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Disciplinary Power and Impression Management in the Trials of the Stansted 15

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Abstract

We bring Foucauldian and Goffmanian frameworks into dialogue to show how repressive and disciplinary power operate in the criminal trials of social movement activists. We do so through an ethnographic account of the trials on terrorism-related charges of a group of anti-deportation direct action protesters known as the Stansted 15, complemented by interviews with defendants. We argue that the prosecution of these activists on terrorism-related charges creates conditions of constraint which effectively serve to collapse the space for political and normative challenge, and obliges them to develop impression management strategies internalising and reproducing the court's expressive regime. We see these trials therefore as a normalising procedure whose goal is not the repressive application of custodial sentences, but rather a disciplinary disarming of radical critique so that leniency can be applied. At stake here, therefore, is the production through trial of the ideal disciplined liberal political subject.

Keywords

deportation, direct action, disciplinary power, Foucault, Goffman, impression management, protest trial

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Introduction

Deliberate law-breaking is integral to many social movement campaigns. The subsequent criminal prosecutions have the capacity to hold our attention because while trials serve as an authoritative site for the adjudication of truth and justice, the courts are seen by many activists as an arena to ‘speak truth to power’. The central stakes of standard criminal trials concern the sorting of evidence, the burden of proof, and the ascription of roles and responsibilities; but what makes the trials of non-violent direct action protesters different is that whether the defendants carried out the alleged act is itself almost never in dispute. Here, the facts of a given case are usually less in question than their interpretation, as the central stakes concern whether the action was justifiable in law. Protest trials are thus ‘extraordinary’ legal events: where in ‘ordinary’ prosecutions the trial is an extension of the crime, and is reflective of a completed act, here the courthouse provides a platform for the extension of the campaign. The court is thus, at least in theory, an arena in an open-ended contest for the definition of the political meaning of events. Equally, for activists, victory in court is not all that is at stake: defendants must sustain their own collective solidarity during the sometimes arduous conditions of trial, while maintaining their wider obligations to the movement and its multiple investments.

Yet despite these extraordinary features, remarkably little sociological attention has so far been paid to protest trials and their internal dynamics. To be sure, the literature on ‘legal mobilisation’ predominantly analyses the rights-based ‘impact litigation’ strategies of public interest law organisations (Boutcher and McCammon, 2019); the ‘social movement turn’ in law centres on lawyers and lawyering (Cummings, 2018); and historians have given rich accounts of the trials of specific movements (e.g. Mayhall, 2003 on the suffragettes), though here the focus is typically particular campaigns and their contexts, not trials per se. This oversight is surprising, because the courthouse provides a vital link in the chain between arrest and imprisonment, and protest trials have provided some of the most striking events in the histories of social movements (Doherty and Hayes, 2015). It is perhaps even more surprising because, as Allo (2015: 9) argues of the 1963–1964 Rivonia trial of Nelson Mandela and other ANC activists, ‘the court is law’s foremost geography of power whose primary function is to secure the existing distribution of power within the *body-politic*’ (emphasis in original).

Here, we seek to remedy this lack of attention to protest trials as distinct sociological events through sustained ethnographic analysis of the trials of a group of activists known as the Stansted 15, who were convicted on terrorism-related charges at Chelmsford Crown Court in 2018 after blocking the boarding and departure of a Home Office deportation flight. We focus on the exercise and effects of power within the courtroom. Within the social movement literature, there is extensive discussion of elite power as ‘repression’, or ‘the attempt by a regime or its agents to end movement challenges through physical control’ (McAdam and Tarrow, 2019: 26). Much of this work centres on the search for causal mechanisms linking repression and mobilisation (Boykoff, 2007; Earl, 2011), typically focusing on policing, surveillance and state violence, or those elite actions designed to ‘harass and intimidate activists; divide organizations; and physically assault, arrest, imprison, and kill movement members’ (Stockdill, 2003: 121). In this

schema, prosecutions are noteworthy only in so far as they deplete collective resources and stigmatise and imprison activists (Boykoff, 2007: 289).

Beyond this emphasis on repression there is, as far as we know, no sustained socio-legal study of protest trials, or wider discussion of the interplay of power, identity, and agency within such trials. This is especially curious because, as Foucault (1977) notes, the judicial order of the modern state is built on disciplinary power, which is a *normalising* rather than repressive or stigmatising force. To conceive of elite action only as 'repression' is to neglect the importance of normalisation, and of how various types of institutional power intertwine, are sequenced, exerted and resisted.

If the courtroom is essentially absent from the social movement literature, rare also are micro-sociological analyses of the operation of power in the courtroom as a combinatory series of processes and embodiments (see Baldwin, 2008; Newman, 2013 for a review). While several studies do address the place of the defendant in the criminal process (Carlen, 1976; McBarnet, 1981; McConville et al., 1994), they mainly focus on legal professionals (lawyers, judges, magistrates). Here, we place the defendants at the centre of our analysis; we consider this particularly important when seeking to understand how the trial creates specific forms of legal subjectivity. Moreover, we break new ground by focusing not just on defendants, but on *protest* defendants: while 'everyday' trials anonymise and silence the subject (Carlen, 1976), in protest trials we might expect defendants to develop resistant political subjectivities.

