Goldsmiths Law and Politics Review

EDITOR'S NOTE

Welcome to this issue of the *Law and Politics Review*. As students and scholars, we often navigate the intersection of law, politics, and the society around us, examining how legislation, political decisions, and circumstances shape not only institutions but also the lived experiences of individuals. This issue explores not only law and politics but also their intersections with sociology and the arts.

In reflecting on how law shapes fundamental freedoms and experiences, I am reminded of Shami Chakrabarti's insight that Human Rights should be "accessible" and must "animate living rooms, classrooms and courtrooms; cabinet, interrogation and even war rooms."

This principle underpins much of the work featured in this issue. Our contributors interrogate societal frameworks, law, and politics, highlighting both human experience and human suffering. We hope this collection inspires further discussion, research, and advocacy as you engage with the pressing questions of law, politics, and the society around us.

-Nina Lago Burity

From all of us at the Law and Politics review, we hope you enjoy this issue!

With special thanks to Isabel O'Herlihy for coming on as a volunteer editor.

Nina Lago Burity
Head Editor

Evie Hones
Co-Editor

Sophia Bradstreet
Co-Editor

Nuha Nayem
Co-Editor

Daniel Phelps
President, Law society

TABLE OF CONTENTS

NOTE: SETTLER COLONIALISM OR CULTURAL TEMPO? TWO VISIONS OF IMMIGRATION IN TRUMP'S AMERICA

Maria Romanova

In the last decade, immigration has shifted from a policy issue to a cultural fault line, fuelling partisan polarization, energizing populist movements, and calling into question the durability of American democracy itself. What are America's fiercest fights over immigration truly about? Is it about jobs, crime, national security, some mixture of these, or is there something else to it? At the heart of the divide lies a puzzle: why do many on the political right appear to support Trump's current immigration policies, while mainly Democrats tend to be against them? This article brings together two contrasting voices: Dr. Tarsis Brito, a postdoctoral fellow in International Relations at LSE, and Professor Eric Kaufmann, a political scientist at the University of Buckingham. For Dr. Brito, borders have always been more than lines on a map, they are instruments of racial domination. He also believes that the concept of "liberal nationalism", as he calls it, is central when examining the stark divide between Republicans and Democrats on Trump's immigration policies. Professor Kaufmann, on the other hand, argues that the heart of the debate lies in "cultural tempo" - which psychologists define as the speed at which societies can absorb and adapt to cultural and demographic change.

At the heart of the interview, Dr Brito identified two layers of stark divide between Republicans and Democrats on immigration. First, he says, there is more continuity between the parties than people might think. "Even when Democrats are in power, border politics still operate as racial tools. There is a shared consensus that borders protect the country, but also that they reinforce a certain racial project." This is true under both Biden and Trump, he explains: "Both operate from the assumption that the border protects sovereignty and the national community. The disagreement is about how they connect that to race." This leads to the second level: tone and emphasis. Republicans, especially under Trump, have been far more explicit in their attachment to white supremacy, Dr Brito articulates. Democrats, by contrast, maintain what he calls a "liberal nationalist" approach. This means they tend to prioritize multicultural rhetoric and celebration of diversity whilst still upholding the same fundamental logic of racialized migration control.

This critique leads into a broader analysis of political polarization in the United States, which Dr Brito sees as a driving force behind the hardening of immigration policy. He argues that the intense opposition to Trump's immigration agenda cannot be fully understood without recognizing this polarization, whereas Professor Kaufmann attributes it to shifts in "cultural tempo". Drawing from his experience in Brazil, Dr. Brito notes a similar trend: the collapse of the traditional centre-right created space for the far right to become the new mainstream. "In the US, the Republican Party was not always overly far right," he says,

“but that faction is now dominant.” This shift has intensified polarisation, pitting the far right against the centre-left. He adds that the far right’s rise has also meant a growing willingness to undermine democratic norms. “There’s a different attitude toward truth, toward democratic institutions,” Brito says. “That consensus we once had [i.e., democracy being the end goal] is eroding.” One way to see this shift is in the way political leaders speak with authority on issues far outside their expertise. Consider Donald Trump’s recent comments about paracetamol (acetaminophen in the US, sold as Tylenol), one of the most widely used painkillers in the world. Trump warned pregnant women against taking the drug, claiming that its use is linked to Autism in children. “Tylenol is not good. All right, I’ll say it; it’s not good,” Trump declared. He went further, asserting that “for this reason the FDA [the U.S. Food and Drug Administration] are strongly recommending that women limit Tylenol use during pregnancy unless medically necessary.” In reality, however, the FDA has issued no such recommendation. While some studies have examined potential associations between acetaminophen use and developmental outcomes, the scientific evidence remains inconclusive, and major health authorities continue to view it as generally safe when used appropriately. Trump’s remarks illustrate not only the spread of misinformation but also how easily scepticism toward institutions and scientific consensus can be amplified in the political arena. In a democracy, once truth loses its authority, the institutions built upon it are not far behind.

To understand the racialized foundations of immigration policies, Dr Brito encourages us to look at the concept of “settler colonialism” - a specific type of colonialism where the colonizing power established a permanent presence by replacing the original population with settlers. When asked whether the concept of settler colonialism is helpful in understanding attitudes towards immigration in the US, Dr Brito says “yes” without hesitation, “especially if you want to understand the racial politics of borders”. His work in the US context begins from the idea that borders, immigration policy, and security measures have always been intertwined with the colonial project. While many people see borders purely in terms of sovereignty, he argues they have historically been used to enforce settler colonial control. “In the US specifically, borders were not just lines on a map,” Brito explains. “They were used to implement white dominance.” That meant fostering the idea that whiteness itself was native to the country, despite its origins in Europe and its role in replacing Indigenous populations. Borders, he continues, were key to this process, functioning as tools to regulate the arrival of racialised populations and to cement what he calls “white nativeness.” This is why, for him, settler colonialism is not just a historical reference but an ongoing reality: it explains how borders remain entangled with the project of reclaiming and preserving the US as a “white space.”

Here, however, Professor Kaufmann offers a counterpoint grounded in social psychology and empirical data. He stresses that “attachment to one’s ethnic or cultural group does not necessarily reflect hostility

toward others." Kaufmann refers to research demonstrating that in-group attachment and out-group animosity are distinct, noting that "white Americans who feel stronger identification with their own ethnic background do not show higher levels of animosity toward other racial groups." Citing the work of political scientist Ashley Jardina, he adds, "racial resentment and white identity are largely separate constructs. You can be attached to a particular cultural configuration without endorsing a supremacist worldview. For Kaufmann, the central issue is the speed of cultural change — the "cultural tempo" — rather than race itself.

Tracing the political history, Professor Kaufmann places the rise of immigration as a central Republican concern well before Trump. He points to California's Proposition 187 in 1994 and Arizona's SB 1070 in 2010 as pivotal moments that "primed Republican voters to prioritize immigration more than ever before." Trump, Kaufmann argues, simply "broke taboos within the party by making immigration a non-negotiable centrepiece of his campaign." This, according to him, allowed Trump to consolidate support among working-class voters who had previously been Democratic or independent. Kaufmann describes Trump's Republican Party as moving away from the "fusionist" blend of libertarianism, religious values, and hawkish foreign policy, toward a "more nationalist, culturally conservative party." Trumpism, he insists, is "a durable ideological shift, not just a temporary populist wave."

Returning to the present, Dr Brito believes that this polarisation has already damaged American democracy. He warns that the breakdown of shared democratic ideals is dangerous. While Brito struggles to define democracy, he still believes that "democratic norms have been deconstructed over the past few years, immigration politics is one of the areas where you can see that happening most clearly." He does not hesitate to say that current US immigration policies "are deeply troubling." "Border enforcement has always been tied to racial violence and the dehumanization of migrants, but now it's worse." As mentioned before, Brito pays a considerable amount of attention to a revival of "white nativeness" rhetorically, meaning that the US is fundamentally a white nation and warns us about it. "It legitimizes racial violence", he says, "and the border has become a space of human rights violations: detention without due process, no access to legal counsel, systematic targeting of racialised groups." For Dr Brito, the stakes could not be higher. "This is a very dangerous time for migrants and racialised populations in the US", he says. "The politics of dehumanisation have always been there, but they're becoming more radicalised - and that's bad for the country in every possible sense: socially, politically, and economically. But above all, it's the violence that should alarm us."

When it comes to President Donald Trump's immigration agenda, Professor Kaufmann adopts a cautious but pragmatic stance. He supports a number of enforcement policies, such as the "Remain in Mexico" program and efforts to require asylum applications to be made from outside the US. Yet Kaufmann draws a firm line when enforcement infringes on constitutional rights. Specifically, he is critical of measures that

deport individuals based on their political views or infringe on constitutionally protected speech. “It’s a grey area constitutionally”, he notes, “but I don’t think people should be deported for their views – as long as those views are not inciting imminent hatred.” This distinction points to his broader concern about balancing enforcement with constitutional protections, underscoring a recurring theme in his analysis: immigration debates are not merely about economics or crime but deeply tied to cultural continuity and identity.

Now, Professor Kaufmann can help us understand why many Americans support restrictions in the first place. Contrary to common assumptions, he argues that this support is not primarily driven by economic fears or racial animus. Instead, Kaufmann argues, “Most people are not exclusionary in the sense of wanting no immigration. They just want slower cultural change. Even many non-white Americans feel similarly.” He explains that this desire for a slower pace of demographic change is widespread and rooted in what he terms a preference for a slower “cultural tempo” — the rate at which American culture is changing because of the cultural influence of migrants. According to Kaufmann, this preference transcends racial lines, citing survey data showing that “a substantial portion of Hispanic and Asian voters express concern about the speed and scale of demographic change,” indicating that anxiety about cultural transformation is not exclusively a white phenomenon. This leads naturally into his critique of how immigration is handled within the ideological divide. Responding to Dr Brito’s claim that the left’s support for open immigration stems from “liberal nationalism,” he acknowledges the insight but adds nuance. He identifies two key constituencies on the left: “economic liberals” who support immigration for market reasons, and “the cultural left,” who view immigration as a moral issue tied to anti-racism and diversity. “This latter group has become more powerful over time,” Kaufmann explains. “They see immigration as a vehicle for transforming national identity in a way that challenges traditional cultural norms.” He argues that this cultural progressivism, especially within academia and media, has driven much of the polarization on immigration issues.

Looking ahead, Professor Kaufmann believes the Republican Party will remain centred on cultural and identity issues such as immigration, diversity, equity, and inclusion, and free speech battles. He predicts, “These are the new battlegrounds, not the old religious right issues like abortion or gay marriage. Those are fading. While he thinks Trump’s authoritarian tendencies might diminish with future leaders like J.D. Vance, the core ideological project—cultural nationalism and immigration restriction—will likely continue.” When the conversation turns to polarization, Professor Kaufmann is clear-eyed about the risks. He acknowledges that American democracy is under significant pressure, though he remains sceptical of apocalyptic predictions. He attributes blame to both sides: the right for Trump’s challenges to election legitimacy, and the left for “sacralising minority identity to the point that any symbolic offense is seen as

moral blasphemy." Kaufmann posits, "Polarization weakens democracy, yes. But it's not fatal. I don't believe we're heading for civil war. Partly because partisan and racial identities are not perfectly aligned." Cross-cutting identities, such as Hispanic Republicans or white liberals, provide some stability. Still, he warns that without marginalizing extremes, "American politics will remain deeply unstable." However, Kaufmann ends on a hopeful note: "The Democratic Party could depolarize if a strong centrist figure emerges—someone willing to challenge the party's cultural radicals, much like Bill Clinton did in the 1990s. The Republican Party could moderate post-Trump, keeping nationalist messaging but shedding authoritarianism." In Professor Kaufmann's view, the future of American democracy – and of the immigration debate itself – may depend not just on policy decisions, but on how willing the country and its political parties are to find common cultural ground.

Taken together, Dr. Brito and Professor Kaufmann represent two different ways of understanding America's immigration divide. For Dr. Brito, borders are not neutral institutions but historically racialized tools, deeply embedded in a legacy of "settler colonialism". He frames immigration control as a continuation of racial domination, one that perpetuates white nativeness and legitimizes violence against migrants. From this perspective, Trump's policies are not aberrations but intensifications of a long-standing racial project, made more explicit and more dangerous by today's polarization. Professor Kaufmann, by contrast, downplays race as the central driver. He argues that attachment to one's own cultural identity can exist without hostility toward others, and that concerns over immigration reflect not white supremacy but discomfort with the rapid pace of cultural change. For Kaufmann, the debate is less about exclusion and more about "cultural tempo". Trump's rise, in this view, channelled anxieties about cultural continuity rather than reviving a racial hierarchy.

Despite their differences, the two perspectives share some common ground. Both acknowledge that immigration has become a flashpoint in America's polarization and that this polarization threatens democratic stability. Both see Trump as a pivotal figure who amplified existing currents, whether by racializing border enforcement, according to Dr. Brito or by breaking taboos around the topic of cultural tempo, according to Professor Kaufmann. Each, in their own way, highlights how immigration has become more than a policy question. It has become a mirror of America's deepest anxieties - about who belongs, how quickly society should change, and what kind of democracy the nation can sustain.

REVIEW: A VISUAL ANALYSIS OF SABRINA CARPENTER'S "MAN'S BEST FRIEND" ALBUM COVER: A PIECE OF FEMINIST ART OR A PATRIARCHAL FANTASY?

Aïcha Dabo

On June 11th 2025, pop sensation Sabrina Carpenter broke the internet when she revealed the cover of her upcoming album, *Man's Best Friend*. It featured Carpenter in a short black dress and heels, on her knees next to a faceless man who is holding her hair in a tight grip. Her hand is lightly placed on his leg while her mouth is slightly opened, an expression of sensuality. The response was mixed: while fans of the singer were seemingly excited about a new album release, critics were quick to point out what they described as a 'demeaning' pose Carpenter adopted for the shot. In this visual analysis, we will explore the contemporary debate on whether Sabrina Carpenter's album cover is indeed a feminist statement or a piece of art that feeds into the male gaze and overall holds up patriarchal notions of women's sexuality.

Album cover for *Man's Best Friend* by Sabrina Carpenter. *Courtesy of Island Records.*

The cover of "Man's Best Friend" can be perceived as a feminist statement piece, as it is reclaiming female sexuality as well as challenging societal norms. Through a patriarchal lens, women are encouraged and understood to be virgins until marriage. This translates to societal ideas that women should not express any sexual desire, as this renders them "unpure" and not suitable for marriage, which is maintained as the ultimate goal a woman should strive for. In the modern era, this idea has been heavily criticized but even in more progressive societies, it is still upheld. Carpenter challenges this through her unapologetic display of sexual desire demonstrated in her music. Her hair being pulled on the album cover, an action associated with sexual kinks, allows the viewer to infer that despite her otherwise innocent appearance, Carpenter enjoys non-innocent behaviour. This is relevant because innocence is

heavily associated with virginity: the idea that if a woman is not aware of sexual pleasure, she cannot succumb to its temptations. Thus, mirroring the stories of Eve and Pandora, where curious desire becomes less an individual act and more a cultural warning, constructing women as symbols of temptation and moral failure. Furthermore, the decision to not show the face of the man holding her hair and instead focus on Carpenter on her knees furthers the message that it is *her* pleasure that is the focus of her album. The position of submissiveness that she is in is by choice, not something that is imposed onto her, like usually done to women. Carpenter is not the first pop artist to partake in this, as this challenging of norms has been done by many female pop artists over the past few decades. Madonna, who Carpenter has been compared to, had songs such as "Like a Prayer", which showcased a clear display of the enjoyment of sexual pleasure. In other genres such as rap and hip-hop, female artists have also shown unapologetic enjoyment of sex. By showing herself in sexual positions, Carpenter partakes in a self-sexualization process that places the control back in her hands, shaping her own image of how she wants to be perceived and not have it done for her. This also pushes against the years of male artists singing about their sexual pursuits, typically degrading women to mere objects for their use to be discarded.

On the other hand, many have criticized the album cover for it fitting into the "male gaze". A term coined by Laura Mulvey in her 1975 essay, "Visual Pleasure and Narrative Cinema", the male gaze is the idea that women in cinema are portrayed to fit a certain male fantasy. This is accompanied by visuals of lingering cinematic shots on the legs or chest, as well dressing in a particular manner that accentuates features favoured by heteronormative beauty standards. The woman is never fully own character: she only serves to be the embodiment of pleasure for her male counterpart(s). While the essay explores the cinematic side, the concept has been expanded beyond the movie screen. Foucault's idea of self-regulation in his theory of "Disciplinary Power" explains this well: the normalization and widespread presence of the male gaze leads to women, in real life, to internalize those ideas and shift how they act to fit this narrative set by the gaze. In a way, it is a method used by women to gain a little control in a system that leaves them ultimately powerless. However, for some, if a woman chooses to sexualize herself for men, she continues the oppression of her gender; thus, women will not be able to break out of the mould the patriarchy places on them. This can be applied to Carpenter's album cover: she does not present herself as the one in control in the picture. Her hair is the one being held can be seen as if she is "on a leash". This fits into the title of "Man's Best Friend", an expression used for dogs, who are known to be loyal companions who follow orders with little question. (Loyalty is also addressed by Mulvey in her essay, with her stating that women characters are written to be utterly loyal to their male counterpart(s), acting only for their desire).Additionally, it can be also seen as a fulfilment of male desire and not a kink. Notably,

pornography, a male-centred type of media, features countless videos of violence against women. Overall, critics point out that her reclaiming of female sexuality is not subversive enough. She still embodies patriarchal notions of what makes a woman desirable, through her hyper-feminine appearance and expression of enjoyment in submissive sexual attitudes. It can also be said that her embodied sexuality is rather heteronormative in nature.

In conclusion, both sides of this debate hold merit. Carpenter's forwardness with her sexuality is still groundbreaking, evermore so due to the skewing of American society towards increased conservatism. Moreover, the artist herself positions the album as playful and not something to be taken seriously, with the album cover being a simple reflection of its content.Nevertheless, Carpenter still fits a heteronormative idea of female sensuality. She is a petite, blond, white woman who performs in bedazzled bodysuits and knee high-heeled boots. She presents herself as submissive, willing to fulfil the desires of her partner. In the end, we must ask ourselves who is responsible for the dismantling of the patriarchal ideas: should it be women, who are the ones most oppressed by the system, or should it be those on top, namely heterosexual, cisgender men?

---

1 Golland, Tova. 2025. "Sabrina Carpenter: This Generation's Madonna - the LION." THE LION - Covering
Loyola Marymount University and Los Angeles. February 19, 2025.
https://thelion.sites.lmu.edu/opinion/sabrina-carpenter-this-generations-madonna.

2 Horton, Adrian. 2025. "Is the Sabrina Carpenter Album Art Really That Offensive?" The Guardian. The Guardian. June 14, 2025.
https://www.theguardian.com/music/2025/jun/14/sabrina-carpenter-album-art-offensive.

3 Mulvey, Laura. 1975. "Visual Pleasure and Narrative Cinema." Screen 16 (3): 6–18.
https://doi.org/10.1093/screen/16.3.6.

4 Foucault, Michel. 1977. "Discipline and Punish: The Birth of the Prison." Contemporary Sociology 25 (4).
https://doi.org/10.2307/2077073.

5 karamazovluvr. 2025. X (Formerly Twitter). 2025.
https://x.com/karamazovluvr/status/1932948755642290408.

6 aurajunkieagain. 2025. "TikTok - Make Your Day." Tiktok.com. 2025.
https://vm.tiktok.com/ZMAwGe2db/.

7 Molloy, Laura. 2025. "Sabrina Carpenter Responds to 'Man's Best Friend' Album Cover Controversy:

‘Y’all Need to Get out More.’” NME. August 30, 2025. https://www.nme.com/news/music/sabrina-carpenter-responds-to-mans-best-friend-album-cover-controversy-yall-need-to-get-out-more-3888784..

REVISITING BHOPAL: MORE THAN A DISASTER

Asher Abraham

Abstract

The Bhopal gas leak is often referred to as the worst industrial disaster in history. The disaster led to the deaths of 2500 in the first week alone (Dhara, 2002), but has also had intergenerational health and socio-economic impacts. This article examines Bhopal, not as an isolated 'disaster', but as an iteration within a pattern of corporate malpractice that consistently harms racialised bodies in the global south. The mode of analysis is a sociological interpretation of the emotions that Bhopalis experienced by survivors, treated as an embodied way of knowing the crisis. This emotional knowledge was often undervalued due to an epistemic hierarchy that favoured "rational, official" ways of knowing. Said analysis is then situated within a theoretical framework that identifies racism as an essential condition for capitalism, rather than a by-product. The overarching aim is to position Bhopal as a structurally produced environmental catastrophe within contemporary climate activism conversations.

Setting the Scene

When a local pesticide plant owned by Union Carbide (UCC), an American corporation, saw a leak of Methyl Isocyanate (MIC) in 1984, the Indian city of Bhopal bore the burden. Though figures are inconclusive due to the difficulty of directly attributing deaths to the gas leak, it is estimated by some that the total death toll as a direct result of the leak is between 15 to 20,000 (Dhara, 2002). In the months and years after the initial leak was a "second tragedy", where countless others experienced lifelong health issues and a lack of meaningful medical aid and compensation. Although UCC paid $470 million in damages, the amount is commonly seen as inadequate (Brougton, 2005), and its leaders largely evaded responsibility through blaming the Indian subsidiary company, UCIL (ICJB, n.d.; Trotter, et al., 1989). Bhopal sparked both domestic and international outrage, with its survivors forming several activist groups in what is the longest ongoing social movement in modern India (Deb, 2023). Their primary demands are justice for the victims and survivors, and consequences for the Indian state and UCC for failing to adequately compensate the survivors or prosecute the responsible parties.

