A law unto themselves: On the relatively autonomous operation of protest policing during the Covid-19 pandemic

Dr Greg Martin, Associate Professor of Criminology, Law and Society, School of Social and Political Sciences, University of Sydney, Australia.

Email: greg.martin@sydney.edu.au

Abstract

A central argument of this article is that the exercise of police power in respect of protests is relatively autonomous of judicial pronouncements affirming or upholding rights of free speech and peaceful public assembly. Using mostly Australian examples but also drawing on United Kingdom material and some American references, the article shows how protests have gone ahead regardless of prohibitions on mass gatherings during the Covid-19 pandemic. In New South Wales, courts have sometimes allowed protests to proceed when public health experts have assessed the risk to community transmission of coronavirus to be sufficiently low. Notwithstanding that, as they did prior to the pandemic, police have moved to prevent protests and repress protestors. Accordingly, the article takes issue with the 'negotiated management' model of protest policing, which perpetuates a fiction of police-protestor co-operation. Indeed, protest policing has often been conflictual and heavy-handed, even militaristic, which, paradoxically, has sometimes led to potential breaches of Covid-safe protocols. The article concludes by highlighting analogies between the Covid crisis and the 'war on terror' following 9/11, including the role played by courts in attempting to limit the concentration of executive power, government overreach and intensification of police powers under a paradigm of security.

Key words: coronavirus crisis, Covid-19 pandemic, health security, protest policing, right to protest, war on terror

Introduction

Despite being at odds with coronavirus restrictions prohibiting mass gatherings, people have continued to protest throughout the Covid-19 pandemic. The lawfulness or legality of public gatherings, including those for the purpose of protest, has varied at different times and across jurisdictions. In the United Kingdom, for instance, coronavirus rules have only sometimes provided exemptions permitting protests (Grierson and Dodd 2020). In the Australian state of New South Wales, which is a principal focus of this article, the Supreme Court has sometimes allowed protests to proceed while at other times it has prohibited them on the advice of public health officials who have considered the risk of community transmission of coronavirus too great during those phases of the pandemic.

For protests to be authorised, and therefore lawful, in New South Wales, protest organisers must adhere to provisions set out in the *Summary Offences Act 1988* (NSW), which essentially provides for what in the scholarly literature is described as a 'negotiated management' model of protest policing (Vitale 2005). It is a key contention of this article, however, that this model is flawed, since it is premised on a fiction of police and protestors negotiating with equal bargaining power. Accordingly, even when courts have authorised protests, police can and have moved to impede protests and repress protestors. Not only has this occurred in New South Wales but in other parts of the world during the pandemic; one of the more prominent cases here being the heavy-handed policing of the vigil for Sarah Everard held on Clapham Common in March 2021. Even before that vigil took place, police failed to act on the High Court's recommendation that they negotiate constructively with Reclaim These Streets activists to ensure a Covid-safe event occur. Hence, a central argument of the article is that regardless of courts striving to foster cooperative relations between police and protestors, the breadth of police discretion is such that it permits the exercise of police power in whatever ways police deem necessary.

The article begins by discussing a burgeoning interdisciplinary literature dedicated to considering optimal ways of fostering compliance with Covid rules largely via facilitative or procedural justice policing. Significantly, these means of engendering compliance contrast with some of the protest policing methods employed during the pandemic. Nevertheless,

fines have been a key law enforcement tool used throughout the coronavirus crisis, and have contributed, inter alia, to the criminalisation of everyday life. Criminalising dissent has also intensified during the pandemic, including in ways likely to precipitate the spread of coronavirus, such as protestors being forced to remove facemasks after police deployment of tear gas.

The second section of the article considers the variety of protests that have occurred during the pandemic, including Black Lives Matter, refugee welfare and anti-lockdown demonstrations. It looks at the ways protests have been policed mostly in a manner that is antithetical to the negotiated management model, though in keeping with a pre-emptive security style of policing. The next section offers an exposition of the New South Wales jurisprudence on the legality of protests organised in the context of public health orders prohibiting mass outdoor gatherings. Contrary to assertions that has amounted to a blanket ban on protest, the article argues the New South Wales case law is more nuanced, with courts sometimes allowing protest gatherings to proceed when public health experts have deemed them sufficiently low risk. The concluding section of the article considers analogies between the Covid crisis and the 'war on terror' post-9/11. In both scenarios, courts have played a crucial role in providing a check on government overreach and pre-emptive security policing strategies, though, as the article emphasises, police remain sufficiently free to exercise discretionary power in respect of protests in ways that are relatively autonomous of judicial rulings.

Fostering Covid compliance, medical policing and the criminalisation of everyday life

As occurred during the Spanish flu pandemic, 1918-1919 (Luckingham 1984), authorities have found it hard to enforce rules and restrictions during the Covid-19 pandemic. In England, police chiefs asked retailers and shopkeepers to work in 'partnership' with them to enforce the mandatory wearing of facemasks in shops that came into force on 24 July 2020, saying they lacked the resources to enforce the law broadly and issue £100 fines for non-compliance (Wood and Syal 2020). In the United States, police in some areas refused to enforce lockdown rules as cases surged at the end of 2020, with a Californian sheriff saying, 'Compliance with health orders is a matter of personal responsibility and not a matter of law enforcement' (Gramenz 2020). Meanwhile, in the Australian state of Victoria, staff at a Bunnings hardware store had to call police to escort a woman off the premises after she

refused to wear a mask in-store contrary to company policy. As she left, the woman said she would sue staff for violating her human rights (Estcourt 2020).

Examining both individual and collective expressions of resistance to coronavirus restrictions, scholars working across disciplines have drawn on Tyler's (2006) work around why people obey the law, arriving at a consensus that indicates the best way to engender citizen compliance is via principles of procedural justice, which promote a sense of fairness and faith in police applying rules uniformly. The behaviour of so-called 'sovereign citizens', such as the Bunnings example, forms the basis for much of this academic work that is focused on people believing government rules and restrictions are illegitimate and do not apply to them. A study by McCarthy et al. (2021: 16) refers to this as the 'disengaged defiance' of individuals who are likely to comply with restrictions only when their loved ones face significant health risks posed by Covid (see also Grace 2020), and not because they feel duty compels them, as the majority do (Murphy et al. 2020a: 489). Focusing on collective compliance and the potential for disorder, Reicher and Stott (2020a: 570-571; 2020b: 695-696) argue preventing collective disorder during the pandemic has been dependent on authorities adopting a 'procedurally fair' approach. Replicating arguments made in research on counter-terrorism policing, radicalisation and community engagement (Cherney and Murphy 2017; Dunn et al. 2016), Reicher and Stott support the deployment of 'facilitative policing' as a means of helping police (and the army) win the consent and support of local communities (see also Tyler 2019).