In a liberal democracy like the UK, normalisation processes can be expected to be significant given that non-violent protesters are rarely imprisoned. This itself suggests elite reliance on forms of power beyond repression. The clearest statement of this as principle lies in Lord Justice Hoffmann's influential legal commentary, given in an appeal hearing in February 2006 (brought by anti-war activists convicted for various offences of aggravated trespass or criminal damage immediately prior to the US/UK invasion of Iraq). Hoffmann argued that in a democratic state, 'the citizen is not entitled to take the law into his own hands'; but at the same time,

there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account.¹

This commentary creates a set of conventions for the trials of non-violent activists in England and Wales, within what Hoffmann calls a 'British tradition of toleration'. The bargain it involves is explicit: defendants are unlikely to be acquitted (indeed, Hoffmann essentially sets out a route to conviction);² yet as long as defendants demonstrate conscience and compliance, they are unlikely to be handed custodial sentences.

Hoffmann's bargain thus focuses on *character* and *justification* as the central determinants of sanction, rather than the nature of the alleged act itself; and it suggests the trial's objective is less to repress than to recuperate political resistance, so it can be incorporated within a liberal narrative of national democratic amelioration. Its goal is therefore

the production of the ideal disciplined liberal political subject, one whose oppositional consciousness is tamed through ultimately benevolent institutional action. We describe this subject as 'ideal' in terms of legal subjectivity: the legal subject is conceived in a liberal framework, and presumed to be a rational actor; in substantive law, standards of 'reasonableness' abound. This legal subject acts with integrity, submits to the authority of law, and acts 'reasonably'. In these circumstances, lenient sentencing represents no more than a sovereign tolerance of the political.

The Stansted 15

Here we explore how Hoffmann's bargain operates in practice, through an ethnographic account of the trials of the Stansted 15. On 28 March 2017, 15 activists had locked themselves around the nosewheel of the parked aircraft, and set up a tripod behind the port wing. Dressed in pink, they wore tops bearing anti-deportation slogans ('No-one is Illegal'), erected a large banner ('Mass Deportations Kill – Stop Charter Flights') and sang protest songs ('No Borders, No Nations, Stop Deportations'). The action successfully prevented the deportation to West Africa of 60 people incarcerated in state immigration removal centres (IRCs); at the time of writing, 11 of the 60 remain in the UK as a result (with two officially recognised as victims of modern slavery).

This was the first major prosecution of anti-deportation activists in the UK, and although the techniques they used are staples of the British direct action toolkit in general and actions at airports in particular (including lock-ons and tripods to obstruct routine site operations), this is the first time they had been used to disrupt a deportation flight. Previously, activists had staged regular demonstrations at IRCs, blockaded coaches taking detainees to airports and launched social media campaigns against British Airways and Virgin Atlantic for carrying out deportations on scheduled flights. As a result, the Home Office has used private charter flights, boarding detainees at night and away from terminal buildings; this attempt to reduce visibility on departure makes deportees more visible, and thus more vulnerable, on arrival (Cammiss et al., 2018). The practice also involves deporting detainees whose legal procedures are still ongoing, under the UK government's highly controversial 'deport now, appeal later' procedure, and according to campaign groups, showing little regard for the particular risk of violence faced by lesbian, gay, bisexual and transgender (LGBT) migrants.

The convictions followed a first trial in March 2018, abruptly cut short by jury discharge, and a second 10-week trial in Autumn 2018; we observed both in full. The trials attracted widespread attention, as they crystallised a gathering sense of disquiet over the apparent chilling of protest rights in the UK, with Amnesty International UK (2018) calling the prosecution 'a crushing blow for human rights' which would 'send a shiver down the spine of anyone who cares about the right to protest in our country'. It is also the first time the Crown Prosecution Service has charged activists with the endangerment of the safe operation of an aerodrome, under s. 1(2)b of the Aviation and Maritime Security Act (AMSA) 1990, a terrorism-related offence carrying a maximum penalty of life imprisonment. However, despite the gravity of the charges, trial judge HHJ Christopher Morgan ultimately sentenced the defendants to a range of community service orders and suspended prison sentences, citing Hoffmann in his reasoning.

In what follows, we show how the trial process combines and imposes repressive and normalising power to quieten the ‘speaking of truth to power’. To do so, we bring Foucauldian macro-structural and Goffmanian micro-processual understandings into dialogue, showing how disciplinary technologies are performed in situ. We have three broad aims: to focus attention on and tease out the central dynamics of the protest trial as a sociological event; to introduce a more variegated conceptualisation of power into understandings of state-movement dynamics (to ‘bring power back in’); and, in the specific context of the UK, to assess the significance of the Stansted trials for the protection of political belief. As we will argue, defendants have (at least potentially) considerable agency to engage the court ‘as a space in which to air a radical critique’, as Noronha and Chowdhury (2018) put it in their discussion of the Stansted case. Yet when, as here, the charges brought against the defendants are escalated, the capacity of defendants to exercise agency is highly constrained, and their concomitant capacity for critique is severely reduced, as trial conventions and the lack of any realistic option to provide a political justification combine to prevent them from providing an adequate account of their actions.

Foucault and Goffman in the Courtroom

Given the transformative dynamic outlined above, our interest therefore lies in the channelling of political agency within the courtroom to minimise or forestall the expression of radical critique. Foucault’s (1977: 136–138) concept of disciplinary power, whose object is the production of the transformed, obedient, ‘docile body’, offers an inviting framework to explore this dynamic through the analysis of specific spatial, embodied and communicative practices. Foucault distinguishes between sovereign power, whose function is to forbid, and which is underpinned by the state’s claim to the monopoly of legitimate violence; and disciplinary power, or the bringing about of self-regulation. Here, practices of control work to shape, guide, correct and *normalise* human actions, through surveillance and the control of time and space. As Allen (2003: 76) puts it, Foucault conceives power as ‘something that works its ways into people’s lives through their acceptance of what it is to be or how they should act within particular contexts and scenarios’. Failure to respect the norm leads to punishment.

