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Counter-Cultural Groups in the Age of Covid: Ravers, Travellers and Legal Regulation

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Abstract

The Covid-19 pandemic once again brought into sharpened focus the contested relationships of marginalised groups in the criminal law sphere, and the liminal (re-)regulation of space. Over the course of the last four decades, the law has borne witness to an episodic yet regular intertwining of the fortunes of arguably two elements of Britain's counterculture: ravers and travellers, specifically 'new age' travellers. The two groupings of peoples have had a long, complex and often uncomfortable and fractious relationship both with English law, and also its enforcement agencies. This is perhaps particularly evident in the criminal law provisions and sometimes questionable enforcement of the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994, through to the social and environmental provisions of the Caravan Sites Act 1968, Entertainments (Increased Penalties) Act 1990, and subsequent provisions.

Both the groupings of ravers and travellers have been faced with a series of legislative and administrative measures that, directly or indirectly, curtail or otherwise restrict their choices as to activities, lifestyles and behaviours. The article analyses how the impact of the Covid-19 pandemic has led to some long-established legal and regulatory themes being once again played out in relation to these two counter-cultural groups.

Introduction

The Covid-19 global pandemic has presented in novel, yet paradoxically familiar terms the law's relationship with non-normative marginalised groups operating in liminal spaces, specifically in this instance the sometimes coalescing peoples that form travellers and/or ravers.¹ Over the last forty years, ravers and new age travellers have had a complex and often uncomfortable relationship with English law, often being seen as the folk devils² of various public order and trespass panics in public and moral discourse pertaining variously to their lifestyles and modes of habitation, but particularly in relation to the interface between these groups' activities and

¹ See for example: T. Guest, 'Fight for the right to party', *The Guardian*, 12 July 2009, <https://www.theguardian.com/music/2009/jul/12/90s-spiral-tribe-free-parties> (accessed 5 October 2021).

² S. Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Third Edition (Routledge: London, 2002).

'mainstream' society. As a result of these panics and legal change the groups have endured a similarly chequered relationship with the law's enforcement agencies.

The advent of Covid has arguably led, once again, to a change in public perception of ravers and travellers. This appears to have been a consequence of greater visibility of the groups, or at least, greater *sensitivity to the visibility* of the groups' experience of contested spaces, by virtue of Covid changing the dynamics of space in the public realm. This has in turn, we suggest, contributed to a re-awakening of long-established concerns pertaining to both ravers and travellers, relating to fears concerning their use of space, and interaction with the mainstream populace, but with these concerns now re-situated as part of a broader and normative contesting of the use of space and regulation of associated behaviours.

There is a long history of conflict between these two groups and mainstream society, and their consequent problematisation in law. By documenting the past and present often overlapping yet distinct boundaries of the legal and cultural regulations of the groups, we are gaining novel insights on the impact of Covid-19 measures upon these groups. Raves' apparent association with several notable drug-related deaths, and the increased visibility and associated narratives of nuisance brought by large all-night raves, drove a moral panic and ultimately criminal law measures to outlaw raves under the Criminal Justice and Public Order Act 1994. Similarly, travellers became the focus of attention and pressure for legal change following numerous high-profile incidents where their desired nomadic lifestyles clashed with the wishes of the established, mainstream population, leading to successive legislative interventions starting with the Public Order Act 1986.

This article makes two original contributions. Firstly, we are providing a synthesis of two groups - ravers and travellers - and the socio-legal dynamic on policing the social and cultural phenomena. Secondly, we provide a novel examination of the impact of Covid on how these groups have been reported as experiencing law. It explores these matters with an additional focus upon the impact on these groups both of the law pertaining to Coronavirus and attendant regulations, but also public perception and actions pertaining to the groups *as a consequence of the pandemic*.

Electronic Dance Music and the Raving Phenomenon

Rave – as a cultural and social phenomenon – has been characterised by 'hypnotic electronic music and the liberal use of drugs such as ecstasy'.³ It is not merely the playing of a particular genre of music, but it is also about the space – legal, social, and physical – that rave continues to occupy in society, with Covid-19 providing a renewed motivation for the operation of raves, their visibility, and responses from the criminal law. The 'complex and subtle' relationship between law and space that the rave occupies is an example of what Blomley has described as 'compounded opacity'⁴, although as noted above, this article seeks to contribute to the literature

³ E. Weir, 'Raves: A Review of the Culture, the Drugs and the Prevention of Harm' (2000) 162(13) Canadian Medical Association Journal, 1843. Wherever rave has been transported so too has the drug ecstasy. For instance it was only when rave reached Israel in the mid 1990s that what had been an underground drug became hugely popular. See: D. Klaidman, J. Chen-Morris and M. Hosenball, 'Bingeing on Ecstasy' (2000) 135(19) *Newsweek*, 30 and more generally on rave drug consumption: A. Smith and J. A. Fitchett, '"The First Time I Took Acid I was in Heaven": A Consumer Research Inquiry into Youth Illicit Drug Consumption' (2002) 40(4) *Management Decision*, 372; S. Lenton, A. Boys and K. Norcross, 'Raves, Drugs and Experience: Drug Use by a Sample of People Who Attend Raves in Western Australia' (1997) 92(10) *Addiction*, 1327; M. Fendrich et al, 'A Contextual Profile of Club Drug Use Among Adults in Chicago' (2003) 98 *Addiction*, 1693; S.C.E Riley et al, 'Patterns of Recreational Drug Use at Dance Events in Edinburgh, Scotland' (2001) 96, *Addiction*, 1035.

⁴ N. Blomley, *Law, Space, and the Geographies of Power* (Guilford Press: New York, 1994), xiii.

in understanding how law has operated in the liminal spaces that raves occupy. Moreover, the intervention of the criminal law underlines, we suggest, the lack of geographic neutrality to these spaces. As with other marginalised groups, notably queer populations, these spaces provide important insights into the law's regulation of behaviours and tribes that become socially, legally, and economically 'outsiders' whilst simultaneously performing 'insider' roles.

Today's illegal gatherings draw upon a history of counterculture shaped and re-calibrated by the intervention of criminal law, but also by wider economic and social forces. By the mid-1990s the first-generation ravers found their lives continued to be dominated by a mainstreamed electronic dance and clubbing culture which arguably permeated into their children and the generations that followed in the first two decades of the twenty-first century.⁵ This broad culture of dance music – driven in part by the new musical technologies of the 1970s and 1980s – can be found today in advertisements and the everyday consumption of media. This is a culture that shifted the illicit space of the rave into a regulated commercial space, but Covid-19 became a particular inflection moment in which commercial spaces ceased to operate or – when permitted – operated in a highly restrictive hyper-regulated space.

Goulding and Shanker⁶ previously suggested that a small number of those earlier generation of ravers refuse to conform to the 'thirties stereotype' (now forties or fifties), and continue to engage with raving.⁷ Their children, and younger siblings, Gore has suggested, seek turntables for Christmas and birthdays as they worship at the alters of what became seen as 'the modern shaman', or the superstar DJ⁸; a phenomenon that has continued with globalised figures operating particularly in the Global North and pre-covid providing similar sounds in regulated and lawful commercial venues across major cities such as London, Paris, Berlin, Miami, and New York⁹. In contrast, McCall has argued that rave is no longer a 'hidden phenomenon', becoming largely mainstream through commercial dance venues and arguing that 'all that remains of rave's underground nature is illegal drug use'.¹⁰ Yet the visible re-emergence of rave, particularly during the Covid-19 pandemic, suggests an endurance that goes far beyond the consumption of illegal drugs.