Interest in why people comply with or defy Covid rules and restrictions has also spawned a burgeoning literature seeking to make international comparisons using cross-cultural perspectives. Framing part of his analysis of pandemic policing on culture, Sheptycki (2020: 160) proposes the twin tropes of police 'force' and police 'service' might explain why it is policing styles vary across geographic locations. Terpstra et al. (2021) use a similar formulation when comparing France and the Netherlands. In France, police have used force to ensure compliance with Covid restrictions, which has, in turn, been bolstered by politicians mobilizing a language of 'war' (Terpstra et al. 2021: 173; see also McQuade and Neocleous 2020: 7). (Reicher and Stott (2020b: 698) conjecture the French approach is a legacy of state repression evident in law enforcement responses to the *Gilets Jaunes*.)

Far less heavy-handed and less visible, policing style in the Netherlands has comprised a combination of security-led approaches, such surveillance using drones and smartphone apps,

and community policing (by far the largest component), which stresses responsibilisation, communication, persuasion and self-control. To Terpstra et al., the stark difference between the two jurisdictions correlates to the number of fines issued in each for breach of coronavirus rules. Hence, from 17 March to 11 May 2020, 1.1 million fines were issued in France, while 13,390 fines were issued in the Netherlands from 26 March to 31 May 2020 (Terpstra et al. 2021: 172, 174).

The use of fines as a key strategy in the enforcement of Covid regulations contrasts with facilitative or procedurally just approaches aimed at cajoling citizen compliance and policing by consent. Nevertheless, fines and short periods of imprisonment for egregious or repeat offences have tended to be the penalties of choice for non-compliance with coronavirus measures. However, as the critical criminology literature reveals, even though fines are prima facie porous sanctions that are 'levied impersonally, without ceremony and regardless of the intentions or desires of the payee' (O'Malley 2009: 77) to 'compel obedience' without any accompanying feeling of guilt or wrongdoing (O'Malley 2009: 73), there is nonetheless a hidden punitiveness to fines, including 'enforceability against the indigent' (Quilter and Hogg 2018: 16). Police location data from across Australia not only confirms this but also reveals an inverse relationship between fines and Covid-19 infection rates. Accordingly, more fines have been issued in less affluent suburbs with relatively few Covid cases as compared to more affluent suburbs with high rates of coronavirus infection (Boseley 2020; Lee 2020; McGowan et al. 2020).

In this way, fines function as a form of 'criminal selectivity', which refers to the unfairness that is 'a mandated feature of the criminal justice system', and which results in the over-criminalisation of groups at society's margins; while social harms perpetrated by the powerful are under-criminalised (Vegh Weis 2017: xv). The 'hard lockdown' and high visibility policing of public housing tower blocks at the beginning of Melbourne's second outbreak in mid-2020 – which effectively targeted marginalised groups already suspicious of the authorities – has been described in similar terms as an example of 'selective criminalisation and intensified overpolicing' (Boon-Kuo et al. 2020: 8; see also Lelliott et al. 2021: 188, 196; Martin 2021b). Given the health inequalities experienced by public housing residents reflect long-term government failure to invest in that particular housing sector, questions were raised as to the appropriateness of using law enforcement to patrol public

health, as well as the reasonableness of turning to police in the absence of a properly planned emergency public health response (Boon-Kuo et al. 2020: 9).

To McQuade and Neocleous (2020: 8), this convergence of criminal justice and public health policy during the pandemic represents a return to 'medical policing', whereby 'health security and medical police coincide'. Historically, medical policing has involved social police exercising 'soft power […] in the management of life and ways of living [and] the policing of the health of individuals' (McQuade and Neocleous 2020: 4). Moreover, as with older conceptions of social police, which regard them 'a technology of governing through the welfare and health of populations' (Wall and Linnemann 2014: 136), so McQuade Neocleous (2020: 4) connect medical policing to 'the systematic colonisation of everyday practices'. During the Covid crisis that has meant police have been granted unprecedented access to the private lives of citizens (Mazerolle and Ransley 2021), which has led, inter alia, to the 'criminalisation of everyday life' (Martin 2021b), including in the use of fines (see Lelliott et al. 2021: 186, 195), that function here as a 'disciplinary technology' in the regulation, rather than correction, of those who may not represent a criminal justice problem but still require social control (O'Malley 2009: 75).

Criminalisation during the pandemic has also extended to protests, which have taken place despite public gatherings being at variance with social distancing and other Covid measures. Paradoxically, police warnings about the dangers of Covid transmission at mass gatherings have been antithetical to the militaristic policing practices frequently displayed at these events, which, it has been observed, are likely to precipitate spread of the disease. Among other things, mass arrests bring people into close proximity, which makes physical distancing impossible, and the use of tear gas on protestors not only causes them to remove facemasks but also provokes sneezing and coughing and hence raises concern about potential viral spread (Dewey 2021: 64-65; Gaffney et al. 2020: 21). All of this underscores the problem of using a criminal justice approach to address social issues amidst a health crisis (Dewey 2021: 65, 68) and poses questions as to whether expenditure on law enforcement 'would be better spent on alternatives to policing, such as health, educational, and social programmes' (Gaffney et al. 2020: 21). As with the criminalisation of daily life, these modes of policing and criminalising dissent also contradict calls by academic researchers for the adoption of facilitative or procedurally just approaches. Furthermore, the 'pre-emptive security policing' of protests (Boon-Kuo et al. 2020: 83) and police repression at protest events effectively

subverts statutory schemes aimed at promoting police-protestor cooperation, which is an issue canvassed in the next section.

Protest and policing during the Covid-19 crisis

Notwithstanding the public health concerns posed by mass gatherings during the coronavirus crisis, pressing issues have arisen that have brought protestors onto the streets. The police killing of George Floyd on 25 May 2020 in Minneapolis sparked a resurgence globally of the Black Lives Matter movement that had begun earlier in 2013 after the acquittal of George Zimmerman for the shooting death of African American teenager, Trayvon Martin, in Florida in 2012, and the police killings in 2014 of two African American men: Michael Brown in Ferguson, Missouri; and Eric Garner in New York City. In Australia, Black Lives Matter protests during the pandemic had a local inflection related to the ongoing issue of Aboriginal deaths in custody. Other Australian protests combined social justice/human rights and Covid issues, including concerns raised over refugees and other prisoners seen to be at heightened risk of contracting Covid-19 as a function of being detained in often overcrowded, closed environments (Evans and Petrie 2020: 167-177; Freckleton 2020: 790-793; Gaffney et al. 2020; Henriques-Gomes and Elias Visontay 2020; Kirby 2021). Protests were also held in opposition to lockdowns, vaccinations, and other coronavirus measures, such as the wearing of facemasks.