The trial can be understood as the point where sovereign and disciplinary power meet: formally, the court does not have the power to make law, and it does not apply punishment directly; but its procedures and discourses apply discipline to the body of the defendant during the trial, and sovereign power in the sentencing phase. It is certainly clear that Foucault (1994: 4) understood the court as a major site of disciplinary power and knowledge production:

Judicial practices, the manner in which wrongs and responsibilities are settled between men, the mode by which, in the history of the West, society conceived and defined the way men could be judged in terms of wrongs committed [. . .] seem to me to be one of the forms by which our society defined types of subjectivity, forms of knowledge, and consequently, relations between man and truth.

While the court is, therefore, a site which sees the coming together of sovereign and disciplinary power, it is important to note the difference between these two modes. While sovereign power focuses upon repression and prohibition, disciplinary power, a point often overlooked, can be productive; as for Foucault (1980: 74) '[t]he individual, with his identity and characteristics, is the product of a relation of power exercised over bodies, multiplicities, movements, desires, forces'. Disciplinary power produces subjectivity, as the individual is 'an effect of power, and at the same time [. . .] the element of its articulation' (1980: 98). As this suggests, disciplinary power is more diffuse than sovereign power, while sovereign power is dependent upon disciplinary power to function. Prohibitive state power 'can only take hold and secure its footing where it is rooted in a whole series of multiple and indefinite power relations that supply the necessary basis for the great negative forms of power' (1980: 122). As a place where sovereign and disciplinary power meet, the courtroom can be considered an ideal location to observe the operation of power, allowing us to see how subjectivity is constituted through the legal process. This includes the possibility of resistant agencies: as noted, the trial is also a site where parties contest the narration of the events. Here, Jackson (1988: 92) underlines that there are two levels of narrative production: the narrative of 'the stories told in court (their content) and that of the pragmatics of those stories'; in other words, the narrative *in* the trial and the narrative *of* the trial. Understanding the trial process therefore requires an evaluation of how participants collectively construct it as an event, a process that inevitably involves relations of power.

Yet for McNay (1994: 101), Foucault's account of power is inevitably one-sided, as it is fundamentally uninterested in the agencies of those who are subjected to it; Giddens (1984: 157) underlines that 'Foucault's bodies do not have faces'. If, for Foucault (1977: 139), discipline is a 'political anatomy of detail', his work tells us little about the relational processes through which external standards of behaviour are internalised and reproduced through the verbal and non-verbal communications of the disciplined, self-regulating, subjectified body (for Jackson, the *pragmatics* of the process).

Discipline, Dispossession and Script Compliance

One response to this blindspot is to bring Foucault and Goffman into productive tension. Hacking (2004) and, following Hacking, Larsen and Urry (2011), Leib (2017) and Nunkoosing and Haydon-Laurelut (2012), note how Foucault's institutional archaeology and Goffman's interactionist sociology share concerns with deviance, surveillance, spatiality and the foregrounding of the body as the site through which relations of power are played out. For Hacking (2004: 278), the bottom-up, embodied and material analysis of Goffman's behavioural micro-sociology can 'fill out' Foucault's top-down, abstracted and systemic analysis, enabling empirical understanding of how forms of discourse are integrated into and performed through everyday interactions, and reproduced through the operation of institutions. For Leib (2017: 206), Goffman is in this way a 'Foucaultean micro-physicist of discipline'. Here, it is (perhaps paradoxically) the apparent weaknesses of Goffman's analysis of power that make his work useful for studying the processes of norm compliance; as Tyler (2018: 756–757) notes, Goffman's own lack of

investment in political challenge produces an analytical focus on the dramaturgical management of existing arrangements.

For Goffman (1959: 25), character is always a public performance, a series of practices designed to ‘safeguard the impression fostered by an individual during his presence before others’; ‘impression management’ (or ‘facework’) is always performed within the context of the ‘situation’, or the specific institutional frameworks which provide normative expectations for both the performance and its reception. Leib (2017: 189) argues this approach complements Foucault’s understanding of power, underlining how Goffman’s account of interactions between institutions and bodies illuminates the internalisation of disciplinary power, as the production of the docile body involves a ‘systematic divestment of the subject’s access to the external processes and spaces on which the production and performance of his “self” depends’.

Thus, in *Asylums*, Goffman (1961: 23–40) shows how the entry of the inmate into an institution is characterised by a systematic process of dispossession and recolonisation. Goffman terms this process a *mortification of the self*; it typically features ‘obedience tests’ and ‘will-breaking contests’, as inmates are institutionally socialised, their deference obligations made clear and routine compliance ingrained. Further, inmates are denied the capacity to distance themselves from their compliance through an indirect form of mortification that Goffman calls ‘looping’. Where inmates seek to save ‘face’ through resistant expressive behaviours (sullenness, insolence and so on), this defence mechanism becomes the target for the next attack, such that the ‘protective response to an assault upon self is collapsed into the situation’ (1961: 41). Inmates are also denied ‘backstage’ areas in which they might potentially gain respite from surveillance and carry out acts of self-repair, a process Goffman terms ‘contaminative exposure’, or invasion of the territories of the self.

The court is, of course, not a total institution: defendants often have access to a variety of backstage areas. Yet within the courtroom, space is highly structured in ways familiar from Goffman’s accounts. Carlen (1974: 103) emphasises how legal and extra-legal rules serve to manage (instrumentally) the judicial process, but also maintain and legitimate (symbolically) the authority of law, and so ‘accomplish competent performances of justice’. Her analysis of tacit control techniques focuses on spatial and temporal organisation, noting the regulation of body movement and presentation and its subjugation to the court’s organisational efficiency (Carlen, 1976). Rock (1993: 51), meanwhile, notes how the ‘bearing’ and emotional self-control of a witness is taken to provide a ‘non-verbal commentary [on their] credibility and character’.