Beyond recording the human and legal consequences, this article asks what Bhopal teaches us about the structural causes of environmental harm. It analyses survivor testimonies and narratives, as a form of knowledge about the disaster, positioning them within sociological, political and economic scholarship on corporate power and neglect. This approach exposes power relations by answering the question: *who* was allowed to feel *what?*

Emotions within Sociology

Traditionally, sociology has seen emotions as individually experienced, perhaps more relevant to the field of psychology. Additionally, as a discipline emerging from Enlightenment thought, the dualisms between mind and body pitted rationality and emotion against each other (Jasper, 2011; Barbalet, 1998). Consequently, sociology did not always value studying emotions as a mode of analysis (Shilling, 2014).

However, there is now a sociological understanding of emotions that sees them as deeply embedded in social structure (Collins, 2004). Rather than being privately experienced, emotions are shaped by institutions, structures and inequalities. Scholars now recognise that emotions reveal relationships between micro-experiences and macro power structures (Norgaard & Reed, 2017).

Such a theorisation emerges within Bhopal. Following the leak, survivors experienced a range of complex emotions. A girl who was at school during the time of the leak suffered weakness and compromised vision. Her request for absence was denied, she failed her 8th-grade exams, and that was the end of her studies. She felt frustrated at not having been able to pursue a career and being forced into another job. She also describes the financial sacrifices and subsequent anxiety following her father's selling his autorickshaw to pay for her brother's medical bills (ICJB, n.d.)

Another man, rendered unconscious by MIC, was mistakenly placed on a truck transporting the dead. When he awoke to the traumatic image of contorted faces and warped features, the fear led to consistent nightmares of the moment. He tragically took his own life, asking that the world remember the forgotten victims of the tragedy (ICJB, n.d.).

The grief, fear and anger felt by Bhopalis in the wake of the disaster are not merely personal reactions to tragedy; they are socially determined embodiments of systemic neglect. These feelings were socially produced and collectively experienced. Inequal structures not only distribute material harm, but also emotional suffering. The poorest, most marginalised of people were subject to such emotional turmoil. The shared emotional distress of the disaster and its aftermath reflects meanings of social order and hierarchy (Norgaard & Reed, 2017).

What do emotions reveal?

Beyond just characterising emotions as socially and structurally determined, observing the emotional landscape of Bhopal exposes power relations by answering the question: *who was allowed to feel what?* Emotions are politically significant, and paying attention to them is epistemologically powerful.

One of the primary characteristics of Enlightenment thought was the dualism between mind and body. The 'thinking' mind was seen as the defining characteristic of humans and distinct from the 'feeling' body. The problem with this model is that, by resting our uniqueness as humans on our thoughts/mind, we relegate our feelings/body to a position of inferiority – feelings become "irrational" and "uncivilised".

Consequently, generating knowledge through rational means such as the natural sciences was applauded, while more emotive, embodied forms of knowledge production were looked down upon. This hierarchy is artificial – scholars now recognise that emotions are a legitimate way of navigating and making sense of the world, parallel to thinking (Jasper, 2011).

The ethnography of Shadaan (2016) shows how this dualistic hierarchy becomes concrete through the accounts of Bhopali women seeking medical attention and compensation following the leak. To be eligible for compensation, survivors were required to register through officially recognised medical and bureaucratic channels. Doctors had to sign off a patient as needing compensation. However, many women found their claims of illness dismissed, with doctors explaining their sickness as hysteria and paranoia. The feelings of pain and anguish reflected genuine illness but were ultimately muted for fear of not being taken seriously and being disregarded by medical professionals. In addition, feelings that indicated that rates of sickness were higher than initially thought might mean that UCC and the state would be obliged to pay higher compensation rates, This reflects existing gendered hierarchies that view women's ways of knowing as irrational and at odds with scientific accuracy (Culley & Angelique, 2003) - an epistemic hierarchy in which scientific, bureaucratically confirmed information supersedes the validity of survivors' own claims about their bodies that also shows how emotions are politicised.

On the other side of the same coin, Fortun's (2001) research with Bhopal advocates shows which knowledge *was* considered valid. She explores how the compensation process was administered in relation to the legal system. The Indian government placed survivors within broad categorisations of different levels of loss and injury that would result in corresponding amounts of money. However, these rigidly determined categorisations did not match 'the reality on the ground in Bhopal' (2001, p. 41) where sickness and circumstance were rarely black and white. She highlights how "Victims had nightmares about their inability to prove their identity; acquiring a name on official lists became an obsession." (2001, p. 157). Women were forced to become obsessed with names and gaining bureaucratic recognition, rather than focus on lived experience. Their anxiety was directed towards legal recognition rather than suffering. Vitally, the objectivity required by the Indian state, doctors, and UCC does not mean neutrality. To be detached *is* an emotional state, and belonging to a powerful group meant they could express it freely. The women whom Shadaan (2016) spoke to evidence how embodied emotional ways of knowing were dismissed, while Fortun's interviewees demonstrate the state's fetishisation of objectivity (2001).

The control exerted over which emotions were expressible and considered legitimate exposes systems of power. Shadaan's work (2016) shows how the emotional pain and despair, as an embodied form of knowing, the tragedy was dismissed, while Fortun (2001) proves that official state ways of knowing were

privileged. Survivors were required to conform to dominant ways of knowing to be recognised by the Indian state and UCC to gain access to essential aid and compensation. Emotions are more than socially produced; they are politically regulated.

How Emotions Resist

However, emotions are more than objects of control; they are also effective modes of resistance. Emotions are significant in producing a counter-narrative that reclaims Bhopali perspectives that reflect ongoing suffering, simultaneously challenging the epistemic hierarchies mentioned. Additionally, as an embodiment of structural violence, emotions expand restrictive temporalities imposed on crisis.

"Official accounts" of Bhopal were often mediated by the self-serving interests of UCC and the Indian State, who sought to obfuscate the real costs of the crisis to limit liability and promote further industrialisation, respectively (Rajagopal, 1987; Deb, 2023). Looking at UCC's response to questions of liability or inadequate compensation payouts, they emphasise the quantitative, financial dimensions (BBC, 2004). Such a response is validated, as it incorporates dualistic ideals of rationality. On paper, UCC responded to the problems it needed to.

But accounts of pain and trauma reflect a different reality. Justice groups such as the International Campaign for Justice in Bhopal emphasise the testimonies of those who experience continued harm and inadequate recompense. By highlighting emotion, those who were directly affected by the disaster can narrate it, rather than those who were responsible for managing it. The pain and anger that Bhopalis continue to experience today and channel into political protest are embodied proof that the issue is not closed (Deb, 2023) and that the tangible harms of the gas leak are still rife. Although emotions have typically been viewed as counterproductive to knowledge production within Western thought (Jaggar, 1989), here they illuminate continuing struggles that were obscured by official ways of knowing. Emotions decentre epistemic authority *away* from institutions, towards survivors who present an embodied knowledge (Hasan, 2025). It affords them the proper agency to narrate their own story, while also revealing knowledge that is often hidden from dominant ways of knowing.

Emotions Disrupt Temporal Constraints

Considering the relationship between crisis and time as significant, emotions resist the temporal limitations that popular conceptions of crisis impose. Since crises are often located within a specific moment in time, it is difficult to relate an initial cause to problems that, although they directly stem from it, manifest far later down the line (Nixon, 2011). To apply this idea to Bhopal, though the gas leak might have only occurred on one night and most deaths in the following weeks, it led to inter-generational illness and poverty (Amnesty International, 2004). Studies show that people in utero at the time of the

leak had higher rates of work-impeding disabilities than average when older (McCord, et al., 2023). The families of these children will likely go on to bear the financial difficulties of this, but this is not a problem commonly attributed to the disaster. Other than the impact on human health, the plant has also consistently contaminated both the surrounding soil and water, which are both used by the adjacent residential population to their detriment (The Bhopal Medical Appeal, n.d.; United Nations, 2024; Deb, 2023; Chander, 2001).

Conceiving of Bhopal as having a clearly defined start and end conceals these harms; in reality, Bhopal is not a temporally contained event (Fortun, 2001). The settlement by UCC did not factor the long-term costs into the amount paid and is largely considered to be inadequate (Brougton, 2005), which shows the material consequences of limiting the crisis to a specific moment in time. Bhopal reflects decades of colonial history before it and encompasses decades of continuing structural violence after it. This phenomenon is referred to by Nixon (2011) as "slow violence" – an understanding that violence and harm occur longitudinally and beyond the immediate. What Nixon misses, however, is that such violence is *not* missed by everyone. Davies (2022) argues that the immediately affected groups *are* intimately aware of the long-term violence that affects them, but as they are often marginalised, their voices go unheard. Emotions, as the embodiment of this awareness, reflect this idea. The inter-generational feelings of distress and anger signal the duration and persistence of Bhopal as a violent problem. Investigating the emotions of areas such as Bhopal can disrupt temporal restrictions that see crises as open and closed. Survivors continuing to feel pain and anger reflects ongoing hierarchy – *not* a finished event.

Bhopal as a Product of Racial Capitalism

Emotionality offers a legitimate analysis of asymmetrical power relations by asking '*who feels what?*' and '*what feelings are legitimate?'.* Emotions are objects of control and shaped by power, but also symbols and tools of resistance. But emotions alone cannot explain why crises such as Bhopal happen repeatedly all over the world. Using UCC's corporate malpractice as an example, the next section introduces the issue of racial capitalism in perpetuating crises such as Bhopal. This ultimately frames Bhopal as an inevitability of a predatory economic system that relies on the exploitation of racial minorities.

The role of corporate and state negligence is often understated in the aftermath of Bhopal. UCC came up with a range of legal responses, largely blaming their subsidiary company, UCIL, in order to shift liability. Although UCIL was responsible for the day-to-day operations of the plant, it is worth noting that UCC owned 50.9% of UCIL stock, so it had influence in how UCIL was run concerning safety operations (Pearce & Tombs, 1989). A faulty valve, which led to water making its way into the MIC tank, which resulted in an exothermic reaction, is a failure on UCC's part. As was the scrubber, designed to neutralise toxic discharge, having been turned off 3 weeks prior (Brougton, 2005). Though a range of

explanations were given, including unsubstantiated claims of sabotage (Brougton, 2005; Pearce & Tombs, 1989), safety experts claim:

> "The tragedy occurred due to cost-cutting in staffing, training, procedures, and maintenance. Management decisions systematically cut out nearly everything that provided them with protection against a release." (Murphy, et al., 2014, p. 312)

That the event happened in India, a former British colony located in the global south, is no coincidence. The concept of racial capitalism explains *why it happened in Bhopal.* It addresses the intersection between economic systems that value capital maximisation and the marginalisation of ethnic minorities, positing that racism is a necessary component of capitalism (Robinson, 2000). Capitalism, as an extractive process, will inherently disadvantage groups of people, so it relies on racism, a system that devalues people into disposable bodies, to create groups convenient to exploit (Pulido, 2016).

This system treats racialised bodies as disposable, treating their surrounding environment as 'sacrifice zones' - areas that can be freely subjected to environmental harm for the "greater good", regardless of the damage it does to communities occupying them (Juskus, 2023). UCC's decision to produce MIC in Bhopal was cheaper than importing it, and safety procedures were ignored to cut costs, so production of this toxic gas occurred right next to the poorest area of a city populated with racialised bodies. This phenomenon is repeated around the world, with corporations often positioning environmentally degrading facilities close to marginalised communities (Commission for Racial Justice, UCC, 1987). This is often cheaper, and since racism constructs the voices of those threatened as less valuable and ensures they are more vulnerable, there is often less pushback (Davies, 2022). Fortun (2001) says how those living next to the plant were aware of the impact of the plant before the leak, but as they technically occupied houses without state permission, 'They were never in a position to protest' (2001, p. 161). Racial capitalism is spatialised in areas like Bhopal and structures whose emotions are heard and ignored.

Wider Implications for Climate Activism

Contemporary climate activism is often predisposed to accept the same epistemic authority that disadvantaged Bhopalis. For example, techno-optimism, the belief that technological innovation will solve climate change, has led to inventions such as the Ocean Cleanup Array - large, automated nets designed to clean plastic from the oceans (Liboiron, 2015). The valuation of a rational fix to the problem through feats of engineering mirrors government and medical responses to sickness in Bhopal – ignoring embodied experiences in favour of an abstract resolution. In Bhopal, the emotions felt proved that despite government and corporate assurances that the problem was resolved, harm was still ongoing. Paying attention to the epistemic hierarchy in Bhopal between official versus embodied ways of knowing can

help focus efforts around lived experiences, perhaps illuminating problems deemed “solved” by technocracy.

This relates to another lesson that Bhopal brings to climate activism today. Throughout this case study, I have argued that it is reductive to see Bhopal as an isolated tragedy. Titling it as the “worst industrial disaster in history” fails to acknowledge the socio-political hierarchies that led to it. Framing Bhopal in this way hides the structures that led to it and gives way to its repetition. In this same way, the ocean cleanup array focuses on the symptom of plastic pollution, rather than the social forces that gave way to it (Liboiron, 2015). Although Bhopal may not explicitly be the result of climate change, approaching it with a racial capitalism lens gives a good indication of what happens when harm is forced onto racialised communities in the form of climate change. Examining Verges’ summary of the interaction between climate change and race, Bhopal maps onto it neatly:

> “Structurally racist built environments that have made black, brown and indigenous women and trans and queer people more susceptible to premature death and climate disaster (not climate change) are exacerbating pre-existing inequalities” (2024, p. 52)

Bhopal demonstrates how environmental disasters, and by extension, climate disasters, are not accidental. They are distributed along intersecting lines of class and race, ensuring that only the most marginalised of people are exposed to material and emotional suffering.

Conclusion

I began this case study by mentioning that Bhopal is referred to as the “worst Industrial disaster of all time”. But this title does the tragedy, its victims, its survivors and those affected by similar events across the world a disservice. “Industrial disaster” is a depoliticised term that denies the role of the responsible actors or the event as a sequence within a pattern. Instead, Bhopal is a product of interlocking hierarchical systems that ensure already marginalised groups in the global south are on the receiving end of the West's exportation of hazard, risk and crisis. These structures not only disperse material harm, but also emotional suffering, which is similarly patterned by race, class and gender. However, examining these emotions allows an intimate dissection of the power relations that produce them. Emotions tell stories and reveal truths that dominant ways of knowing miss, whilst also emphasising the lived experiences of those closest to the problem in a much-needed epistemic re-centring. In this, Bhopal emerges not as a closed case but as an ongoing political tragedy that bears relevance for modern-day climate activism and environmental justice.

Bibliography

Amnesty International, 2004. *Clouds of injustice: Bhopal disaster 20 years on,* London: Amnesty International Publications.

Barbalet, J., 1998. *Barbalet, Jack M. (2001). Emotion, Social Theory, and Social Structure: A Macrosociological Approach.* s.l.: Cambridge University Press. .

BBC, 2004. *Response: Union Carbide and Dow Chemical.* [Online]
Available at: http://news.bbc.co.uk/1/hi/programmes/bhopal/4023447.stm#2
[Accessed 02 01 2026].

Brougton, E., 2005. The Bhopal disaster and its aftermath: a review. *Environ Health,* May.Volume 4.

Chander, J., 2001. Water Contamination: A Legacy of the Union Carbide Disaster in Bhopal, India. *International Journal of Occupational and Environmental Health,* 7(1), pp. 72-73.

Collins, R., 2004. *Interaction Ritual Chains.* s.l.:Princeton University Press.

Comission for Racial Justice, UCC, 1987. *Toxic Waste andd Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites,* s.l.: United Church of Christ.

Culley, M. & Angelique, H., 2003. Women's Gendered Experiences as Long-Term Three Mile Island Activists. *Gender and Society,* 17(3), pp. 445-461.

Davies, T., 2022. Slow violence and toxic geographies: 'Out of sight' to whom?. *EPC: Politics and Space,* 40(2), p. 409 –427.

Deb, N., 2023. Unyielding humanity from catastrophic ruins: new political society for social and environmental justice after Bhopal. *Environmental Sociology,* 10(1), pp. 118-134.

Dhara, V., 2002. The Union Carbide Disaster in Bhopal: A Review of Health Effects. *Archives of Environmental Health An International Journal,* 57(5), pp. 391-404.

Fortun, K., 2001. *Advocacy After Bhopal: Environmentalism, Disaster, New Global Orders.* Chicago & London: The University of Chicago Press.

Hasan, Z., 2025. nvironmental Racism, Epistemological Eugenics and Advocating for Patients' Experiences. *Spectrum,* Volume 4, pp. 1-6.

ICJB, n.d. *1969-1979: Union Carbide Enters Bhopal.* [Online]
Available at:
https://www.bhopal.net/what-happened/setting-the-stage-for-tragedy-1969-1984/1969-1979-union-carbide-enters-bhopal/
[Accessed 28 12 2025].

ICJB, n.d. *In Their Words.* [Online]
Available at: https://www.bhopal.net/what-happened/that-night-december-3-1984/in-their-words/
[Accessed 29 12 2025].

Jaggar, A., 1989. Love and knowledge: Emotion in feminist epistemology. *Inquiry,* 32(2), pp. 151-176.

Jasper, J., 2011. Emotions and Social Movements: Twenty Years of Theory and Research. *Annual Review of Sociology,* 37(1), pp. 285-303.

Juskus, R., 2023. Sacrifice Zones A Genealogy and Analysis of an Environmental Justice Concept. *Environmental Humanities,* 15(1), pp. 3-24.

Liboiron, M., 2015. *Discard Studies: How the Ocean Cleanup Array Fundamentally Misunderstands Marine Plastics and Causes Harm.* [Online]
Available at:
https://discardstudies.com/2015/06/05/how-the-ocean-clean-up-array-fundamentally-misunderstands-marine-plastics-and-causes-harm/
[Accessed 06 01 2026].

Mccord, G. et al., 2023. Long-term health and human capital effects of in utero exposure to an industrial disaster: a spatial difference-in-differences analysis of the Bhopal gas tragedy. *BMJ Open,* 13(6).

Murphy, J. et al., 2014. Bhopal Revisited. *Process Safety Progress,* 33(4), pp. 310-313.

Nixon, R., 2011. *Slow Violence and the Environmentalism of the Poor.* Cambridge, Massachusetts and London: Harvard University Press.

Norgaard, K. M. & Reed, R., 2017. Emotional impacts of environmental decline: What can Native cosmologies teach sociology about emotions and environmental justice?. *Theor Soc,* Volume 46, p. 463–495.

Pearce, F. & Tombs, S., 1989. Bhopal: Union Carbide and the Hubris of the Capitalist Technocracy. *Social Justice,* 16(2), pp. 116-145.

Pulido, L., 2016. Flint, Environmental Racism, and Racial Capitalism. *Capitalism Nature Socialism ,* 27(3), pp. 1-16.

Rajagopal, A., 1987. And the Poor Get Gassed: Multinational—Aided Development and the State-the Case of Bhopal. *Berkeley Journal of Sociology,* Volume 32, pp. 129-152.

Robinson, C., 2000. *Black Marxism: The Making of the Black Radical Tradition.* s.l.:The University of North Carolina Press.

Shadaan, R., 2016. 'I Know About My Own Body ... They Lied': Environmental Justice, and the Contestation of Knowledge Claims in Institute, WV, and Old Bhopal, India. *Canadian Woman Studies/les cahiers de la femme,* 31(1-2), pp. 65-74.

Shilling, C., 2014. The two traditions in the sociology of emotions. *The Sociological Review,* 50(S2), pp. 10-32.

The Bhopal Medical Appeal, n.d. *Water Contamination.* [Online]
Available at: https://www.bhopal.org/continuing-disaster/second-poisoning/
[Accessed 03 01 2026].

Trotter, C., Day, S. & Love, A., 1989. Bhopal, India and Union Carbide: The Second Tragedy. *Journal of Business Ethics,* 8(6), pp. 439-454.

United Nations, 2024. *Bhopal: A lingering legacy of contamination and injustice.* [Online]
Available at:

https://www.ohchr.org/en/press-releases/2024/12/bhopal-lingering-legacy-contamination-and-injustice [Accessed 04 01 2026].

Vergès, F., 2024. *Making the World Clean: Wasted Lives, Wasted Environment and Racial Capitalism*. London: Goldsmiths Press.

THE EXPERIENCES OF ASIAN INTERNATIONAL STUDENTS IN THE UK: THE IMPACTS OF THE UK STUDENT VISA ON THEIR STUDIES IN UK HIGHER EDUCATION AND THE CONSTRUCTION OF IDENTITY

Charmaine Li

Abstract:

The growth of the higher education market has led countries to develop immigration policies aimed at attracting international students. As the world's second-largest higher education market in recent years, the UK has frequently revised its student visa regulations. These changes often position international students as consumers and can negatively affect them during the application process. However, limited research explores these regulations from students' perspectives. Using a survey method, this study examines Asian international students' experiences of UK visa policies to provide a more comprehensive understanding of their impact.

