustice”—threatening civil liberties and limiting the right to protest, using the pandemic as an excuse (Liberty, 2021: 6). Yet, the police relied on their new legal powers to impose fines, disperse gatherings, remove people to their homes, detain potentially infectious persons, issue court summonses, resort to online shaming, deploy vehicle checkpoints, use aerial drones and roadblocks to enforce the lockdown and target Black people, other racialised minorities and anti-racist protesters during the #BlackLivesMatter demonstrations in the summer of 2020 (Netpol, 2020), while also placing a blanket ban on protest and closing borders with no upper limit—thereby undermining people’s right to seek asylum or travel to provide humanitarian aid.

Focusing obsessively on what restrictions to impose, the Coronavirus Act supported a strategy to a pandemic disease that made people more vulnerable to harm through its punitive approach, ignoring the negative consequences for those who were already most likely to be at risk of illness (e.g. elderly and Disabled people) and exposed to human rights abuses too (e.g. domestic abuse victims, homeless people, migrants). For example, Section 15 in combination with Schedule 12 of the Act allowed local authorities to apply easements under the Care Act 2014, weakening protections for those in need of care at a time when informal social support was restricted. Similarly, undocumented migrants were left at the mercy of unscrupulous landlords and employers, without access to welfare benefits, access to healthcare or banking, potentially barred from work, or forced to work and live in unsafe conditions. This included additional risks to those in prison

or in immigration detention, who had little access to adequate sanitation or the ability to socially distancing—not to mention the lack of adequate provisions for victims and survivors of domestic abuse, who would be left isolated with their abusers. While escaping harm was considered a reasonable excuse for leaving one’s home, under such circumstances, the Coronavirus Act offers no provision for those without a safe home to return to; offering a masterclass on how *not* to respond to a global public health emergency—inspiring alternatives like the “Protect Everyone Bill”, devised by the civil liberties organisation Liberty (2021a) and subjecting the UK government to an ongoing public inquiry to into decision-making during the pandemic⁵.

Police, Crime, Sentencing and Courts Act 2022 (Police Act 2022)

Nearly a year after people took to the streets to protest against racist police violence, following the lynching of George Floyd in Minneapolis, it was police violence against women that coincided with the emergence of additional anti-protest legislation. Although migrant women, Black women, women of colour and those who are non-normatively gendered have been subjected to and protesting against racist policing and patriarchal violence for decades (see, e.g. Hull *et al.*, 1982: esp. 13-22 and Ritchie, 2017), it was the kidnapping and murder of Sarah Everard by a Metropolitan Police Officer (Wayne Couzens) that sensitised many to the dangers of police violence against women—alongside the aggressive policing of a vigil held for Everard at Clapham Common in March 2021. Instead of reckoning with the harms that policing as “violence work” (Seigel, 2018) produces, the response of the British state was to devise more anti-protest legislation in the form of the Police, Crime, Sentencing and Courts Bill. Ironically, but not surprisingly, the bill itself became the target of the infamous ‘Kill the Bill’ protests against it, led by a coalition that included groups like: Sisters Uncut, Black Lives Matter UK, Gypsy, Roma and Traveller Socialists, Disabled People Against Cuts, No More Exclusions, Women’s Strike Assembly and the