Writing about protests in the United States before the police murder of George Floyd, Pressman and Choi-Fitzpatrick (2020) argue that unlike protests in solidarity with health care workers, anti-lockdown protestors and their ilk have tended to ignore public health guidelines recommending social distancing and the wearing of facemasks.[1] Gerbaudo (2020: 63) has also delineated various 'strands of pandemic protest' but argues irrespective of their focus *all* protests during the pandemic have been spontaneous, impromptu, and highly localised. However, given its links to the global Black Lives Matter movement one would be hard pressed to characterise Australian protests over Aboriginal deaths in custody as 'high localised'. Rather, it would be better to speak of them as 'glocalised'. The same applies to

[1] Pressman and Choi-Fitzpatrick (2020) argue street protests have sometimes been supported by online action. Similarly, Pleyers (2020) and Kowalewski (2020: 6) show how in the face of prohibitions on public gatherings, the pandemic has spawned less visible activism at the level of daily life in the guise of voluntary action, mutual aid and community groups, such as neighbourhood networks organising food distribution and shopping for medical prescriptions during lockdown.

protests concerned with prisoner and refugee welfare, which were vindicated when half of almost 400 refugees held in dormitory accommodation at an army barracks in the United Kingdom contrary to Covid rules contracted the virus (Taylor 2021). In addition, while certain protests in Australia have appeared spontaneous, even in some of those cases there has been a degree of prior organisation and planning. For instance, before a Day of Freedom rally was due to take place in September 2020 in Melbourne, several protestors were charged with 'incitement' offences under section 321G of the *Crime Act 1958* (Vic) (O'Sullivan 2020b), indicating the protest was not impromptu and involved some measure of preparation.

Significantly, some Australian protests have been organised in accordance with legislation aimed at facilitating public demonstrations. For the most part, those protests have focused on non-Covid-specific issues, such as Black Lives Matter. In New South Wales, those events have been scheduled to take place under provisions set out in the *Summary Offences Act 1988* (NSW). As stated in the second reading speech to the Summary Offences Bill 1988 (NSW), a key object of Part 4 (public assemblies) of the *Summary Offences Act 1988* (NSW) is to facilitate cooperation between protest organisers and police who, it is hoped, will arrive at a consensus over things like protest purpose, protestor numbers and protest route (Gotsis 2015: 14). In exchange for their cooperation with police, protesters are provided protection against the offences of 'unlawful assembly' and 'obstruction' (Gotsis 2015: 15-16). In New South Wales, then, protests proceed, ostensibly at least, on the basis of a 'negotiated management' model (Vitale 2005).

In the past, there has been scholarly support for this more democratic style of protest policing as, it has been argued, 'the velvet glove increasingly comes to replace, or at least cover, the iron fist' (Marx 1998: 253). Most recent commentary, however, is less persuaded by that view, having identified a 'shift away from communicative models of interaction between individuals and governments to a more repressive and hostile relationship' (Bourne 2011: 191). Some have even cast doubt on the dichotomy between 'repressive' and 'communicative' modes of policing, arguing 'such distinctions are part of the mythology of the liberal state', and asking, 'Are not acts of repression, command, and control also acts of communication?' (Neocleous 2021: 2).

In a similar vein, it is a key contention of this article that the negotiated management model is predicated on a fiction of police and protestors brokering deals as equal partners. Such a flawed assumption denies the fundamental power imbalance that exists between protestors

and police, as well as the fact that in reality, 'police make the initial decision about protest authorisation' and are therefore 'the "primary definers" of legitimate protest' (Boon-Kuo et al. 2020: 7; see also McNamara and Quilter 2019; Sentas and Grewcock 2018). Moreover, while the judiciary can and have intervened in the process of protest authorisation under statutory schemes like Part 4 of the *Summary Offences Act 1988* (NSW), ultimately courts are powerless when it come to the practical exercise of police power before, during or after protest events.

A couple of recent cases support this contention and the argument put earlier that the policing of protest during the pandemic has, at times, been at odds with scholars advocating for the use of facilitative or procedural justice policing to foster Covid compliance. First is the example of a protest that took place at the University of Sydney on 28 August 2020 where police used Covid health orders to repress students who were issued with fines and move-on orders supported by the force of over seventy riot and mounted officers (Wang 2020). A more high-profile example is the policing of the vigil held on 13 March 2021 at Clapham Common in memory of Sarah Everard, where police failed to act on High Court advice that they engage constructively with Reclaim These Streets activists beforehand to ensure a Covid-safe event take place (Kirk 2020).[2]

The effect of the High Court ruling was that protest can in principle be lawful, even when coronavirus regulations do not provide an exemption for protests – as they did not at the time of the vigil (Grierson and Dodd 2020) – and that the onus is on police to assess how protest events can proceed in a way that is 'proportionate and safe' (Kirk 2020). However, the 'extremely broad discretion' given to individual police forces to decide when it is 'necessary and proportionate to restrict protests' means the current law governing protests is insufficiently clear and foreseeable (Lines 2021: 9; see also Greene 2020: 84). The divergent use of police discretion was on display at Reclaim These Streets vigils. While one held in Birmingham (contrary to police advice), 'passed off without incident and with no obvious sign of uniformed police' (Campbell 2021), social and mainstream media footage of the Clapham event depicted mainly male Metropolitan police officers clashing, sometimes aggressively, with female protestors; images that were despairingly reminiscent of

[2] *Leigh v The Commissioner of the Police of the Metropolis* [2021] EWHC 661 (Admin) (*Leigh*).

photographs of police arresting and handcuffing suffragettes outside Buckingham Palace in the early 1900s (Chakrabarti 2021).

The failure of police to engage with Reclaim These Streets protestors in good faith represents a fundamental flaw of the negotiated management model as well as the fact that whenever police are given carte blanche over protest authorisation, regulation and control (e.g. when there is no protest exemption under Covid regulations), they are more likely than not to choose to adopt a narrow law and order response. Nonetheless, the report of Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) (2021: 46) concluded police actions at the Clapham vigil were not disproportionate and found 'nothing to suggest that officers acted inappropriately or in a heavy-handed manner'. On the contrary, the report determined officers 'did their level best to peacefully disperse the crowd', and that they 'remained calm and professional when being subjected to some extreme and abhorrent abuse' (HMICFRS 2021: 45). This is a situation likely to be compounded by British government proposals under the *Police, Crime, Sentencing and Courts Bill* to permanently strengthen police powers to tackle peaceful protests (GOV.UK 2021). In fact, as if to reinforce the point, police and protestors clashed violently during the 'Kill the Bill' demonstrations of early 2021 when coronavirus rules still provided no exemption for protests (Morris and Weaver 2021).[3]

What could be described then as the relatively autonomous operation of police power has been for some the defining feature of protest policing during the Covid-19 pandemic. Maguire (2021: 2), for instance, shows how protest rights have been interpreted differently by courts and police, with the distinction between 'law in the books' and 'law in action' being played out in the ways police have chosen to exercise their discretion during public protests: routinely violating individual rights, often with impunity. However, while it has been argued the whittling away of exceptions for large gatherings under Covid rules in New South Wales has amounted to 'a de facto anti-protest law', and that there has been an 'intensified criminalisation' of protest under Covid regulations (Boon-Kuo et al. 2020: 7), or even a blanket ban on protest (O'Sullivan 2020a), the New South Wales case law that has evolved around the legality of protest gatherings under Covid restrictions is actually more nuanced. Insofar as the corpus of jurisprudence of the New South Wales Supreme Court regarding the

[3] In contrast to the HMICFRS report, the All Party Parliamentary Group on Democracy and the Constitution identified 'significant failings' in policing at the Clapham Common vigil and Kill the Bill protests in Bristol, also recommending the removal from the *Police, Crime, Sentencing and Courts Bill* of all clauses that expand police powers over peaceful protest (Darling 2021).

legality of mass gatherings for the purpose of protest during the Covid pandemic is considered both 'unique' and 'internationally significant' (Freckelton 2020: 790, 797, 806) it will be the focus of the next section.