Introduction:

In the era of globalisation, more individuals have considered studying in internationally recognised universities abroad, which enables them to enhance their competitiveness in the labour market, equip themselves with a global perspective and enjoy a cosmopolitan education.[1] Higher education institutions also take advantage of international students, as they can provide new perspectives, enhance the diversity of the campus and allow organisations to meet their financial goals.[2] In addition, the development and globalisation of the higher education market enable countries to attract international students who later become a source of skilled workers.[3] The generation of income is also an advantage of recruiting international students, which in 2021/22, they brought 37.4 billion pounds in net economic benefits to the UK, according to estimates.[4] The benefits of attracting international students have led states to rethink their immigration regulations and objectives. Countries can develop positive policies to compete in the global education market, attracting international students to study overseas in higher education institutions.[5]

The UK, the second most popular global destination in recent years, has developed its own immigration system.[6] In the UK legislative system, the regulations about international students lie under the immigration rules.[7] Currently, in the UK, the student visa route is the main visa category for international students to apply for to study in UK higher education institutions.[8] All international students aged sixteen

[1] Sophie Arkoudis, Mollie Dollinger, Chi Baik, & Allan Patience 'International students' experience in Australian higher education: Can we do better?.' (2019) Higher Education 77

[2] Ravichandran Ammigan & Elspeth Jones, 'Improving the student experience: Learning from a comparative study of international student satisfaction' (2018) Journal of Studies in International Education 22,4

[3] Aisling Tiernan, 'Strange encounters in UK higher education: understanding the experiences of visa-required international students' (2023) Doctoral dissertation, University of Sussex

[4] Paul Bolton, Joe Lewis & Melanie Gower 'International students in the UK higher education' (*House of Commons Library*, 20 September 2024) <https://researchbriefings.files.parliament.uk/documents/CBP-7976/CBP-7976.pdf> accessed 3 February 2025

[5] Sylvie Lomer, 'UK policy discourses and international student mobility: the deterrence and subjectification of international students' (2018) Globalisation, Societies and Education 16,3

[6] Bolton (n 4)

[7] Home Office, 'Immigration Rules' (*GOV.UK*, 12 March 2025) <https://www.gov.uk/guidance/immigration-rules> accessed 14 March 2025

[8] Bolton (n 4)

or over are required to apply for a UK student visa to study in the UK for more than six months.[9] To be granted a UK student visa, applicants must fulfil all the suitability and eligibility requirements, including having sufficient funds to pay outstanding fees, passing the English language requirement and obtaining the Confirmation of Acceptance of Studies from higher education institutions.[10] They must also pay the visa fee and the healthcare surcharge to complete the application.[11] In addition, throughout their studies in higher education institutions, individuals continue their interactions with the UK student visa regulations. Students with a UK student visa must not work more than twenty hours per week during term time, cannot be self-employed, and should not be absent from classes without a granted authorised absence that must not exceed sixty days from the higher education institution.[12]

Nevertheless, the UK immigration policies are open to adjustment and revision at any time. In recent years, due to the changing objectives of the UK government towards immigration, the UK student visa regulations have been unstable and often influence international students' trajectories.[13] For instance, the UK government introduced a digital immigration system, eVisa, to replace physical documents.[14]

The experiences of international students studying in UK higher education institutions are impacted by the UK student visa regulations. Various studies have suggested that immigration policies are shaping and affecting international students' experiences in a personal way.[15] Previous studies have indicated that the application process for the UK student visa is perceived as unclear, expensive, and challenging, and the immigration regulations and frequent changes in rules make international students feel under surveillance and affect their emotions and academic performance. Some research also indicates that the policies construct international students as consumers. However, some studies have solely focused on analysing the UK student visa policies and neglected the experiences of international students. Most research also failed to show the opinions of Asian international students, even though around half of the international students in the UK are from Asian countries. Research needs to be conducted to provide a more comprehensive perception towards the impact of the UK student visa and changes in regulations on the experiences and construction of identities of Asian international students since the application process.

This study aims to understand the perceptions of Asian international students, who study in the UK with a UK student visa, towards the UK student visa regulations during the application process and their study period in the UK, and the construction of the identity of consumers by the immigration policies. This study will first discuss the experiences of international students and identity construction with the UK student visa regulations interpreted in previous studies, and introduce the methodology. The data collected through the survey will be discussed in the last part, with a comparison to prior literature and limitations of this study.

---

[9] Home Office, 'Immigration Rules: Appendix Student' (*GOV.UK*, 12 March 2025) <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-student> accessed 19 March 2025; individuals who are studying in an independent school can choose to apply as either a Student or as a Child Student visa.

[10] Ibid

[11] GOV.UK, 'Student visa' (*GOV.UK*, n.d.) <https://www.gov.uk/student-visa> accessed 20 March 2025

[12] Home Office (n 9); GOV.UK (n 11);UCL, 'Student visa responsibilities' (*UCL*, 4 April 2025) <https://www.ucl.ac.uk/students/immigration-and-visas/student-visa/student-visa-responsibilities#:~:text=As%20a%20Student%20visa%20holder,Undergraduate%20and%20Postgraduate%20Taught%20students> accessed 29 April 2025

[13] Thomas Brotherhood, 'Consolidating regulatory and personal accounts of student migration: A mixed methods study in the UK and Japan' (2023) Globalisation, Societies and Education 21,1; Bolton (n 4)

[14] GOV.UK, 'Online immigration status (eVisa)' (*GOV.UK*, 9 June 2025) <https://www.gov.uk/guidance/online-immigration-status-evisa> accessed on 10 June 2025

[15] Penelope Anthias, 'Student Migration From Bangladesh to the UK' (2008) RMMRU Occasional Paper Series 15; Lomer (n 5); Tiernan (n 3); Brotherhood (n 13); Max Crumley-Effinger, 'ISM Policy Pervasion: Visas, Study Permits, and the International Student Experience' (2024) Journal of International Students 14,1

Literature Review:

The experiences and identities of international students during their studies in UK higher education institutions are influenced and shaped by the UK student visa regulations.[16] Experience is constructed from a personal perspective, which is 'a complex interaction between body, sensory input, and neurological processing'.[17] However, experiences between individuals with the same object or event may differ due to the differences in cultural background, dominant norms, relationship with others and their historical positioning.[18] In this study, experiences are considered to be personal and constructed through the five senses, physical actions and thinking processes.[19]

Two other terms, higher education institutions and international students, need to be defined. A higher education institution refers to a college, university or similar educational institution where individuals can learn professional knowledge and norms about society and occupational groups beyond secondary education.[20] On the other hand, according to UNESCO, international students are 'individuals who have crossed nations' borders to participate in educational activities', which in this study, international students are also considered as individuals who must apply for a UK student visa to study in the UK.[21] Distinct studies have been conducted to investigate the experiences of international students studying in different countries' higher education institutions from various perspectives.

International students' experiences with the UK higher education system started with applying for a student visa. Most studies have suggested that international students perceive their experiences during the application process as negative. Anthias's study indicates that respondents considered the free information provided by the British government to be hard to access, as research skills and proficiency in English are required.[22] In Tiernan's research, some participants suggested that the UK visa application process is complicated and challenging to provide documents, and they may need to seek help from the agency.[23] For instance, some international students need to travel to other countries for the tuberculosis test, as their home countries do not have a place certified by the British government to run the test, which impacts their emotions negatively.[24] International students may also perceive the application process as violating their privacy, as they must provide various personal documents, including their income, proof to show they can support their tuition fees, and a tuberculosis test.[25] In addition, they agreed that applying for a UK student visa is expensive and requires additional costs, such as paying for the tuberculosis test, fast-track options, and agents in some cases.[26] Some international students also considered the UK student visa financial requirements challenging to meet, which may require them to seek help from relatives.[27] The complicated application process and lack of help from the UK government or universities, as described by distinct scholars, have often created barriers for individuals to apply and

[16] Tiernan (n 3)
[17] Karen Fox, 'Rethinking experience: What do we mean by this word "experience"?.' (2008) Journal of Experiential Education 31,1
[18] Ibid
[19] Ibid
[20] Andrey V. Rezaev & Olga V. Maletz, 'Higher education studies: Toward a new scholarly discipline' (2012) Advances in Education in Diverse Communities: Research, Policy and Praxis 7
[21] UNESCO, 'Internationally mobile students' (*UNESCO*, n.d.) <https://uis.unesco.org/en/glossary-term/internationally-mobile-students> accessed 21 March 2025
[22] Anthias (n 15)
[23] Tiernan (n 3)
[24] Ibid
[25] Tiernan (n 3); Gabriella Scandurra, Chris Degeling, Paul Douglas, Claudia C. Dobler & Ben Marais, 'Tuberculosis in migrants–screening, surveillance and ethics' (2020) Pneumonia 12
[26] Anthias (n 15); Tiernan (n 3)
[27] Anthias (n 15)

created negative experiences, which may make international students feel unwelcome and gloomy about their future in the UK.

The UK student regulations continue to impact international students in various areas during their studies in the UK. International students are highly regulated and monitored by the regulations throughout their studies.[28] The policies led to some international students being raised that they feel as though under surveillance.[29] They are also aware of the risk of deportation, as failing to fulfil one of the responsibilities of being a visa-required student may impact their existence in the UK.[30] Making a small mistake may risk them losing their visa and opportunities to study in the UK. In addition, the complex visa regulations may impact international students' academic results and evoke feelings of pressure and frustration.[31] The immigration policies may constrain individuals in choosing the field to study, stopping international students from studying part-time or working to earn experience in their professional fields.[32] On the other hand, international students may consider the regulations as a motivation to continue and improve their studies. For instance, the pressure of finishing the courses before the student visa expires may force international students to concentrate on their studies.[33] The student visa attendance regulations may also urge individuals to attend the lectures, which can improve their academic results.

The frequent changes in the UK student visa regulations also affect international students' experiences. Brotherhood's research suggests that the instability and frequent changes in the UK student visa regulations, which often lack transparency and support, negatively impact international students.[34] The inconsistency of the UK student visa regulations may impact international students' emotions and require them to check updates provided by the UK government constantly. Throughout their studies in UK higher education institutions, international students engage with the UK student visa system and are influenced by the regulations on a daily basis, and they are pessimistic about the immigration system and consider the regulations problematic. International students often face more daily challenges than local students and need to be prepared for regulations. Nevertheless, the UK higher education system usually neglects these problems and situates international students in the same position as local students, with no additional care or ways to reduce their workload.

In addition, due to educational and regulatory factors, international students' identities transform during their stay in the UK. The requirements and expectations provided by professors and instructors differ from those in their home countries, requiring them to construct new identities when pursuing new knowledge.[35] Furthermore, international students are often considered as economic agents, as they are expected to support host countries by bringing funds and contribute as skilled workforces.[36] The current UK student visa regulations are created to generate financial benefits from international students, positioning international students as consumers and the UK as providers.[37] For instance, international students need to pay a higher tuition fee and immigration health surcharge for the NHS when applying

[28] Marie Segrave, Helen Forbes-Mewett & Chloe Keel, 'Migration Review Tribunal decisions in Student Visa Cancellation Appeals: Sympathy, Hardship and Exceptional Circumstances' (2017) Current Issues in Criminal Justice 29,1
[29] Tiernan (n 3)
[30] Tiernan (n 3); Segrave (n 28)
[31] Tiernan (n 3); Crumley-Effinger (n 15)
[32] Crumley-Effinger (n 15)
[33] Ibid
[34] Brotherhood (n 13)
[35] Xuemei Li, 'International students in China: Cross-cultural interaction, integration, and identity construction' (2015) Journal of language, identity & education 14,4
[36] Arkoudis (n 1)
[37] Patricia Walker, 'International student policies in UK higher education from colonialism to the coalition: Developments and consequences' (2014) Journal of Studies in International Education 18,4

for a UK student visa, even though they receive the same education and treatment.[38] The marketisation of higher education in the UK also positions international students as customers and gives students the right to complain and provide feedback, instead of exercising their citizens' rights through the analysis of the UK policy discourses.[39] The notion of 'consumers rather than students' shaped through the visa regulations may impact international students' experiences in the UK. By positioning themselves as consumers, their aims may switch from acquiring knowledge to enjoying the English culture and tourism. However, Brooks' study rejected the idea that the UK regulations position international students as consumers, as students are more likely to be considered vulnerable by the government due to insufficient marketisation of the higher education market.[40] The debate over whether international students are constructed as consumers in the UK immigration policies continues, and more research is required from the students' perspective.

Previous literature has stated the impacts of the UK student visa regulations on the experiences of international students and the construction of consumers' identities. Researchers have suggested that international students perceive the UK student visa application as expensive, challenging to prepare documents, unclear regulations and violating their privacy. During their studies in UK higher education institutions, international students feel under surveillance and are aware of the risk of deportation, and consider that the UK student visa regulations impact their emotions and academic performance, and are unstable. The UK student visa regulations may also position international students as consumers.

However, few studies have investigated the perspectives of international students on UK immigration regulations.[41] Some studies neglect the international students' insights and experiences during their studies in UK higher education institutions, as they focus on the analysis of policies, while some focused on a specific element of the UK student visa, which cannot fully capture international students' experiences throughout their studies in the UK since the application process. Also, focusing on analysing the UK government's policies and the marketisation of the UK higher education market by previous literature indicates a failure to understand the construction of the identity of 'consumer' from the perspectives of international students.[42] Moreover, the fluid nature of the UK student visa regulations also suggests that more investigation is required to capture the experiences of international students from time to time.[43] Further research is needed to investigate whether international students receive updates about changes to the UK student visa regulations regularly from the government and understand the influence of those adjustments on international students. In addition, due to the rising number of international students applying for the UK student visa from Asian countries, and half of the international students in UK higher education institutions are Asian, more studies are required to understand the UK student visa regulations from the perspective of Asian international students. Although previous studies provided insights into the experiences and identity construction of international students with the UK student visa regulations, new research is required to understand the immigration policies from the perspectives of international students, focusing on Asian students and recognising the impacts of changes in the policies.

To provide a more concrete understanding of UK student visa policies, this study aims to assess regulations and the notion of constructing them as consumers from the perspectives of Asian international students by employing the survey as the research method. Dividing into three sub-research questions, this essay first investigates the insights of Asian international students during the application

[38] Tiernan (n 3)
[39] Lomer (n 5)
[40] Rachel Brooks, 'The construction of higher education students in English policy documents' (2018) British Journal of Sociology of Education 39,6
[41] Brotherhood (n 13)
[42] Lomer (n 5)
[43] Tiernan (n 3)

process. The second part focuses on their experiences with the UK student visa policies during their studies and the consequences of constant regulation adjustments, while the last part aims to understand the construction of the identity of consumers by the policies in the perceptions of international students. The perceptions of Asian international students will be analysed and used to provide a more comprehensive understanding of UK immigration policies.

Methodology:

In previous literature, Asian international students' experiences with the UK student visa regulations have been outlined. However, more studies are required to understand the impacts of UK student visa regulations towards Hong Kong international students by analysing the thoughts of international students. Based on the findings and problems of previous studies, the research question for this study is:

'How do the UK student visa regulations affect the experiences of Asian international students and the construction of the identity of consumers during their studies in higher education institutions?'

The research question is further divided into three sub-research questions based on the objectives of the study. The first sub-research question is 'How do Asian international students perceive and experience the UK student visa application process?', which investigates the experiences of Asian international students during the application process. The second sub-research question is, 'How do the UK student visa regulations affect the experiences of Asian international students during their studies in the UK?'. This question aims to know the perceptions and experiences of Asian international students with UK student visas during their studies in the UK. In addition, this sub-question hopes to answer whether Asian international students receive updates from the UK government from time to time on the changes in UK student visa regulations and the impacts of these changes on them throughout their studies in UK higher education institutions. The third sub-research question is 'Do the UK student visa regulations construct Asian international students as consumers?'. As illustrated in the last part, there are constant debates on the notion of identity construction by the UK student visa regulations. This question strives to understand the correlation between immigration policies and the construction of the identity of consumers. Each sub-question focuses on different perspectives of international students' experiences to provide a comprehensive understanding of the UK student visa regulations.

The online survey was chosen to investigate the impact of the UK student visa regulations on the experiences of Asian international students and the construction of identity based on its advantages. Designing and conducting the survey online can reduce time and cost, improve question diversity, collect responses from a large population in a short period of time, and allow individuals not in the same geographic location to participate in the study.[44] In addition, the response rate of the survey may increase as respondents can complete it when they feel comfortable and convenient or in multiple sessions.[45] Conducting an online survey can also reduce the time and errors when inputting data, and responses can be easily analysed.[46] Microsoft Forms was employed to outline, undertake, and analyse the collected survey data in this study. A pilot was conducted to identify the problems and negative trends before the

[44] T. Mathiyazhagan & Deoki Nandan, 'Survey research method' (2010) Media Mimansa 4,1; Priscilla A. Glasow, 'Fundamentals of survey research methodology' (2005) Retrieved January 18; Joel R. Evans & Anil Mathur, 'The value of online surveys' (2005) Internet research 15,2; Pramod R. Regmi, Elizabeth Waithaka, Anjana Paudyal, Padam Simkhada, & Edwin Van Teijlingen, 'Guide to the design and application of online questionnaire surveys.' (2016) Nepal journal of epidemiology 6,4

[45] Regmi (n 44)

[46] Evans (n 44)

collection of data.[47] Adjustments were made based on the participants' feedback from the pilot, including clarifying wordings and reorganising the sequence of questions.

The survey consists of nineteen questions, which are further divided into two parts. The first part of the survey, which includes fourteen questions, focuses on the experiences of international students with the UK student visa. All the questions are closed-ended. Closed-ended questions, requiring respondents to answer from the specific options provided in the survey, can ensure that answers are consistent and specific, which is easier for comparison and analysis.[48] Also, providing pre-determined questions can prevent the problem of misunderstanding the questions and responses.[49] In addition, the five-point Likert-type scale was used, as it is suitable for analysing and measuring individuals' opinions and attitudes when obtaining large numbers of responses.[50] All the scales that were provided in the survey were carefully designed and straightforward to prevent misunderstanding and simple for respondents to answer. The second part of the survey aredemographic questions, which can ensure respondents fulfil the requirements to participate and allow the researcher to describe the sample accurately.[51] Four questions are open-ended, which were used to ask participants about their ages, universities, and programmes they are currently studying, as well as their passports, as it is impossible to list all the options for these questions. While asking about respondents' gender, the question is close-ended with four options provided, which are 'man', 'woman', 'others' and 'prefer not to say'.

The population of this study is international students who hold an Asian passport and are currently studying in a UK higher education institution with a UK student visa. The UK has been the second most popular global destination for international students in recent years, which is suitable for investigation.[52] This study focuses on investigating students currently studying in UK higher education institutions, as the immigration policies differ between university students and students who study in an independent school.[53] However, since the number of international students studying in the UK is significant, a subgroup needs to be selected due to the constraints of time and cost. Asian international students are selected as the population, which Asia is defined from a geographical point of view by employing the definition of the United Nations.[54] Asians international students can provide a comprehensive understanding of the impacts, and it is crucial to recognise their voices due to the large and rising number of applicants. Half of the UK student visa applicants are from China and India, and 14 Asian states are among the top 20 nations applying for UK student visas in the year ending March 2025.[55] In addition, in recent years, the number of students from several Asian countries, such as India, Pakistan and

---

[47] Mathiyazhagan (n 44)

[48] Laura Colosi, 'Designing an Effective Questionnaire' (2006) <https://engagement.uiowa.edu/sites/engagement.uiowa.edu/files/2020-11/Colosi%20-%202002%20-%20Designing%20an%20Effective%20Questionnaire.pdf> accessed on 29 April 2025

[49] Ibid

[50] James Hartley, 'Some thoughts on Likert-type scales' (2014) International journal of clinical and health psychology 14,1; Sigan L. Hartley & W. E. MacLean Jr, 'A review of the reliability and validity of Likert‐type scales for people with intellectual disability' (2006) Journal of intellectual disability Research 50,11

[51] Jennifer L. Hughes, Abigail A. Camden & Tenzin Yangchen, 'Rethinking and updating demographic questions: Guidance to improve descriptions of research samples' (2016) Psi Chi Journal of Psychological Research 21,3

[52] Bolton (n 4)

[53] International students between four and seventeen years old who study in an independent school should applied for a Child Student visa

[54] United Nations, 'Methodology Standard country or area codes for statistical use (M49)' (*United Nations*,n.d.) <https://unstats.un.org/unsd/methodology/m49/> accessed on 3 June 2025

[55] GOV.UK, 'Immigration system statistics data tables' (*GOV.UK*, 22 May 2025) <https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#entry-clearance-visas-granted-outside-the-uk> accessed on 3 June 2025; Home Office, 'Accredited official statistics Why do people come to the UK - Study?' (*GOV.UK*, 22 May 2025) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-march-2025/why-do-people-come-to-the-uk-study> accessed 30 May 2025

Bangladesh, has risen significantly.[56] The participants were also required to use passports issued by Asian countries to apply for the UK student visa, as some Asians may hold a passport issued by the UK or nations outside of Asia, which they do not need to apply for a UK student visa or may not have the same experiences as international students who hold an Asian passport. Additionally, some international students with an Asian passport may study in the UK as a standard visitor or apply for the BNO visa, which suggests that it is crucial to indicate that the participants must hold a UK student visa.[57] To ensure the respondents fulfil the requirements for participating in the study, participants were asked and required to answer a question in the consent form to confirm that they hold an Asian passport to study in a UK higher education institution with a UK student visa before the survey.

This study has employed two non-probability sampling methods, convenience sampling and snowball sampling, to recruit the sample based on their characteristics and advantages. Convenience sampling was first used to collect data from individuals who are easily accessible to the researcher.[58] The survey was sent to friends, classmates, and international students studying at Goldsmiths, University of London, through social media platforms or in-person requests. While snowball sampling is deployed to reach unobtainable individuals by asking respondents who have already participated in the study to send the survey to other international students who are willing to engage.[59] The employment of convenience and snowball sampling can obtain responses in a short period and at an affordable price compared to other sampling methods.[60] Furthermore, as the participants are reachable, less effort is required to achieve a satisfactory sample for the study when using convenience sampling.[61] Although probability sampling ensures each individual in the population has an equal chance of being chosen, these sampling methods are excluded from this study as they are often expensive and require listing out individuals in the population, which is impractical due to the large population size of this study.[62] By employing these two sampling methods, thirty-nine responses were received.