⁵ To follow the Covid-19 Inquiry, go to: <https://covid19.public-inquiry.uk/>

Independent Workers Union of Great Britain. Rightly nicknamed the ‘crackdown bill’ by its critics, this 296-page document paraded its anti-protest stance with pride—raising concerns over its illiberal, undemocratic and discriminatory nature from leading human rights organisations, charities, campaigners and more than 700 legal scholars who (rightly) feared that that aspects of the emergency powers included in the Coronavirus Act are here to stay (Liberty 2021b; Woodcock, 2021). Introduced as a piece of legislation that gave new protections and powers to the police, this bill allowed senior police officers and the Home Secretary to restrict protest activity in unprecedented ways. It also risks criminalising the living circumstances of Gypsy, Roma and Traveller communities—as a High Court ruling found, stating that the Police Act 2022 discriminates against these communities without justification and breaches Article 14 rights when read with Article 8 of the European Convention of Human Rights⁶. After gaining Royal Assent (=becoming law) in October 2022, the Police, Crime, Sentencing and Courts Act was particularly aimed at movements that use direct action and civil disobedience tactics against government or corporate inaction on the climate emergency, but would have a profound impact on other campaigners too—which explains why it was so fiercely opposed by a series of protests that used ‘Kill the Bill’ as their motivating slogan. Under the Policing, Crime, Sentencing and Courts Act, the police can impose conditions on static assemblies, including timings and approved noise levels, even when the protest is held by just a single person. In addition to restricting “noisy” protest, it has now become a crime to fail to follow police restrictions that protesters ‘ought’ to have known and it will become an offence to intentionally, or recklessly cause public nuisance as part of a protest, however vague or ill-defined this phrase is. Such authoritarian crackdowns on the right to protest are hardly unexpected and entirely consistent with the government’s stated law and order

⁶ For more information on this High Court ruling, see: <https://www.gypsy-traveller.org/news/high-court-declares-parts-of-police-act-2022-in-breach-of-european-convention-of-human-rights/>

agenda⁷, whose enmity towards protest has been expressed in public statements that described the 2020 Black Lives Matter protests as “dreadful” (Parveen, 2021), labelled Extinction Rebellion activists as “criminals” who “disrupt our free society” (Dodd, 2020) and declared pro-Palestine demonstrations to be “hate marches” (Syal *et al.*, 2023), advising the police to consider waving a Palestinian flag, or singing chants that advocate freedom for Palestinians criminal offences (Syal and Allegretti, 2023) and warning of “ruthless” crackdown on Palestinian solidarity (Forrest, 2023), already targeted by Prevent (the UK’s flagship counter-terrorism strategy) as a sign of terrorist activity (Amnesty International UK, 2023: 4, 45, 52, 56-7, 61-2, 64). Such remarks could be ignored as mere reactionary ramblings, were they not threatening to become law—or use existing law to criminalise protest, in the manner described in turn. A HM Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) report, which accompanied and complemented the Policing, Crime, Sentencing and Courts Bill (before it became law), describes “activity that seeks to bring about political or social change but does so in a way that involves unlawful behaviour or criminality” as “aggravated activism” (HMICFRS, 2021: 21). Adopting a Counter Terrorism Policing definition of activism as a form of domestic extremism, such language signals an era of renewed expansion of surveillance on political and social movements.

Public Order Act 2023

Soon after the Policing, Crime, Sentencing and Courts Act gave the police new powers to restrict noisy protest, among other anti-protest regulations, the government sought to revive amendments that were rejected in the House of Lords in the form of a Public Order Bill (now Act) which criminalised the right to protest even further. While there have been Public Order Acts before in

⁷ Priti Patel, who served as the Home Secretary at the time, declared the Conservatives to be “the party of law and order” in the Conservative party conference in 2019. A snapshot of her speech is available at: <https://www.theguardian.com/politics/video/2019/oct/01/the-party-of-law-and-order-priti-patel-addresses-the-conservative-party-conference-video>