Nonetheless, drugs have often been cited as a reason for legislative criminal law interventions in the context of raves. Nor is this a phenomenon or approach restricted to the UK¹¹. In the early 2000s, the then Senator and future 46th President of the United States, Joe Biden co-sponsored a legislative attempt to curb drug use at raves in response to a series of shootings and violent incidents¹² that had taken place at illicit gatherings. Initial attempts to introduce legislation called the Reducing Americans Vulnerability to Ecstasy Act (RAVE Act) failed, but proved ultimately successful the following year, taking the form of the Illicit Drug Anti-Proliferation Act

⁵ See more generally: B. Malbon, *Clubbing: Dancing, Ecstasy and Vitality* (Routledge: London, 1999).

⁶ C. Goulding and A. Shanker, 'Age is Just a Number: Rave Culture and the Cognitively Young "Thirty Something"' (2004) 38(5/6) *European Journal of Marketing* 641.

⁷ D. Gilhooley, 'From the Cradle to Rave', *Sunday Times Style Magazine*, 11 March 2001.

⁸ G. Gore, 'The Beat Goes On: Trance, Dance and Tribalism in Rave Culture' in H. Thomas (ed.) *Dance in the City* (Macmillan Press: London, 1997). See, also: D. Haslam, 'DJ Culture' in S. Redhead et al, *The Clubcultures Reader* (Blackwell: Oxford, 1998).

⁹ Historically framed around the party satellites of the Balearics. See for example: L. Ali and B. Walston, 'The Road to Rave' (2001) 138 (6) *Newsweek*, 54. See more generally: A. Saldanha, 'Music Tourism and Factions of Bodies in Goa' (2002) 2(1) *Tourist Studies* 43.

¹⁰ T. McCall, *This is Not a Rave* (Insomniac Press: Ontario, 2001) 196.

¹¹ See more generally on the USA: S. Champion, 'Fear and Loathing in Wisconsin' in S. Redhead et al, *The Clubcultures Reader* (Blackwell: Oxford, 1998) 94.

¹² See for example: M. Kasindorf, 'Rave Scene Not to Blame, Says Seattle Mayor', *USA Today*, 30 March 2006; D. Leinwand, 'Rising Popularity Prompts Backlash Over Drug Use', *USA Today*, 13 November 2002.

2003.¹³ Just as the death of Leah Betts in 1995¹⁴ was invoked to drive the UK drugs moral panic (and the link to raves), Biden invoked the death of a 17-year-old in New Orleans to justify the new criminal law measures:

“The reason that I introduced this bill was not to ban dancing, kill the ‘rave scene’¹⁵ or silence electronic music, all things of which I have been accused. Although this legislation grew out of testimony I heard at a number of hearings about the problems identified at raves, the criminal and civil penalties in the bill would also apply to people who promoted any type of event for the purpose of drug use or distribution. If rave promoters and sponsors operate such events as they are so often advertised as places for people to come dance in a safe, drug-free environment then they have nothing to fear from this law. In no way is this bill aimed at stifling any type of music or expression it is only trying to deter illicit drug use and protect kids.”¹⁶

This ‘protect the kids’ framing of the phenomenon and associated moral panic has resonance with the UK media and political attitudes of the 1990s.¹⁷ The commercialisation that occurred at the end of the twentieth century curiously continued to provide a space – albeit a commercial one – in which drugs can be traded and consumed, albeit still shrouded in deviancy and the scope of criminal law. The parties held in muddy fields and disused warehouses were – so it seemed - replaced by refurbished warehouses and commercially organised summer festivals. Nonetheless, the apparent re-emergence of illicit parties prior to Covid-19 suggests there is some form of backlash to mass commercialisation whilst the heightened visible growth during the pandemic underscores the importance of ‘need’ and the lack of alternative spaces in driving demand for raves.

Today’s clubbers can see a plethora of videos on YouTube¹⁸ and similar sites that romantically portray the rave and so-called ‘Acid House’ phenomenon that gripped Britain in the late 1980s and early 1990s.¹⁹ They portray the ‘cat and mouse’ like game that was played out during those years between law enforcement agencies and the clubbers and party organisers, arguably embedding a history of deviance and legal confrontation deep into the phenomenon. As has

¹³ K. Goffman and D. Joy, Counter Culture Through the Ages: From Abraham to Acid House (Villard Books: New York, 2004) 356.

¹⁴ Cohen has described Betts as ‘the girl next door’. The 18-year-old collapsed soon after taking an ecstasy tablet in a London nightclub and fell into a coma, dying two days later. This is a much-analysed moment in which the story became extensively covered by the media, whilst her death became projected as a warning: it could be your child. Cohen has also noted that her parents ‘became instant experts and moral guardians – disagreeing with them would be insensitive to their grief’. S. Cohen, Folk Devils and Moral Panics, Third Edition (Routledge: Abingdon, 2002) xv. See more generally: P. Manning, ‘The symbolic framing of drug use in the news: ecstasy and volatile substance abuse in newspapers’, in P. Manning (ed) Drugs and Popular Culture: Drugs, Media and Identity in Contemporary Society, 150-167 (Routledge: Abingdon, 2013).

¹⁵ It is interesting to compare this with the speech of British MP, Graham Bright. In introducing his Entertainments (Increased Penalties) Act 1990 he stated: ‘If my hon. Friend listens carefully to what I have warned him will be a lengthy speech, he will hear that there is no way in which I am setting out to ban parties.’ Hansard HC, 9 March 1990, coll.1110.

¹⁶ Statement to Congress, January 28 2003, Issue 2003, Vol 149, No 15, 108th Congress (2003-2004), 1st Session, Page S1679 <https://www.congress.gov/congressional-record/2003/1/28/senate-section/article/S1669-2>

¹⁷ See more generally M. O’Brien and C. Ashford, ‘Tribal Groups in Modern Britain: Legal Theory, Legal Practice and Human Rights’ (2002/2003) Contemporary Issues in Law 180.

¹⁸ See for example: <http://www.youtube.com/watch?v=WTiAU-w1KyI>; <http://www.youtube.com/watch?v=TO2d7UQrjaU>; https://www.youtube.com/watch?v=_SIVE1j0nOU (all accessed 27 September 2021).

¹⁹ More generally on the rave/internet nexus see: B. Wilson and M. Atkinson, ‘Rave and Straightedge, the Virtual and the Real: Exploring Online and Offline Experiences in Canadian Youth Subcultures’ (2005) 36 Youth & Society 276.

been well documented by Bennett and others, the origins of rave go further back to ‘gay disco’ and Chicago clubs in the late 1970s.²⁰ This ‘house’ sound could be characterised by steady repetitive beats between 120 and 140 bpm and the use of samplers, sequencers and synthesizers.²¹ These records and the DJing technique of ‘blend mixing’ were then exported to the Balearic island of Ibiza where many young Britons from a range of social and economic backgrounds met for their summer vacations. It was within this cultural melting pot that a ‘Balearic beat’²² emerged. Largely shorn of its queer origins²³, the sound was then re-imported back into the UK, where the music would go on to engage in a form of ‘queering’ of spaces, re-purposing and disrupting existing meanings.