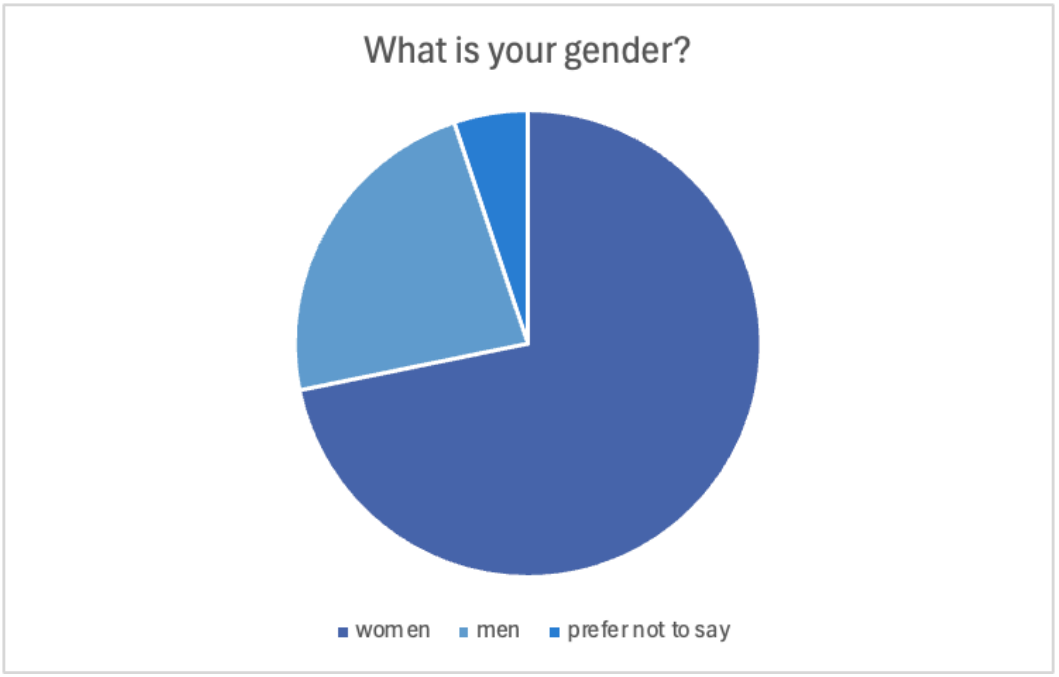
Ethics were also carefully considered throughout the study. All the participants must be over eighteen years old to participate in the research. At the start of the survey, participants are given an information sheet and a consent form to obtain informed consent. Informed consent is required to prevent participants from unconscious harm and to respect their autonomy.[63] The information sheet is written in simple English with headings and avoids the use of technical terms to ensure participants can easily understand. [64] In the information sheet, the purpose and format of the survey are stated, and respondents are reminded that their participation is voluntary. Respondents also understand that the survey is taken anonymously, which may make them feel more comfortable.[65] The information sheet also stated that they could withdraw from this study at any time and contact the author through the email address listed in the

[56] Mihnea Cuibus & Peter William Walsh, 'Student Migration to the UK' (2024) Migration Observatory briefing
[57] GOV.UK, 'Visit the UK as a Standard Visitor' (*GOV.UK*, 31 October 2024) <https://www.gov.uk/standard-visitor> accessed on 4 June 2025; GOV.UK, 'British National (Overseas) visa' (*GOV.UK*, 31 October 2024) < https://www.gov.uk/british-national-overseas-bno-visa> accessed on 4 June 2025
[58] Samar Rahi, 'Research design and methods: A systematic review of research paradigms, sampling issues and instruments development' (2017) International Journal of Economics & Management Sciences 6,2
[59] Charlie Parker, Sam Scott & Alistair Geddes, 'Snowball sampling.' (2019) SAGE research methods foundations
[60] Rahi (n 59); Mahin Naderifar, Hamideh Goli & Fereshteh Ghaljaie. 'Snowball sampling: A purposeful method of sampling in qualitative research.' (2017) Strides in development of medical education 14,3
[61] Jawad Golzar, Shagofah Noor & Omid Tajik, 'Convenience sampling' (2022) International Journal of Education & Language Studies 1,2
[62] Anita S Acharya, Anupam Prakash, Pikee Saxena & Aruna Nigam, 'Sampling: Why and How of it?' (2013) Indian journal of medical specialties 4,2
[63] Evangelia E Antoniou, Heather Draper, Keith Reed, Amanda Burls, Taunton R Southwood & Maurice P Zeegers, 'An empirical study on the preferred size of the participant information sheet in research' (2011) Journal of Medical Ethics 37,9
[64] Jon F Merz J.D, 'The ethics of research on informed consent' (2002) Controlled Clinical Trials 23,2
[65] Ronald E. Robertson, Felix W. Tran, Lauren N. Lewark & Robert Epstein, 'Estimates of non-heterosexual prevalence: The roles of anonymity and privacy in survey methodology' (2018) Archives of sexual behavior 47,4

information sheet. Participants can understand the aims, benefits and disadvantages of participating in this study through the information sheet, which allows them to decide whether they would participate in the study with adequate information. After reading the information sheet, respondents are also notified to answer the questions in the consent form, which is used to obtain informed consent from respondents.[66] The consent form includes three questions, which ensure participants read the information sheet, agree to participate in this study, and fulfil the requirements to engage in the survey. Throughout the study, ethics were considered to ensure participants could safely and comfortably participate and to prevent them from being harmed by this research.

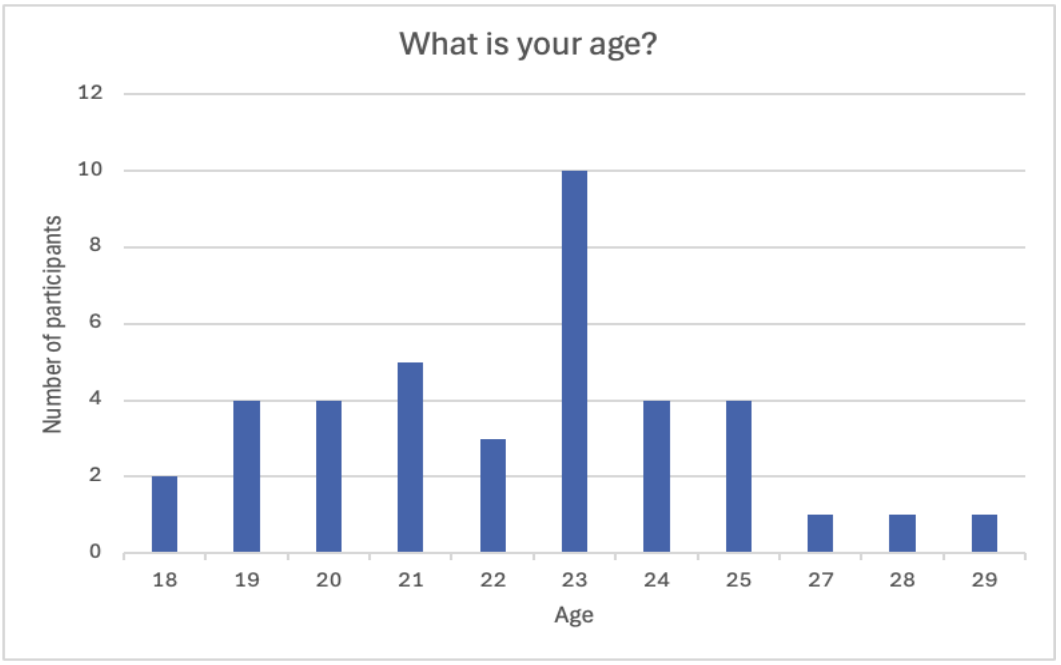
Findings:

Between 9 March 2025 and 21 March 2025, thirty-nine survey responses were collected. All participants hold Asian passports and study in UK higher education institutions with UK student visas when participating in this study. 28 of the participants (72%) are women, and 9 of them (23%) are men, while 2 respondents (5%) chose the option 'prefer not to say'.

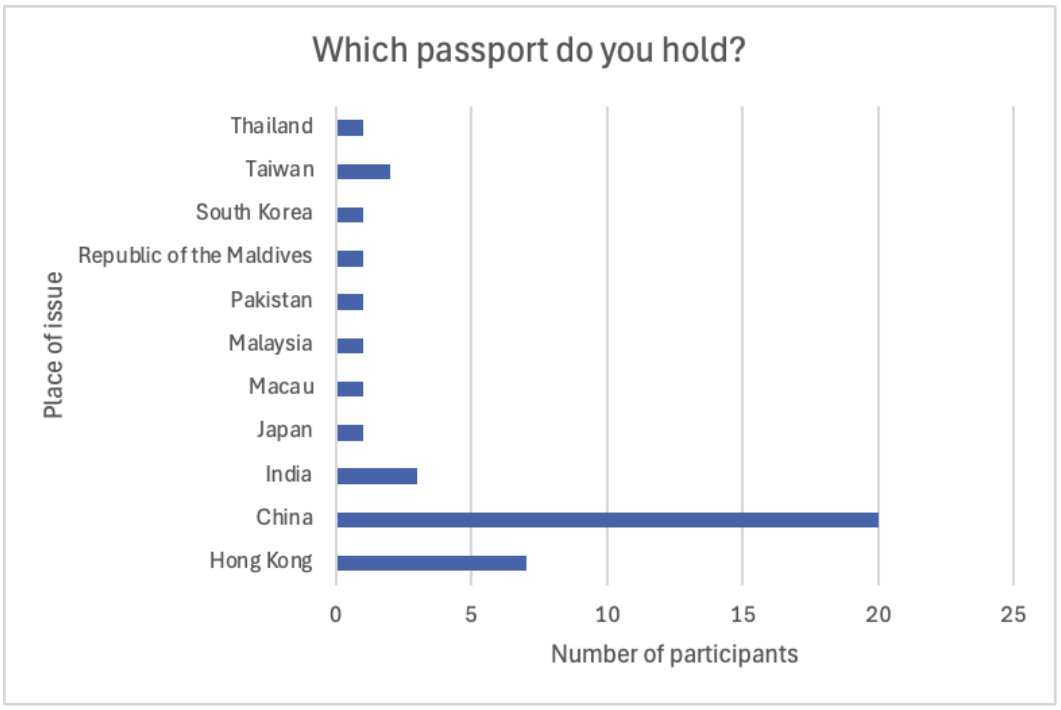


All the participants are between eighteen and thirty, 10 of whom (26%) are 23 years old and 5 (17%) are 21. 4 participants (10%) were recruited from 19, 20, 24 and 25, respectively. 3 participants (8%) are 22 years old, and 2 (5%) are 20 years old. There was 1 respondent (3%) from 27, 28, and 29, respectively.

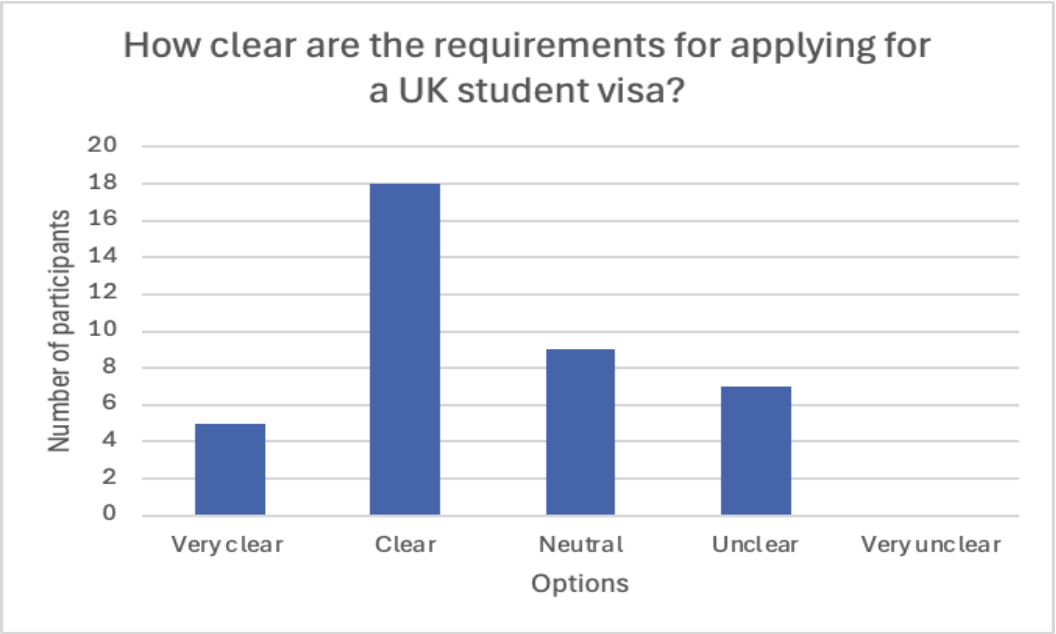
[66] Tiernan (n 3)



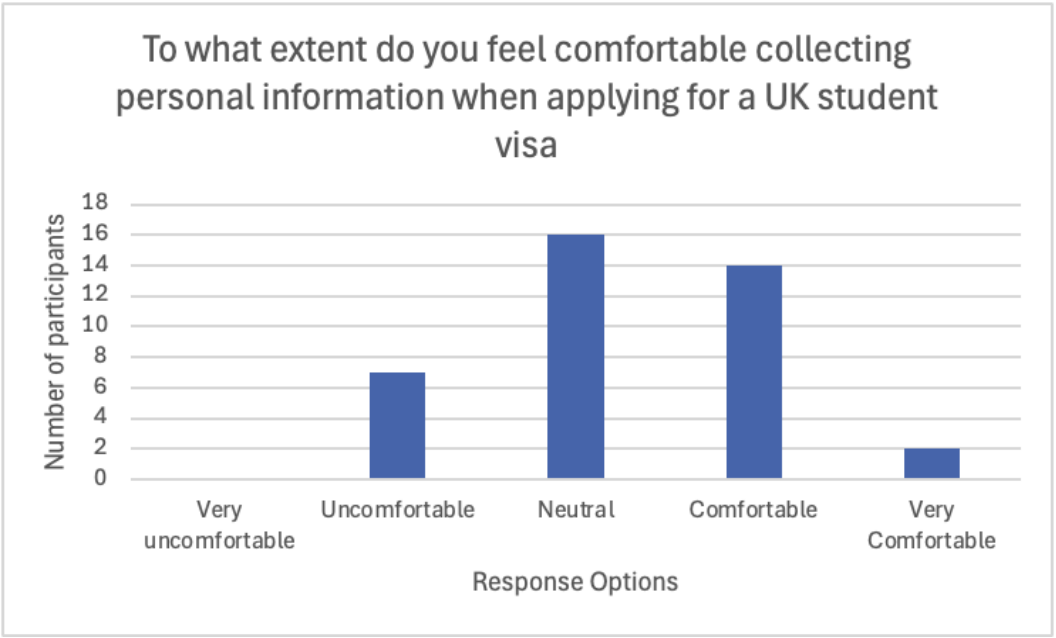
The survey also asked about individuals' nationality. 20 participants (51%) hold a Chinese passport, and 7 (18%) are from Hong Kong. 3 respondents (8%) are from India, and 2 participants (5%) are from Taiwan. 1 participant (3%) is from Japan, Macau, Malaysia, Pakistan, the Republic of the Maldives, South Korea and Thailand, respectively.



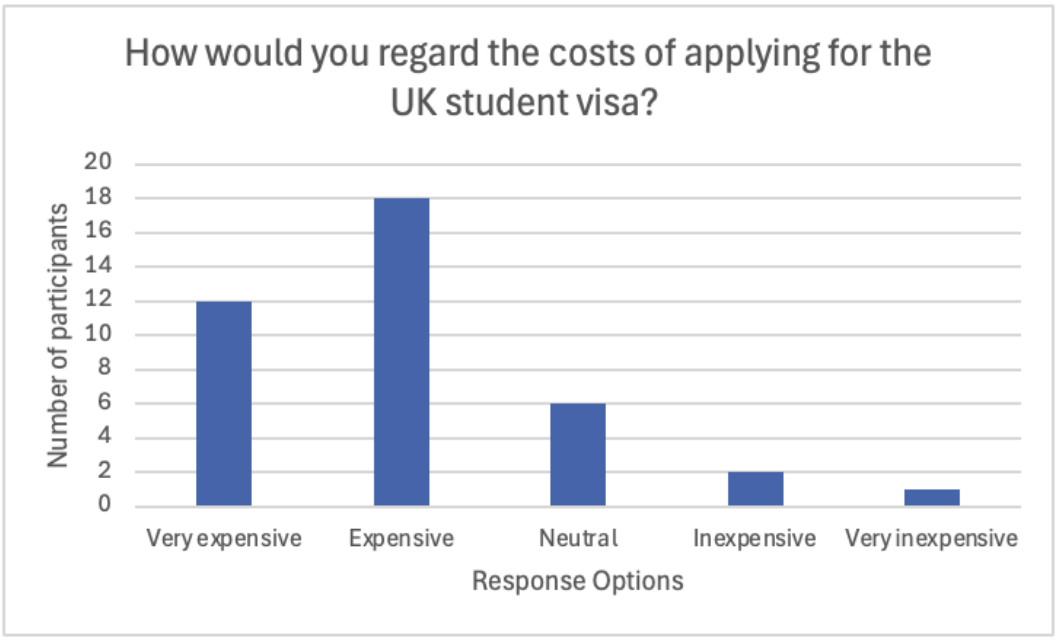
The first question of the survey focuses on the precision of the regulations for applying for a UK student visa, for which 18 respondents (46%) voted for 'clear', and 5 (13%) selected 'very clear'. 7 participants (18%) thought the requirements were unclear, and 9 (23%) remained neutral.



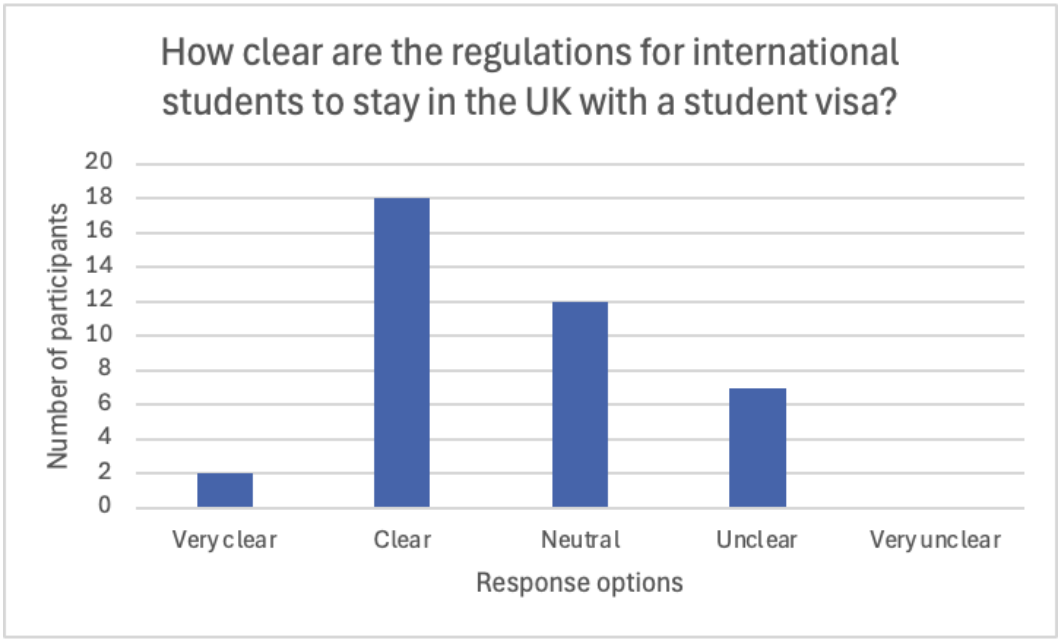
When asked whether participants feel the application process is comfortable, 14 participants (36%) feel comfortable, and 2 respondents (5%) feel very comfortable handing in personal information when applying for a UK student visa. Only 7 respondents (18%) stated they were uncomfortable providing the documents, and 16 participants (41%) selected 'neutral'.