1936 and 1986, the current Public Order Act adds to already existing powers to further restrict protest and punish disorder, reintroducing the worst and most repressive elements that the government tried to include in the Policing, Crime, Sentencing and Courts Act, but were rejected by Parliament. What the government sought to achieve this time around was further crackdowns on the right to protest, by introducing new offences that lower the bar for what is considered “serious” disruption for these new offences by giving police new powers to respond to newly created criminal offences. These new offences include so-called “locking-on offences” and interference with any “key national infrastructure” in England and Wales, obstruction of major transport works and expanded stop and search powers⁸ that does not require “reasonable grounds”—essentially normalising the otherwise exceptional use of “suspicion-less” section 60 (s60) stop and search powers⁹, but also creating protest-specific powers too to shut down demonstrations and criminalise protesters. These include Serious Disruption Prevention Orders (SDPOs, nicknamed ‘protest banning orders’) on individuals who have participated in at least two protests within a five-year period, resulting in a super-complaint¹⁰ by the Criminal Justice Alliance to repeal s60 searches & SDPOs on the grounds that they lower the threshold for the police to put conditions on a protest (CJA, 2023). Indeed, SDPOS have the potential to be renewed indefinitely (clauses 18(1) and 21(7)), as well as ban named individuals from protesting, associating with certain people at certain times, using the internet in certain ways and subjecting people to a range of additional requirements that include reporting to certain places at certain times and

⁸ For a more detailed description of the Act and the offences it introduced, see: <https://www.legislation.gov.uk/ukpga/2023/15/enacted>

⁹ Section 60 stop and search powers are named after section 60 of the Criminal Justice and Public Order Act 1994 (s60), which enforced them. They are known as ‘suspicionless’ police powers as they do now require ‘reasonable suspicion’ to be used.

¹⁰ Super-complaints are designed to address/redress systemic issues in policing, rather than complaints about individual forces or officers.

electronic monitoring. Failing to fulfil the requirements of a SDPO amounts to a criminal offence and therefore facing 51 weeks of imprisonment, a fine—or both. Worse still, such powers were introduced by the then Home Secretary (Suella Braverman), despite the fact that she had no power, or right to do so—prompting the civil liberties organisation Liberty to take legal action against the government through judicial review and won; following a High Court ruling which confirmed that the government was acting unlawfully in creating legislation that gave the police almost unlimited powers to restrict protests ¹¹. Were this not enough, the Counter Terrorism Policing (CTP) alliance of UK police forces has developed a ‘Terminology and Thresholds Matrix’ (ISCP, 2022: 81) determining who is an “aggravated activist” and at what level: low, moderate, substantial. According to this matrix, the lowest level of aggravated activism includes action resulting in: “a change to the behaviour of the population (e.g. not to use products tested on animals) or change to specific government policy (e.g. fracking)”. The moderate level of aggravated activism is described as aiming at “change of economic system or the insistence that [a] particular section of society (e.g. race or religion) conform to certain values”. Finally, the highest or “substantial” level of such activism includes the risk posed by ideologies that advocate the “dismantling of the state or rule of law (e.g. anarchism)” (ISCP, 2022: 81)¹².

¹¹ Legal action by Liberty challenged Braverman and the government, arguing that they acted unlawfully by using a statutory instrument to change the Public Order Act 1986 in June 2023 to give police powers to restrict protests which cause “more than minor” disruption, a significantly lower threshold than the previous definition of “serious disruption”. Braverman and the government forced this change through despite the fact an amendment attempting to do the exact same thing was voted out of the Public Order Act 2023 by Parliament in January 2023. Liberty argued that Braverman and the government were not given the powers by Parliament to take this action, making it a serious overreach which violates the constitutional principle of the separation of powers. For a more extensive account of Liberty’s legal challenge, see: <https://www.libertyhumanrights.org.uk/issue/government-broke-law-with-new-protest-powers-court-told/> For more information on the High Court ruling, see: <https://www.libertyhumanrights.org.uk/issue/court-finds-government-anti-protest-legislation-unlawful-after-liberty-legal-challenge/>

¹² Leaving aside the fact that an entire political ideology and intellectual tradition (anarchism) is targeted by name, it is worth noting that such a move coincides with what the police and security services call “Left, Anarchist and

The Law Against the People

While the Coronavirus Act, the Police, Crime and Sentencing Act and the Public Order Act set the scene for how public order legislation was to be (re)made in the aftermath of Covid-19, they are only a small part of a whole bundle of laws that betray the same illiberal, undemocratic and authoritarian zeal.