The law of protest policing during the coronavirus pandemic in New South Wales

The law of protest in Australia recognises in both statutes and at common law that the right to protest is not absolute but subject to necessary and reasonable limits as can be justified in a free and democratic society, such as restrictions placed on rights of free speech and public assembly in the interests of ensuring public safety or protecting the rights and freedoms of others (Martin 2017, 2021a). That principle was applied amidst the Covid pandemic in *Attorney-General for the State of Queensland v Sri & Ors* [2020] QSC 246 when the Supreme Court of Queensland prohibited a sit-down protest set to be held on 8 August 2020 on Story Bridge in Brisbane. The Court determined the protest interfered with the rights of other road users, including their freedom of movement under section 19 of the *Human Rights Act 2019* (Qld).[4] Limits on protest rights also characterised the approach adopted earlier by Justice Simpson in *Commissioner of Police v Rintoul* [2003] NSWSC 662, where his Honour affirmed the intent of the *Summary Offences Act 1988* (NSW) to 'strike a balance between competing rights – the right, jealously guarded, of the citizen to exercise freedom of speech and assembly integral to a democratic system of government and way of life, and the right of other citizens not to have their own activities impeded or obstructed or curtailed by the exercise of those rights'.[5]

During the Covid pandemic, provisions of the *Summary Offences Act 1988* (NSW) relating to protest have interacted with public health orders made by the New South Wales Health Minister pursuant to section 7 of the *Public Health Act 2010* (NSW). Among other things, those orders have prohibited outdoor public gatherings of more than 20 people (e.g. Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 4), cl 18(1)), where

[4] While the Queensland Court did not need to consider threats posed to public health by Covid-19, Justice Applegarth nevertheless distinguished the Brisbane case from *Commissioner of Police (NSW) v Gibson* [2020] NSWSC 953 on the basis the event involved a static assembly where social distancing would be hard to achieve, including in relation to police officers who would be required to come into close physical contact with protestors when making arrests that would inevitably occur as result of the intent to engage in civil disobedience. That situation would have been compounded by the fact protestors in this case did not apply to have the event approved under the *Peaceful Assembly Act 1992* (Qld). Although that did not make the protest unlawful, it would mean protestors could not be afforded protections granted under that Act for conduct otherwise constituting a criminal offence or civil wrong, such as public nuisance.

[5] *Commissioner of Police v Rintoul* [2003] NSWSC 662 [5].

a *public gathering* is defined as 'a meeting or assembly of persons for a common purpose, including an organised or planned event, in a public place (whether ticketed or not)' (cl 3(1)). As with other rules and restrictions, those failing to comply with public health orders have been liable to receive fines or, in repeat or egregious cases, periods of imprisonment. However, these penalties have not deterred people from protesting with or without authorisation during the pandemic. Some proposals to hold protests pursuant to the process set out in the *Summary Offences Act 1988* (NSW) have ended up before New South Wales Supreme Court following police attempts to block authorisation. And it is these cases that have formed the basis for an emergent body of jurisprudence on the legal status of protest under Covid restrictions.

Among other things, provisions under the *Summary Offences Act 1988* (NSW) stipulate that for a protest to be 'authorised' protest organisers must serve written notice of intent to hold a public assembly on the Commissioner of Police. The issue of notice was the subject of the successful appeal of protest organiser, Raul Bassi, in *Raul Bassi v Commissioner of Police (NSW)* [2020] NSWCA 109. However, although Bassi's appeal ultimately succeeded on a procedural issue, at first instance the Supreme Court refused to authorise the protest. This was the first protest in New South Wales to be held in solidarity with Black Lives Matter. Protestors wanted to remember Aboriginal deaths in custody similar to that of David Dungay Jr, a 26-year-old Dunghutti man who was killed in Sydney's Long Bay Jail in 2015 when prison staff held him face down until he lost consciousness, stopped breathing and died in a manner not dissimilar to George Floyd (Allam 2020).

In *Commissioner of Police v Bassi* [2020] NSWSC 710, trial judge, Justice Fagan, considered exceptional the circumstances of the public health crisis not only in New South Wales but also globally when weighing the risks to community safety with the right to peaceful assembly. Persuasive expert evidence was adduced by Chief Health Officer for New South Wales, Dr Kerry Chant, who while recognising infection rates were very low, 'expressed concern that the event would attract over 10,000 participants and that an event of that size would increase the risk of community-acquired transmission of COVID-19 and the seeding of clusters of infection' (Freckelton 2020: 797). The Court also had regard to the stockpile of facemasks the protest organisers intended to have Covid marshals distribute, and the fact that they planned to provide hand sanitiser at the event. While the Court found these measures would reduce the risk of viral transmission, it held they would not eliminate that risk. On

balance, then, and at trial, Justice Fagan determined the protest could not go ahead, finding that, 'The exercise of the fundamental right of assembly and of expression of political opinion by gathering in numbers is not taken away by the current Public Health Order; it is deferred'.[6]

This precise line of reasoning was followed by Justice Lonergan in *Commissioner of Police, New South Wales Police Force v Kumar (OBO National Union of Students)* [2020] NSWSC 804 when prohibiting the holding of a public assembly in Wollongong on 20 June 2020 to show solidarity with Black Lives Matter and raise awareness about Aboriginal deaths in custody. Crucial in that case was the fact that the defendant, Mr Kumar, could not 'control numbers, who attends, what people do once they are gathered, how they congregate, whether they wear a mask and whether they socially distance or not'.[7]

In the subsequent case of *Commissioner of Police v Gray* [2020] NSWSC 867, the Supreme Court allowed a protest allied to Black Lives Matter to proceed. As with *Bassi* (at first instance), the Court heard evidence from Dr Chant who said at the time and in that location (Newcastle) the risk posed by the protest was low. The Court considered evidence confirming social distancing had been adhered to and facemasks worn at previous protests. The organisers of the protest also argued their proposed event was similar in size to some gatherings regarded an acceptable risk, such as community sporting events with up to 500 people attending, or a crowd of 10,000 watching a football match at a stadium. Having taken the evidence and submissions of both sides into account, and regarding it 'significant that the implied freedom of communication on political and government matters has been recognised as a matter of constitutional law',[8] Justice Adamson held, 'the public interest in free speech and freedom of association outweigh the public health concerns'.[9]

---

[6] *Commissioner of Police v Bassi* [2020] NSWSC 710 [31].
[7] *Commissioner of Police, New South Wales Police Force v Kumar (OBO National Union of Students)* [2020] NSWSC 804 [47] (Lonergan J).
[8] *Commissioner of Police v Gray* [2020] NSWSC 867 [56] (*Gray*) (Adamson J), referring to *Lange v Australian Broadcasting Corporation* (1997) 175 CLR 520.
[9] *Gray* [70]. On 9 October 2020, the New South Wales Supreme Court prohibited the holding of a protest in support of transgender school children, distinguishing Adamson J's opinion in *Commissioner of Police v Gray* [2020] NSWSC 867 [59] on the basis alternatives to public assemblies were not limited to social media, and in this case might have included contacting politicians directly to raise awareness about the negative impact of proposed legislation on advice given to students regarding gender and sexuality: *Commissioner of Police v Samuel Holcombe also known as April Holcombe (on behalf of Community Action for Rainbow Rights)* [2020] NSWSC 1428.

