

Essay

The Health-Power-Criminality Nexus in the State of Exception

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Background

The positioning of the 'other' as a dangerous vector of disease is a long-standing trope. This has existed both in racial terms, such as the 1905 Aliens Act, and for others positioned as on the outliers of society, such as sex workers, under the Contagious Diseases Acts 1864, 1866, 1869 (Hamilton, 1978). The public health system has long been used as a system of control, alongside its self-described role as existing for the betterment of population health. Similarly, other aspects of our health system have long functioned both as a foundational part of the welfare state, and as key perpetrators of racial injustice and part of the carceral state. This is most obvious in the psychiatric system, where there continues to be a disproportionate detention of black men (Singh, 2007). Injustice, surveillance, and even mass detention, that is enacted within a health systems framework is rarely given the same critical focus as other systems of power, such as the criminal justice system – which has been highlighted by the reality that various recent reports into racial discrimination only give a brief mention to the role of healthcare systems in perpetrating various injustices (Equality and Human Rights Commission, 2016). During the pandemic the healthcare system has increasingly been used as a justification for advancing a state apparatus of biopower and has experienced little resistance from the organised left.

The State of Exception

The State of Exception is based on the state's ability to transcend the rule of law in the name of 'public good' (Agamben, 2005). In practice this has resulted in the government threatening large fines and the possibility of prison sentences for travellers arriving in the country and not complying with quarantine (BBC News, 2021). Labour's Shadow Health Secretary Jonathan Ashworth told the Commons: "Our first line of defence is surely to do everything we can to stop

[new variants] arising in the first place. That means securing our borders to isolate new variants as they come in” (Ibid). In the same article we are reminded of the moralising discourse of self-responsibilization by Conservative Health Secretary Matt Hancock who states: "People who flout these rules are putting us all at risk” (Ibid). This shifts the responsibility onto individual actors and deflects blame from the multiple failings of the state during the pandemic. It also positions the threat as coming from a foreign agent, and as such represents a strong boundary-marker of the dangerous 'other' and pollutant (Douglas, 1966).

Hudson (1997) argued that punishment can never lead to justice, and we argue that a criminal justice approach cannot medically nor ethically be used to solve a public health crisis. Indeed, there have been a raft of ethical medical debates during the crisis, including the ethical issues of the mass testing of asymptomatic people (Pollock, 2021) and the counterproductive measures of issuing Fixed Penalty Notices to people using outdoor spaces such as beaches, country parks, and sitting on benches, displacing people into less safe indoor spaces. These should be questioned and critically challenged, especially given the lack of gendered risk assessment and the hostile architectures presented to disabled people through such measures.

The ‘state of exception’ is compounded further by health exceptionalism whereby oppressive government action is considered to be benign as is perceived to be carried out to advance health and avoid mortality. This has led to a mass expansion of police power, including into fine details of all of our personal and private lives, detailing specifics such as whether it is permitted to sit on a park bench, or who an individual may invite into their home. Almost every aspect of civic society, including religious and political activity, has been criminalised. These restrictions have, as expected, been disproportionately enforced in those the state has the most control over – in particular people who are in state institutions such as prisons, care homes, mental health hospitals, and supported accommodation units (Freudenthal & Campling, 2021). Given that people in such institutions are disproportionately working class or disadvantaged in other ways, this has led to a disparity in the enforcement of the restrictions of liberty. People whose liberty may be curtailed due to other legal frameworks (e.g. the Mental Health Act or Mental Capacity Act) have been placed in isolation in mental health hospitals and care homes, using legislation that was never intended to be enacted to manage a public health risk.

Stay the f*ck at home: The class politics and the erasure of risk

The aggressive slogans telling citizens to ‘stay at home’ have created a confusing labyrinth of legal restrictions that reinforce the government’s divide and rule strategy. These strategies have failed to consider the classed and gendered implications (Boyce Kay, 2020; Preston and Firth, 2020; 2021). Nor have such tactics accounted for the violence and danger that exist within the home. Scholars such as Walklate, Richardson and Godrey (2020) have referred to this risk as the shadow pandemic (2020).