These include:

- The Covert Human Intelligence Sources (Criminal Conduct) Act 2021, which provides undercover state agents and police officers who engage in criminal activities with impunity, just as a public inquiry on undercover policing (the Undercover Policing Inquiry) rages on.
- The Overseas Operations (Service Personnel and Veterans) Act, which prevents criminal prosecutions of British soldiers who have engaged in torture, war crimes, genocide and crimes against humanity.
- The Judicial Review and Courts Act 2022, which makes it harder for people to stand up for their rights by restricting judicial review.
- The Nationality and Borders Act 2022, which creates a two-tiered system of refugee protection giving those who travel to the UK through third countries via irregular routes (e.g. crossing the Channel in a small boat) limited rights to welfare benefits and family reunion.

Single-Issue Terrorism” (LASIT)—which also features in government-approved education materials for schools, under the banner of Educate Against Hate. An example can be found below, which -rather bizarrely- does not use any twenty-first century examples and cannot name any identifiable groups that might pose a threat to or operate within Britain: https://www.youtube.com/watch?v=p8Tg5D_G9uk

- The Safety of Rwanda (Asylum and Immigration) Act, devised to transfer people seeking asylum in the UK to Rwanda and becoming law despite being unanimously ruled unlawful by the Court of Appeal *and* the Supreme Court. It was also challenged by a coalition of 270 charities and expert organisations who have issued a joint statement calling on Peers (=members of the House of Lords) to reject it¹³. Alas, the Prime Minister the Prime Minister Rishi Sunak's remarks on the Supreme Court Judgement¹⁴ indicated his determination to do “what is necessary” to defy the European Court of Human Rights to remove international “obstacles” to the scheme—the obstacles in question being international human rights legislation.
- A Bill of Rights Bill, which threatened to repeal and replace the Human Rights Act 1998, replacing it with a British Bill that would allow Britain to ignore, bypass and reduce the rights contained in the European Convention on Human Rights (ECHR). Thankfully, the Government decided not to pursue this Bill further after mounting pressure from the Joint Committee on Human rights and 123 organisations¹⁵.
- The Illegal Migration Act 2023, which effectively extinguishes the right to seek asylum with few exceptions and in very narrow circumstances.

¹³ The full statement is available at: <https://www.libertyhumanrights.org.uk/issue/over-260-charities-and-expert-organisations-call-on-house-of-lords-to-reject-shameful-rwanda-bill/>

¹⁴ The Prime Minister Rishi Sunak's remarks on the Supreme Court Judgement are available at: <https://www.gov.uk/government/speeches/pm-remarks-on-supreme-court-judgement-15-november-2023>

¹⁵ The full text of the Joint UK Civil Society Briefing on the Bill of Rights Bill is available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/12/Joint-Civil-Society-Briefing-on-the-Bill-of-Rights-Bill-for-Second-Reading-in-the-House-of-Commons-September-2022.pdf>

- The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 which removes the ability to investigate and prosecute those who have unlawfully killed or committed torture during the Troubles.
- The Strikes (Minimum Service Levels) Act 2023 which was introduced to infringe on the right to strike, under the pretext of ensuring a minimum service level of functioning that workers must guarantee during industrial action.
- The Victims and Prisoners Bill, which disapplies a vital part of the Human Rights Act in relation to people in prison and also undermines the parole system.
- The Economic Activity of Public Bodies Bill (Overseas Matters) Bill, which attempts to ban public bodies from engaging in Boycott Divestment, Sanctions (BDS) tactics, with the government being able to exempt certain states from this ban (e.g. Russia), but not others (e.g. Israel, the Occupied Palestinian Territories, or the Occupied Golan Heights).
- The Online Safety Act 2023, which introduces a new regulatory regime for the Internet that risks infringing on the right to free expression and privacy, especially when it comes to provisions that undermine encryption.