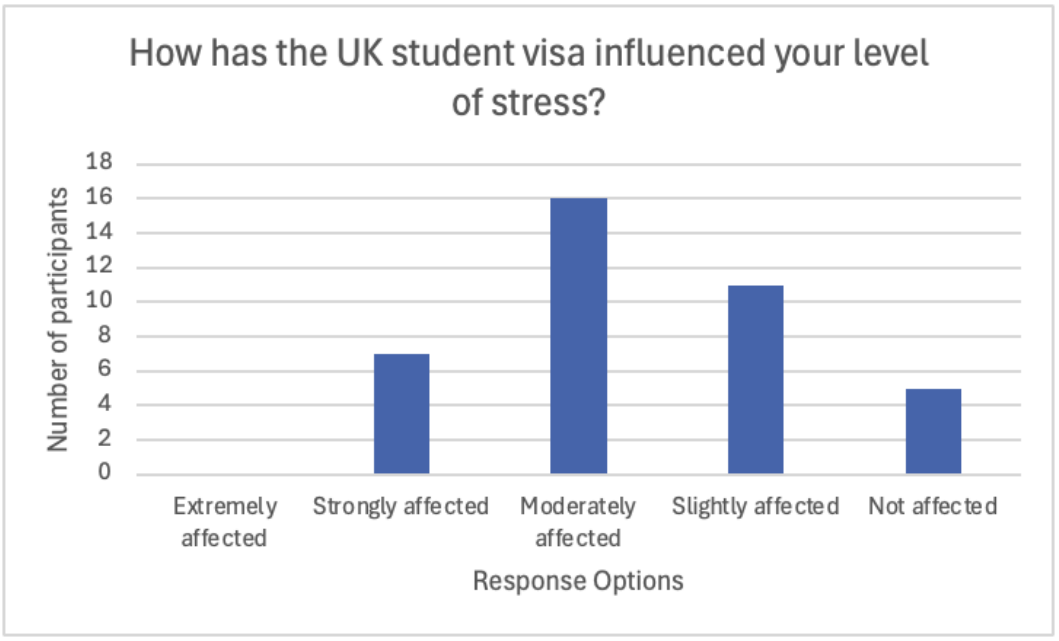
On the other hand, most participants regard the costs of applying for the UK student visa as expensive. 18 respondents (46%) considered the UK student visa expensive, while 12 participants (31%) chose the option 'very expensive'. Only 2 participants (5%) thought the cost was inexpensive, and 1 (3%) said very inexpensive. The remaining 6 respondents (15%) claimed neutral.



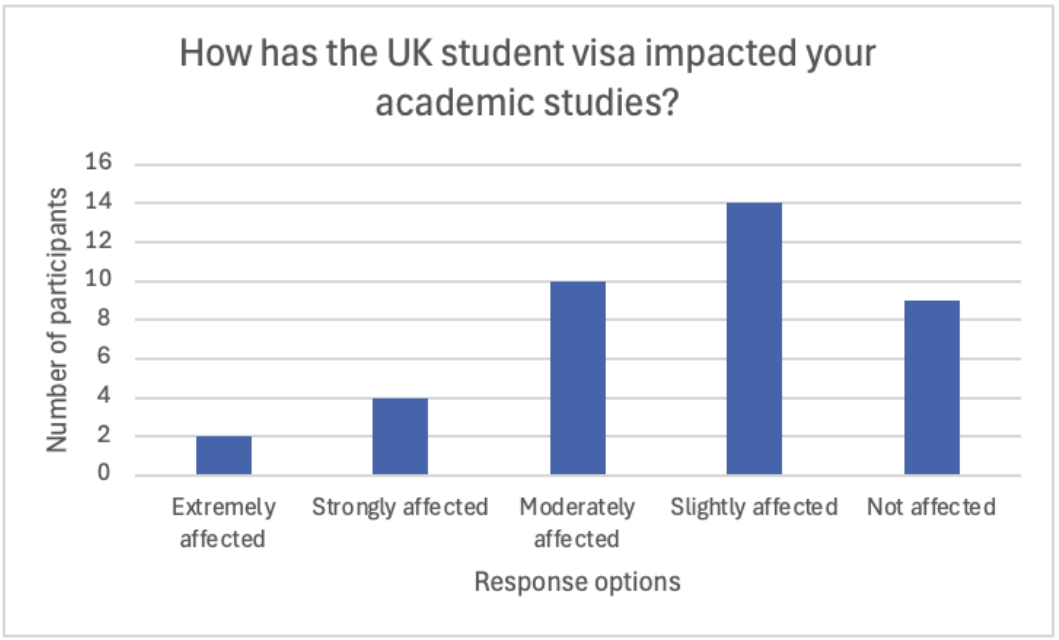
In the question, ‘How clear are the regulations for international students to stay in the UK with a student visa?’, 18 participants (46%) voted ‘clear’, and 2 (5%) selected ‘very clear’. Only 7 (18%) chose ‘unclear’, and the remaining 12 (31%) chose ‘neutral’.



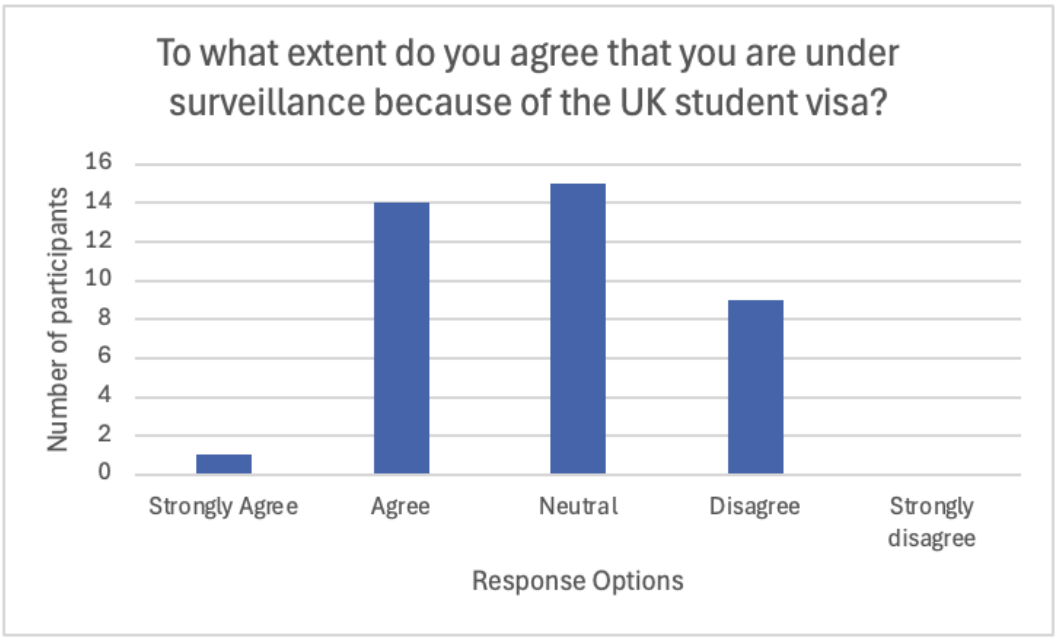
The collected results showed that the UK student visa makes respondents feel stressed and impacts their academic studies, as 7 participants (18%) selected ‘strongly affected’, 16 respondents (41%) chose ‘moderately affected ’, and 11 (28%) said slightly affected. Only five respondents (13%) thought the UK student visa did not affect their stress level.



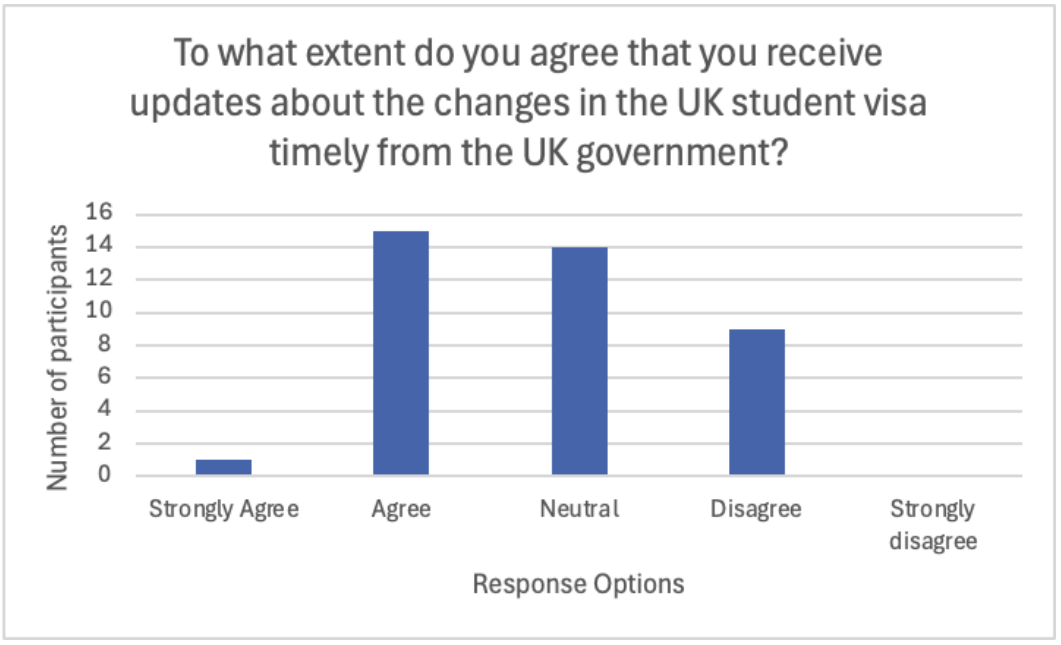
In addition, 30 respondents claimed that the UK student visa had impacted their academic studies, and only 9 participants (23%) said they were not affected. 14 participants (36%) chose ‘slightly affected’, while 10 (26%) selected ‘moderately affected’. 2 participants (5%) stated they were extremely affected, and 4 (10%) proposed they were strongly affected.



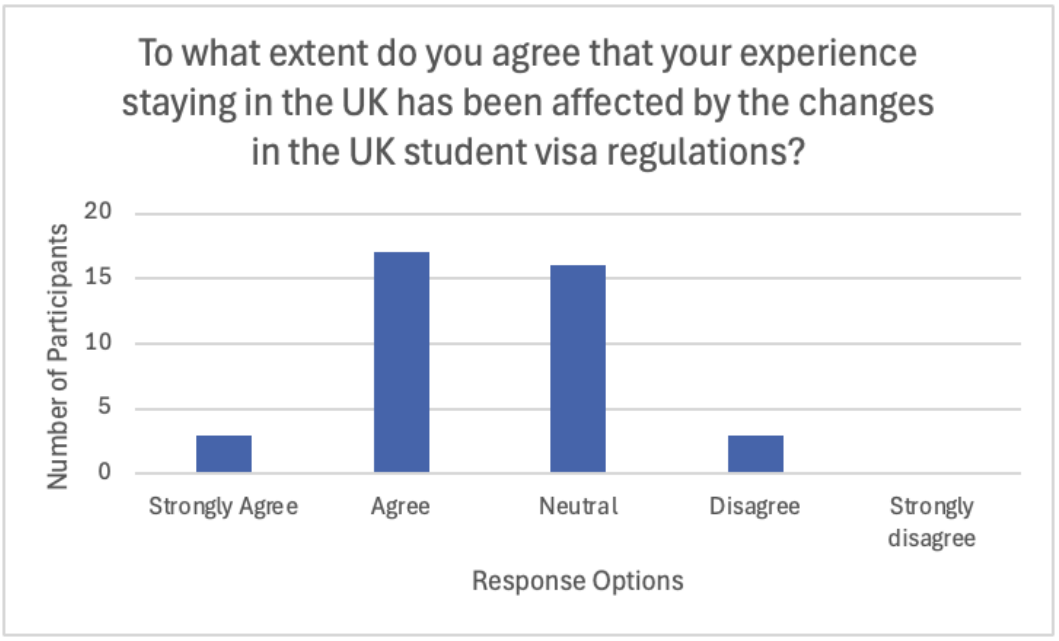
When asked about the notion of surveillance,14 participants (36%) agreed that they feel they are under surveillance. 1 respondent (3%) stated ‘strongly agree’, 15 (39%) remained neutral, and 9 (23%) disagreed.



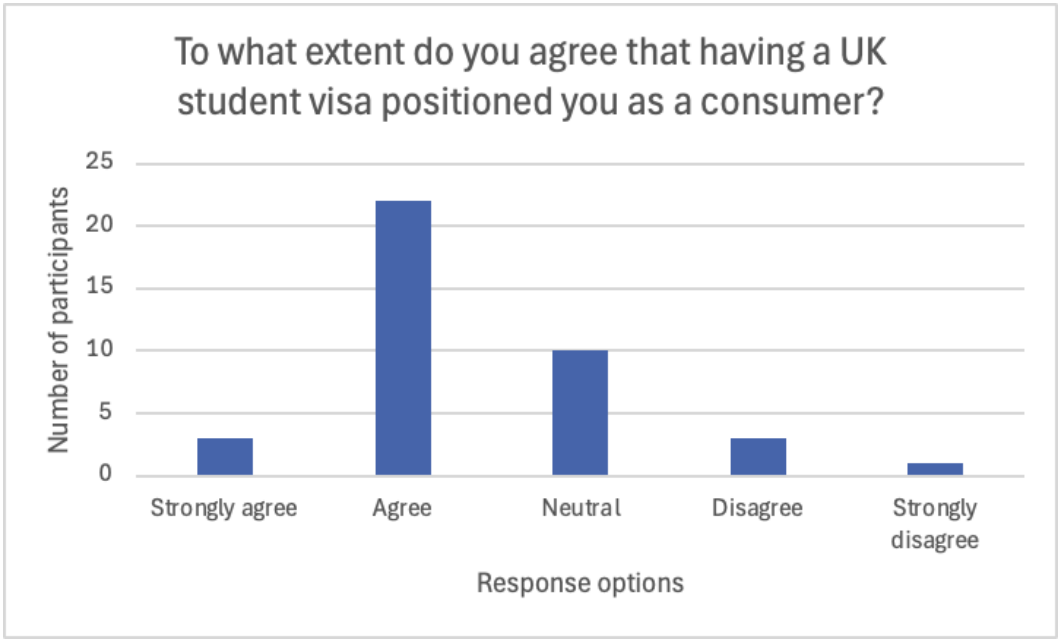
The next part focuses on the changes in the UK student visa. 15 respondents (39%) agreed that they received updates about the changes, and 1 (3%) voted ‘strongly agreed’. 9 participants (23%) chose ‘disagree’ and 14 (36%) selected ‘neutral’.



In addition, 3 participants (8%) and 17 respondents (44%) stated they strongly agreed and agreed that these changes impacted their experiences with staying in the UK, respectively. Only 3 (8%) voted ‘disagree’, and 16 (41%) remained neutral.



Participants were also asked about their positions on the UK student visa. 22 participants (56%) agreed they were seen as consumers, while 3 (8%) voted for 'strongly agree'. 3 (8%) did not agree with the statement, and 1 (3%) selected 'strongly disagree'. 10 respondents (26%) claimed neutral in this question.



Discussion:

In this study, most of the respondents are female and hold a Chinese passport, which they use to apply for a UK student visa. This part will discuss the data collected from the survey and provide an answer towards the three sub-research questions.

First sub-research question:

The findings have indicated that Asian international students considered the UK student visa application process clear and comfortable, but they agree that the fee is costly. Compared to prior research, the results have rejected the idea that the application process violates individuals' privacy and that the rules

are unclear or complicated. Nevertheless, the problem of the application fee being expensive still exists in the current regulations.

To improve the experiences of international students, the UK government should reduce the price of the application. The additional costs, including fast-track options and the healthcare surcharge, are often not included in the application fee on the government website, which may result in international students finding the costs are higher than expected. The government can list all the fees in one area, allowing participants to know the total costs for the application. In addition, the application fee for the UK student visa is higher when compared to other host countries. For instance, the application fee for the US student visa is 185 USD, and the Canadian student visa is 150 CAD, while the current application fee for the UK student visa is 524 pounds. [67] The UK government can reduce the application fee to provide better experiences for international students.

Second sub-research question:

The collected data have suggested that Asian international students considered the UK student visa regulations as clear, but argued that the policies have made them feel they are under surveillance. The results also suggest that the UK student visa regulations influence Asian international students' stress levels and academic results. The research results of this study match some of the findings from prior studies, but reject the idea that the regulations are unclear. Moreover, the responses indicated that Asian international students receive updates on changes to the immigration policies from the UK government. These modifications have impacted their experiences throughout their stays in the UK, which aligns with previous findings on the impacts of changes in UK immigration policies.

To improve the experiences of Asia international students with the UK student visa regulations, the government and institutions can prevent making changes, provide assistance and adjust the current rules. First, higher education institutions can provide more information about the regulations and places for international students to seek help when stressed. Second, the UK government should also adjust some of the current policies to reduce their impacts on international students. For instance, the government could abandon the regulations on checking the attendance of international students, which may reduce the pressure and the feeling of being under surveillance. Third, to reduce the impacts of changes in policies, the adjustments should be regulatory and only performed in a specific timeframe. The UK government can reduce the impact of UK student visa regulations on Asian international students by adjusting the current rules to improve their experiences.

Third sub-research question:

The survey results indicate that Asian international students consider the UK student visa regulations to structure them as consumers. The results align with some of the previous literature, suggesting that the UK student visa regulations structure international students as consumers. The construction of consumers by the UK student visa regulations may indicate that the government failed to acknowledge that international students can be citizens and educational partners during their studies.[68] The UK government should reconstruct the identities of international students as valuable students and potential citizens by

[67] GOV.UK (n 11); Government of Canada, 'Citizenship and immigration application fees Fee list' (*Government of Canada*, 14 April 2025) < https://ircc.canada.ca/english/information/fees/fees.asp> accessed on 13 June 2025; U.S. Department of State—Bureau of Consular Affairs, 'Student Visa' (*Travel.State.Gov*, n.d.) <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html> accessed on 12 June 2025; The application fee only includes the amount of money that is required when submitting the application, which other required payment are neglected. The pricing for the US student visa is non-immigrant visa application processing fee.

[68] Lomer (n 5)

adjusting the regulations and giving citizens more rights. For example, the government can increase the working hours and allow international students to be self-employed.

Limitations:

Although this study was carefully designed, some limitations were still present. One of the limitations is bias due to the employment of non-random sampling methods. As participants selected through convenience and snowball sampling are available to the researcher, some participants will not have the opportunity to be chosen, which may result in some groups being neglected and a particular subgroup being over-represented.[69] For instance, women can be over-represented, as they are seen as more cooperative and less likely to reject the request for participation.[70] Moreover, due to time and money constraints, the number of responses collected is small when compared to the large number of Asian international students studying in UK higher education institutions, which may not provide a comprehensive understanding.

Although Asian international students come from the same geographical region, their experiences with the UK student visa application process may be different. For instance, the UK government only required international students from a list of countries to prepare tuberculosis tests when they applied for UK student visas.[71] International students who are not required to provide their tests may have a different perception of the application process compared to those who are required. In addition, the UK immigration policies are fluid and inconsistent, which may lead to international students interacting with different regulations and having dissimilar experiences.

More studies are required to understand the impact of the UK student visa regulations on international students in the future. Future studies can include international students from all nationalities to understand the regulations comprehensively, or students from a specific nationality to prevent diverse experiences. Scholars can also include individuals who were rejected, as their experiences can provide a different insight into investigating the policies and the process of appeal.[72] Other research methods, including interviews and mixed-research methods, may also be employed to capture fully and provide a comprehensive understanding of international students' experiences with the UK student visa. In addition, as the UK immigration regulations are constantly changing, researchers should continue to investigate the impacts of the UK student visa policies on the experiences of international students. Long-term studies are also required to collect information on the impacts of changes in UK student visa regulations, which may not appear immediately.

Conclusion:

Globalisation has led to the development of the international higher education market, which students, higher education institutions, and countries can all benefit from through studying abroad or becoming host nations. Countries, including the UK, have started to develop immigration policies for students studying abroad. Under current UK immigration rules, international students must apply for a student visa when studying in UK higher education institutions. Prior studies have suggested that international students consider the UK student visa regulations negatively during both the application process and

[69] Golzar (n 61); Parker (n 59)
[70] Ibid
[71] GOV.UK, 'Tuberculosis tests for visa applicants' (*GOV.UK*, 7 January 2015) <https://www.gov.uk/tb-test-visa> accessed on 4 June 2025
[72] Tiernan (n 3)

study period. Also, the changes in rules may detrimentally impact international students. Some previous literature also indicates that the UK student visa regulations have constructed international students as consumers rather than students who can exercise the rights of citizens, but this idea is highly debated. Nevertheless, few studies have examined the UK student visa regulations from the perspectives of Asian international students, as they focus on the analysis of rules or particular elements of the regulations. More studies are required to understand the impacts of changes in immigration regulations on international students and to understand whether international students consider the policies shaping them as consumers.

This paper employs an online survey to investigate the experiences and the construction of identities of Asian international students with the UK student visa regulations during their studies in the UK. All the participants must be over eighteen, study in a UK higher education institution with a UK student visa and hold a passport issued by an Asian nation. As it is impossible to include all the individuals in the population, convenience and snowball sampling are employed to select respondents. In addition, to provide a better understanding, three sub-research questions have been designed, each with a different objective. The first and second sub-research questions focus on the experiences with the UK student visa regulations during the application process and studies, respectively, while the third sub-research question investigates the construction of the identity of consumers. Ethics are also considered throughout the study to protect participants from harm. The information sheet and consent form, which include all the information about this research, are provided.

A total of thirty-nine responses were collected in this study, of which most of the respondents are female and hold a Chinese passport. The responses indicated that most participants consider the UK student visa regulations for application clear and comfortable, which is different from previous findings. Nevertheless, respondents agree that the application fee is expensive. In addition, most participants feel under surveillance because of the UK student visa regulations, and the policies are impacting their academic performance and stress levels, which align with the previous research results. Moreover, the data shows that most respondents receive updates on the changes in the immigration regulations from time to time, and these changes have impacted them. The collected data also suggests that Asian international students consider the UK student visa regulations to position them as consumers. Several suggestions are provided to the government to improve the experiences of Asian international students with the UK student visa regulations, including reducing the application fee, adjusting some current policies and providing more information about the regulations. Although this study has offered an overview of the experiences of Asian international students with the UK student visa regulations, limitations appeared, and long-term studies are required to fully capture the changes in UK student visa regulations and their impacts on international students.