The precise origin of Acid House in the UK is unclear, with debate continuing as to which city and group of people are responsible²⁴, typically dividing along north and south lines focussing around Manchester and London respectively. Acid House came to dominate headlines during the second ‘Summer of Love’ in 1988. As Redhead has noted²⁵, newspapers that initially appeared supportive of Acid House describing it as ‘cool and groovy’ on 1 October 1988 quickly changed as the extent of drug use became apparent. National UK tabloid newspaper *The Sun* talked of the ‘Evil of Ecstasy’ on October 19 and on October 25 ‘Acid House Horror’ whilst on October 28 it spoke of ‘Drug Crazed Acid House Fans’. The death of twenty-one-year-old Janet Mayes on 28 October provided further fuel for this media blaze with *The Sun* moving on to focus on the ‘Pill Pushers’ and ‘Acid Barons’ who acted as ‘Pied Piper figures’ praying on the children of England.²⁶ Beyond the tabloid newspapers, BBC Radio One DJ Peter Powell described acid house as ‘the closest thing to mass zombiedom’²⁷. In addition, complaints emerged relating to noise where raves could in some instances be heard over ten miles away.²⁸ The first law in England and Wales specifically designed to impose criminal sanctions was the Entertainments (Increased penalties) Bill. The backbench law was introduced by Graham Bright, then MP for Luton, who identified the issue of disruption caused by raves:

“The larger the party, the more serious the risk. That is especially so if the emergency services cannot gain access. It is common for convoys of cars and minibuses to be seen travelling to pay-parties in the late evening. One such party at Roydon airfield in Suffolk last September caused such disruption on the A12 that the road had to be closed. Last Saturday the junction of the M25 and the A12 at Brentwood, which was the meeting point for several acid house parties, was completely blocked for some time. No one

²⁰ A. Bennett, *Cultures of Popular Music* (Open University Press: Maidenhead, 2001) 119. See also H. Rietveld, ‘The House Sound of Chicago’ in S. Redhead, D. Wynne and J. O’Connor (eds.) *The Clubcultures Reader: Readings in Popular Cultural Studies* (Blackwell: Oxford, 1997).

²¹ H. Rietveld, ‘The House Sound of Chicago’ in S. Redhead, D. Wynne and J. O’Connor (eds.) *The Clubcultures Reader: Readings in Popular Cultural Studies* (Blackwell: Oxford, 1997) 106.

²² A. Bennett, *Cultures of Popular Music* (Open University Press: Maidenhead, 2001) 119. See also S. Bidder, *Pump up the Volume* (Macmillan: London, 2001) 85-94; S. Reynolds, *Energy Flash: A Journey Through Rave Music and Dance Culture* (Picador: London, 1998) 36-37; N. Saunders, *Ecstasy and the Dance Culture* (Nicholas Saunders/Turnaround and Knockabout: London, 1995).

²³ See more generally: S. M. Feiner, *A Rave at the End of the World: The Politics of Queer Hauntology and Psychedelic Chronomancy*, Thesis submitted MA Fine Arts, May 10th 2019.

²⁴ S. Redhead, *The End of the Century Party: Youth and Pop Towards 2000* (Manchester University Press: Manchester, 1990) 3.

²⁵ S. Redhead, *The End of the Century Party: Youth and Pop Towards 2000* (Manchester University Press: Manchester, 1990) 3-4.

²⁶ S. Reynolds, *Energy Flash: A Journey Through Rave Music and Dance Culture* (Picador: London, 1998), 49. See more generally S. Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd edition (Routledge: Abingdon, 2002).

²⁷ S. Reynolds, *Energy Flash: A Journey Through Rave Music and Dance Culture* (Picador: London, 1998) 50.

²⁸ A. Hill, ‘Acid House and Thatcherism: Noise, the Mob and the English Countryside’ (2002) 53 (1) *British Journal of Sociology* 89.

could get into or out of Brentwood. Certainly no ambulance or fire tender could have done so if an emergency had occurred.²⁹

Others noted that raves represented a losing of control ‘of the masses’ with the police sometimes apparently acting beyond their powers creating concerns both for those wanting to strengthen police powers to stop such events and civil liberty campaigners alike³⁰. During the passing of the Bill the MP for one Lancashire town at the centre of large-scale rave events, also chose to focus on the issue of disruption:

‘Acid house parties are now a common occurrence throughout the country, but there seems to be a particular problem in north-east Lancashire, where such parties are placing a considerable burden on police resources. Every weekend some part of the area is the venue for such a party. On 17 February, 5,000 people from the north-west, the midlands and Scotland attended an all-night party in a warehouse in Fairfield, Street, Accrington. They caused £50,000 worth of damage to the offices of Hyrota, the Hyndburn and Rossendale training agency, smashing up furniture, stealing telephones and video equipment and tipping radiators off walls [...] The police were inundated with telephone calls from irate and often frightened local residents when more than 1,000 vehicles were parked in the streets and side streets surrounding the warehouse, but their efforts to stop the party were thwarted by the sheer numbers attending. It seemed that the position could not get any worse, but a week later it did. Some 10,000 partygoers - again, from all over the country - converged on a warehouse in Nelson at 1 am on Sunday. Police with riot shields were attacked as they raided the party in an attempt to prevent possible tragedies. At both the Nelson and the Accrington parties, there were arrests for drug-related offences.’³¹

Again, an image of the police not having full control is given. In industrial Lancashire large, abandoned warehouses were used along with quarries. Promoters had discovered that perhaps unsurprisingly, people did not want to rent warehouses to them, so warehouses would be taken over illegally. In some instances, documents were forged so as to render the venue lawful within the Public Entertainment Act 1982.³²

Travellers

As with ravers, the Coronavirus pandemic has resulted in heightened public and legal attention being focussed upon another group in society – the ‘new age’ traveller. The effects of the pandemic upon travellers were significant: a by-product of the closure of some vital support services meant that ‘new age’ travellers were prevented from accessing even staples such as water and sanitation during the pandemic, and there was a heightened infection risk amongst these groups due to their living conditions. Moreover, the majority, mainstream population’s sensitivity to transient groups in shared, contested public spaces - dulled in recent years - again sharpened as a direct result of the pandemic. Due to an often-shared appreciation for mass gatherings for the appreciation of music, public awareness and the legal responses to rave culture and travelling peoples have often been inextricably intertwined with that of some travelling peoples, especially the so-called ‘new age’ traveller.

²⁹ Hansard HC, 9 March 1990, Column 1112-1113.

³⁰ ‘Acidity and the Police’ (1989) 139 New Law Journal 1477, ‘Repressive Laws’, (1989) 139 New Law Journal 1657 and ‘Acid House Package’ (1989) 139 New Law Journal 1699.

³¹ Ken Hargreaves, MP for Hyndburn, Hansard HC, 9 March 1990, Column 1127-1128.

³² W. Anthony, Class of 88: The True Acid House Experience (Virgin Books: London, 1998) 34.

There are significant though unquantified number of people leading counter-cultural lifestyles in the United Kingdom, including Roma and other ‘traditional’ travellers, and a number of ‘non-traditional’ traveller groups, including most recently those inspired by the pandemic to lead a non-sedentary lifestyle as part of the current international ‘van life’ phenomenon.³³ Of these travelling peoples and communities, different, distinctive sub-groups have emerged or developed at different periods across the United Kingdom. Different groups of travellers are cited at different times by the state at different times as being of social and/or legal concern³⁴

There is a history of the presence of ‘traditional’ travellers in the United Kingdom, such as the Roma, up to 500 years ago, as well as more recent manifestations such as the counter-cultural ‘new age’ traveller. The latter initially emerged from the ‘Beat’ and wider anti-establishment scene of the 1950s and 1960s, and later the peace movement and music scene of the 1980s. Both broad categories of ‘traditional’ and so-called ‘new age’ travellers appear to share a number of characteristics. Thus, as Hetherington notes ‘New Age travellers are a hybrid phenomenon [...] Part alternative lifestyle, part youth subculture and part new social movement’.³⁵

There is not a coherent, all-encompassing definition of the traveller, but discrete groups of travellers, with identifiable *similarities* in their activities and lives³⁶. These sometimes include factors such as rejecting a mainstream lifestyle, often linked to economic hardship or family problems; an interest in environmental protectionism; and an itinerant lifestyle travelling on the roads, and setting up camp on land in their vehicles from time to time. The traveller groups which are the subject of this article’s exploration of the impact of the criminal law pertaining to the Coronavirus, therefore cannot be described as a clear-cut, identifiable group. As Lowe and Shaw indicate, the numbers of ‘new age’ travellers have been difficult to ascertain, as they tend to maintain a low profile to avoid the attention of the police, welfare agencies and locals.³⁷

This can be readily understood in the light of the often-hostile attention that these ‘new age’ travellers can attract³⁸ coupled with the intrinsic illegality of numerous aspects of the way of life that they choose to lead, such as the instances specifically highlighted during the pandemic.