In addition to these twelve examples of political decision-making that undermines judicial discretion and the rule of law, the UK government faced the UN in March, 18th 2024 to give evidence on “grave or systemic” violations of Disabled people’s rights under the United Nations Convention on the Rights of Disabled People (UN CRPD, 2016: 3). This is the same government that on the 8th of February 2024, published new protest laws to ban face coverings at protests, ban

flares and other pyrotechnics, make climbing on war memorials a criminal offence and remove the ability of protesters to use their right to protest as a reasonable excuse¹⁶. These measures will be introduced as amendments at the report stage of the Criminal Justice Bill in the House of Commons and will apply to England and Wales. An overzealous Rishi Sunak quickly took to Twitter, in post that was quickly removed, to announce these proposed offences as already punishable by law—when the government has not yet even published the proposed amendments to the Criminal Justice Bill, which would need to pass through all of its stages before becoming law anyway. This clumsy attempt at making law via Twitter rather than through Parliament, could be dismissed as a farcical departure from the norm were it not illustrative of the governments anti-protest fervour, or its allergic reaction to political opposition—as recently witnessed by a Home Affairs Committee Report on the “policing of protests”¹⁷ which: targets the wearing of masks (pp. 9, 19), calls for policing protests at MPs’ constituency offices (p. 40), argues that protests distract the police from core priorities (p. 25) and puts forward a new definition and offence of “hateful extremism” (p. 34).

The last two points are worth considering in more detail. The first, concerns the Report’s admission that the “first priority for policing in England and Wales should be to look inward and ensure it has the right people and right culture to deliver a service that earns public trust, confidence and consent” (p.25), in a political context where the government gives more power(s) to that same police that finds itself in urgent need of self-appraisal. What is also of note here, is the implication that the police should ‘get its own house in order’ before policing disorder; perhaps by addressing the “institutional racism, sexism and homophobia” revealed by the Casey Review into the standards of behaviour and internal culture of the Met (Casey, 2023: 7, 17, 22, 235, 237,

¹⁶ The announcement of such legislation is available at: <https://www.gov.uk/government/news/new-protest-laws-on-face-coverings-and-pyrotechnics>

¹⁷ The full text of The Home Affairs Select Committee Policing of Protests Report is available at: <https://committees.parliament.uk/publications/43477/documents/216201/default/>

329, 331). The second, concerns the new working definition of “hateful extremism” which targets: “[a]ctivity or materials directed at an out-group who are perceived as a threat to an in-group motivated by or intending to advance a political, religious or racial supremacist ideology” to “create a climate conducive to hate crime, terrorism or other violence”, or “[a]ttempt to erode or destroy the fundamental rights and freedoms of our democratic society as protected under Article 17 of Schedule 1 to the Human Rights Act 1998” (p.34). Reading this definition in the light of the legislation that this chapter has discussed above, much of that definition could actually be applied to the government itself. The ‘out-group’ in question seems to be civil society and the ‘in-group’ seems to be the government itself. The “racial supremacist ideology” that this definition targets could also implicate the government itself. One could simply look at recent accusations of the Conservatives’ “increasingly normalised culture of racism” (White, 2024) in the aftermath of a Party donor’s gendered racism (or misogynoir) against Diane Abbott¹⁸, judged against PM’s own pledge to “stop woke nonsense and left-wing agitators” (Sky News, 2022) and evidenced by the Conservative party’s deputy chair’s (Lee Anderson) stated opinion that disgruntled asylum seekers should “fuck off back to France” (Muir, 2023)—to say nothing of appointing a Race Equality chief (Murphy *et al.*, 2020) who rejects the reality of institutional racism, taking policy advice by the former head of the No. 10 Policy Unit from 2019-2022 (Munira Mirza), who also considers institutional racism a “myth” (Mirza, 2017a) and thinks of race disparity audits as “dangerous and divisive” (Mirza, 2017b), or perhaps reckoning with the emphatic declaration that “the Government stand unequivocally against critical race theory”, confidently made by Kemi Badenoch in her role as the government’s Minister for Equalities (Hansard, 2020). Beyond the embarrassing pronouncements by a farcical line-up of ‘anti-woke’ and ‘equality-bashing’ brigade, however, it is the government’s own legislation -as already shown in this chapter- that creates a “climate conducive to hate crime, terrorism or other violence” and attempts to “erode or destroy