RESTRICTING THE UNDISCLOSED PRINCIPAL: AN AGENCY ANOMALY

Eleni Alexia Timiliotis

Abstract

Agency is a commercially necessary and normatively defensible doctrine that allows principals to transact efficiently through intermediaries. However, the doctrine of the undisclosed principal represents a problematic exception to orthodox principles of contract law. This article argues that while disclosed agency is essential to modern commerce, the attribution of contractual rights and liabilities to an undisclosed principal undermines privity of contract, distorts consent, and threatens commercial certainty. Through an analysis of leading authorities, including *Watteau v Fenwick*, *Keighley, Maxsted & Co v Durant*, and *Said v Butt*, the essay demonstrates the judicial unease surrounding the doctrine and the subsequent limitations imposed upon it. Comparative and international perspectives further highlight the incompatibility of the doctrines with contemporary commercial practice. The article concludes that the undisclosed principal doctrine lacks a coherent normative justification and should be restricted to preserve transparency, consent, and certainty in contractual relations.

Introduction

Agency is a commercially necessary and normatively defensible doctrine[73] that enables principals to transact through intermediaries.[74] However, where the principal remains undisclosed, the attribution of contractual rights and liabilities to an unknown party undermines privity, distorts consent, and threatens commercial certainty.[75] This essay argues that, while disclosed agency is normatively defensible and necessary to contemporary commerce, the doctrine of the undisclosed principal is exceptional and should be restricted. This claim will be examined through the doctrine's impact on privity, its compatibility with modern commercial practice, its means of operation, and judicial application.

Privity and the Undisclosed Principal

Privity safeguards the parties to a contract by ensuring transparency and clarity of rights and liabilities assigned to the parties.[76] Although agency ensures the efficient continuation of modern commerce, its introduction of the undisclosed principal undermines privity to an excessive extent.[77] This is exemplified by an undisclosed principal's ability to intervene in a contract recognised between the agent and the third party and by its right to sue or be sued upon its own terms, which conflicts with orthodox principles of

[73] Lee Roach, Eric Baskind and Greg Osborne, *Commercial Law* (5th edn, Oxford University Press 2025) 151–152.
[74] Ewan McKendrick, *Goode and McKendrick on Commercial Law* (6th edn, Penguin 2020) 207-208.
[75] Lee Roach, Eric Baskind and Greg Osborne, *Commercial Law* (5th edn, Oxford University Press 2025) 151–152.
[76] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 156-167.
[77] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 165-166.

privity.[78] *Watteau v Fenwick*[79] further emphasises the issues associated with the undisclosed principal doctrine, in which Fenwick's agent acted without actual authority; however, Fenwick was held liable by the Court and obligated to uphold the contract.[80] This depicts agency law extending beyond the already exceptional doctrine, as ordinarily the agent must act within actual authority so that the principals' consent exists, despite being hidden. However, the principal being bound despite the third party's lack of knowledge of their identity illustrates a significant inroad into privity since the third party did not consciously agree to contract with that principal. Conversely, *Watteau*[81] is confined to its facts and viewed as a historical anomaly, as modern courts in cases such as *Armagas Ltd v Mundogas SA*[82] reject its judgment and impose liability only where actual or apparent authority is established.[83] Nevertheless, this suggests that courts are attempting to reinforce privity as the baseline norm and to restrict the undisclosed principal doctrine, as *Watteau* depicts the unjust outcomes it entails. In the latter case of *Said v Butt*,[84] the risk of the undisclosed principal doctrine to privity is displayed by its obstruction of transparency, as had the third party known the actual principal, they would not have contracted with them.[85] Although the courts recognised that the identity of the true contracting party mattered and, therefore, held the contract void, the flexibility of the application of the undisclosed principal doctrine highlights the awareness of the danger posed by the doctrine to privity. The cases reveal that agency is considered commercially necessary by its continued use, but a doctrinally dangerous mechanism. If the limitations in *Armagas Ltd*[86] and *Said*[87] had not been applied, the judgments would have been unjust, as depicted in *Watteau*,[88] presenting the undisclosed principal doctrines' ability to strongly undermine privity, allocating unnecessary risks to all parties.[89] This illustrates the doctrines' doctrinally exceptional nature and its need for limitation.

Modern Commercial Practice and Transparency

Beyond agency's doctrinally exceptional nature through the undisclosed principal doctrine, which undermines privity, it also proved to be an outdated and internationally rejected concept. Therefore, it should be limited to disclosed principals.[90] The undisclosed principal doctrine was developed in the

[78] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 165-167.
[79] *Watteau v Fenwick* [1893] 1 QB 346.
[80] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 87-90.
[81] *Watteau v Fenwick* [1893] 1 QB 346.
[82] *Armagas Ltd v Mundogas SA* [1986] AC 717.
[83] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 87-90.
[84] *Said v Butt* [1920] 3 KB 497.
[85] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 165-167.
[86] *Armagas Ltd v Mundogas SA* [1986] AC 717.
[87] *Said v Butt* [1920] 3 KB 497.
[88] *Watteau v Fenwick* [1893] 1 QB 346.
[89] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 151-162.
[90] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 165-167.

19th-century mercantile practice, where intermediaries were common and principals often concealed.[91] This is inconsistent with modern commerce,[92] which relies on the transparency of counterparties, credit checks, and risk assessments. Although agency remains a necessary concept in contemporary commerce, as it supports efficient risk-bearing and decision-making in large firms,[93] it should not be stretched to the extent of the undisclosed principal because the intervention of an unknown party after contract formation undermines commercial certainty and bargaining autonomy.[94] This concern is especially prevalent in international trade, where identity affects credit risk, regulatory compliance, sanctions, and enforcement, and where parties actively choose with whom they contract. This is also demonstrated by the UNIDROIT Principles, which regulate only disclosed agency[95], given this would conflict with objective consent and undermine the transparency and predictability the principles seek to guarantee in international commerce. [96] Similarly, Scots[97] and German law reject the doctrine of undisclosed principal as a form of agency.[98] Suggested by their attempt in limiting cases, English courts have become increasingly uneasy about the application of the undisclosed principal doctrine.[99] This is reflected in the principle articulated by Lord Macnaghten in *Keighley, Maxsted & Co v Durant*: 'Civil obligations are not to be created by, or founded upon undisclosed intentions'.[100] This was doctrinally important, as it applies the privity doctrine by expressing contract law principles holding that an obligation arises from objective manifestations of consent, rather than from what one party privately intended or later reveals.[101] This exposes a fault in the undisclosed principal doctrine, which typically permits an undisclosed principal to intervene after contract formation and acquire rights and liabilities, thereby straining privity.[102] However, in *Keighley*,[103] the Court imposes a boundary that precludes the principal from inserting themselves at a later point by ratification, where the agent did not purport to act for the principal.[104] This is due to ratification

[91] Ania Lang, 'Unexpected Contracts versus Unexpected Remedies: The Conceptual Basis of the Undisclosed Principal Doctrine' (2012) 18 Te Mata Koi : Auckland University Law Review 114-136.
[92] Ania Lang, 'Unexpected Contracts versus Unexpected Remedies: The Conceptual Basis of the Undisclosed Principal Doctrine' (2012) 18 Te Mata Koi : Auckland University Law Review 114-136.
[93] Gabriel Rauterberg, 'The Essential Roles of Agency Law' (2020) 118 Michigan Law Review.
[94] Ernest J Weinrib, 'The Undisclosed Principle of Undisclosed Principals' (1975) *McGill LJ* <https://lawjournal.mcgill.ca/article/the-undisclosed-principle-of-undisclosed-principals/> accessed 20 December 2025.
[95] UNIDROIT, *Principles of International Commercial Contracts* (2016) <https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2016-English-bl.pdf> accessed 28 December 2025.
[96] UNIDROIT, *Principles of International Commercial Contracts* (2010) art 2.2 <https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2010/chapter-2-section-2/> accessed 28 December 2025.
[97] Nadia Napieraj, 'The Strange Case of an Agent Acting for an Unidentified Principal' (2024) 5(1) *Edinburgh Student Law Review* <https://journals.ed.ac.uk/eslr/article/view/9716> accessed 28 December 2025.
[98] Edwin R Holmes, 'Apparent Authority and Undisclosed Principal Under German Law' (1974) 4 *Cal W Int'l LJ* <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1908&context=cwilj> accessed 28 December 2025.
[99] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 147-149.
[100] *Keighley, Maxsted & Co v Durant* [1901] AC 240 (HL) 247.
[101] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 49-51.
[102] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 148-149.
[103] Keighley, Maxsted & Co v Durant [1901] AC 240.
[104]Baskind, Osborne, and Roach, *Commercial Law* (n 1) 72-73.

retroactively altering the parties to the contract and imposing obligations based on undisclosed terms. This indicates a judicial effort by English courts to depart from the undisclosed principal doctrine to adapt to modern international commercial expectations. Thus, while disclosed agency remains necessary and internationally accepted, the undisclosed principal appears increasingly outdated.

Judicial Containment and Doctrinal Incoherence

The doctrine of the undisclosed principal continues to survive because courts have imposed numerous strict limitations, exceptions, and conditions,[105] depicting its restricted operation and reflecting the dangers that necessitate further restriction. Unlike disclosed agency, the doctrine of the undisclosed principal is neither a free-standing nor robust principle and sits uneasily with the privity of contract. It operates only because courts have constructed doctrinal barriers, and is treated as exceptional, fragile, and dangerous if applied broadly.[106] The extent of these restrictions reflects judicial discomfort rather than doctrinal confidence since a normatively sound doctrine would not require such containment.[107] This is exemplified by the Court's recognition of an identity-based exception in *Said v Butt*,[108] where the Court intervened in the contract as the identity of the undisclosed principal mattered to the third party.[109] Thus, it created the restriction that an undisclosed principal can not intervene where the third party intended to contract only with the agent personally.[110] The case illustrates courts prioritising contractual intention over agency doctrine, preventing principals from inserting themselves into contracts where their identity was excluded.[111] Furthermore, it depicts a retreat to privity logic by the courts, as undisclosed principals are only accepted so far as they do not distort consent. By contrast, one could argue that all undisclosed principals distort consent and that, in such circumstances, every third party intends to contract with the party they assume is the principal because they must assess the party's credibility.[112] This concern is reflected in *Keighley*,[113] in which the Court tried to limit the undisclosed principal doctrine even further by not allowing the ratification of an unauthorised contract.[114] Although this decision received scholarly criticism for lacking a convincing principled justification, it serves a highly restrictive purpose because it does not apply to disclosed principals.[115] This suggests the courts' greater comfort with and trust in the

[105] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 147-149.
[106] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 152-158.
[107] Ernest J Weinrib, 'The Undisclosed Principle of Undisclosed Principals' (1975) *McGill LJ* <https://lawjournal.mcgill.ca/article/the-undisclosed-principle-of-undisclosed-principals/> accessed 20 December 2025.
[108] *Said v Butt* [1920] 3 KB 497.
[109] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 166-167.
[110] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 166-167.
[111] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 166-167.
[112] Ernest J Weinrib, 'The Undisclosed Principle of Undisclosed Principals' (1975) *McGill LJ* <https://lawjournal.mcgill.ca/article/the-undisclosed-principle-of-undisclosed-principals/> accessed 20 December 2025.
[113] *Keighley, Maxsted & Co v Durant* [1901] AC 240.
[114] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 71-73.
[115] Arnold Rochvarg, 'Ratification and Undisclosed Principals' (McGill Law Journal 1989) <https://lawjournal.mcgill.ca/wp-content/uploads/pdf/4930762-Rochvarg.pdf> accessed 20 December 2025.

disclosed principal doctrine in agency law and, similarly, its purpose in contemporary commercial transactions. Furthermore, the restriction displays judicial concern about retrospective distortion of contractual relations.[116] In *Bird v Brown*,[117] the Court imposed a further limitation on the doctrine, establishing that even where agency requirements are met, intervention is barred if it would unfairly prejudice the third party, shifting from relying on vesting of rights and timing.[118] Commentary on the case suggests it is valued more for its protective function than for its clear reasoning.[119] Despite this, it demonstrates the courts' attempt to restrict the undisclosed principal doctrine due to the concern that ratification unfairly and retroactively alters the third party's legal position, thereby undermining consent and commercial certainty.[120] These cases depict the courts' restrictive nature around the undisclosed principal doctrine, aware of the damage it may cause when unrestricted, but conversely, its lenience regarding the disclosed principal doctrine, suggesting its commercially necessary role.

Normative Incoherence and Lack of Justification

These limitations reveal that the undisclosed principal doctrine lacks a single coherent rationale, leading to inconsistent and unstable judicial application.[121] Beyond being viewed as controversial by international institutions, the doctrine can also not be explained by reference to any single orthodox legal principle.[122] Instead, different cases appear to rely on different, and sometimes incompatible, rationales, including implied consent, commercial convenience, reasonings akin to estoppel, and historical custom.[123] Scholars emphasise that these explanations fail to be applied consistently across the case law, causing the doctrine's boundaries to appear arbitrary and unstable.[124] Incoherence in the application of the doctrine is exemplified by *Keighley*,[125] where the Court refused to allow ratification where the agent had not purported to act for a principal. Lord Macnaghten's previously mentioned statement that 'civil obligations are not to be created by undisclosed intentions'[126] underscores the doctrinally exceptional nature, as undisclosed principals within authority may acquire rights and liabilities. However, when ratification is required, it is prohibited.[127] This is often criticised, as academics claim there is no convincing explanation

[116] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 71-73.
[117] *Bird v Brown* [1850] 154 ER 1433.
[118] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 148-149.
[119] Robert Schultz, 'Principles without Principals? Reconsidering Unauthorised Agency on the Boundary of Contract: Implied Warranty of Authority and Ratification' (2014) 20 *Auckland U L Rev* <https://www.nzlii.org/nz/journals/AukULRev/2014/3.pdf> accessed 28 December 2025.
[120] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 71-73.
[121] Ania Lang, 'Unexpected Contracts versus Unexpected Remedies: The Conceptual Basis of the Undisclosed Principal Doctrine' (2012) 18 Te Mata Koi : Auckland University Law Review 114-136.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] *Keighley, Maxsted & Co v Durant* [1901] AC 240.
[126] *Keighley, Maxsted & Co v Durant* [1901] AC 240 (HL) 247.
[127] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 148-149.

provided as to why undisclosed intention is acceptable in one context but not in another.[128] This inconsistency reveals the absence of a unifying rationale. *Bird*[129] further explores the ratification doctrines' confusing and inconsistent interpretations that further impede the privity of contract. The Court held that ratification was ineffective. Judicial analysis has suggested two main competing and incompatible explanations for this ruling: 1) Ratification was refused due to the third party's rights already being vested and could not retrospectively be divested,[130] and 2) the timeframe in which the right had to be exercised had passed.[131] However, neither of these explanations has become the authoritative ratio, and judges have subsequently relied on different rationales in different cases, often without acknowledging the inconsistencies.[132] More recent authority instead treats *Bird*[133] as illustrating the broader Bowstead and Reynolds principle that ratification is ineffective where it would unfairly prejudice a third party.[134] Although these cases may be better understood as case-specific responses rather than applications of a coherent doctrine, they still portray the inconsistent and unstable judicial application of the law.[135] Moreover, upon drawing a comparison between apparent authority and the undisclosed principal doctrine, apparent authority is grounded in representation by the principal, reliance by the third party, and estoppel.[136] This allows it to be normatively defensible, whereas the undisclosed principal doctrine lacks this foundation, since it has no representation, no reliance on the principal, and no objective manifestation of consent. Due to this, an agency that operates by applying actual or apparent authority constitutes a doctrinally sensible extension of agency. Yet, because it lacks a coherent rationale, the undisclosed principle doctrine needs to be restricted.

Conclusion

To conclude, while agency is a commercially necessary and justified practical necessity to the privity of contract, the doctrine of the undisclosed principal is an anomaly to agency law and extends agency's already doctrinally exceptional nature too far. This is exemplified by the undisclosed principal doctrine, permitting contractual rights and liabilities to arise in favour of a party unknown at the time of contracting, thereby undermining privity, commercial certainty, and bargaining autonomy. The courts'

---

[128] Arnold Rochvarg, 'Ratification and Undisclosed Principals' (McGill Law Journal 1989) <https://lawjournal.mcgill.ca/wp-content/uploads/pdf/4930762-Rochvarg.pdf> accessed 20 December 2025.

[129] *Bird v Brown* [1850] 154 ER 1433.

[130] Cotton LJ in *Bolton Partners v Lambert* (1899) LR 41 ChD 295 (CA), 307. This view was confirmed by Roch LJ in *Presentaciones Musicales SA v Secunda* [1994] Ch 271 (CA), 284.

[131] Dillon LJ in *Presentaciones Musicales SA v Secunda* Ch 271 (CA), 279. This view was confirmed by Clarke LJ in *The Owners of the Ship 'Borvigilant' v The Owners of the Ship 'Romina G'* EWCA Civ 935, 2 All ER (Comm) 736.

[132] Tan Cheng-Han, 'The Principle in Bird v Brown Revisited' (2001) 117 LQR 626.

[133] *Bird v Brown* [1850] 154 ER 1433.

[134] *The Owners of the Ship 'Borvigilant' v The Owners of the Ship 'Romina G'* [2003] EWCA Civ 935, [2003] 2 All ER (Comm) 736, (Clarke LJ).

[135] Tan Cheng-Han, 'The Principle in Bird v Brown Revisited' (2001) 117 LQR 626.

[136] Baskind, Osborne, and Roach, *Commercial Law* (n 1) 87-89.

persistent efforts to limit the doctrine by imposing strict limitations, as seen in *Keighley*[137], *Said*[138], and *Bird*[139], highlight the judicial discomfort with the undisclosed principal. Moreover, the international rejection of the doctrine further supports the claim that it is anomalous in agency law, has a negative impact, and is a source of disruption rather than coherence in modern commercial systems. Accordingly, although agency remains crucial to the functioning of contemporary commerce, the doctrine of the undisclosed principal should be restricted due to its adverse effects on privity and its often unjust implications for the parties to the contract.

[137] *Keighley, Maxsted & Co v Durant* [1901] AC 240.
[138] *Said v Butt* [1920] 3 KB 497.
[139] *Bird v Brown* [1850] 154 ER 1433.

‘SHAME MUST CHANGE SIDES’: AN ERA OF PROGRESSION SURROUNDING RAPE CULTURE IN FRENCH CRIMINAL LAW

Isabel O'Herlihy

Abstract

This article explores the recent legislative reform in French Criminal Law surrounding the definition of sexual violence. The incorporation of a considerably more expansive and comprehensive definition in the Criminal Code marks a momentous advancement in both legal and political spheres on this topic. However, this landmark reform comes after the harrowing case of Gisèle Pélicot swept across France, shining a light on the stark reality of the attitudes towards sexual violence in all spheres of society. This piece examines the context in which this new definition arose as well as the advancements it encourages, whilst also delving into its potential shortcomings. Moreover, this article explores the conversation surrounding consent as well as posing the question of how vast the impact this new reform will prove itself to be in practice.

Introduction

In late 2024, the chilling news of the Gisèle Pélicot case dominated the headlines. The man at the centre of the harrowing *‘viols de Mazan’* [140] trial was Pélicot’s now ex-husband, who over the course of a decade, repeatedly drugged and raped his wife, whilst also recruiting dozens of men to participate in these acts of depraved sexual abuse. This sordid affair gave way to the largest rape trial in French history, resulting in a guilty verdict for all 51 offenders. The convictions sparked fervent discourse and sent shock waves across the world. The case brought to light deep-rooted, virulent issues of misogyny, impunity and ignorance surrounding sexual violence, shattering the image of the imagined rapist as a social outcast. This ultimately led to legislation surrounding rape and sexual assault being called into question.

In France, rape had been long defined by case law[141], with a legal definition criminalising said offence appearing in the Criminal Code in 1980[142]. Following this codification, several landmark advancements ensued. For instance, in 1990[143], marital rape was recognised by the French justice system, leading to its incorporation into the Criminal Code in 2006 as an aggravating factor [144], followed by the complete elimination of de facto consent between spouses in 2010[145]. The Mazan trail reignited the conversation surrounding consent and its omittance from the legal framework on sexual violence, serving as the impetus for a momentous advancement in French Criminal Law with the reform of the legal definition of rape in the Criminal Code[146], introduced by the Law on 6 November 2025[147]. This latest development marks a shift towards a consent-based provision, placing it at the heart of the definition and setting out distinct conditions which must be met for consent to be established.

[140] Audrey Darsonville, ‘Le procès des viols de Mazan, la banalité d’un procès de viol’ (2024) 2 Intersections Revue Semestrielle Genre & Droit <https://revue intersections.parisnanterre.fr/index.php/accueil/article/view/81/132> Accessed 13 January 2026.
[141] Cass crim. 25 June1857, N°240.
[142] Loi n°80-1041 du 23 Décembre *1980 relative à la répression du viol et de certains attentats aux mœurs*.
[143] Cass crim. 5 September 1990, 90-83.786.
[144] Loi n°2006-399 du 4 avril 2006 *renforçant la prévention et la répression des violences au sein du couple ou commises contre les mineurs*.
[145] Loi n°2010-769 du 9 juillet 2010 *relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants*.
[146] *Code Pénal* (Dalloz, 2025) art 222-22.
[147] Loi n° 2025-1057 du 6 Novembre 2025 *modifiant la définition pénale du viol et des agressions sexuelles*.

Significantly expanding the definition of rape constitutes an essential step towards facilitating the criminalisation of sexual violence, as well as combating the looming cloud of impunity and 'culture of rape'[148] that have long stained the French criminal justice system. However, the legal sphere is but one cog in the rusty machine that is society, whose power, albeit essential, cannot singlehandedly sway the narrative.