³³S. Hattenstone and D. Lavelle, ‘I was sleeping in laybys: the people who have spent the pandemic living in vans’, The Guardian, 25 May 2021, <https://www.theguardian.com/lifeandstyle/2021/may/25/i-was-sleeping-in-laybys-the-people-who-have-spent-the-pandemic-living-in-vans> (accessed 5 October 2021); D. Leatherdale, ‘Van life: couple’s six years on the road (and counting)’, BBC News 22 November 2020, at <https://www.bbc.co.uk/news/uk-england-tyne-54842438> (accessed 5 October 2021). As the sources demonstrate, there are parallels that can be drawn between the lifestyles and societal and legal reaction to van dwellers and travellers. This recent iteration of the traveller lifestyle was also notably depicted in the award-winning 2020 film Nomadland.

³⁴ David Maclean, Minister of State at the Home Office, stated that travellers were the main motivation behind the Bill. HC Deb col 295, 13 April 1994.

³⁵ K. Hetherington, *New Age Travellers: Van Loads of Uproarious Humanity* (Cassell: London, 2000) 4.

³⁶ See: T. Acton, *Gypsy Politics and Social Change* (Routledge: London, 1975), and J-P. Liegeois, *School Provision for Ethnic Minorities: The Gypsy Paradigm* (Council of Europe: Strasbourg, 1986).

³⁷ R. Lowe & W. Shaw, ‘Travellers: Voices of the New Ages Nomads’ (Fourth Estate: London, 1993) page xi identified the diverse and remote places in which some ‘new age’ travellers lived, for example isolated beaches and dense woodland; also J. Davis et al ‘Out of Site, Out of Mind: New Age travellers and the Criminal Justice and Public Order Bill’ (Children’s Society: London, 1994).

³⁸ This included hostile attention from the police and Government: D. Campbell, ‘Police Log Travellers for Crackdown’, The Guardian, 25 February 1994; Department for Social Security Benefits Agency ‘Income Support Bulletin’ - Issue 24/93 (Internal Document), in Statewatch (2003), ‘Discrimination against travellers’, <https://www.statewatch.org/statewatch-database/discrimination-against-travellers/> (accessed 5 October 2021), and more recently, concerns regarding the operation of Universal Credit, Friends and Families of Travellers (2018), ‘Fairer for all? The negative and disproportionate impact of Universal Credit on gypsy and traveller communities’, see: <https://www.gypsy-traveller.org/resource/fairer-for-all-the-negative-and-disproportionate-impact-of-universal-credit-on-gypsy-and-traveller-communities-may-2018/> (accessed 5 October 2021).

The ‘new age’ traveller that became subject to legal and regulatory focus appears to have begun to emerge as part of 1960s counterculture, rooted in anti-war protest and anti-establishment thinking. So-called ‘peace’ festivals and music festivals began to be held in the United States, and later in the United Kingdom, such as the official Glastonbury Festival at Pilton Farm in Somerset established by Michael Eavis, and an unofficial summer solstice festival at the Stonehenge Neolithic stone circle. In the early 1980s, partly as a consequence of social changes such as high unemployment, and changes to the law pertaining to rented property rendering some people homeless, the loose gatherings of travelling people movement gathered momentum in the early 1980s, and the primary so-called ‘free festivals’ such as the Summer Solstice festival at Stonehenge – again in contested spaces – increased in size to peak in 1984 that was estimated by English Heritage to be around 30,000 participants.³⁹

The size of the Stonehenge event led to a move from low-key policing of travellers in liminal spaces. 1985s flashpoint ‘Battle of the Beanfield’ together with the policing of the 1986 and 1987 Stonehenge festivals and later, the 1992 Castle Morton festival all contributed to the construction of the traveller as the folk devil at the epicentre of a counter-cultural moral panic.⁴⁰

There is a long history of the criminalisation and proscription of certain activities undertaken by both traditional and ‘new age’ travelling groups in England and Wales, often as a consequence of what would now be characterised as moral panics against the folk devil ‘other.’ Later nineteenth century and early twentieth century legislation continued this theme; Public Health Acts, a Commons Act and various highways legislative enactments all contained measures aimed directly at traditional travellers, and their use of liminal spaces.⁴¹

More recently, travellers have attracted heightened media, public and thus government attention. Legislative responses have included the s.39 trespass provisions of the Public Order Act 1986, and the Criminal Justice and Public Order Act 1994 measures of aggravated trespass provisions under s.61, the regulation of raves under ss.63 and 65, and s.77 powers to remove unauthorised campers from land. These did not, however, always act as a deterrent to the activities of travelling peoples, nor always succeed in giving the police and other agencies the control that they sought over gatherings and events.

Covid-19 and the ‘Return’ of the Rave

The Covid-19 pandemic created a significant curbing of individual freedoms by the state, and closed the commercial venues that had emerged in recent decades in response to raves. Just as the 1990s had scene parallels with other parts of the world and their response to the rave phenomenon noted above, the emergence of raves during Covid was a similar phenomenon across multiple jurisdictions. In January 2021, 2,500 people from France and other countries gathered at a hanger in Lieuron, Brittany in western France amidst ‘curfew’ rules.⁴² Whilst the

³⁹ K. Hetherington, *New Age Travellers: Van Loads of Uproarious Humanity* (Cassell: London, 2000) 11.

⁴⁰ E. Hallett, ‘Summer solstice: how the Stonehenge battles faded’ BBC News, 20 June 2014, <https://www.bbc.co.uk/news/uk-england-27405147> (accessed 5 October 2021).

⁴¹ R. Lowe & W. Shaw, ‘Travellers: Voices of the New Ages Nomads’ (Fourth Estate: London, 1993), *passim*.

⁴² Associated Press in Paris, ‘Police in France break up new year rave during Covid curfew’, The Guardian, 2 January 2021, <https://www.theguardian.com/world/2021/jan/02/police-break-up-new-year-rave-france-covid-curfew> (accessed 4 October 2021). See, also for generally across Europe: A. Kassam, ‘Parties and raves across Europe spark fears of Covid-19 surge’, The Guardian, 26 June 2020

<https://www.theguardian.com/world/2020/jun/26/parties-and-raves-across-europe-spark-fears-of-covid-19-surge> (accessed 4 October 2021).

pandemic also saw a rise in ‘virtual’ digitally mediated raves and gatherings⁴³, the presence of raves in the physical yet liminal spaces of fields and disused closed or semi-closed spaces is noteworthy.

In England and Wales, whilst brief easing of restrictions of some restrictions on public commercial spaces such as bars and cafes occurred in the Autumn of 2020 - amidst a Government campaign to “Eat Out to Help Out”⁴⁴ - clubs and dance venues found themselves positioned at the end of the Government’s ‘road map’, only re-opening in the Summer of 2021.⁴⁵ Even as these venues began to again operate, there was debate and confusion about venues requiring ‘covid passports’ and other mitigating measures. It was the moot of these additional measures that prompted some rave organisers to suggest that the continued restrictions would provide a further boost to illegal raves, whether that be in the form of ‘free parties’⁴⁶ or ‘pay parties’. Ultimately, whilst additional checks were imposed in other parts of the UK, England and Wales did not introduce covid passports alongside those other jurisdictions.