¹⁸ For an excellent scholarly take on misogynoir, focusing on previous experienced of it by Diane Abbott, see, Palmer, 2019.

the fundamental rights and freedoms of our democratic society”, through undemocratic legislation that attacks the very Human Rights Act that this government claims to uphold. Alas, before this new definition (published on the 21st of February 2024) had a chance to stretch its legs, an even newer definition of extremism (published on the 14th of March 2024) was introduced “to respond to increased extremist threat since October 7 terror attacks in Israel”¹⁹, indicating the government’s commitment to criminalising protests against Israel’s settler colonialist violence in Palestine (Said, 1979; Sayegh, 2012). According to this New Definition of Extremism (2024)²⁰: “Extremism is the promotion or advancement of an ideology based on violence, hatred or intolerance that aims to:

1. negate or destroy the fundamental rights and freedoms of others; or
2. undermine, overturn or replace the UK’s system of liberal parliamentary democracy and democratic rights or
3. intentionally create a permissive environment for others to achieve the results in (1) or (2)”

Not unlike the ‘*older new*’ definition of extremism, it is the government again that should be on the defendant’s seat to face charges of: (i) negating or destroying fundamental rights and freedoms through the very legislation it creates, (ii) undermining, overturning or replacing the UK’s liberal parliamentary democracy by acting unlawfully in the way it criminalises dissent in a concerted attempt to shut down potential routes of accountability and exert the power of the executive over Parliament, the courts and the public—to say nothing of its determination to intentionally create a permissive environment for others to achieve the results in (i) or (ii). Exaggerated though such a

¹⁹ This announcement can be read in full at: <https://www.gov.uk/government/news/government-strengthens-approach-to-counter-extremism>

²⁰ This new definition of extremism is available from: <https://www.gov.uk/government/publications/new-definition-of-extremism-2024/new-definition-of-extremism-2024>

claim might sound, it is nevertheless hard to deny the fact that the law-making practices discussed above constitute anything other than a dangerous power grab—by a government which criminalises political opposition to shield itself from accountability, in an unashamed manner that can only be described as a case of institutionalised lawfare against civil society.

Becoming Disloyal to the Law

Alerting ourselves to the realities of law-making post Covid-19, as outlined above, inevitably involves deciding where we stand in relation to grandiose, mythologised and cherished idea(l)s of ‘the rule of law’ and ‘liberal democracy’—in a political context where such foundational principles are either being eroded by governments that invoke such high-minded values only to undermine them, or shown to be what they really are: mere “instrument[s] of social control but also a symbolic expression of dominant society” (Calmore, 1992: 2184) that “preserve the status quo and only periodically and unpredictably serv[e] as a refuge of oppressed people” (Bell, 1992: 364). Having hitherto shown how the advent of Covid-19 “gave rise to disciplinary projects” (Foucault, 1995: 198), not unlike the 17th-century plague that Foucault was writing about, it seems appropriate to grapple with such a legal and political context in terms of what this means for criminological and jurisprudential scholarship, pedagogy and study—arguing that we can no longer ignore the harm that romanticised notions of ‘the law’ do, without being complicit in the ends it serves, as a tool of “just liberal violence” (Neu, 2017).