In examining this reform, it is firstly important to note the long-standing context of impunity which has shrouded the criminalisation of sexual violence, highlighting the significance of legally enshrining consent in the normative provisions. In addition, this conversation illustrates the power of law and the role it plays in moulding judicial and scholarly approaches along with demonstrating the steely grip it exerts on society. However, despite this recent oscillation towards effective recognition and judicial remedy for victims of rape and sexual assault, it is vital to draw attention to the areas in which this reform may fall short, notably in relation to the murky outlines of consent and the underlying cultural and racial dimensions of this conversation.

Tackling the omnipresent climate of impunity through the legal enshrinement of consent

The *'viols de Mazan'*[149] case catapulted the way in which rape is addressed by legislators and the judiciary into the heart of public discussion, sparking action in civil society[150] and rippling its way through Parliament. In January 2025, shortly after the trial ended, two members of Parliament, Marie-Charlotte Garin and Véronique Riotton, submitted a proposal to the French National Assembly[151] which brought forward several critiques of how rape was defined in Criminal Law. This proposal brought to the fore the cracks in legislation that were being filled and sanded over by case law, perpetually failing to address the absence of consent in the legal framework. It also highlighted the failings of the criminal justice system in its treatment of victims throughout the legal process. This proposal was scrutinised by both the National Assembly and the Senate, resulting in the promulgation of the law on 6 November 2025 and placing consent at the core of the new definition.

It is undeniable that this reform falls within a dire situation of gender-based violence in France, illustrated through a staggering 164 recorded femicides in 2025[152]. Defined as the 'misogynous killing of women by men,'[153] femicide makes up an irrefutable facet of sexual violence. The cloud of impunity that has long surrounded rape and sexual assault illustrates a system that lacks in both sanctions for aggressors and effective legal remedies for victims, with a mere 5,6% of reported complaints of sexual violence resulting in a conviction by the French courts in 2023[154]. This highlights the passive attitudes of institutions in addressing this epidemic, as well as the systemic nature of such violence, through the role

[148] *Proposition de Loi Visant à Modifier la Définition Pénale du Viol et des Agressions Sexuelles* n°842, 2.
[149] Audrey Darsonville, 'Le procès des viols de Mazan, la banalité d'un procès de viol' (2024) 2 Intersections Revue Semestrielle Genre & Droit <https://revue-intersections.parisnanterre.fr/index.php/accueil/article/view/81/132> Accessed 13 January 2026.
[150] 'Violences faites aux femmes : des manifestations marquées par le procès des viols de Mazan' (Franceinfo, 23 November 2024) < https://www.franceinfo.fr/societe/violences-faites-aux-femmes/violences-faites-aux-femmes-des-manifestations-marquees-par-le-proces-des-viols-de-mazan_6915401.html> Accessed 8 January 2026.
[151] *Proposition de Loi Visant à Modifier la Définition Pénale du Viol et des Agressions Sexuelles* n°842.
[152] 'Mur de Femmages' (*Nous Toutes*) < https://www.noustoutes.org/mur-de-femmages-2025/ > Accessed 5 January 2026.
[153] Jill Radford, Diana EH Russel, *Femicide The Politics of Woman Killing* (Twayne Publishers 1992) 3.
[154] 'Le non-consentement entre dans la définition pénale du viol' (*Info gouv*, 30 October 2025) < https://www.info.gouv.fr/actualite/le-non-consentement-entre-dans-la-definition-penale-du-viol > Accessed 17 November 2025.

played by androcentric societal constructs in normalising and failing to protect women from such attacks by enforcing legislation that is notoriously restrictive.

The overarching goal of this new definition is to encourage a shift away from rape culture towards one of consent through the introduction of various conditions required to establish its existence, or lack thereof. According to the newly modified French Criminal Code[155]consent must be free, informed, specific, and revocable. Therefore, it can never be established under duress, nor in a situation of vulnerability or inferred from silence, and must always remain retractable. Under the previous legal framework, the threshold for establishing sexual assault or rape, required 'violence, coercion, threat or surprise'[156], whilst failing to include non-consensual acts which did not take place under these conditions. This highlights the restrictive approach of lawmakers in addressing sexual violence, as well as the burden placed on the victim in proving the veracity of such force. These conditions remain in the new provision as aggravating factors negating the possibility of consent; however, they are no longer required for the threshold of culpability to be met.

Furthermore, the legal requirement of ensuring free, informed, specific, and revocable consent contributes to closing the gap of the commonly used loophole of reasonable belief [157]. Here, it is important to draw a parallel with the infamous, and eerily similar, *DPP v Morgan*[158] out of the United Kingdom, which also orbited around marital rape and has garnered a reputation for its stance on the honest belief defence, as it was known at the time. Removing the possibility of slipping through the grasp of criminalisation by denying any intent of violation under the affirming belief of consent puts an end to hiding within the murky grey area shrouding this notion. According to the information report to the National Assembly, this grey area, in of itself, lies within the realm of non-consent[159].

Etching such a component into the definition of rape places greater power in the hands of the victim during the judicial process by shifting the focus to the actions of the perpetrator. Consequently, the importance that has long been given to a meticulous examination of the victim's conduct, often leading to vitriolic attacks on character and past interactions, will now be attributed to determining the measures taken by the accused to ensure consent was given. Such a shift was encouraged by Gisèle Pélicot during the landmark trial which she chose to make public in the aim of drawing attention to the perpetrators having committed these heinous acts. Removing the kaleidoscope of anonymity showcased the offenders not as hypothetical monsters removed from society, but as the wolves in sheep's clothing who live among us. As a result, the strong emphasis on consent visible in the new legal framework, opens the path to a system which fosters a more protective environment for victims and allows for an increased criminalisation of situations of vulnerability, marking a significant leap in improving the prevention, recognition, and reprehension of sexual violence.[160]

[155] *Code Pénal* (Dalloz 2025) art 222-22.
[156] *Code Pénal* (Dalloz 2021) art 222-22.
[157] Sexual Offences Act 2003, s 1(2).
[158] *DPP v Morgan* [1976] UKHL [1976] AC 182.
[159] *Rapport d'information, Délégation de l'Assemblée Nationale aux Droits et à l'Égalité des chances entre les hommes et les femmes sur la définition du viol* n°792, 21 January 2025.
[160] Ibid.

The power of law in shaping the narrative surrounding sexual violence

According to Emeritus Professor Margaret Thornton, there exists an intrinsic link between popular culture and the law, with both spheres exerting mutual influence over one another. [161] The law plays a vital role in shaping societal narratives and defining the ways in which we exist and interact by outlining the boundaries of what is, and is not, socially acceptable. However, it should be noted that woven into this discipline is a fundamental masculine perspective injecting this standpoint into the very foundations of society. Here, Catherine A. MacKinnon asserts 'the male point of view forces itself upon the world as its way of apprehending it'[162], drawing attention to the dominant position of the male viewpoint in all societal spheres and claiming that 'such law reflects a society in which men rule women'[163]. The omnipresence of these male ideals renders them invisible due to how deeply they are imbedded in all disciplines. This can be observed in both the legal framework pertaining to the restrictive criminalisation of sexual violence and the attitudes of wider society, referred to by the French National Assembly as a 'cultural problem which exceeds the legal sphere'[164]. As a result, fuelled by the interests of its male authors, the law has perpetually contributed to further entrenching exclusionary and unequal practices. The new provisions defining rape, therefore, work towards recalibrating such a longstanding power imbalance by introducing a more accurate reflection of the reality of sexual violence within the law, as well as widening the notoriously narrow path to judicial remedy.

Certain scholars, however, criticise such a heavy reliance on the law in working towards social transformation, following the idea that 'the master's tools will never dismantle the master's house'[165]. This current of thought can be seen in the writing of Carol Smart[166], who perceived the law as being impenetrable by other standpoints which rendered it impossible to challenge from within. Smart posited that social change, specifically a feminist approach, cannot be achieved by deploying the law as a tool to challenge the law because it amounts to a reinforcement of male ideologies, which, in turn, fails to protect those who do not fall within the scope of such interests.

Furthermore, Ngaire Naffine's work serves as a beacon for understanding this notorious 'man problem'[167] and the omnipresence of men 'whose wants and preoccupations have shaped the discipline of criminal law'[168], using *DPP v Morgan*[169] as an instrument to illustrate her argument. Her analysis was two-pronged and begun by highlighting the exclusion of women from the protection of criminal law through the doctrine of spousal immunity, rendering marital rape legal in the UK until 1992[170] and France until 1990 [171], which significantly reduced the scope of rape law by hinging criminalisation on legal status[172]. Naffine then went on to underline the dangers of a subjective *mens rea* through the honest belief defence and the implications of this discourse on the criminalisation of sexual violence.

---

[161] Margaret Thornton, *Romancing the Tomes: Popular Culture, Law and Feminism* (1st edition, Cavendish publishing 2002).
[162] Catherine A. MacKinnon, 'Feminism, Marxism, method and the state: towards feminist jurisprudence' (1983) 8(4) Signs: Journal of Women in Culture and Society 635, 636.
[163] Ibid, 645.
[164] *Rapport d'information, Délégation de l'Assemblée Nationale aux Droits et à l'Égalité des chances entre les hommes et les femmes sur la définition du viol* n°792, 21 January 2025, 15.
[165] Audre Lorde, *The Master's Tools Will Never Dismantle The Master's House* (Penguin Books 2018).
[166] Carol Smart, *Feminism and the Power of Law* (Routeledge1989).
[167] Ngaire Naffine, *Criminal Law and the Man Problem* (Bloomsbury Publishing Plc 2019) 5.
[168] Ibid.
[169] *DPP v Morgan* [1976] UKHL [1976] AC 182.
[170] *R v R* [1992] 1 AC 599.
[171] Cass crim. 5 September 1990, 90-83.786.
[172] Ngaire Naffine, *Criminal Law and the Man Problem* (Bloomsbury Publishing Plc 2019).

In the context of such a delicate issue, a non-comprehensive legal definition contributes to generating passive attitudes and rendering justice a mere mirage for victims. The outrage generated by the Pélicot case regarding the law's weak control over sexual violence prompted a reaction from legislators and served as the catalyst for reform and evolution. The new legal definition of rape in French Criminal Law, therefore, challenges the idea that the law and legal theory are domains solely reserved for men whilst simultaneously shining a light on the inequality which has long underpinned such definitions. Perhaps the hourglass biding time for the invisible men of law has run out at last.

A potentially fallible framework

The incorporation of consent into the legal definition of sexual assault and rape in French law indicates a deviation away from both rape culture and the rampant impunity and victim-blaming that permeate through the penal system. Nevertheless, the limits of what has traditionally defined consent have significantly expanded, with this term increasingly becoming assimilated to sexual autonomy and liberation. Consent is often regarded as the key to safe, and even pleasurable, sexual interactions; however, this interpretation is widely criticised by feminist scholars. For instance, MacKinnon views it, not as emancipatory[173], but as the very foundation for male domination in all areas of society. This, of course, does not deny the vital role consent plays in ensuring safety and bodily integrity. Yet, sexual pleasure is now widely regarded as hinging upon this rusty notion, putting the onus on women in ensuring partners are aware of what this pleasure entails[174].

Comparatively, Joseph J Fischel criticises the interpretation of consent as being a robust partition between permissible and non-permissible sex since it denies the occurrence of 'regretted, unpleasant, or even harmful' sex in the context of consensual interactions[175]. In the same vein, Janet Halley explains that with the rise of the affirmative consent movement, that is the 'active, explicit, mutual and voluntary agreement to participate in a sexual act'[176], the boundaries of consent are increasingly blurred, creating a hazy distinction between subjectively unwanted sex and non-consensual interactions, with the former being increasingly criminalised regardless of the intent of the accused[177]. This movement is, therefore, shadowed by political implications, promoting a conservative ideology of criminalisation and punishment[178].

In addition to pinpointing the critiques pertaining to such a heavy reliance on consent, it would be remiss to overlook the cultural aspect of the traction gained by the Pélicot case. As noted by Katherine Angel, 'rape convictions relating to white victims lead to more serious outcomes than those relating to black women'[179]. Here, she highlights the discriminatory and selective interpretations of consent and how this notion does not apply in the same manner for all victims, underlining the increased likelihood of US juries to deliver a guilty verdict if the victim is white[180]. The weight attached to the idea of consent fluctuates according to its subject, with the value of the necessary 'yes' being diminished according to the victim's race. Despite the historical reform in French Criminal Law prompted by the harrowing Mazan trial, the outcome would likely not have been the same had the victim been a woman of colour.

[173] Catherine A. MacKinnon, 'Feminism, Marxism, method and the state: towards feminist jurisprudence' (1983) 8(4) Signs: Journal of Women in Culture and Society 635.
[174] Katherine Angel, *Tomorrow Sex Will Be Good Again: Women and Desire in the Age of Consent* (Verso 2021).
[175] Joseph J Fischel, *Sex and Harm in the Age of Consent* (University of Minnesota Press 2016) 10.
[176] Oxford Pro Bono Publico, 'Affirmative Consent' in the Law of Sexual Offences in Commonwealth Jurisdictions (2024) 8.
[177] Janet Halley, 'The move to affirmative consent' (2016) 42 Signs: Journal of women in culture and society 257.
[178] Ibid.
[179] Katherine Angel, *Tomorrow Sex Will Be Good Again: Women and Desire in the Age of Consent* (Verso 2021) 12.
[180] Katherine Angel, *Tomorrow Sex Will Be Good Again: Women and Desire in the Age of Consent* (Verso 2021)

This is reminiscent of the lack of attention paid on the world stage to the atrocities suffered by women and girls during the Rwandan genocide in terms of sexual violence, with victims left to suffer life-long repercussions and stigma while the perpetrators of this sexual warfare faced no responsibility for their heinous crimes[181].

It is also imperative to note the wider context in which this reform is taking place, most notably the fallible and androcentric nature of the institutions that make up the criminal justice system. Until now, the judicial process in France had failed to provide effective remedies to victims of sexual violence. As was highlighted in the information report submitted to the National Assembly in January 2025[182], the structure of this process is designed to undermine and destabilise victims by discrediting their recount of events, all the while conditioning a successful outcome to a victim who fits a certain profile, excluding both women of colour and sex workers[183] whose consent is deemed automatic in the eyes of both the courts and society as a whole[184]. Furthermore, the perpetrator is expected to fulfil certain characteristics, rendering attacks committed by someone close to the victim or stemming from a middle or upper socioeconomic status much less appealing and credible to the judicial system[185]. In fact, rapists are rarely assimilated to the figure of the good father, good husband, and good worker[186] , but as deranged predators and outcasts. As with *DPP v Morgan*[187], the media discourse surrounding the Mazan rape trial repeatedly referred to Dominique Pélicot as the husband, rather than the perpetrator of vicious, violating acts. The connotations of this term erode the malicious and venomous traits which characterise men like Pélicot or Morgan and emanate ideas of domesticity, protection or partnership instead. The referral to these men as husbands plays directly into the erasure of painting men as offenders, as though these heinous acts were inflicted by abstract, nameless, shadowy figures who live on the outskirts of society.

Although the Pélicot case prompted important progress in the law, this reform must be accompanied by support from wider society through a shift in mentalities and social attitudes to be effective in practice and move away from a culture that has historically refused to believe victims. Finally, support from organisations dedicated to victims' rights, accompanied by increased resources dedicated to prevention and education, is essential when valuing a victim's place in the criminal justice system

Conclusion

The promulgation of the Law on 6 November 2025, modifying the definition of rape and sexual assault in the French Criminal Code, marks both a legally and culturally pivotal moment. This momentous pivot extends beyond French society, with the traction of the Pélicot case catapulting the discussion surrounding sexual violence into mainstream media and conversation around the world[188] and pushing the need for a renewed pathway to achieving justice for victims[189]. Altering this definition, along with

[181] Human rights watch, Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath (1996).
[182] *Rapport d'information, Délégation de l'Assemblée Nationale aux Droits et à l'Égalité des chances entre les hommes et les femmes sur la définition du viol* n°792, 21 January 2025.
[183] Molly Smith, Juno Mac, *Revolting Prostitutes: The Fight for Sex Worker's Rights* (Verso 2018).
[184] *Rapport d'information, Délégation de l'Assemblée Nationale aux Droits et à l'Égalité des chances entre les hommes et les femmes sur la définition du viol* n°792, 21 January 2025.
[185] Véronique Le Goaziou, 'Les viols en justice : une (in)justice de classe ?' (2013) 32 Nouvelles questions féministes, 16.
[186] Gisèle Halimi, *Viol. Le procès d'Aix* (Gallimard 1978).
[187] *DPP v Morgan* [1976] UKHL [1976] AC 182.
[188] Catherine Porter, Ségolène Le Stradic, 'France's Horrifying Rape Trial Has a Feminist Hero' The New York Times (Avignon, 25 September 2024) < https://www.nytimes.com/2024/09/25/world/europe/france-rape-trial-gisele-pelicot.html> accessed 8 January 2026.
[189] 'Mazan rape trial: Scale of abuse and violence committed must serve as wake-up call, says Special Rapporteur' (*United Nations Human Rights Office of the High Commissioner,* 24 December 2024) <

drawing attention to the shortcomings of the criminal justice system, promotes a shift from 'rape culture to a consent culture'[190], by working towards dismantling many of the obstacles that hinder criminalisation, particularly the ambiguity surrounding the establishment of consent and the weight placed on scrutinising the victim's actions. As a result, this demonstrates the power of the law and its ability to achieve social transformation through encouraging discussions outside of the legal sphere.

However, as many scholars have noted, the significance attached to the notion of consent falters depending on the victim, often leaving women of colour and sex workers unprotected when going through the judicial process. Despite the magnitude of this reform and the shift it reflects in the legal sphere and beyond, it must be accompanied by a swaying of the narrative surrounding rape culture in the criminal justice system and governing institutions, as well as throughout society.

Given the recent introduction of this legal framework, it will be interesting to follow its application and effectiveness in practice.

https://www.ohchr.org/en/press-releases/2024/12/mazan-rape-trial-scale-abuse-and-violence-committed-must-serve-wake-call> accessed 11 January 2026.

[190] Soizic Bonvarlet 'Legal Definition of Rape: "Changing the Paradigm" by Integrating the Notion of Non-Consent' (*LCP*, 21 January 2025) < https://lcp.fr/actualites/definition-penale-du-viol-changer-de-paradigme-en-integrant-la-notion-de-non> accessed 8 January 2026.

DO "PEOPLE'S COURTS" DELIVER JUSTICE? RETHINKING LEGALITY AND LEGITIMACY BEYOND THE WOMEN'S INTERNATIONAL TRIBUNAL ON JAPANESE MILITARY SEXUAL SLAVERY

Biba Reay

Abstract

This essay contends that people's courts can deliver justice despite lacking formal legal authority. It challenges state-centric views of international criminal law that reduce justice to punishment, instead framing justice as recognition, dignity, and advocacy. Focusing on the Women's International Tribunal on Japanese Military Sexual Slavery, the essay demonstrates how formal institutions historically marginalized gendered and Global South harms, and how people's tribunals function as corrective mechanisms by centering survivor testimony and affirming responsibility where states failed to act. Although lacking binding force, their legitimacy derives from their moral and jurisprudential impact, representativeness, and their capacity to restore dignity and reshape legal understandings of sexual violence.

Introduction

People's courts, or people's tribunals, sit uneasily within positivist conceptions, referring to understandings of law grounded in authoritative sources, rather than moral or social outcomes of international criminal law and justice. Unlike formal courts, they operate as informal systems that are not supported by state institutions[191], lacking the jurisdiction and enforcement power. People's courts not only address technical failures in state systems, such as political unwillingness, but challenge the idea that international law belongs exclusively to states, insisting instead that affected communities can interpret and shape international law[192]. The Women's International Tribunal on Japanese Military Sexual Slavery illustrates the interventionist function. After decades of silence from the Japanese state, convened by civil society rather than states, the tribunal investigated and pronounced judgement on Japan's system of forced military sexual slavery during World War two. For critics, as people's courts 'are not legal mechanisms' they are therefore inherently illegitimate and lack the authority to 'bring about justice'. However, this essay will challenge this view and argue that while people's courts lack formal enforceability and legal mandate, they serve essential justice functions that formal legal systems have historically neglected. This will be revealed by first considering what justice means in international criminal law, overall arguing that justice extends beyond courts, punishment and state authority. Secondly, it will explain why the quote is critical of people's courts focusing on legitimacy, and thirdly it will examine how people's courts do deliver many forms of justice, particularly around gendered harms where formal institutions have systematically failed and through recognition. Overall arguing that people's courts are vital components that fill the gap where formal, 'legal mechanisms' fall short.

[191] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 202.

[192] Andrew Byrnes and Gabrielle Simm, *Peoples' Tribunals and International Law* (1st edn, Cambridge University Press 2017) '1.2 What Are Peoples' Tribunals?'.

What is Justice in International Criminal Law?