In two other proceedings, the Supreme Court of New South Wales prohibited protests. In *Commissioner of Police (NSW) v Supple* [2020] NSWSC 727, the purpose of the protest was to campaign around fears refugees in detention were at increased risk of coronavirus infection. As with other cases, the Court considered proposals put forth by protestors to mitigate Covid transmission via social distancing and facemasks, though Justice Walton thought it likely these measures would be hard to implement at an event attended by large numbers aggrieved over an emotive issue. Indeed, his Honour was also persuaded by evidence the Assistant Police Commissioner provided, which revealed social distancing and the wearing of facemasks had not been abided by at an earlier protest. While Justice Walton had regard to Dr Chant's opinion that the risk of Covid-19 transmission during the protest was likely to be low, his Honour thought an often overlooked factor was also relevant, namely the 'significant risks for frontline workers such as police'.[10] Deflecting criticism of Justice Fagan's opinion at trial in *Bassi* that protest rights had been deferred not extinguished, Justice Walton thought it crucial to consider the balancing of public health risks with rights to free speech and freedom of public assembly 'will necessarily shift over time'.[11]

In *Commissioner of Police (NSW) v Gibson* [2020] NSWSC 953, the Supreme Court prohibited a proposed protest aligned to Black Lives Matter according to a proposition similar to that enunciated by Justice Walton in *Supple*. Accordingly, Justice Ierace held, 'the balancing of the competing concerns of the right to free speech and to demonstrate, as against the safety of the community at large, *at this particular phase of the pandemic*, necessitates the granting of the order prohibiting the holding of the public assembly'.[12] Critical in this case was evidence presented by public health officials indicating New South Wales was, at that point in time, on a 'knife-edge', principally because of a large coronavirus outbreak, a 'second wave', that the neighbouring state of Victoria was then experiencing. That meant the risk of community transmission was elevated from 'low' to 'medium', including the risk of Covid transmission at public assemblies.[13] Justice Ierace also considered the fact that measures to mitigate transmission, like facemask wearing and social distancing, would be difficult to enforce given the protest was to be held at lunchtime on a weekday in central Sydney. This was of particular concern, opined Justice Ierace, 'as the contact particulars of

[10] *Commissioner of Police (NSW) v Supple* [2020] NSWSC 727 [40] (*Supple*).
[11] *Supple* [42].
[12] *Commissioner of Police (NSW) v Gibson* [2020] NSWSC 953 [84] (*Gibson*), emphasis added.
[13] *Gibson* [82].

passing pedestrians will be unknown and they may not have taken the same precautionary steps as the protesters, such as wearing masks'.[14]

Three months after the decision in *Gibson*, the New South Wales Supreme Court allowed a rally to be held in October 2020 that was organised to protest at the federal government's university education reforms that the National Tertiary Education Industry Union estimated would cause significant job losses across Australia's higher education sector. At that point, there was 'substantial agreement' between the two health experts before the Court that the risk of Covid-19 transmission both in the community and at the protest was at a low level. Justice Cavanagh held, therefore, that in this case, 'the right to free speech and assembly outweighs whatever health risks there might be'.[15]

Concluding commentary: Analogies between the Covid-19 crisis and the 'war on terror' post-9/11

The New South Wales jurisprudence on the legal status of protest during the coronavirus health crisis affirms the principle set out at the beginning of the last section that protest rights are not absolute but subject to necessary and reasonable limits as can be justified in a free society with a democratic system of government. In the New South Wales cases, that has meant limits have been placed on protest rights when public health concerns have taken precedence. Here, courts have conducted a balancing exercise that has sought to reconcile competing public interests in free speech and public assembly, on the one hand, and community health and safety, on the other. Moreover, because courts have been attentive to local conditions at specific phases of the pandemic, the New South Wales case law adds a temporal dimension to the construction of protest rights, which are deemed not immutable.

Contrary to what some have purported (Boon-Kuo et al. 2020; Sullivan 2020a), there has been no wholesale ban on protest during the Covid-19 pandemic in New South Wales, which is something also reflected in United Kingdom judgments standing for the proposition coronavirus regulations do not ban protests per se (Lines 2021: 7-8).[16] Indeed, challenges to the legal status of protest during the Covid-19 pandemic generally have 'resulted in difficult balances needing to be forged between […] safety concerns with long-established principles

[14] *Gibson* [83].
[15] *Commissioner of Police v Thomson* [2020] NSWSC 1424 [92].
[16] *Dolan v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605; *Leigh*.

of criminal justice and much-cherished rights and entitlements' (Freckelton 2020: 806). In New South Wales, though, that has not resulted in the law simply 'doffing its cap to […] police power', as Neocleous (2021: 3) observes has occurred in England and Wales in cases of police 'kettling' protestors. For, as the New South Wales jurisprudence demonstrates, there have been times when courts have resisted police attempts to prevent protests, upheld protest rights and allowed protests to proceed when community transmission of the coronavirus has been considered low risk. Ultimately, though, while courts may affirm protest rights and strive to facilitate police-protestor cooperation – as happened in the United Kingdom case of *Leigh*, for instance – the judiciary cannot dictate how police exercise their power in respect of protests.

To the extent courts also played a role in determining the limits of executive authority and police power following the terror attacks of 11 September 2001, it is instructive to consider analogies between the Covid crisis and developments in the 'war on terror'. In both scenarios, concerns have been raised about the concentration of executive power, as reflected, for instance, in the speed with which exceptional measures have been introduced in a state of emergency, and invariably with little if any public consultation or parliamentary oversight (Baker 2021; Boughey 2020; Greene 2020: 98-100; Murphy et al. 2020b; Ng and Gray 2021: 257-259). Moreover, in both cases, fears have been expressed over the prospect exceptional measures may become permanent, that such measures may be introduced secretly or with little scrutiny, and that measures may give authorities sweeping powers without providing adequate safeguards to guarantee government accountability and transparency (Martin 2010, 2011, 2021a; Fowler 2021; Greene 2020: 84-85; Ng and Gray 2021: 235, 240).

Indeed, following 9/11, critics questioned the extent to which government secrecy and overclaiming national security was used as a pretext to enhance the powers of the police and intelligence services (Roach 2012). While government secrecy has been harder to maintain during the coronavirus crisis given the preponderance of publicly available scientific data, opacity has still been an issue. Early on, for example, there were pleas in the United Kingdom for the government's Scientific Advisory Group for Emergencies (SAGE) to be more open following revelations its membership was kept secret (Mason 2020), and that its meetings were attended by government advisors and hence prone to political interference (Tyler 2020). Lack of transparency also came to light when it was revealed contracts for procuring personal

protective equipment (PPE) had been awarded to cronies of Conservative government ministers (Reeves 2021; Stone 2021).