As Flower (2018) underlines, effective impression management therefore involves the articulation of character through displays geared to the courtroom’s ‘emotional regime’. In her discussion of Swedish defence lawyers, Flower (2018: 246) argues that the ‘subtle interactional impression management strategies’ they deploy feature not just Goffman’s ‘little dramatic productions’, but also ‘little dramatic reductions’: strategic emotional expressions and suppressions enable them to manage face threats and maintain character while ensuring their ‘performances must remain within the emotional regime of the courtroom of civility’. Defendants, however, do not occupy the same structural position as legal professionals. In the English Crown Court, defendants are constrained into passivity and marginality as they are confined to the back of the court, ‘sidelined (and silenced)’ in

the dock, contributing ‘only when being asked to plea or when appearing as a witness for the defense’ (Scheffer et al., 2009: 189). Further, they are subjected to a highly elaborated and implicit code of conduct concerning their capacity for emotional display, voice, gesture and movement. Zoetl (2016: 410) argues that the defendant’s body plays an important part in the validation of criminal procedure through disciplinary ‘script compliance’: the unspoken rules that regulate bodily posture and movement serve to ‘visually acknowledge the court’s authority to deliver a sentence over the person accused and thus the validity of the sentence itself’.

Ethnographic Methods

These accounts point to the importance of facework, spatial control, surveillance and compliance within the trial. Here, we apply this framework to the Stansted 15 in order to better understand how disciplinary power is produced and articulated within the criminal justice process, and to understand how the defendants themselves experience and participate in this process. To do so, we deploy a range of ethnographic methods, including nine semi-structured interviews with eight defendants (three prior to the trial, and six afterwards); informal (and formally unattributed) conversations with supporters, defendants and legal representatives, including off the record interviews with two members of the legal team; and participation in and observation of events and workshops before and after the trial (at public meetings in Chelmsford in February and September 2018, as the defendants developed relationships with local supporters; a public meeting in Leicester in March 2019; and a closed workshop in Birmingham in June 2019). While these events informed our work, our primary data are based on our observation of both trials, for one day in March and 30 days between 1 October and 4 December 2018.³

Nine of the defendants were female, and six male (we did not ask them about their gender identities, and it was not asked in court). All but two were white, and all but one had a university degree; the youngest was 27, the oldest 44. Several worked as researchers for campaign groups or non-governmental organisations (NGOs), including one for a faith organisation; other occupations included solicitor, gardener, music teacher, student, freelance journalist. Most, but not all, had extensive experience in direct action and social movement campaigns (LGBT, climate justice, anti-deportation), although for a minority this was their first major high-risk action, and first arrest. We have not foregrounded questions of intersectionality in our analysis, not because we think they are unimportant (indeed, they are likely to be central to further work on protest trials), but because our primary focus here is on the situational relationship between defendants, individually and as a collective, and other actors in the court. As we note below, defendants were acutely conscious of the social characteristics of the jury who were mainly older than them, and whom they perceived to be mainly working class, and possibly hostile to their activist identities. Most of the defendants lived in London; none were from Chelmsford, which they saw as a deeply conservative, even alien, territory.

To enable us to capture their verbal and gestural interactions, we wrote fieldnotes in court, typing them up in situ or immediately afterwards. Our approach was collaborative: we attended court separately in shifts, developing our analysis inductively (O’Reilly,

2012: 30), sharing and analysing notes and ideas from our observations via a password-protected message board and a restricted WhatsApp group. This allowed us to develop a method of real-time thematic identification and interdisciplinary discussion (particularly important for the two non-legally trained co-authors). We used our prior conceptual understandings to orient our note-taking and data organisation, which we further developed collaboratively through a classic two-step coding procedure (Holton, 2010): our initial observations enabled us to co-construct emergent categories. We then refined our data into core themes, developing a more selective focus in the later stages of the second trial. We used these themes to prepare our subsequent interviews with defendants, selected purposively to ensure mixed gender representation, and a mix of some we knew to have extensive prior experience of high-risk activism, and others who were comparative novices. This combination of interviews and observation provides rich and comprehensive data.

A key problem of ethnographic practice concerns position taking, between marginality/observation and immersion/participation (Fielding, 2008). For self-evident reasons, immersive and participatory approaches were not available to us; we were not ourselves on trial, nor acting as legal professionals. Scheffer (2010: xxii–xxiv) points out that access to the field is already a key part of reflexive ethnography; for a trial, this appears formally unproblematic, given that an open court is the base condition of ‘fairness’. However, court access does not simply concern entry, but the conditions of entry. During break periods (and frequent periods where court was not in session), we sat in the lobby alongside the defendants, supporters, legal teams (of this and other concurrent trials). But moving into the courtroom itself involved a process of positional fixing: while in the lobby we were free to circulate and chat (observing and occasionally participating in ‘backstage’ interactions), entry to the court itself fixes roles, reserving separate highly circumscribed spaces for different classes of actors.

Here, we were visibly fixed ‘frontstage’ as observers in the small public gallery. Undertaking relatively long and open-ended interviews with the defendants subsequent to the trial was thus important for our capacity to probe their subjective experiences, in their own words. Our approach here was one of ‘active interviewing’, led by the understandings derived from our observations, enabling interviews to function as engaged and interactional sites of the co-construction of knowledge (Gubrium and Holstein, 2001). This again is particularly important: not only does the trial process allocate and segregate space, it allocates and segregates voice.