We can also see that the widening-web of governmentality (Hudson, 1997) has spread to using celebrities and Influencers as tools of state propaganda, Boyce Kay argues that “celebrity

culture has become the soft arm of law enforcement” (2020, p. 885). Indeed, a government spokesperson has admitted that Influencers from the television show Love Island were paid to make social media posts promoting Test and Trace (BBC News, 2020). The body of the working-class woman has long been a site of regulation and a construction of moral decay (Commane, 2021; Tyler, 2005) and this is influenced through the public disciplining of women influencers who ‘flout’ lockdown rules (Packer, 2021) whilst middle class males such as Professor Neil Ferguson and Matt Hancock MP are spared such punishment.

This presents an issue with the legitimacy of public health advisors and their guidance. This self-responsibilization agenda can be seen as part of a widening-web of governmentality that uses a variety of actors to regulate individuals. In *Society Must Be Defended* Foucault has a preoccupation with the schema of war that is central to his positioning of force and power-relations (Foucault, 1998, p. xviii). We must ‘fight’ the Indian variant and ‘defend our borders’, no matter the harm to vulnerable people. This military language is problematic and promotes xenophobia and racism behind the guises of saving ‘us’ from ‘them’, promoting an agenda of nationalism.

Covidiot

Reicher and Drury have written that the public are adhering to the regulations despite the many hardships they are facing (Reicher & Drury, 2021). Therefore insults used in the mainstream press such as ‘Covidiot’ must be seen as part of the moralising discourse that places ‘blame’ for the pandemic at an individual level whilst erasing the failing of the government. There is also a strong classed element to the Covidiot slur. The middle classes have largely been able to stay at home and transfer their risk to the working-class workers through ‘invisible’ means such as ordering online from warehouse staff, or having food delivered by precarious staff. As Preston and Firth rightly argue, capitalism has provided the “human factories” for virus transmission (Preston and Firth, 2020, p. 2). Whilst the middle classes have been baking banana bread and saving money from long commutes and leisure activities, the working classes have had their risks increased as a *direct* result of the middle classes’ desire for comfort and convenience.

The securely employed mocking those at most financial and biological risk due to their socio-economic disadvantage is particularly cruel. An example of this has been the criticism of the longing for pubs to reopen. Hospitality has been one of the worst impacted industries, with the hospitality sector in the UK usually providing 3.2 million jobs which equals 10 percent of UK employment (UK Hospitality, 2021). Individual pub landlords, independent bar, cafe and restaurant owners, have been disproportionately harmed by the various and changing lockdown regulations. The acute stress of not knowing when, or if, they will be able to pay mounting bills, re-open, and retain staff, is a serious cause for concern for mental ill health (Khan et al, 2021). It is also important to recognise that pubs are the centre of many communities and help those who struggle with social isolation. Alcohol-related deaths in the home increased during the period of lockdowns (Limb, 2021). This illustrates why a blinkered approach to combating medical and social harms are not desirable. It is not feasible to ‘protect’ society from one specific

harm whilst exacerbating other harms. The lack of nuance in the public health approach to Covid has caused untold harms to the most marginalised in our societies.

Failure of the institutions of the organised left

Many of the institutions of civic society are established to advocate for particular groups or activities yet have been unable to during the course of the pandemic. This is most striking within the institutions of the organised left, such as the Labour party, that rather than campaigning for the rights and advancing the interests of the working class, has instead wholeheartedly supported the lockdown policy programme and even advocated for stricter lockdowns. This is despite the lockdown programme representing an austerity-type policy, with the forced closure of services, that will have a disproportionate impact on working class communities (Preston and Firth, 2021).