From the very beginning of the pandemic this so-called 'chumocracy' and the like has led social movement experts and other committed intellectuals to produce 'counter-expertise, reports and analyses that have scrutinized the way governments have tackled the sanitary and social crisis' (Pleyer 2020: 301). The role of courts in these circumstances is also vital for providing a check on executive overreach and monitoring government accountability. After 9/11, courts in the United Kingdom robustly upheld due process rights when closed material proceedings or CMPs were introduced in control order cases where a person's liberty is at stake. The House of Lords here held that to satisfy the requirements of minimum procedural protection under Article 6 of the European Convention on Human Rights, 'a person potentially subject to a control order must be told the "gist" or "essence" of the case against him' (Martin 2014: 511).[17] In Australia, by contrast, the High Court has endorsed the judicial use of secret evidence in control order proceedings despite the limits control orders place on a person's liberty (Martin 2012, 2014; see also Hardy 2011). Meanwhile, in Canada, judges became aware of the dangers of government overclaiming secrecy and national security in the war on terror partly as a result of effective challenges made by special counsel who, unlike their counterparts in other jurisdictions, had access to secret material (Roach 2012: 188; see also Martin 2014: 514; Martin et al. 2015). At other times post-9/11 courts across jurisdictions deferred to the executive branch, as government ministers were deemed best placed to make decisions on matters of national security (Martin 2014: 531; see also Martin and Scott Bray 2012, 2013).

The New South Wales jurisprudence on protest policing during the Covid pandemic has displayed a similar mix of determinations; courts sometimes allowing protests to proceed while at other times preventing them on the basis of persuasive expert evidence … which has also chimed with police wishes. However, what this article has argued is that despite court rulings, the nature of police discretion is such that police are ultimately free – and sufficiently autonomous of court decision-making – to exercise their power in whatever ways they see fit. Accordingly, pandemic policing has frequently assumed the form of 'pre-emptive security

[17] *Secretary of State for the Home Department v MB* [2008] 1 AC 440; *Secretary of State for the Home Department v AF (No 3)* [2010] 2 AC 269.

policing' (Boon-Kuo et al. 2020: 83). And it has done so not only during the life course of protests but also at the level of everyday life through, for instance, the 'risk-based governance' of fines (O'Malley 2010: 373). Herein lies another analogy with the war on terror; that is, in the use of pre-emption and security policing, which it was feared in the post-9/11 context would be exceptional measures that may become normalised as part of a 'preventative paradigm' (Lynch et al. 2010: 5). However, whereas *national security* was at stake following 9/11, as McQuade and Neocleous (2020) propose, it is *health security* (biosecurity) that has been at stake during the Covid-19 pandemic, though in both scenarios policing has continued inexorably to move away from reactive and towards pre-emptive strategies and practices.

References

Allam, L. (2020) 'Black Lives Matter organisers say they'll call off Sydney's rally if premier seeks Dungay death investigation' *The Guardian*, 27 July, available at: <https://www.theguardian.com/australia-news/2020/jul/27/black-lives-matter-organisers-say-theyll-call-off-sydney-rally-if-premier-seeks-dungay-death-investigation>.

Baker, S. (2021) 'Parliament must have the final say on restrictions that cripple our lives', *The Telegraph*, 29 March, available at: <https://www.telegraph.co.uk/politics/2021/03/29/parliament-must-have-final-say-restrictions-cripple-lives/>.

Boon-Kuo, L., Brodie, A., Keene-McCann, J., Sentas, V. and Weber, L. (2020) 'Policing biosecurity: Police enforcement of special measures in New South Wales and Victoria during the COVID-19 pandemic' *Current Issues in Criminal Justice*.

Boseley, M. (2020) '"Overreach and overzealous": Concerns over Victoria's proposed new police powers' *The Guardian*, 12 September, available at: <https://www.theguardian.com/australia-news/2020/sep/21/overreach-and-overzealous-concerns-over-victorias-proposed-new-police-powers>.

Boughey, J. (2020) 'Executive power in emergencies: Where is the accountability?' 45(3) *Alternative Law Journal* 168-174.

Bourne, K. (2011) 'Commanding and controlling protest crowds' *Critical Horizons* 12(2): 189-210.

Campbell, L. (2021a) 'Met police criticised for "deeply disturbing" handling of Clapham Common vigil - as it happened' *The Guardian*, 14 March, available at: <https://www.theguardian.com/world/live/2021/mar/13/reclaim-these-streets-vigils-womens-safety-uk-latest-updates?page=with:block-604d28588f083aee44b799db>.

Chakrabarti, S. (2021) 'After the Sarah Everard vigil scandal, who still thinks the police need extra powers?' *The Guardian*, 15 March, available at: <https://www.theguardian.com/commentisfree/2021/mar/14/sarah-everard-vigil-police-extra-powers-met-brutal-women-priti-patel-protests>.

Cherney, A. and Murphy, K. (2017) 'Police and community cooperation in counterterrorism: evidence and insights from Australia' *Studies in Conflict & Terrorism* 40(12): 1023-1037.

Darling, Z. (2021) '"Significant failings" in policing of "Kill the Bill" protest and Sarah Everard vigil' *Justice Gap*, 1 July, available at: <https://www.thejusticegap.com/significant-failings-in-policing-of-kill-the-bill-protest-and-sarah-everard-vigil/>.

Dewey, J. (2021) 'The solution is the problem: What a pandemic can reveal about policing' in M. J. Ryan (ed.) *COVID-19 – Volume II: Social Consequences and Cultural Adaptations*. London: Routledge, pp. 61-71.

Dunn, K. M., Atie, R., Kennedy, M., Ali, J. A., O'Reilly, J. and Rogerson, L. (2016) 'Can you use community policing for counter terrorism? Evidence from NSW' *Australia, Police Practice and Research* 17(3): 196-211.

Estcourt, D. (2020) 'Do you have a right not to wear a mask?' *The Age*, 27 July, available at: <https://www.theage.com.au/national/victoria/do-you-have-a-right-to-not-wear-a-mask-20200727-p55fqb.html>.

Evans, K. and Petrie, N. (2020) 'COVID-19 and the Australian Human Rights Acts' *Alternative Law Journal* 45(2): 175-179.

Fowler, M. (2021) 'Andrews government secretly negotiating permanent pandemic laws to replace state of emergency', *The Age*, 13 June <https://www.theage.com.au/politics/victoria/andrews-government-secretly-negotiating-permanent-pandemic-laws-to-replace-state-of-emergency-20210611-p5807t.html>.

Freckelton, I. (2020) 'Covid-19: Criminal law, public assemblies and human rights litigation' *Journal of Law and Medicine* 27(4):790-806.

Gaffney, A. W., McCormick, D., Woolhandler, S. and Himmelstein, D. U. (2020) 'US law enforcement crowd control tactics at anti-racism protests: A public health threat' *The Lancet* 396: 21, available at: <https://doi.org/10.1016/S0140-6736(20)31421-5>.