The intervening period between initial Covid restrictions in 2020 and the re-opening of commercial clubs in the Summer of 2021 did create a cultural space in which to dance outside or in cavernous warehouses curiously resonated with general Government and public health guidance about being in outdoor and ventilated spaces. Yet, such behaviour remained not merely prohibited by existing anti-rave criminal law measures in the form of the Criminal Justice and Public Order Act 1994, but a slew of new and ever-evolving regulatory interventions under public health and Coronavirus statutory measures.⁴⁷

This more complex legal landscape arguably re-shaped the criminal law’s intervention in the rave phenomenon. Drug interventions continue⁴⁸, but that takes the form in commercial venues rather than the historic problematisation of raves as ‘dangerous’ for their drug use. In contrast, raves have, we would suggest, become problematised as gatherings *per se*, irrespective of disruption, with the scale of their gathering and perceived dangers (public health or otherwise) that ravers might themselves encounter. This marks a shift in the role of the law in regulating the behaviour of this group of people from the historic interventions of doctrinal law.

⁴³ J. J. Palamar and P. Acosta, ‘Virtual raves and happy hours during COVID-19: New drug use contexts for electronic dance music partygoers’ (2021) 93 International Journal of Drug Policy 102904; and F. Vandenberg, M. Berghman & J. Schaap (2021) The ‘lonely raver’: music livestreams during COVID-19 as a hotline to collective consciousness? (2021) 23 European Societies s141.

⁴⁴ The Government scheme provided a 50% discount on food or non-alcoholic drinks to eat or drink in (up to a maximum of £10 discount per diner) every Monday, Tuesday and Wednesday between 3 and 31 August 2020. There was no limit on the number of times an individual could utilise the discount. See: <https://www.gov.uk/guidance/get-a-discount-with-the-eat-out-to-help-out-scheme> (accessed 4 October 2021).

⁴⁵ See for example; J. Muggs, ‘Rave responsibly: a guide to clubbing safely as Covid restrictions end’, The Guardian, 21 July 2021, <https://www.theguardian.com/music/2021/jul/21/clubbing-safely-restrictions-covid-vaccine-certificates> (accessed 4 October 2021).

⁴⁶ No charge to those attending. The covid pandemic and the resulting news coverage around raves also provided heightened coverage of “free parties” in contrast to the profit-orientated “pay parties” which traditionally received most publicity. See for example: A. Clarkson, ‘Covid: Vaccine passports ‘to boost illegal outdoor raves’, BBC News, 28 August 2021, <https://www.bbc.co.uk/news/uk-england-58249698> (accessed 4 October 2021).

⁴⁷ The Coronavirus Act 2020, and a series of Regulations passed under the Public Health (Control of Diseases) Act 1984, for example The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.

⁴⁸ See for example: BBC, ‘Warehouse project: Four drug arrests after death’, BBC News, 26 September 2021, <https://www.bbc.co.uk/news/uk-england-manchester-58693142> (accessed 4 October 2021). This particular incident involved three people being arrested on suspicion of being in possession of drugs, but followed the death of a 20-year-old man who fell ill at the Manchester club night. Drugs have arguably become accepted as an integral element of the commercial and illicit dance scene for many, and no longer the driver for policing interventions in these spaces as a matter of course.

Central to this legal intervention is the Criminal Justice and Public Order Act 1994. The legislation was the second attempt to tackle raves through statute and sought to reach beyond ‘pay parties’. First introduced into Parliament in December 1993 the Bill had a long and difficult Parliamentary journey.⁴⁹ It started with 117 sections and was 112 pages long. By the time it received Royal Assent, the Bill had grown to 172 sections over 214 pages.⁵⁰

When raves had first emerged in the 1980s, the inadequacy of then legislation in stopping raves was becoming increasingly apparent. The Private Places of Entertainments Act 1967 was used to limit ‘pay parties’ as it required that any private entertainment for financial gain must have a licence. In 1988 the Licensing Act gave further powers to monitor premises, but as has been discussed above, it was the Entertainments (Increased Penalties) Act 1990 that provided the first legal intervention and acted as a forerunner for the Criminal Justice and Public Order Act provisions. The effect of the Act was to increase penalties for holding unlicensed events giving the courts the power to impose a fine of up to £20,000. Redhead has argued that the practical effect of this legislation was to ‘criminalise a whole section of the youth population’.⁵¹

The 1994 Act went further and remains, with amendments, the key legislation in this area with sections 63-67 specifically addressing raves and associated offences.⁵² S63(1) as originally drafted defined a rave as ‘a gathering on land in the open air of 100 or more persons (whether or not trespassers) at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality’.⁵³ Central to this legislation was the notion of disruption whether in terms of disruption to others through sound or the presence of large numbers of people. Moreover, the definition temporally rooted the rave phenomenon in the night and in doing so tacitly acknowledged the temporality of the spaces utilised – repurposed and reclaimed – for rave and away from their mundane usage. A transformation that, as we will discuss, Covid-19 also made evident.

It was not until almost ten years later that these powers were further augmented and this time by the Blair Labour government. The Anti-Social Behaviour Act 2003 was designed to address a plethora of social issues just as the 1994 Act had. In 2003 owning a high hedge, carrying imitation firearms, not removing graffiti from one’s property and running a crack house all came within the ambit of this legislation.⁵⁴

Section 58 of the 2003 Act aimed to increase police powers in relation to smaller rave gatherings, reflecting the shift to smaller rave events that now were too small for the 1994 legislation. Where as 100 or more people needed to be present for a gathering to fall within the 1994

⁴⁹ A. T. H. Smith, ‘The Criminal Justice and Public Order Act 1994: The Public Order Elements’ (1995) *Criminal Law Review* 19.

⁵⁰ M. Wasik and R. Taylor, *Blackstone’s Guide to the Criminal Justice and Public Order Act 1994* (Blackstone Press: London, 1995) 4.

⁵¹ S. Redhead, ‘The Politics of Ecstasy’ in S. Redhead (ed.) *Rave Off: Politics and Deviance in Contemporary Youth Culture* (Avebury: Aldershot, 1995) 21.

⁵² The powers bestowed by the CJPOA 1994 curtailed both the number and scale of unlicensed raves but some police forces continued to ‘turn a blind eye’ rather than deploy those powers, notably in the West Country. See: Gore, ‘The Beat Goes On: Trance, Dance and Tribalism in Rave Culture’ in H. Thomas (ed.) *Dance in the City* (Macmillan Press: London, 1997) 57.

⁵³ Music is defined in s.63(1)(b) as including ‘sounds wholly or predominantly characterised by the emission of a succession of repetitive beats’. Such a definition rendered ambient music outside of the rave definition and thus the ‘chill out’ area of a rave does fall outside the legislative framework. Other music that might not be dance music but in possession of a beat *does* fall within the legislative framework.

⁵⁴ J. Manning et al, *Blackstone’s Guide to the Anti-Social Behaviour Act 2003* (Oxford University Press: Oxford, 2004) 2.

definition of a rave, it is now just 20 or more people. In the context of the Covid-19 pandemic, this meant that a wide-range of gatherings could – and did – fall foul of the amended 1994 provisions, shifting the conception of raves from large gatherings – which might constitute a nuisance – into smaller gatherings which might constitute a range of party gatherings.

Section 58 (4) removed ‘in the open air’ from the original definition addressing some of the problems originally stated in relation to the 1994 Act and also extending a rave to include a closed building. This meant that rave warehouses also came within the scope of the legislation and avoided debates about what might warrant openness of a venue. This also provided significant amidst the current pandemic in which raves appeared to largely take place in spaces that were entirely open air or only partially covered. Yet, despite this extended legal framework, the raves of Covid were largely policed and regulated by the landscape of covid regulations rather than specific rave statutory provisions.