This may reflect a disconnect between the institutions and the people that they claim to represent, which perhaps suggests that if the institutions are not benefiting, and sometimes actively harming those whose interests they purport to advance, than perhaps the institutions primarily exist to advance the interests of those people that lead them rather than those they seek to represent. The majority of party members, across all political parties including the Labour party, are in higher social classes (Audickas et al, 2019), and are therefore poorly equipped to recognise the impact that such policies might have on working class communities. Working class people, no longer fully represented in the political parties that claim to advocate for them, have therefore been locked out of the positions of influence that is awarded to those in charge of large institutions, which may have contributed to the conditions arising which has allowed for a public health response that has been detrimental to those with less influence.

Bio-surveillance and control

As the pandemic has progressed, an increasingly complex system of bio-surveillance has been constructed, ranging from the primitive, such as police patrolling parks ensuring public health restrictions are adhered to, to the complex and technical, including a variety of different types of tests and tracking systems for logging test results. The prohibition against group activity has led to a significant curtailment against most of the structures of civic society – community organisations, religious communities, political activities, pubs, cafes – which means that individuals do not have the opportunity to meet one another and exist in groups together. This has led to an authoritarian societal structure, where our relationship is with the government, but not with our peers and fellow citizens. This relationship is acted out in terms of power control – the government dictates what we can and cannot do and maintains this through surveillance.

The rupture of group structures is further maintained not just by the means of meeting having been criminalised, but also through an encouragement to live in a state of paranoia, such that any individual should be considered primarily as an infection risk and therefore a threat to our life, or the lives of those around us (Douglas, 1966). The systems of control and paranoia (Harper, 2008) are further maintained by the hostile adjustments made to public spaces, such

that playgrounds are closed, park benches sealed off, and picnic benches prohibited, and the government makes the decision on behalf of the public regarding what activities are considered “essential” or “non-essential”.

While the systems of bio-surveillance have become more entrenched as the pandemic has progressed, with ever increasing demands for testing of the public to participate in daily civic life, the public health discourse has also become ever more divorced from the fundamental biological realities of human existence. Many of the “lockdown” policies have been based on an idea that human interaction can be “frozen” and resumed once it is safe to do so. Such policies have at their core a denial of our own mortality and the realities of the passing of time. This has been most stark in the treatment of older people who reside in care homes, where the assumption has been made that they can wait until after the pandemic has passed to see relatives. However the mortality in care homes is high (Collingridge Moore et al, 2020) and many other residents have progressive cognitive illnesses such that spending time with their family cannot be reasonably delayed for a period of months or longer.

Similarly, biological realities such as the inevitability of viral mutations, have been denied, with a fantasy that mutations can be prevented by closing our borders. The government has likewise sought to expand its control over innate human behaviour, by legislating bans on physical contact such as hugging, and sexual activity with a new partner. At its heart, this is rooted in a fantasy of control, in which it is considered possible for the government to control behaviour in this way. It has long been understood that such ‘total abstinence’ policies are rarely successful in modifying human behaviour (Arnold, 2021), however such knowledge and realities has been overlooked in the desire for government control over our relational lives.

Overwhelming medicalisation

Pandemics impact every aspect of society and the decision-making involved in our response requires consideration of fundamental societal realities such as how we support one another, how civil liberties are protected, how risk is distributed, how behaviour change takes place and its potential interaction with law enforcement, and how people are economically protected so as to reduce the risk of destitution. Yet during the Covid-19 pandemic, the government has de-facto devolved key decision making on many of these factors to the scientific bodies, by using the “follow the science” rhetoric. This has functioned to remove responsibility from the government should mistakes be made and has resulted in the response being viewed first and foremost through a scientific and medical framework (Abbasi, 2020). Interventions are considered in terms of how they might impact the outcomes on an epidemiological model, with little or no consideration given to existing human rights and civil liberties. This has resulted in deprivations of liberty taking place without any significant safeguards being put in place for those impacted by them, and all activities are considered first and foremost in terms of the risk the activity might pose of viral transmission, irrespective of the meaning or importance of particular activities for individuals.