We secured ethical clearance from the corresponding author’s institution, following the British Sociological Association’s guidelines (BSA, 2017); following our ethical protocol, we (1) fully attribute statements produced in court; (2) anonymise statements gathered from interviews; (3) do not use off the record statements.

Mortification and Dispossession

The first trial was abandoned on the second day by Judge Morgan, citing concerns over notes taken by the defendants in court. Our abbreviated verbatim notes from 23 March 2018 run thus:

J [Judge] was concerned that the integrity of the jury and the trial had been compromised; on the notes, there were the names of jurors written next to the colour of their hair, and in some cases the shape of their glasses; and declared the court minded to discharge this jury and put the details in the hands of the police. J was concerned that jurors arriving and leaving the court may be identified.

J then gave defence and prosecution ten minutes to discuss outside; the defendants and their legal team went into a small ante-room.⁴

On return, P [prosecution counsel] argued these notes were inappropriate; and detailed that they contained speculation about the age; sexuality in one case; WC / MC ('whatever that means'); hair; glasses.

D [defence counsel] responded the notes were 'unfortunate, but neither illegal nor inappropriate'.

J maintained nothing justifies the taking of notes about the shape of a juror's face or their glasses; the court was only aware of these notes because they were brought to my attention by concerned jurors; the court is satisfied that the jury is compromised; the jury is to be discharged; the jurors will not be returned to the pool.

At this point the mother of one of the defendants, seated next to us in the public benches, emitted a derisory snort; J rebuked them, demanded to know what they were holding [a notebook and pen] and forbade them from taking notes. We also stopped taking notes.

There was a long period of silence in the court, broken only by two of the defendants in tears and visibly distressed at the front left of the dock.

We chatted in the lobby area for some time afterwards. The defendants were stunned.

The discharge had a series of practical effects. The proceedings were delayed by over six months; when they reconvened, the jury was now all white, a factor seen by some of the defendants as less favourable to them (as anti-deportation activists). More widely, the delay forcibly disrupted the defendants' attempts to integrate the trial into their other commitments and relationships, an example of how the legal process, in a Foucauldian disciplinary sense, inevitably intervenes in the defendants' control of time and space (particularly as none lived near Chelmsford). In interviews, many of the defendants told us of the strain and anxiety the delay caused them. The two defendants who had made the notes were subjected to a police investigation, which was discontinued (because no offence had been committed). Just before sentencing, one of them told us:

The idea that us taking notes was because we were going to intimidate the jury, I mean is just farcical. . . like if I was going to intimidate the jury I wouldn't write 'twinkly eyes' on it, and it was really mortifying, like very embarrassing actually, to have my personal notes which I would never show anyone being photocopied and distributed around the whole courtroom to the prosecution and all of our lawyers. . . Um, so yeah I think that moment I felt a huge amount of shame and erm self-doubt around that, and it took quite a long while to get through that, I think I am kind of through that now but also the impact of my actions on the other fourteen

people I was in the dock with. . . what a horrendous impact to have on people that I had no intention of doing. . . (Interview, February 2019)

For this defendant, the experience was shaming; an (in their words) *mortifying* process. Their account of the experience as a humiliation is strikingly similar to Goffman's account of dispossession and recolonisation: removing the defendant's access to unmonitored self-expression, enforcing compliance with an arbitrary standard, breaking down their sense of self:

it's led to me having a substantial amount of reassessment of who I am and how I am in the world, and what I think I am and how I behave, and like. . . am I who I think I am and. . . But, erm, but one of the things particularly in that moment was, I felt so wrong-footed and so ashamed and so like I had done something terrible that I really believed that I had.

The analogy to the mortifying process of the total institution is of course not quite exact, as noted above; nonetheless, out of court, the defendant's space to escape 'contaminative exposure' is limited, because of the perceived effect of their action on the group. In this circumstance, self-repair is a long and painful process.

Jury discharge thus imposed a series of process penalties: time, stress, logistical labour. More widely, Morgan's intervention can be seen as an *act of dispossession* of the defendants; not physically, of their property, as for inmates on entry to the asylum, but rather symbolically, of their self-management, and their autonomous capacity of expression within the court. It deprived them of their control over their own schedules and plans (campaign, careers, personal life), and those of their friends, families, colleagues. Above all, it established the courtroom as a hostile space, in which they were positioned as a credible threat to the jury and rendered wholly and continuously visible to the controlling gaze of the court, which extended into 'their' allotted space. This loss of expressive potential was emphasised by the application of reporting restrictions: contempt of court rules meant that the defendants could not publicly discuss why their trial had been rescheduled.

Dispossession as Adversarial Strategy

This dispossession (of time, space, voice) is also a product of the adversarial legal process. The prosecution sought to argue that the defendants' purpose had been primarily political, rather than humanitarian, thus negating the defence's presentation of a necessity, or duress of circumstance, defence. This defence requires defendants to justify their actions as reasonable and proportionate, acting from sincere and reasonable belief, to prevent an imminent act of serious harm to others. Prosecution counsel argued that the activists had acted to attract publicity rather than protect specific individuals on the aborted flight; defence counsel denied the primarily political character of the act.

For the defendants, this defence was consequential. Eight of them had prior convictions for criminal damage, obstruction or aggravated trespass during direct action protests; for the prosecution, this was evidence of 'bad character', suggesting a pattern of (political) behaviour rather than exceptional action under duress. Equally, these

convictions created the possibility of prejudice by association, where the bad character of some ‘infect’ the good character of the others. Although the defence argued that propensity cannot be established on the basis of a single prior conviction, Judge Morgan sided with the prosecution in legal argument, finding that the previous convictions had ‘probative value’. The solution to this problem, the prosecution suggested, was for the defence to disassociate the defendants, so that they be judged separately as individuals rather than collectively as a group.