For example, in January 2021, a rave at a disused London shop, which saw 150 people gather and resulted in a fine of £10,000 for the DJ under coronavirus regulations. The council noting that ‘there was no social distancing at the event’ and one councillor arguing that the event “puts our teams and police colleagues at risk of dangerous exposure at a time where we should all be keeping our distance.”⁵⁵ Similarly, in March 2021, a dozen people were fined at a gathering that saw around 100 people gather at Healey Nab Quarry near Chorley, Lancashire, with the fines issued again done so under the framework of coronavirus regulations.⁵⁶

In March 2021, more than 20 people were fined by West Midlands Police following an illegal rave that took place under a motorway bridge, which had resulted in part of the M6 being closed. The police had been tipped off by a single member of the public with the police regarding the scene as “dangerous” as it was under a motorway bridge and close to a river. 30 people were identified at the site after the police dispatched a helicopter equipped with thermal imaging technology.⁵⁷ In January 2021, 300 people attended a rave held in a London railway arch. The Hackney party resulted in no arrests but 78 fines of up to £200 for breaking lockdown restrictions were issued. A dog unit and helicopter were dispatched to the scene, although the police emphasised in subsequent reports that they had made numerous attempts to contact organisers.⁵⁸

By utilising the Covid powers rather than the Criminal Justice and Public Order Act, the police were placing these events in the same category as other large gatherings, such as a London wedding the previous month in which police broke up a gathering of 150 people at a school (after initially reporting more than 400 people had been present).⁵⁹ This also perhaps served to shift the conception of the rave as ‘other’ and into a broad category of behaviours that whilst outlawed impacted a diverse range of activity and a broad section of society, transforming ravers as a ‘marginalised’ group into one that is far more relatable to.

⁵⁵ BBC, ‘DJ fined £10,000 over rave attended by 150 people’, BBC News, <https://www.bbc.co.uk/news/uk-england-london-55592419> (accessed 4 October 2021).

⁵⁶ BBC, ‘Covid: Dozen fined over illegal Chorley quarry rave’. BBC News, <https://www.bbc.co.uk/news/uk-england-lancashire-56319673> (accessed 4 October 2021).

⁵⁷ BBC, ‘Covid: Police break up rave under M6 motorway bridge’, BBC News, 30 March 2021, <https://www.bbc.co.uk/news/uk-england-coventry-warwickshire-56574540> (accessed 4 October 2021).

⁵⁸ BBC, ‘Covid: Hackney railway arch rave attended by ‘300 people”, BBC News, 24 January 2021, <https://www.bbc.co.uk/news/uk-england-london-55787044> (accessed 4 October 2021).

⁵⁹ BBC, ‘Covid: Wedding party in Stamford Hill broken up by police’, BBC News, <https://www.bbc.co.uk/news/uk-england-london-55764673> (accessed 4 October 2021).

New Year 2020/21 and the preceding Christmas period ostensibly provided a particularly acute moment for raves with the country still in ‘lockdown’ at a time of traditional mass revelry. Raves *prima facie* provided both a commercial opportunity for their organisers and a social release for ravers. ‘Hundreds’ of people were reported as attending one event in an Essex church with the organiser fined £10,000, again under the coronavirus regulations.⁶⁰ Greater Manchester Police intervened at one rave attended by forty people at an industrial estate in Wigan with three people issued with fines for breaching covid restrictions. Yet 105 fines were given out the same day by Greater Manchester Police in response to house parties and other breaches including one Stockport pub that was fined £1000 for serving customers despite only being permitted to serve takeaways.⁶¹ In Manchester, around 100 people were reported to have attended a rave in central Manchester at unoccupied flats with two men facing fixed penalty notices and music equipment seized.⁶² Far from marking a ‘return’ of raves, these events served to highlight a normative transformation of rave provided by the Covid regulations in a striking contrast to the Criminal Justice and Public Order Act.

Section 63 of the 1994 Act was also amended by the 2003 Act so as to create a new offence where an individual knows that a direction under S.63(2) has been given which applies to him, and he makes preparations for or attends a gathering to which this section applies within the period of 24 hours starting when the direction was given. This effectively means that even if a rave goer is not on site but knows that a direction has been made, he is guilty of an offence if he continues to prepare to attend a gathering.

Yet, the 1994 Act powers have, albeit in a limited form, seemingly been deployed during the pandemic in relation to raves. In April 2021, West Mercia Police used a Section 63 dispersal. The rave apparently saw more than 150 people gather at the event on the English-Welsh border with the police asking people to move on due to the ‘lockdown’ that was in place at the time, ultimately using the Section 63 powers, when some people did not positively respond to the initial request by the police.⁶³ Here the rave powers appear to have been the last resort, underlining the shift towards raves as merely another form of illicit covid-gathering rather than an othered event in and of itself.

Whilst the coronavirus pandemic perhaps brought heightened attention once more to raves, we would not suggest that this marked a ‘return’ of the rave *per se*. They arguably never went away, continuing to be periodically reported by local media following policing interventions or community concern. However, these raves have rarely managed to generate the moral panic reactions that accompanied raves in their earlier incarnations of the 1980s and 1990s.

One such exception, for example, took place in 2017 in the Northern city of Newcastle upon Tyne. The Ouseburn, once known as Byker valley, a place of disused warehouses popular as rave venues in the 1980s and 1990s and now a vibrant and gentrified space of entertainment spaces, and desirable apartments, a city farm, and fashionable eateries.⁶⁴ In March 2017,

⁶⁰ BBC, ‘Covid-19: Essex church rave organiser fined £10,000’, BBC News, <https://www.bbc.co.uk/news/uk-england-essex-55922306> (accessed 4 October 2021).

⁶¹ BBC News, ‘Covid: New Year rave among events stopped by Greater Manchester Police’, BBC News, 1 January 2021, <https://www.bbc.co.uk/news/uk-england-manchester-55507355> (4 October 2021).

⁶² BBC, ‘Manchester city-centre rave condemned by Police’, BBC News, 27 December 2021, <https://www.bbc.co.uk/news/uk-england-manchester-55459614> (accessed 4 October 2021).

⁶³ BBC, ‘Dorstone ‘illegal rave’: Officers use powers to disperse party-goers’, BBC News, 5 April 2021, <https://www.bbc.co.uk/news/uk-england-hereford-worcester-56637512> (accessed 4 October 2021).

⁶⁴ In August 2021, the North-East-based artist Susie Davies premiered her documentary ‘The Kick, The Snare, The Hat & A Clap’ which chronicles the rave history of this space in Newcastle upon Tyne. It can be viewed here: <https://www.youtube.com/watch?app=desktop&v=KA4EFuO-wbI> (accessed 4 October 2021).

Northumbria Police used social media to publicise their intervention at a rave in the Ouseburn. It took place in a tunnel below a bridge on the River Ouseburn, with around 200 people gathering having waded through polluted water to get to the event with the police condemning the event as “dangerous”.⁶⁵ Media coverage of the event harked back to the moral panic shaped reporting of the past. A reporter who visited the scene (which police had described as dangerous) documented some of the items that had been left behind including a can of Lynx deodorant, laughing gas canisters, and party cups.⁶⁶ The story also linked the event to a New Year’s Eve rave that took place at the start of the 2017 which took place in the Newcastle tower of the Tyne Bridge.⁶⁷

Such a return to traditional narratives of moral panic have not accompanied the reporting of raves during Covid-19. Rather, the rave has been repositioned and re-centred by the application of a different legal framework into one form of outlaw but understandable behaviour rather than as an othered illicit gathering of peoples. Moreover, the (re)construction of spaces has become familiar to many, repurposing their gardens and public spaces as social and entertaining spaces during the pandemic, reclaiming abandoned or under-utilised spaces for renewed purposes.