Conclusion

2020-21 has overseen the dismantling of the fundamental building blocks of our society. Almost all the institutions of civic society, other than those involved with the direct delivery of healthcare and emergency services, have at some points been closed to in-person activity. Much has been written about the austerity politics that was spearheaded by the coalition government from 2010 and continued by subsequent Conservative governments, yet the withdrawal and closure of services during the pandemic has represented a far greater removal of support from some of the most vulnerable in our society than was ever threatened by austerity politics. This has resulted in a more isolated, lonely, and disconnected society. While the driving rationale that has led to this has been primarily medical, with a goal of reducing the risk of viral transmission between humans, the rebuilding up of society cannot be done by medicine. Perhaps a multi-disciplinary led pandemic response - one that includes historical and political considerations, a human rights framework, and democratic oversight - would have prevented some of the policies that took place, which were seemingly unaware of many of these considerations. Potentially the hyper-specialisation in academic disciplines, unaware of the perspectives of other ways of understanding human relationships and societal structures, contributed to the lockdown-related fragmentation, and the path forward to rebuilding society will need to be multidisciplinary, across different sectors and areas of expertise. Perhaps multi-disciplinary work such as this - between psychiatry and criminology, with consideration given to health care, mental health, and the intersection between law enforcement and healthcare, can be a stepping-stone towards dismantling medical authoritarianism, re-asserting our legal rights and civil liberties, and ultimately rebuilding our community structures free from an oppressive system of medicalised control.

Bibliography

- Abbasi K. (2020) Covid-19: politicisation, “corruption”, and suppression of science. *British Medical Journal* 371 doi: <https://doi.org/10.1136/bmj.m4425>
- Agamben G. (2004) “Interview with Giorgio Agamben – Life, A Work of Art Without an Author: the State of Exception, the Administration of Disorder, and Private Life”, *German Law Review*, Vol. 5, No. 5
- Agamben G. (2005) *State of Exception*, translated by Kevin Attell, Chicago: The University of Chicago Press
- Arendt, H. (1951). *The Origins of Totalitarianism*, London: Penguin Classics
- Arnold, C. (2021). Covid-19: How the lessons of HIV can help end the pandemic. *British Medical Journal* 372, doi: <https://doi.org/10.1136/bmj.n216>
- Audickas, L., Dempsey, N., Loft, P. (2019) Membership of UK political parties, House of Commons Library Briefing Paper, Available at: <https://researchbriefings.files.parliament.uk/documents/SN05125/SN05125.pdf>