The prospective cross-examination of defendants with bad character thus threatened the integrity of the defendants as a collective; a dispossession of their ability to present themselves as a group. One defendant with prior convictions told us that if they were to take the stand, the cross-examination would be ‘brutal, they could spend a day asking me questions and I’d have to answer yes or no’. As soon as the prosecution had applied for bad character to be admissible, the defendants, guided by counsel, changed their initial strategy that all of them give evidence. As a result, the eight with prior convictions did not give evidence, dispossessing them of their expressive autonomy, and denying them an opportunity to resist the framing of the trial narrative, for the entirety of proceedings. This also had a broader political effect, hiding the wider political connections and histories of more than half the defendants.

Collective Solidarity, Script Compliance and Looping

The participation of the defendants in the trial was characterised by variable forms of involvement and exclusion, alienation and attention. We noted relatively early in the second trial that a number of the defendants looked visibly bored. This is probably inevitable, to some extent. A trial is a re-creation, through the words of others, of what was alleged to have happened; being part of a legal dispute involves handing over voice and agency to professional others. Noting the dictum that the criminal process typically happens ‘to’ rather than ‘with’ defendants, we discussed how nevertheless this was not always the case for the Stansted defendants, since they were also sometimes focused, alert and wearing hearing loop headphones. The mood in the courtroom was serious and often tense, but as one defendant commented:

I also felt like I was back in my childhood really. You know I was being treated as a child and I know that from what other defendants have told me some of them felt similar. You know, you’re not allowed to speak. (Interview, April 2019)

The defendants worked to support each other and maintain their collective solidarity in the face of often gruelling questioning; silently hugging, or half-hugging, or hand-grabbing when a defendant returned from giving evidence, following cross-examination (5, 9, 13 November). Otherwise, our overall impression in court was of them ‘switched on in their own bubbles’; but this intensity came at a cost. One told us:

I found that my body hurt, pretty much at the end of every day. And, of course, I have coping strategies but the best thing would be not to be in that position. And a big part of my recovery post trial has been tending to, like, my physical health and as a result my mental health as well. But I really felt it at a visceral level, like aches and pains. (Interview, April 2019)

In many respects, this is an example of postural self-regulation (in Foucauldian terms, disciplinary ‘dressage’), as the defendants complied with courtroom norms. In the large windowless lobby area, the defendants were more relaxed. They helped each other stretch, after a long session; they chatted in small groups with supporters, sometimes smiling and joking, complicit with each other. It is, of course, not unusual for different rules to apply in different spaces, but the difference between the courtroom and lobby was stark.

Back in the courtroom, prosecuting counsel was often theatrical, deploying a repertoire of pregnant pauses, emphasis, repetition, expansive language. This control over the forms of communication operates as a pragmatic process that sets the interaction agenda, an example of the narrative *of* the trial (Jackson, 1988). Repetition in examination-in-chief served to establish the knowledge and authority of the witnesses called by the Crown; repetition and speed in cross-examination sought to wrongfoot and disorient the defendants. The cross-examination of defendant Lyndsay Burtonshaw (7 November) captures this repeated gambit:

- Burtonshaw: We are a group of many different strengths. To make an analogy, it’s like booking a holiday, we divided tasks. . . I was making lock-ons.
- Prosecution counsel: You think that what you were doing was like *organising a holiday*?! [performance of shock]
- LB [defensively, trying to explain]: Something one does as a group –
- P: When one goes on a holiday one does not commit a crime!
- LB: As I said before, when taking action to prevent harm, I do not consider it breaking the law –
- P: Like a holiday?
- LB: In terms of having different roles in a group –
- P [play of perplexity]: Help me out?
- LB: I am wondering if you want to take it any further. . .
- P: It was your analogy –
- LB: In what I said – we had different roles. . .
- P: But we are talking about a group of people *stealthily* [not heavily emphasised in speech, but so the court notices] trespassing – so holiday plans are of no assistance. [emphatic, almost bullying now]
- LB [trying to undercut]: I am being asked to repeat myself so I was trying to make it more interesting for the jury to listen to.
- P: Holiday plans don’t concern the impact of trespassing on an airside restricted airport.
- LB: I don’t understand your question.
- P: You have told us your approach was like planning a holiday –

- LB: As I have said it was an analogy to show we had different roles, nothing more.
- P: It reveals does it not, your attitude towards how your actions impacted in safety at the UK's fourth largest airport?
- LB: We were talking about people's lives at risk. We were taking it very seriously.

In so doing, prosecution counsel performed a series of 'little dramatic productions'; here using repetition, emphasis, facial gesture and expressive tone to draw attention to the supposed carelessness of the defendants. This much is perhaps unsurprising, given the adversarial nature of the trial, the structural authority of counsel and the emphasis on endangerment in the indictment.