Travellers, Covid-19 and the Law: New Issue, Old Responses?

As noted previously, the Covid-19 pandemic has once again led to a degree of conflict between marginalised groups. For travellers and ravers in particular, this has crystallised the tension with mainstream society and the contested use of liminal spaces, and has caused disproportionate pandemic-related hardship for travellers as a consequence of their lifestyles.

After a relatively low media profile in the 2000s and 2010s⁶⁸ following their representation as media-generated folk devils in the 1980s and 1990s, travellers once again were the subject of media coverage during the Covid-19 pandemic, especially during the period of national lockdown when the Government banned all but essential travel under public health measures and various Coronavirus regulations. The public health-related measures posed significant issues for travellers. Public conveniences, campsites and caravan sites closed for the duration, meaning that many travellers were denied access to a regular supply of fresh water or even basic sanitation for washing. In this context, Government exhortations to ‘stay at home to save lives’ presented difficulty, as against a backdrop of a long history of a chronic shortage of official sites for travelling people, there was arguably an implicit assumption that ‘home’ would be a building.

This resurgence of media coverage included some examples of mainstream societal concern over travellers’ use of contested spaces that mirrored past flashpoints. One such incident took place in the very early stages of lockdown, in April 2020, when a traveller electrician, who had lived in a van for some years, encamped in a highway layby for lockdown. This caused local tension, and the media’s involvement in the matter resulted from an email to the DevonLive news outlet

⁶⁵ A. Rafter, ‘Police Break Up Illegal Rave in a Filthy Sewer in Newcastle’, 16 March 2017; DJ Mag, <https://djmag.com/news/police-broke-illegal-rave-filthy-sewer-newcastle> (accessed 4 October 2021).

⁶⁶ L. Hill and K. Collings, ‘Newcastle sewer illegal rave RECAP: Police launch investigation after underground party’, ChronicleLive, 15 March 2017, <https://www.chroniclelive.co.uk/news/north-east-news/newcastle-illegal-rave-ouseburn-sewer-12739628> (accessed 4 October 2021).

⁶⁷ S. Meechan, ‘Tyne Bridge rave organisers still at large as party-goer describes scene inside Newcastle tower’, ChronicleLive, 3 January 2017, <https://www.chroniclelive.co.uk/news/north-east-news/tyne-bridge-rave-organisers-still-12400067> (accessed 4 October 2021).

⁶⁸ D. Fox, ‘Whatever happened to New Age Travellers?’ Issue 162, Frieze, 20 March 2014, <https://www.frieze.com/article/music-30> (accessed 5 October 2021). Fox argues that ‘Travellers dropped from media sight, but continued their way of life in Britain, albeit under much tougher conditions.’

from a disgruntled local resident: ‘maybe your readers would be interested why these people are permitted to flout the rules in this difficult time, while the rest of us have to stay at home.’⁶⁹ This email to the media underlines a lack of awareness on the part of the emailer of the situation of the travellers, that is the vehicle *is* their home, and also represents a degree of ‘othering’ of the traveller. In this instance, the traveller noted that the police checked on his welfare on numerous occasions, but did not make an attempt to evict him from the layby.

Similar examples have emerged from other parts of the UK⁷⁰ and further afield: these include not only instances of tensions between traveller groups and local communities, but also the operation in practice of the discretionary nature of the legal powers held by the police and by local authorities. For instance, in May 2020, a group of travellers previously encamped in Avonmouth in Bristol, moved to a layby adjacent to Portbury High Street, near the M5 motorway junction. Instead of the authorities evicting the travellers, as they have the powers to do, they issued a notice that they should stay *in situ*. This particular incident also is interesting in relation to the use of liminal spaces, especially their lack of geographical neutrality.⁷¹ Users of this same space who lead mainstream lifestyles do not appear to have generated the local ire that occurred when travellers parked there, with locals telling the media that they did not feel safe to park there when travellers were encamped there – therefore in effect arguing that commuters to Bristol leading mainstream lifestyles had in effect ‘priority rights’ to the public highway. Rochfort cites several instances, including an instance where a car driver approached a traveller who was working inside her van. The car occupant revved the engine loudly, aggressively shouting out of the window “Go home”.⁷²

This concern follows a long-established pattern of themes pertaining to travellers’ relationship with mainstream society in several distinct ways. This included a long history of legal regulation to control travellers, in part out of fear at travellers’ contested use of space encroaching upon mainstream lifestyles. In the instance of Coronavirus, the fear appears to be that their presence in the liminal space of a highway layby or similar⁷³ posed a risk to the health of mainstream society, whereas past contested use of space generated different concerns about physical damage, public order and noise pollution by travellers. Additionally, current policing exhibits at least ostensibly some of operative uncertainty present in much past policing practice. This uncertainty has been the consequence of the exercise of a wide degree of discretion in the operation of the law, and the wider issues of the problematisation of travellers in law.

⁶⁹ C. Smith, ‘New age traveller waits out pandemic at Torquay beauty spot in unusual vehicle’ DevonLive, 16 April 2020 <https://www.devonlive.com/news/devon-news/new-age-traveller-waits-out-4052806> (accessed 5 October 2021).

⁷⁰ H. Pickstock, ‘Travellers parked illegally on lay-by told to stay put – due to Government lockdown’, BristolLive, 5 May 2020, <https://www.bristolpost.co.uk/news/bristol-news/travellers-parked-illegally-lay-told-4106291> (accessed 5 October 2021); H. Pickstock and S. D’Albiac, ‘Human excrement among trail of mess left behind by travellers in village layby’, SomersetLive, 12 May 2020, <https://www.somersetlive.co.uk/news/somerset-news/human-excrement-among-trail-mess-4125723> (accessed 5 October 2021); and BBC, ‘Covid: London surfers turned back from Devon’, BBC News, 15 January 2021, <https://www.bbc.co.uk/news/uk-england-devon-55675070> (accessed 5 October 2021).

⁷¹ The ‘layby’ concerned is actually a section of the former route of the A369 trunk road, re-routed some years ago, but still classified as the public highway. Notwithstanding this fact, this layby has served for many years as an informal carpark for commuters who park their cars there daily to carshare or travel by public transport on this congested commuter route into central Bristol.

⁷² H. Balogh Rochfort, ‘Pre-covid, the ‘van life’ was a free, easy and trendy lifestyle. Now, its practitioners are pariahs’ Washington Post, 9 April 2020 https://www.washingtonpost.com/lifestyle/travel/van-life-coronavirus/2020/04/09/755e2f48-782d-11ea-a130-df573469f094_story.html (accessed 5 October 2021)

⁷³ A perception that they were not ‘staying at home’.

As has been discussed elsewhere⁷⁴, the criminal law relating to travellers and their encampments has been developed extensively in the past forty years as a consequence of the incidents and resultant moral panics of the 1980s and 1990s. Primarily, the relevant criminal law has been developed initially in the Public Order Act 1986, and the Criminal Justice and Public Order Act 1994, as well as by application of more general provisions, such as obstruction of the highway under s.137 of the Highways Act 1980. Initially, travellers faced the criminalisation of trespass in relation to encampments on land. This was via s. 39 of the Public Order Act 1986, which permitted the arrest and removal of trespassers on land, where the trespass included evidence of an intention to reside in the place, at this stage this being evidenced by there being twelve or more vehicles on the land in question. Thus, trespass moved for the first time from civil law to the criminal law if these circumstances were satisfied, with the provisions being extensively used at a number of flashpoint events subsequently.⁷⁵ This power was additional to other new measures enacted under s.11 and s.12 of the Public Order Act 1986 relating to processions and assemblies, which in some circumstances also relate to, and were used against, travellers' activities.