Shocking though the repressive legislation we have examined is, it is merely a reminder of how the “exceptional state” becomes “permanently installed” (Hall *et al.*, 1982: 306) —using an emergency to suspend human rights. This is hardly an aberration. It is evidence of how this can and does happen because “no matter how democratic the constitution of a state regime, as a sovereign state

it always more than a democracy, and consequently a good deal less” (Buck-Morss, 2003: 31-2). What we are witnessing, therefore, is a case study in ideological control—enforced through “coercion” as “the natural and routine form in which consent is secured” (Hall *et al.*, 1982: 320) and expressed by a reaction to political opposition that sees dissenters not as “political adversaries to be opposed, but criminals to be apprehended” (Chamayou, 2015: 68). This creates a special challenge for the integrity and rigour of any academic discipline that relies uncritically on the vocabulary and logic of ‘the law’, without interrogating what it means to those it is used against. In the light of such lawfare against civil society, criminologists and legal scholars have a moral duty to become disloyal to fictitious conceptions of ‘the law’—striving instead to understand the dominant judicial and political order from the standpoint of those who are victimised by it. Taking Walter Benjamin’s (1968: 257) advice seriously, it seems like we have very little choice but to pay close attention to how “the tradition of the oppressed teaches us that the “state of emergency” in which we live is not the exception but the rule” and “attain to a conception of history [or, in our case, the law] that is in keeping with this insight”. Failure to do so, means refusing to see how the vocabulary of carceral logics normalise and institutionalise social injustice, while promising to do the opposite. After all, as Judith Shklar (1986) reminds us, repression is “always part of a judicial and political system. To ignore this is to falsify its character and to make any effort to halt or impede it impossible”.

If the pandemic as a juridico-political moment has taught us anything, the lesson learned must be the realisation of how easy it is for the state to turn fundamental human and political rights and civil liberties, like the freedom of movement and assembly, into criminal offences—limiting the right to protest and silencing opposition and dissent. Losing sight of this, makes it impossible to see how difficult it is to pretend that policing equals protection for all, that the law is just and that the state is a neutral entity—or that our refusal to admit that propping up the dominant judicial and political order does not (re)produce violence and harm. As students of policing, ‘crime’, law,

penality and surveillance in such a legal-penal and socio-political climate, we cannot afford to look or shy away from such forms of legal(ised), normal(ised) and formal(ised) violence—unless we resign ourselves to such liberal-illiberal, democratic-authoritarian regimes as a necessary evil by adopting their language and thinking to legitimise their operations, instead of exposing, undermining and dismantling them. Much of this will undoubtedly be dismissed as utopian, fanciful, unrealistic, disreputable and dangerous abolitionist freedom dreaming (Fatsis and Lamb, 2022: 79-112)—especially by those hiding behind spurious allusions to value-neutral, rational, scientific objectivity and professional respectability, instead of giving up bird’s-eye views from socio-cultural and political ‘nowheres’ and working towards scholarship that creates ‘elsewheres’ that build socially just, fair, pacific and liberating (rather than liberal) spaces to think, learn and be. Such initiatives can and do exist even within professional academic settings, as evidenced by the Department of Criminology at the University of Ottawa which offers a mandatory undergraduate module on abolishing the criminal justice system (CRM 4302 Abolitionism and the Criminal Justice System²¹). Beyond individual examples, blueprints, five-year plans and ten-point programmes, however, what we should aspire to is a collective effort to move away from rather than traffic in “learned discourse” that becomes “so indispensable to the functioning of the [...] penal system” (Foucault, 1980: 47). As Sven Lindqvist (1996: 2) put it, albeit in a different context, “[y]ou already know enough. So do I. It is not knowledge we lack. What is missing is the courage to understand what we know and to draw conclusions”. In such hopeless times, where state lawfare against civil society has to be seen as a default setting rather than a system error—we can either commit to thinking, writing, teaching and living in ways that nurture “vigor of thought and thoughtful deed” (Du Bois, 2007: 178), or accept our sorry state as apologists of a perfectly legal state of injustice.

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²¹ <https://catalogue.uottawa.ca/en/courses/crm/>

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