Less predictable was the 'script compliance' of the defendants: deliberately positioning themselves to the jury as regular, ordinary citizens, as in Burtonshaw's everyday analogy of booking a holiday (an analogy they had prepared and agreed in advance; interview, July 2019). Acting from humanitarian concern as ordinary citizens, they were consequently also constrained in their ability to present resistant critique, and challenge prosecution counsel's authority in setting the terms of the exchange. This happened repeatedly: for example, when replying to her own barrister on planning and taking care during the action, defendant Ruth Potts replied 'It's like a risk assessment, think what might happen, what you definitely won't do, and how to manage other risks' (14 November). In cross-examination, prosecution counsel returned insistently to this phrase, reading from the airport's safety manual, including the sections on health and safety in the workplace, foreign object debris on the apron, and so on; and in so doing, drawing the defendant into the definition of risk as bureaucratic procedure, codified in safety manuals, rather than the everyday process of evaluating the possible consequences of one's actions. Both are prime examples of 'looping': whether seeking to defuse the situation (like Burtonshaw) or accepting the language of endangerment (like Potts), the effect is to provide further fuel for the prosecution's charge. The defendants' compliance with the prosecution's definition of the situation left them exposed to prosecutorial ridicule; to take Goffman's phrase, their protective responses were 'collapsed into the situation', cited as further evidence of their lack of seriousness and their guilt.

This script compliance also concerns emotional register. As noted above, disciplinary power is reproduced through the spatial and expressive order of the court; Flower (2018) underlines that effective impression management involves calibration to the 'emotional regime' of the courtroom. But where legal professionals have access to both 'little dramatic productions' and 'little dramatic reductions', the reliance on a necessity defence meant that the Stansted defendants were constrained to only produce reductions, dedramatising, suppressing their emotional expressivity: speaking sincerely, with moderation, responding to the leads given by counsel, they did not seek to disrupt or challenge the reproduction of authority in court. We can see here, therefore, how the defendants' self-regulating calibration to the disciplinary regime of the courtroom served to limit their subjectivity and obscure their political motivations.

Performing the ‘Responsible, Caring Activist’

Indeed, the defendants performed their participation in court in highly legalistic, non-transgressive, ways. On the stand, they accepted the premise of the legal norms of conduct, the discursive basis of legal argument and the judicial practices that Foucault identifies as a form of disciplinary power. Other than an unsurprising reticence about detailing the precise roles of their co-defendants (in procuring and assembling materials, rehearsal, breaking into the airfield), their responses to prosecution questions were characterised by respectful engagement (even in response to prosecutorial theatricality). This includes the one defendant who self-represented, Mel Evans, who did so in such a way as to inhabit the legal process rather than to disrupt it; for example, by using the type of footing devices when examining a witness regularly used by legal counsel (15 October). Under examination, the defendants responded to prosecution accusations of carelessness by fostering an impression, through tone and posture and gesture, of sincerity and *carefulness*: as reasonable and responsible actors minimising risks, and as socially concerned, ‘ordinary’ people acting caringly for fellow human beings at risk.

Further, what prosecution counsel referred to as the image of the ‘responsible, caring activist’ was apparent in the self-presentation of the defendants, even when not on the stand. We noted, as an example of self-regulating normalising behaviour, that at least three of the defendants wore red poppy badges prior to Remembrance Day, often seen (particularly in activist networks) as a conservative and nationalist representation of public memory; more of the defendants wore poppies than did members of the jury, and none wore an anti-militarist white poppy.⁵ In dress, expression and conduct, the defendants complied with the court’s normative regime; we noted on numerous occasions how, in the narrow passageway from the lobby to the courtroom, the defendants changed their posture and expressive behaviour, becoming more tense, more closed, performing ‘attentive seriousness’. We noted how pink accessories – a hat, a scarf – worn by the defendants in the lobby were removed by them as they prepared to go into the courtroom (pink being totemic of the group’s 2017 action). They told us they had bought clothes, and dressed soberly and smartly for court. Many of the defendants’ supporters also dressed and acted this way. One of the defendants told us:

being in the front row, you know I was always conscious when I was there that I’m being looked at by the jury, the jury is making an impression of me based on how I look, so you know I always dressed up smart, I always looked presentable, sat up straight. I looked over at them occasionally but I’d be mindful not to look too much not to seem in any way like undesirable, you know I was really conscious that I needed these people to like me, to like make a connection with me to believe us and I encouraged the others to do the same. You know, don’t talk, don’t laugh, don’t make comments, don’t smile, sit up straight, you know, dress smartly. Yeah, I was very, very aware of like that impression that we created. (Interview, January 2019)

But another defendant was unhappy with the compromises this entailed:

I really regret that. I really regret that. . . So everyone was disciplined and to not like have a reaction when the verdict happens and, and I just feel like maybe those are the, so that’s the area of advice that I deeply questioned where I feel you know nothing is going our way, like actually

just being ourselves in this like setup it's like a little bit of, like, taking back control. (Interview, July 2019)

On occasion, both prosecution and judge explicitly policed the behaviour of the public gallery. But so did the defendants, themselves, embodying the disciplinary norms of the courtroom; we noted, for example, how one supporter had a habit of talking loudly, and the defendants repeatedly shot them exasperated and annoyed looks (and that this supporter was told by another supporter to be quiet, 27 November). Our notes for Morgan's summing up (4 December) included this:

J returns at 1020; no one should perch; or sit on the floor, or block the doors; we are not responsible for the number of seats in the public gallery; J excludes individuals who do not have seats; gets especially tough on those who do not have seats, and the usher obliges them to leave.

J leaves again; returns at 1036. It's fractious. People on individual office chairs next to me leave because one of the defendants leaves the dock, comes over and says where they are sitting is 'making the defendants nervous'.

We noted how Morgan's act of dispossession in the first aborted trial in March set the terms of the second trial, establishing a power relation of surveillance, subjection and sanction. In the autumn, as the second trial developed, the defendants themselves began to actively reproduce this regime of surveillance, policing their own and their supporters' conducts.