Subsequently, as a consequence of further skirmishes over contested spaces, and also a prevailing ‘authoritarian populist’ approach from central government⁷⁶, additional measures were introduced, with the introduction of ss.61 and 62 A-E and 70-78 of the Criminal Justice and Public Order Act 1994 as amended, relating to directions to leave unauthorised encampments; organising a trespassory assembly; failing to comply with a direction pertaining to a trespassory assembly; trespassing when there is an interim possession order in place on land; failure to comply with a direction to leave land; and obstructing a local authority officer exercising their powers to remove unauthorised campers.

During the Covid-19 pandemic, however, there has been limited evidence of the operation of these substantive public order legal measures, unlike in many previous instances of the presence of travellers. In the instances outlined above, such as the incidents at Torquay and Portbury, the traveller in Torquay claimed to have ‘spoken to the police many times, and I have no issue with them’, and he was left in situ living in his van in a public lay-by, with a local resident claiming that ‘police have refused to intervene.’⁷⁷ Similarly, in Portbury, the rationale for *not* evicting the travellers under the s.62 powers of the Criminal Justice and Public Order Act 1994 were for reasons of public health. Consequently, it appears to be the case in practice that if someone did not have access to a ‘traditional’ home, then powers under the Criminal Justice and Public Order Act or the Coronavirus Act 2020 were not necessarily deployed in a way that they were in relation to those, such as ravers and surfer, who had mainstream lifestyles.

As with the policing of travellers historically, during the Covid-19 pandemic the operation of police and administrative discretion, whether for pragmatic or practical reasons, has once again come to the fore, but appears to be operating in different, nuanced ways. So, during the pandemic, arguably there is evidence of the letter of the law or regulations not being followed, for example travellers not being moved on, from liminal spaces, despite public concern at their presence, as noted above in the incidents in Torquay and in Portbury in the England.

⁷⁴ M. O’Brien M and C. Ashford C, ‘Tribal Groups in Modern Britain: Legal Theory, Legal Practice and Human Rights’ (2002/2003) 6(2) Contemporary Issues in Law 180

⁷⁵ Report of HM Chief Inspector of Constabulary 1989-90, HC 524, 67-8.

⁷⁶ J Brewer *et al*, ‘the police, public order and the state’ (St. Martin’s Press: New York, 1996)

⁷⁷ It should be noted however, that the same traveller claimed that a ‘young police officer’ told him to move on from a previous location, citing breach of the Coronavirus Act 2020.

This may be for pragmatic reasons (where could a traveller without a fixed abode be directed to during a pandemic) and public health and policy reasons (as with the Portbury encampment, where issuing an order to stay *in situ* was made for public health reasons, whereas an order for removal may have been made in non-pandemic circumstances.) This interpretation is borne out by other instances of people who were temporarily van-dwelling. For example, a group of London-based friends who drove their camper van to an isolated beach location at Saunton Sands in Devon to surf: they were found at 3am one morning by police, sent back to London, and fined for breaching Coronavirus regulations.⁷⁸

Discrepancies between the theory of the legal rules in this area and actual interpretation and enforcement of the law in practice have been noted on numerous occasions, with instances of the policing of counter-cultural groups in the 1980s and 1990s showing marked differences in approach, influenced by policing cultures, past experience such as ‘zero tolerance’ policies, and factors such as degrees of local pressure.⁷⁹ This development of law ‘in practice’ continues to lead to a culture of routine non-enforcement, or creative application⁸⁰ or partial applications of the law in contested spaces. Bucke and James highlighted that trespass to land powers of sections 61, 62 and 76 of the Criminal Justice and Public Order Act 1994, relating to powers to direct trespassers to leave land and to seize vehicles, illustrated differences in some police forces using powers to evict travellers from land, whereas two police forces did not use these powers at all.⁸¹

However, unlike numerous previous legal flashpoints, police forces do at the current time have much more guidance on operational matters pertaining to travellers than was the case in the early stages of the operation of the public order legislation. The National Police Chiefs’ Council’s ‘Operational Advice on Unauthorised Encampments’ details processes for appropriate operational tactics, and liaison with other agencies. This includes protocols for the nature of engagement with the travellers, and importantly, that ‘all police actions should be conducted in a manner compatible with safety, lawfulness, necessity, proportionality and common humanity.’⁸² Moreover, Clause 7 envisages a judgement being made by police officers at the site as to whether or not police intervention is even necessary, and also requires engagement with other agencies as to resolution.

Therefore, what appears to have changed in relation to the interpretation and enforcement of the law in this area during the Covid-19 pandemic has been the adherence to clearer protocols pertaining to the public order policing of travellers than has perhaps historically been the case. It is argued that a previous patchwork of operative discretion, generated by a range of prevailing factors, has evolved into a more reflective and rules-bound process. Moreover, policing under

⁷⁸ BBC, ‘Covid: London surfers turned back from Devon’, BBC News, 15 January 2021, <https://www.bbc.co.uk/news/uk-england-devon-55675070> (accessed 5 October 2021).

⁷⁹ C Aykroyd *et al*, ‘The technology of political control’ (Harmondsworth: Penguin, 1977); P A J Waddington, ‘Coercion and accommodation: Policing Public Order after the Public Order Act’ (1994) 45 British Journal of Sociology 367; A Hoey, ‘Technocops: Information technology and law enforcement’ 6 International Journal of Law and Technology 69. Hoey argues that the interventionist, zero-tolerance approach to policing some adopted here gave rise to some of the worst clashes between the police and the public seen in policing history.

⁸⁰ A. Rosenberger, ‘End of the Road: Travellers and the Criminal Justice Bill: Violations of Rights in Britain’ (London: Charter 88 Enterprises Ltd, n.d.) highlights one instance of police entering an encampment at 2am, saying that they would return an hour later to arrest the occupants if they had not moved on by then, with similar techniques allegedly adopted elsewhere.

⁸¹ T. Bucke & Z. James, *Trespass and Protest: Policing under the Criminal Justice and Public Order Act 1994* (Home Office: London, 1998) 7.

⁸² National Police Chiefs’ Council, ‘Operational Advice on Unauthorised Encampments’ (NPCC: London, 2018) https://www.npcc.police.uk/documents/Unauthorised%20Encampments/NPCC%20Op%20Advice%20on%20Unauthorised%20Encampments_June%2018.pdf (Accessed on 5 October 2021.)

the pandemic powers of the Coronavirus legislation also appears to have been to some degree pragmatic, with some evidence of travellers not being subject to the Covid-19 fines system in the same way as mainstream society, possibly by virtue of the travellers concerned having no alternative place to live. Consequently, whilst parallels such as police discretion, public fear and hostility do exist between travelling groups both in the pandemic and in their other iterations, one area of potential difference appears to be a more flexible, nuanced operational approach to cases involving travellers during the Covid-19 pandemic.

Conclusion

The early stages of the ongoing Covid-19 pandemic highlighted a range of tensions between personal liberties and the actions of the state. For groups long problematised by public order law – for example ravers and travellers – to acknowledge this tension is not in and of itself a new development. However, as we have shown in this article, Covid-19 has provided a backdrop in which we have seen a broader appreciation of the liminality of spaces that enables us to re-consider the (re)claiming and (re)use of contested spaces by these marginalised groups. Moreover, we have highlighted how a broader legal framework has re-centred and re-situated ravers and travellers in relation to other groupings and behaviours in society which have at various points in the pandemic sometimes been re-constituted as illicit. Such is the globalised nature of the groups we have focused upon, and the similarity in problematising and responding to these groups in other jurisdictions in the Global North that the re-framing we offer here, is perhaps of significance for not merely these groups internationally but more fundamentally how marginalised peoples and behaviours are viewed, prohibited, and regulated by the law.