Gerbaudo, P. (2020) 'The pandemic crowd: Protest in the time of Covid-19' *Journal of International Affairs* 73(2): 61-75.

Gotsis, T. (2015) *Protests and the Law in NSW*. Briefing Paper No 7/2015. Sydney: New South Wales Parliamentary Research Service.

GOV.UK (2021) 'Justice overhaul to better protect the public and back our police', Press Release, 9 March, available at: <https://www.gov.uk/government/news/justice-overhaul-to-better-protect-the-public-and-back-our-police>.

Grace, S. (2020) 'Policing social distancing: Gaining and maintaining compliance in the age of coronavirus' *Policing* 14(4): 1034-1053.

Gramenz, J. (2020) 'US breaks coronavirus case records as police refuse to enforce California lockdowns' *news.com.au*, 7 December, available at: <https://www.news.com.au/world/coronavirus/global/us-breaks-coronavirus-case-records-as-police-refuse-to-enforce-california-lockdowns/news-story/8d238b513dd2ad62fed72ba28c76c9c4>.

Greene, A. (2020) *Emergency Powers in a Time of Pandemic*. Bristol: Bristol University Press.

Grierson, J. and Dodd, V. (2020) 'Protest exemption set to be removed from England lockdown rules' *The Guardian*, 4 November, available at: <https://www.theguardian.com/world/2020/nov/03/protest-exemption-set-to-be-removed-from-england-lockdown-rules>.

Hardy, K. (2011) 'Bright lines and open prisons: The effect of a statutory human rights instrument on control order regimes' 36(1) *Alternative Law Journal* 4-9.

Henriques-Gomes, L. and Visontay, E. (2020) 'Australian Black Lives Matter protests: tens of thousands demand end to Indigenous deaths in custody' *The Guardian*, 7 June, available at: <https://www.theguardian.com/australia-news/2020/jun/06/australian-black-lives-matter-protests-tens-of-thousands-demand-end-to-indigenous-deaths-in-custody>.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2021) *The Sarah Everard vigil – An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021*, March, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/inspection-of-mps-policing-vigil-commemoration-sarah-everard-clapham-common.pdf>.

Kirby, M. (2021) 'Incarceration, injustice and COVID-19' *Alternative Law Journal* 46(2): 93.

Kirk, T. (2021) 'Sarah Everard vigil: High Court judge rules it is "inappropriate" for him to intervene in police ban of Reclaim These Streets event' *Evening Standard*, 13 March, available at: <https://www.standard.co.uk/news/uk/sarah-everard-latest-reclaim-these-streets-vigil-result-b923890.html>.

Kowalewski, M. (2020) 'Street protests in times of COVID-19: Adjusting tactics and marching "as usual"' *Social Movement Studies*, available at: <https://doi.org /10.1080/14742837.2020.1843014>.

Lee, S. (2020) 'On the bench: COVID-19 and public health fines' *Community Legal Centres NSW*, 30 April, available at: <https://www.clcnsw.org.au/bench-covid-19-and-public-health-fines>.

Lelliott, J., Schloenhardt, A. and Ioannou, R. (2021) 'Pandemics, punishment, and public health: Covid-19 and criminal law in Australia' *UNSW Law Journal* 44(1): 167-196.

Lines, K. (2021) *Protest During Lockdown (England): A Rule of Law Analysis*, 24 March, Bingham Centre for the Rule of Law, available at: <https://binghamcentre.biicl.org/publications/protests-during-lockdown-england-a-rule-of-law-analysis>.

Luckingham, B. (1984) 'To mask or not to mask: A note on the 1918 Spanish influenza epidemic in Tucson' *The Journal of Arizona History* 25(2): 191-204.

Lynch, A., McGarrity, N. and Williams, G. (2010) 'The emergence of a "culture of control"' in N. McGarrity, A. Lynch and G. Williams (eds) *Counter-terrorism and Beyond: The Culture of Law and Justice After 9/11*. Abingdon: Routledge, pp. 3-9.

Maguire, E. R. (2021) 'Protest policing and the reality of freedom: Evidence from Hong Kong, Portland, and Santiago in 2019 and 2020' *International Journal of Comparative and Applied Criminal Justice*, available at: <https://doi.org/10.1080/01924036.2021.1899002>.

Martin, G. (2021a) 'Protest, policing and law during COVID-19: On the legality of mass gatherings in a health crisis' *Alternative Law Journal*, available at: <https://doi.org/10.1177/1037969X211029963>.

Martin, G. (2021b) 'Covid cops: A recent history of pandemic policing during the coronavirus crisis' in V. Vegh Weis (ed.) *Criminalization of Activism: Historical, Present, and Future Perspectives on the Over-criminalization of Dissent*. London: Routledge.

Martin, G. (2017) 'Criminalizing dissent: Social movements, public order policing and the erosion of protest rights' in L. Weber, E. Fishwick and M. Marmo (eds) *The Routledge International Handbook of Criminology and Human Rights*. Abingdon, Oxon and New York, NY: Routledge, pp. 280-290.

Martin, G. (2014) 'Outlaw motorcycle gangs and secret evidence: Reflections on the use of criminal intelligence in the control of serious organised crime in Australia' *Sydney Law Review* 36(3): 501-539.

Martin, G. (2012) 'Jurisprudence of secrecy: *Wainohu* and beyond' *Flinders Law Journal* 14(2): 189-230.

Martin, G. (2011) 'Showcasing security: The politics of policing space at the 2007 Sydney APEC meeting' *Policing and Society* 21(1): 27-48.

Martin, G. (2010) 'No worries? Yes worries! How New South Wales is creeping towards a police state' *Alternative Law Journal* 35(3): 163-167.

Martin, G. and Scott Bray, R. (2013) 'Discolouring democracy? Policing, sensitive evidence and contentious deaths in the United Kingdom' *Journal of Law and Society* 40(4): 624-656.

Martin, G. and Scott Bray, R. (2012) 'Closing down open justice in the United Kingdom?' *Alternative Law Journal* 37(2): 126-127.

Martin, G., Scott Bray, R. and Kumar, M. (eds) (2015) *Secrecy, Law and Society*. London: Routledge.

Marx, G. T. (1998) 'Afterword: Some reflections on the democratic policing of demonstrations' in D. della Porta and H. Reiter (eds) *Policing Protest: The Control of Mass Demonstrations in Western Democracies*. Minneapolis: University of Minnesota Press, pp. 253-269.

Mason, R. (2020) 'NHS will be priority in decision on face masks for public, says minister', *The Guardian*, 21 April, available at: <https://www.theguardian.com/world/2020/apr/21/nhs-will-be-priority-in-decision-on-face-masks-for-public-says-minister>.

Mazerolle, L. and Ransley, J. (2021) 'Policing health regulations in democratic societies: A focus on COVID-19 challenges and opportunities in Australia' *International Journal of*

Comparative and Applied Criminal Justice, available at: <https://doi.org/10.1080/01924036.2021.1907605>.

McCarthy, M., Murphy, K., Sargeant, E. and Williamson, H. (2021) 'Policing COVID-19 physical distancing measures: Managing defiance and fostering compliance among individuals least likely to comply' *Policing and Society*, available at: <https://doi.org/10.1080/10439463.2020.1869235>.