Discussion

At the outset, we suggested that Hoffmann's bargain requires a *transformative* process, and that the expression of character would explicitly be central to this transformation. If in classic Goffmanian terms, character is *always* produced through action, we can identify two contrasting sides to its operationalisation here. Character refers, in the everyday way, to the identity of the defendants, their beliefs, self-presentation and conduct; but it also refers, in a legal sense, to their history of prior offences (such that 'good character' refers to a blank, or forgiven, history of convictions; and 'bad character' to active and relevant previous convictions). Hoffmann's bargain relies heavily on the first of these definitions, offering leniency to those who are 'conscientious' and 'reasonable'. At Chelmsford, both these elements of character were central, as defendants with 'bad' character were separated and silenced, while defendants with 'good' character were constrained to perform this character in non-transgressive form. The contrast between their high-risk, disruptive, politically challenging activism and their risk-averse, respectful, rather conservative self-presentation in court was striking.

Of course, there are many trials where activists refuse to 'play the game' in court, talking over the judge, self-presenting in rebellious ways, challenging the authority of the court. Equally, it might be suggested that trial strategy is anyway just a tactical game, and that the loss of agency in court is offset by the generation of new agencies and

solidarities outside it; or that the defendants did indeed have considerable agency: as several defendants told us in interview, their trial strategy was at least in part *designed* around normative self-presentation, in the attempt to persuade the jury that they were regular, ordinary citizens. Yet this would, we maintain, be to ignore the effects of the escalation in charging on the conduct of trial process itself, its material and emotional effects on the defendants and the consequent reduction of the political space available to them. Escalation creates major pressure on defendants to manage their self-presentation in ways that are consistent with the image of the ‘conscientious protester’, and to take tactical decisions minimising risk. The agency of the defendants thus lies in managing the conflicting pressures of this process *as a collective*.

But this dynamic is not a given: it is produced through asymmetrical relations of power and intertwined combinations of repressive and disciplinary power. In particular, Morgan’s seemingly arbitrary deployment of sovereign power in discharging the jury in the first trial was an act of shaming and dispossession which facilitated disciplinary dynamics. These involved the imposition of logistical penalties of time and space on the defendants – delay, the strain of travel or lodging – but also underlined their lack of frontstage autonomy, establishing the court as a hostile space of permanent surveillance. Consequent attention to image management and gestural display enables us to see how disciplinary forms of *dressage* are experienced as embodied strains; it also shows us how the defendants’ conduct and communicative practices (who can speak, how they speak, what they can say) involved both collective solidarity maintenance and self-regulating script compliance.

Conclusion

Our argument is significant in three ways. First, we have developed the first socio-legal analysis of what we call Hoffmann’s bargain, which guides how the criminal justice process in England and Wales should in practice manage direct action prosecutions. Here, we show that the leniency at sentencing central to this bargain comes not just at the end but *at the condition* of a highly punitive process: the repressive action of incarceration is rendered unnecessary by the disciplinary action of the trial, directing our focus away from punishment as sentence to punishment as process (Feeley, 1992/1979). For the study of social movements in particular, we suggest that attention to the dynamics of different forms of power within this process would enable a more variegated understanding of what is generically referred to as ‘repression’, open up enquiry into important processes of normalisation and allow productive attention to the relationships between prosecution and the potential of radical political critique. Further, we show how protest trials are not like standard criminal trials: in the case of the Stansted 15, 10 weeks of court time were devoted less to disputing the facts of the case than to disputing their interpretation. We suggest that this is a distinctive and structural feature of such trials.

Second, while bringing Foucault and Goffman together is not itself novel, we have done so in what is to the best of our knowledge the first ethnographic account of a protest trial. We show how disciplinary power displaces the political through specific embodied, spatial and communicative practices. Combining macro and micro approaches allows us to see the interplay of agency and structure in situ, providing

important insights into how actors make sense of their social world, and how agency is constrained by structure. We suggest that this combination creates a productive framework not just for this trial, or for the trials of social movement activists uniquely, but for understanding how defendants are subjected to and experience, reproduce and resist processes of dispossession and reconstruction in court more generally. While the face-work of legal professionals is a familiar theme of forensic sociology, there is comparatively little work on the strategies of defendants, or the conditions in which they are negotiated.

Finally, we are dealing here with only one prosecution, with exceptional features. Yet we suggest that the Stansted trials present worrying outcomes for the right to protest in the UK, not *in spite of* the leniency in sentencing applied at Chelmsford Crown Court, but precisely *because of the terms* of this leniency. While the trial upholds the terms of the right to direct action protest, it does so by placing significant restrictions not simply on what legitimate public protest is, but on how a legitimate public *protester* can present themselves in court. As such, the conditional nature of Hoffmann's bargain has less to do with narrowing the definition of what is legitimate public protest, and more to do with narrowing who may be considered to be a legitimate protester. What is at stake here, therefore, is less the definition of sanction than the transformation of the transgressive activist into the ideal disciplined liberal political subject.


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Notes

1. *Jones* [2006] UKHL 16, §89.
2. Hoffmann told us, 'The main purpose of the Jones judgment was to put an end to arguments that the acts in question were justified because the government or some other party was acting unlawfully' (email correspondence, 25 January 2019).
3. We are grateful to all those who agreed to be interviewed, and to Siobhan Forshaw and Alice Swift who provided notes on proceedings in the second trial on two days when the authors were unable to be present.
4. It appears Morgan had already made the decision to discharge prior to proceedings that day: as we arrived, the electronic screen in the lobby was listing a different trial at 10.30 in the same courtroom.

5. We were also part of this process. We noted above that movement into the courtroom ‘fixed’ us as observers; but our positions in the public gallery also meant we would potentially be viewed by other court actors as supporters. One of the authors therefore decided against wearing a white poppy in case this offended the jury.

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