- BBC News, (2020). Love Island stars and influencers paid to promote track and trace, BBC News Online, 30th August 2020, Available at: <https://www.bbc.co.uk/news/business-53968222>
- BBC News, (2021). COVID-19: Travellers face £1,750 cost for England's quarantine hotels, BBC News Online, 9th February 2021, Available at: <https://www.bbc.co.uk/news/uk-55995645>
- Boyce Kay, B. (2020). 'Stay the fuck at home!': Feminism, family and the private home in a time of coronavirus, *Feminist Media Studies*, 20 (6), pp.883-888, Doi: 10.1080/14680777.2020.1765293
- Collingridge Moore D, Payne S, Keegan T, *et al.* (2020) Length of stay in long-term care facilities: a comparison of residents in six European countries. Results of the PACE cross-sectional study. *British Medical Journal Open*, Doi: 10/1136/bmjopen-2019-033881
- Commane, G. (2021) *Bad Girls, Dirty Bodies Sex, Performance and Safe Femininity*, London: Bloomsbury
- Douglas, M. (1966) *Purity and Danger An Analysis of Concepts of Pollution and Taboo*, London: Penguin
- Equality and Human Rights Commission. (2016) *Healing a Divided Britain: the need for a comprehensive race equality strategy*, p 31.
- Foucault, M. (1998) *Society Must be Defended*, translated by David Macey, London: Penguin
- Freudenthal, R. & Campling, H. (2021). Protecting the rights of individuals who face both mental health and public health restrictions. *BMJ Opinion*. Available from: <https://blogs.bmj.com/bmj/2021/02/19/protecting-the-rights-of-individuals-who-face-both-mental-health-and-public-health-restrictions/> [accessed 12th March 2021]
- Harper, D. (2008). The Politics of Paranoia: Paranoid Positioning and Conspiratorial Narratives in the Surveillance Society, *Surveillance and Society*, 5 (1) pp.1-32
- Hamilton, M. (1978). Opposition to the Contagious Diseases Acts, 1864-1886. *Albion: A Quarterly Journal Concerned with British Studies*, 10(1), pp. 14-27. doi:10.2307/4048453
- Hudson, B. (1997) 'Social Control' in M. Maguire , R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology* (2nd ed). Oxford: Oxford University Press.
- Khan, K.I., Niazi, A., Nasir, A., Hussain, M. and Khan, M.I., 2021. The Effect of COVID-19 on the Hospitality Industry: The Implication for Open Innovation. *Journal of Open Innovation: Technology, Market, and Complexity*, [online] 7(1), p.30. doi.org/10.3390/joitmc7010030
- Klein, N. (2007) *The Shock Doctrine*, London: Penguin Random House UK
- Limb, M. (2021) Deaths from alcohol hit record high during 2020, show figures, *British Medical Journal*, <https://www.bmj.com/content/372/bmj.n317>

Packer, S. (2021). 'EXCLUSIVE 'Acting ignorant is selfish': Olivia Bowen is accused of flouting lockdown rules after Alex's stepdad is spotted on her Instagram story', Daily Mail, 23rd February 2021, Accessed at: <https://www.dailymail.co.uk/tvshowbiz/article-9285931/Olivia-Bowen-accused-flouting-lockdown-rules-Alexs-stepdad-spotted-Instagram.html>

Pollock, A. (2021). Testing, testing... for SARS-CoV-2 in asymptomatic people, British Medical Journal blog, <https://blogs.bmj.com/bmj/2021/02/09/allison-pollock-testing-testing-for-sars-cov-2-in-asymptomatic-people/>

Preston, J., Firth, R., (2020). Coronavirus, Class and Mutual Aid in the United Kingdom. Palgrave Macmillan. 3030577139. 9783030577131

Preston, J. Firth, R., (2021). The pandemic is the new front line in the war on the working class, The Big Issue, 2nd March 2021, Available at: <https://www.bigissue.com/opinion/the-pandemic-is-the-new-front-line-in-the-war-on-the-working-class/>

Reicher, S & Drury, J. (2021). Pandemic fatigue? How adherence to covid-19 regulations has been misrepresented and why it matters, Available at: <https://blogs.bmj.com/bmj/2021/01/07/pandemic-fatigue-how-adherence-to-covid-19-regulations-has-been-misrepresented-and-why-it-matters/>

Singh, S. P., Greenwood, N., White, S. and Churchill, R. (2007) "Ethnicity and the Mental Health Act 1983: Systematic review," *British Journal of Psychiatry*. Cambridge University Press, 191(2), pp. 99–105. doi: 10.1192/bjp.bp.106.030346.

Tyler, I. (2008). 'Chav Mum, Chav Scum' Class disgust in Contemporary Britain, *Feminist Media Studies*, 8, 1, pp.17-34, DOI:10.1080/14680770701824779

UK Hospitality, (2021). Fair 4 Hospitality, Available at: <https://www.ukhospitality.org.uk/page/FAIR4HOSPITALITY>

Walklate, S., Richardson, J., Godfrey, B. (2020). Domestic Abuse- Family Violence, Disasters and Restrictions under Covid-19: An Overview. Working Paper No. 1. Domestic Abuse: Responding to the Shadow Pandemic, Liverpool: University of Liverpool