McGowan, M., Ball, A. and Taylor, J. (2020) 'Covid-19 lockdown: Victoria police data sparks fears disadvantaged unfairly targeted' *The Guardian*, 6 June, available at: <https://www.theguardian.com/world/2020/jun/06/covid-19-lockdown-victoria-police-data-sparks-fears-disadvantaged-unfairly-targeted>.

McNamara, L. and Quilter, J. (2019) 'Criminalising protest through the expansion of police "move-on" powers: A case study from Australia' *International Journal of Law, Crime and Justice* 58: 22-34.

McQuade, B. and Neocleous, M. (2020) 'Beware: Medical police' *Radical Philosophy* 2.08, available at: <https://www.radicalphilosophy.com/article/beware-medical-police>.

Morris, S. and Weaver, M. (2021) 'Senior policing figures fear further violence after Bristol "kill the bill" protests' *The Guardian*, 23 March, available at: <https://www.theguardian.com/uk-news/2021/mar/22/twelve-police-officers-injured-in-bristol-kill-the-bill-protests>.

Murphy, K., Williamson, H., Sargeant, E. and McCarthy, M. (2020a) 'Why people comply with COVID-19 social distancing restrictions: Self-interest or duty?' *Australian & New Zealand Journal of Criminology* 53(4): 477-496.

Murphy, S., Elgot, J. and Stewart, H. (2020b) 'MPs move to require vote on future Covid restrictions' *The Guardian*, 25 September <https://www.theguardian.com/world/2020/sep/24/mps-move-to-require-vote-on-future-covid-restrictions>.

Neocleous, M. (2021) 'Kettle logic' *Critical Criminology*, available at: <https://doi.org/10.1007/s10612-021-09569-x>.

Ng, Y-F. and Gray, S. (2021) 'Wars, pandemics and emergencies: What can history tell us about executive power and surveillance in times of crisis?' *UNSW Law Journal* 44(1): 227-266.

O'Malley, P. (2010) 'Fines, risks and damages: Money sanctions and justice in control societies' *Current Issues in Criminal Justice* 21(3): 365-381.

O'Malley, P. (2009) 'Theorizing fines' *Punishment & Society* 11(1): 67-83.

O'Sullivan, M. (2020a) 'Protest in a Pandemic – The Special Status of Public Spaces' *AUSPUBLAW*, 27 July, available at: <https://auspublaw.org/2020/07/protest-in-a-pandemic-the-special-status-of-public-spaces/>.

O'Sullivan, M. (2020b) 'Protests have been criminalised under COVID. What is incitement? How is it being used in the pandemic?' *The Conversation*, 3 September, available at: <https://theconversation.com/protests-have-been-criminalised-under-covid-what-is-incitement-how-is-it-being-used-in-the-pandemic-145538>.

Pleyers, G. (2020) 'The pandemic is a battleground. Social movements in the COVID-19 lockdown' *Journal of Civil Society* 16(4): 295-312.

Pressman, J. and Choi-Fitzpatrick, A. (2020) 'Covid19 and protest repertoires in the United States: An initial description of limited change' *Social Movement Studies*, available at: <https://doi.org/10.1080/14742837.2020.1860743>.

Quilter, J. and Hogg, R. (2018) 'The hidden punitiveness of fines' *International Journal for Crime, Justice and Social Democracy* 7(3): 9-40.

Reeves, R. (2021) 'The price of the Tories' outsourcing obsession? Cronyism and waste' *The Guardian*, 8 February, available at:

<https://www.theguardian.com/commentisfree/2021/feb/08/outsourcing-tories-coronavirus-cronyism-waste>.

Reicher, S. and Stott, C. (2020a) 'Policing the coronavirus outbreak: Processes and prospects for collective disorder' *Policing* 14(3): 569-573.

Reicher, S. and Stott, C. (2020b) 'On order and disorder during the COVID-19 pandemic' *British Journal of Social Psychology* 59(3): 694-702.

Roach, K. (2012) 'Secret evidence and its alternatives' in A. Masferrer (ed) *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism*. New York: Springer, pp. 179-200.

Sentas, V. and Grewcock, M. (2018) 'Criminal law as police power: Serious crime, unsafe protest and risks to public safety' *International Journal for Crime, Justice and Social Democracy* 7(3): 75-90.

Sheptycki, J. (2020) 'The politics of policing a pandemic panic' *Journal of Criminology* 53(2): 157-173.

Stone, J. (2021) 'Boris Johnson "misled parliament" over Covid contracts, court order shows' The Independent, 6 March, available at: <https://www.independent.co.uk/news/uk/politics/boris-johnson-covid-contracts-court-b1813003.html>.

Taylor, D. (2021) 'Calls to close Napier barracks after asylum seekers win legal case' *The Guardian*, 4 June, available at: <https://www.theguardian.com/uk-news/2021/jun/03/napier-barracks-asylum-seekers-win-legal-challenge-against-government>.

Terpstra, J., de Maillard, J., Salet, R. and Roché, S. (2021) 'Policing the corona crisis: A comparison between France and the Netherlands' *Police Science & Management* 23(2): 168-181.

Tyler, C. (2020) 'Dominic Cummings and SAGE: Advisory group's veil of secrecy has to be lifted' *The Conversation*, 26 April, available at: <https://theconversation.com/dominic-cummings-and-sage-advisory-groups-veil-of-secrecy-has-to-be-lifted-137228>.

Tyler, T. R. (2006) *Why People Obey the Law: Procedural Justice, Legitimacy and Compliance*. New Haven: Yale University Press.

Tyler, T. R. (2019) 'Procedural justice policing' in E. A. Lind (ed.) *Social Psychology and Justice*. Oxon: Routledge, pp. 131-164.

Vegh Weis, V. (2017) *Marxism and Criminology: A History of Criminal Selectivity*. Leiden and Boston: Brill.

Visontay, E. (2021) 'Police urge Sydney private schools to step up response to students' alleged sexual assaults' *The Guardian*, 5 March, available at: <https://www.theguardian.com/australia-news/2021/mar/05/police-urge-sydney-private-schools-to-step-up-response-to-students-alleged-sexual-assaults'>.

Vitale, A. S. (2005) 'From negotiated management to command and control: How the New York police department polices protest' *Policing and Society* 15(3): 283-304.

Wall, T. and Linnemann, T. (2014) 'Staring down the state: Police power, visual economies, and the "war on cameras"' *Crime Media Culture* 10(2): 133-149.

Wang, C. (2020) 'National Day of Action education rally shut down by police, several fines issued' *Honi Soit*, 28 August, available at: <https://honisoit.com/2020/08/national-day-of-action-education-rally-shut-down-by-police-several-fines-issued/>.

Wood, Z. and Syal, R. (2020) 'Sainsbury's and Asda say they won't enforce English face mask laws' *The Guardian*, 24 July, available at: <https://www.theguardian.com/business/2020/jul/24/sainsburys-asda-face-mask-laws-england-police-coronavirus-risk>.