Kelly explains justice as demanding those who commit crimes to be held accountable as well as aiming "to achieve socioeconomic justice, democratic equality, and reparations for historical wrongs."[193] In criminal law, this idea of individuals being held accountable for crimes they commit relies heavily on punishment delivered through state authority. This is illustrated within International Criminal law (ICL) which "prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission."[194] In other words ICL, grounded in state consent and sovereignty, involves a set of legal rules and principles that identifies, investigates and prosecutes the most serious crimes, such as genocide, crimes against humanity, war crimes, torture, etc. The justice aspect of ICL therefore aims to hold individuals accountable for heinous acts, through punishment, hoping to prevent future violations. Under this framework, justice within ICL often prioritises punishment over recognition, perpetrators over victims and legal certainty over moral truth. Bassiouni explains that international criminal justice processes historically have shown "a tension between the interests of power and wealth represented by states and the commonly shared moral and social values of the international community."[195] This is displayed where, historically, sexual violence during war was dismissed as an inevitable byproduct of conflict rather than a prosecutable offence[196], leaving survivors without recognition or remedy. Additionally, Dr Sheri Labenski explained that definitions of rape did not exist in international criminal law until the case of Akayesu.[197] These highlights how the laws development is political and often belated overall suggesting how justice should not only be punitive but should also focus on recognition and validation. Transitional justice scholarship supports this broader understanding. Ruti Teitel characterises justice after atrocity as a plural process encompassing truth-telling, narrative reclamation and collective memory[198]. Justice is thus a multilayered concept that includes but is not limited to formal legal processes and punishment. When legal systems fail justice must be pursued through other arenas. As Chinkin asserts, people's courts 'do not have the authority or power of the state behind them but rather seek to find new ways to speak truth to power.'[199] Consequently, arguing that people's courts arise precisely to deliver justice where formal legal methods fail.

Why Peoples Courts are often criticised

The claim that people's courts 'do not bring about justice' as they are not 'legal mechanisms' is most persuasively grounded in concerns of legitimacy and authority. Within ICL legitimacy is traditionally

---

[193] Erin I. Kelly, 'What is Justice' (2020) 18 Georgetown Journal of Law and Public Policy 1, 1.
[194] International Committee of the Red Cross (ICRC), 'General principles of international criminal law' (May 2021) <https://www.icrc.org/sites/default/files/document/file_list/general-principles-of-criminal-law-icrc-eng.pdf> accessed 28 Jan 2026.
[195] M. Cherif Bassiouni, 'Perspectives on International Criminal Justice' (2010) 50 Virginia Journal of International Law 270, 271.
[196] Kelly D. Askin, 'The Quest for Post-Conflict Gender Justice' (2003) 41 Columbia Journal of Transnational law 509.
[197] *The Prosecutor v. Jean-Paul Akayesu* (Trial Judgment) ICTR-96-4-T (2 September 1998).
[198] Bronwyn Leebaw, 'Book Review: Transitional Justice by Ruti Teitel' (2001) 49 The American Journal of Comparative Law 363.
[199] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 212.

understood as deriving from state consent. Any institutions legitimacy may come from a variety of factors such as "its institutional origins, membership, normative framework, procedures, the nature and weight of the evidence it considers, the cogency of its analysis, its functions, expectations among the constituencies to which its activity is relevant and its impact."[200] Peoples courts, however, are convened by civil society actors or advocacy groups rather than states. As a result, critics argue that they lack the institutional legitimacy necessary to deliver justice in a legal sense. Without jurisdiction recognised by states, their findings have no binding force and cannot compel compliance or punishment. In turn, justice under this view is inseparable from enforceability. However, Byrnes and Simm argue that "the emanation of a tribunal from the font of state authority is neither a necessary nor sufficient criterion of legitimacy." [201] They explain that even formally constituted international courts struggle to secure compliance with their decisions. An example of this is in Nicaragua v. United States where the United States withdrew from the International Court of Justice proceedings refusing to participate in the merits phase[202]. This case demonstrates that state authorisation and 'legal mechanisms' don't always guarantee effectiveness or legitimacy in practice and if legitimacy is measured by compliance and impact rather than formal origin, the distinction between people's courts and state created courts becomes less clear. Additionally, Byrnes and Simm assert that people's courts legitimacy doesn't come from state authority but from their ability to represent affected communities, the seriousness of their investigations, the quality of the evidence they consider, the procedures they carry out and their reasoned decision-making[203]. Cheah also explains that the legitimacy of people's courts shouldn't be judged by whether they adhere to traditional legal standards but by how effectively they expose weaknesses in formal accountability mechanisms[204]. Overall suggesting that the way in which legitimacy is assessed shouldn't be based entirely on state authority, raising questions of whether state consent is a sufficient marker of justice.

How Peoples Courts deliver justice

People's courts exist precisely because formal systems have failed. We can see this through the emergence of the Tokyo Tribunal from sustained state failure. For over 50 years following World War two, no state or international institution prosecuted Japanese sexual slavery with lawsuits brought against the Japanese government being ultimately dismissed by the Supreme Court[205]. Chinkin clarifies that many barriers the women faced, including 'those of diplomacy and politics, the lack of available legal arenas and the powerlessness of those who are marginalised by their gender, class, nationality and poverty'[206] made certain they stayed invisible. This absence of legal accountability was not accidental but structural as cold war politics made prosecuting Japan undesirable. Additionally, it is clear that entrenched patriarchal assumptions rendered sexual violence invisible in international law. Feminist legal approaches as well as Third World Approaches to International Law (TWAIL) have long criticised ICL.

---

[200] Andrew Byrnes and Gabrielle Simm, *Peoples' Tribunals and International Law* (1st edn, Cambridge University Press 2017) '1.7.1 Legitimacy and Authority'.
[201] Ibid.
[202] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. USA) (Jurisdiction and Admissibility)* [1984] ICJ Rep 392.
[203] Andrew Byrnes and Gabrielle Simm, *Peoples' Tribunals and International Law* (1st edn, Cambridge University Press 2017) 1.7.1 Legitimacy and Authority.
[204] W.L. Cheah, 'The potential and limits of peoples' tribunals as legal actors: revisiting the Tokyo Women's Tribunal' (2022) 13 Transnational Legal Theory 8,13.
[205] Erika Miyamoto, 'Comfort Women and Sexual Slavery in International Law: Seeking Justice and Reparations' (PhD International Law, University of Barcelona 2023).
[206] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 202.

Vasiliev asserts that these types of criticism essentially call into question ICL's ethical and intellectual qualifications, its morality and its reasoning[207]. Feminist legal approaches aim to address and change the historically male-centered character of ICL which has traditionally devalued crimes that disproportionately affect women and marginalized their experiences. As of 2017, only 8 cases of sexual violence have reached trial at the International Criminal Court,[208] showing how, despite improvement, even in today's age there are systemic issues within ICL. Moreover, TWAIL aims to address Eurocentric biases, systemic power disparities, and colonial legacies found in ICL. Mutua asserts that international law is "a predatory system that legitimises, reproduces and sustains the plunder and subordination of the Third World by the West."[209] If international criminal law is inherently influenced by power, wealth, patriarchal and Western views then how are marginalised individuals meant to seek justice? Insisting justice can only be brought about through 'legal mechanisms' that are state driven amounts to accepting the exclusion that created the injustice to begin with. Therefore, this is where people's courts come into play.

A clear way in which people's courts deliver justice is through truth-telling, recognition and restoring dignity. Chinkin explains that people's courts "draw heavily on truth telling through oral testimony presented to a panel or a 'jury of conscience'."[210] For instance, the Women's Tokyo Tribunal gathered testimony from survivors across Asia, documented patterns of abuse and established a historical record grounded in women's voices. During the tribunal seventy-five of the women who had suffered sexual slavery at the hands of the Japanese military attended and many provided detailed evidence of the atrocities they endured[211]. For many of the survivors being heard publicly and globally likely constituted the first real acknowledgement of their suffering after decades of denial. This form of justice is particularly significant because recognition itself carries normative weight as by naming the harms and situating them within the language of international law, the Tribunal affirmed that the women's experiences were not private misfortunes but serious violations of international concern. This, in turn, restored dignity to individuals who had been systematically marginalised from legal processes. As Byrnes and Simm assert "[d]ignity is an important value that peoples' tribunals see themselves restoring to those who demand justice before them."[212] Through this emphasis of truth-telling, peoples courts challenge official denial, contribute to collective memory and bring justice to victims through dignity and recognition rather than punishment. Moreover, because they are not formed by the state they don't have to fit into the rigid framework of a formal judicial process and can be easily tailored to the specific problem at hand.[213] This therefore shifts authority towards those directly affected by serious crimes and away from states, whose prioritisation of personal interests and high-level perpetrators can often leave victims to serve only as witnesses. Marconi also notes how the Women's Tokyo Tribunal "recognised the

---

[207] Sergey Vasiliev, 'The Crises and Critiques of International Criminal Justice' in KJ Heller et al. (1st eds), *The Oxford Handbook of International Criminal Law* (OUP 2020).
[208] Sarisha Harikrishna, 'Justice Delayed is Justice Denied: A Feminist Critique of the International Criminal Court's Failure to Prosecute Sexual and Gender-Based Violence' (*Human Rights Research Centre,* 2025) < https://www.humanrightsresearch.org/post/justice-delayed-is-justice-denied-a-feminist-critique-of-the-international-criminal-court-s-failure> accessed 29 January 2026.
[209] Makau Mutua, 'What is TWAIL?' (2000) 94 Proceedings of the ASIL Annual Meeting 31.
[210] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 212.
[211] Christine M. Chinkin, 'Women's International Tribunal on Japanese Military Sexual Slavery' 95 The American Journal of International Law 335, 337
[212] Andrew Byrnes and Gabrielle Simm, *Peoples' Tribunals and International Law* (1st edn, Cambridge University Press 2017) "1.3 The Dignity of Victim-Witnesses Claiming Justice".
[213] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 212.

acts of violence against women during armed conflicts as constituting violations of international law,"[214] thereby bringing international attention to a phenomenon that is typically overlooked in peace agreements[215] and advancing international understandings of sexual violence. Overall, by centering survivor testimony, restoring dignity and redistributing authority away from the state, people's courts demonstrate how justice can be meaningfully realised through recognition and participation even in the absence of formal 'legal mechanism[s]'.

Conclusion

In conclusion, the assertion that people's courts cannot 'bring about justice' as they are not 'legal mechanisms' adopts a narrow, state-centric view of justice. This view fails to account not only for contexts in which legality becomes an obstacle but also for this idea that the law has historically been shaped by white males in the Western world. The Women's Tokyo Tribunal demonstrated that justice is multidimensional and must focus on recognition of those who have been marginalised. While it could not imprison the perpetrators that caused immense suffering, it named crimes ignored for half a century, provided survivors with dignity and a voice and advanced international understandings of sexual violence. In other words, it did what states and international courts refused to do. People's courts are not replacements for formal institutions, nor do they claim to be. They are, however, an "act of defiance"[216] and a corrective mechanism that aims to address forced silence and systemic failure. If justice is understood not merely as punishment but as recognition, then people's courts undeniably deliver. Therefore, by asserting accountability where formal institutions have failed, they remind us that justice cannot be monopolised by the state when the state itself is implicated in silence.

[214] Rachele Marconi, 'Solidarity and Justice for War Crimes Against Women: The 'Comfort Women' Case' (2022) Centre for Women, Peace and Security LSE Research Paper 28/2022, 13 <https://www.lse.ac.uk/women-peace-security/assets/documents/2022/WPS28Marconi.pdf> accessed 29 January 2026.

[215] Ibid.

[216] Christine M. Chinkin, 'Peoples' Tribunals: Legitimate or Rough Justice' (2006) 24 Windsor Yearbook of Access to Justice 201, 212.

BALANCING SECURITY AND LIBERTY: THE CONSTITUTIONAL IMPACT OF UK COUNTER-TERRORISM LEGISLATION

Nina Lago Burity

Abstract

This essay critically examines the extent to which UK counter-terrorism legislation effectively balances national security and civil liberties. It argues that, although anti-terror laws are consistently justified as necessary responses to evolving security threats, particularly in the aftermath of 9/11 and 7/7, their expansion has progressively lowered the thresholds for criminal liability and broadened executive discretion in ways that strain fundamental constitutional principles. Ultimately, the article concludes that the UK's counter-terrorism framework has shifted from targeted, temporary emergency measures to expansive, permanent preventative powers. While national security remains a legitimate and pressing concern, the cumulative effect of low statutory thresholds, diminished intent requirements, and broad executive discretion poses a threat to civil liberties and our democratic freedoms. Reforming and recalibrating these measures would not weaken national security; rather, it would restore the primacy of ordinary criminal law principles, strengthen proportionality, and reassert constitutional limits on state authority.

Introduction

Since the expansion of police powers and the scope of anti-terror legislation, due to the 9/11 and 7/7 attacks, academics and practitioners have questioned the effectiveness of the counter terrorism legislation with regards to security and the protection of civil liberties. This article will begin by contextualising the anti-terror legislation in the aftermath of 9/11 and 7/7, looking at these attacks as catalysts for the broadened and harsher legislation. We will then assess previous models of criminalisation of terrorism. Furthermore, examining how effective anti-terrorism laws are in balancing security measures with the protection of civil liberties. Finally, to find that although anti-terrorism legislation is often presented as essential to national security, the UK's anti-terrorism laws have produced thresholds that are subjective and inconsistent with ordinary criminal law practices. Thereby, modifying and scrutinising these measures would therefore not amount to a weakened level of security in the UK, instead, it would restore the primacy of ordinary criminal law principles, thereby strengthening civil liberties and re-establishing proper limits on state authorities.

Section 1: Contextualising anti-terror legislation

Understanding anti-terrorism legislation requires recognising the political pressures and security threats that reflect a gradual shift from emergency legislation to preventative intelligence-based models. The first instance where 'terrorism' was explicitly legislated was following the 1970 IRA attacks, which led to the Prevention of Terrorism (Temporary Provisions) Act 1974. The act was designed specifically to counter terrorism in direct response to the Birmingham pub bombing. It introduced Draconian, temporary measures, including proscribing organisations, exclusion orders, and extended detention powers, in order to combat such acts fuelled by the tensions in Northern Ireland at the time. Prior to this, 'terrorism' or politically motivated crimes were dealt with under ordinary criminal law. However, this 1974 act differed from more recent legislation (2000s onwards), because the Prevention of Terrorism Act was not a permanent framework. This meant that the provisions and powers enabled through the legislation were reviewed annually. This allowed for further scrutiny by Parliament and a limited scope of powers. Comparitively, the aim of post-2000 legislation, shaped by transnational terrorist attacks like the 1993 World Trade Centre attack and the rise of Al-Qaeda, sought to concretely define terrorism and provide a blanket of permanent preventative measures.

The 2000 Terrorism Act[217] defines terrorism as 'the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear'. Focusing on border control, surveillance and intelligence, all in line with the broad statutory definition of terrorism. Notably, Schedule 7 of the act allows examining officers (police, immigration, or customs) to stop, question, search, and detain individuals at ports, airports, and border areas without reasonable suspicion. Furthermore, the notion of 'stop and search' has been criticised as becoming 'the go-to power for social control, and one that is influenced by unconscious biases or

[217] Terrorism Act 2000

outright racial prejudices'[218]. Thus, with this in mind, it is clearly evident that due to the 2000 Act, Black people were subjected to stop and search policies at a rate of 4 times that of white people, as per the Macpherson Report. Later, post 9/11 legislation shaped key themes in legislation, notably, preventative policing, expansive definitions of terrorism and even broader intelligence powers. More recently, the expansion of the internet has driven legislation targeting radicalisation, notably through the criminalisation of preparatory acts, the removal of online content, and community-based prevention programmes. As a result of this ever-growing framework, there have been increasing concerns regarding privacy, proportionality and the erosion of civil liberties.

Section 2: How effective is anti-terror legislation?

For the purposes of this essay, 'effective' legislation refers to the achievement of aims in line with proportionality, thus ensuring that counter-terror measures deliver genuine security benefits without imposing unnecessary or excessive limits on individual rights. The proportionality assessment in counter-terrorism works on 4 stages:

1. Does the legislation pursue a legitimate aim?
2. Is it suitable for achieving that aim?
3. Is it necessary, and
4. Does it strike a fair balance between the aim and the rights it limits?

On this basis, it is important to consider whether the current legislative framework delivers its genuine aims. The disruption of 39 late-stage plots, since 2017, compared to 15 domestic terrorist attacks[219], suggests that the UK's preventative framework has had measurable operational success. However, this also indicates that a significant majority of identified threats are interdicted before materialisation. The question, therefore, becomes whether the breadth of surveillance powers exercised across the entire population is proportionate to a threat environment in which most plots are already detected and disrupted. Subsequently, illustrating that preventative measures can deliver meaningful security benefits. However, this success has relied on expansive surveillance and security frameworks, such as those created by the Counter-terrorism Acts, whose intrusive investigatory powers raise concerns about whether the scale of information collection is truly proportionate to the threat. Waldron warned that giving state officials more power may not make much difference in reducing the risk of terrorism, but instead will "make them more effective in the somewhat easier task of acting oppressively towards vulnerable political dissents at home"[220]. Once the government is granted these extended powers, whilst they can be used to address the unpredictability of terrorism, they generally will expand the government's ability to control its citizens, further limiting their civil liberties.

These concerns are further reinforced when considered alongside the Terrorism Acts, which, over time, have broadened the scope of the UK's counter-terrorism framework. The Terrorism Act 2000 aimed to create a statutory definition of terrorism whilst also modernising the UK's counter-terrorism laws through flexibility and broad language. These measures included the proscription of organisations whose "use or threat is designed to influence the government, or an international governmental organisation**,** or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause"[221]. Critical scholarship warned that this scope risks capturing forms of civil resistance not traditionally understood as terrorism. This is evident in the formal proscription of Palestine Action as a terrorist organisation under the Terrorism Act 2000. The Acts' broad language facilitates extension to protest movements, as police guidance states that Palestine Action protests "meet the threshold set out in the statutory tests under the Terrorism Act 2000," especially "serious damage to property" and "threats to UK national security"[222]. Accordingly, the thresholds established by the 'statutory tests' are incredibly low, meaning that criminal liability extends not only to acts of property damage but also to passive membership and support. This, in turn, raises questions about whether it is

[218] HC Deb (Westminster Hall) 23 May 2018, vol 641, col 9.30–10.56 (Naz Shah MP) (contribution on *BAME Communities: Stop and Search*) https://hansard.parliament.uk/commons/2018-05-23/debates/AF056653-2F63-4BDD-A210-3FE7B5444AF9/BAMECommunitiesStopAndSearch accessed 1 December

[219] Home Office, *Terrorism (Protection of Premises) Bill: Overarching Factsheet* (2023)

[220] Lucia Zedner , 'Terrorizing Criminal Law' [2014] CLP 99, 103

[221] Terrorism Act 2000

[222] North Wales Police, *2025/760 – Palestine Action policing guidance* (3 September 2025) <www.northwales.police.uk/SysSiteAssets/foi-media/north-wales/disclosure-2025/2025-760-palestine-action-policing-guidance.pdf > accessed 1 December 2025

proportional to infringe on the right to freedom of expression[223] and freedom of assembly[224] when individuals are considered a "threat" without causing actual harm or insecurity to society. This is further exacerbated by the recent High Court ruling that the government's decision to proscribe Palestine Action under the Terrorism Act 2000 was unlawful as it was disproportionate and failed to properly apply the Home Office's own policy criteria. The court found that while some individual acts could fall within the statutory definition of terrorism, the group's overall conduct did not meet the high threshold required to justify proscription, particularly given the severe consequences for freedom of expression and association under human rights law. It also held that ordinary criminal law was sufficient to address unlawful acts, making the use of terrorism powers unjustified in this case. The judgment therefore underscores a structural tension within the UK's counter-terrorism framework, the conflict between executive discretion and public law restraints. This reinforces the concerns that an overly expansive interpretation of the statutory test risks conflating disruptive protest and property damage with terrorism, thereby eroding the principled boundary between political dissent and violent extremism. Subsequently, intensifying the constitutional tension with the rights to freedom of expression and assembly.

This expansion, however, is not limited to the Terrorism Act 2000, but is extended by later legislation through the Counter-terrorism and Border Security Act. Offences under the 2019 Act now include reckless support for proscribed organisations and the mere viewing of online material that is "likely to be useful" to terrorism. Thus, it reinforces the move towards low-threshold criminalisation, echoing Stoughton's view that such frameworks "transform an act that is not inherently harmful into one sufficiently associated with harm to be punishable". However, the government argue that, with the rise of the internet, the offence aims to address the challenging issue that modern terrorism, unfortunately, employs incredibly slick recruitment videos. Although this raises the question of whether it is truly justifiable to "criminalise the haystack to find the needle", as Waldron puts it, especially when the frameworks are ambiguous and highly subjective without specific intent. As a result, the absence of specific intent, a key safeguard against infringements on civil liberties, both facilitates the silencing of dissent and creates uncertainty in the law's application. This is evidenced by the departure from earlier case law, R v Choudary and Rahman, where liability required the "knowing invitation of support", symbolising the importance and erosion of specific intent as a protective factor in expression-related offences. Consequently, the shift from standard specific intent requirements to lower, reckless thresholds raises concerns about who truly constitutes a "threat" to the public and whether such measures are proportionate. This development must also be considered within the broader constitutional landscape in which counter-terrorism powers increasingly operate at the intersection between security and political expression. By lowering the mental element (mens rea) required for liability, the Counter-Terrorism and Border Security Act 2019 amplifies the preventative logic already embedded in the Terrorism Act 2000, extending criminal responsibility further into the realm of curiosity and ambiguous online engagement. Thus, it risks generating a chilling effect whereby individuals refrain from engaging with controversial political material, academic research, or protest movements for fear of falling within broadly framed statutory tests. The effect of this is an imbalance between liberty and security whereby precautionary governance overshadows the traditional criminal law principle and core aspects of civil liberties that underpin our fundamental freedoms

Furthermore, these tensions are amplified when examining counter-terrorism strategies, such as the UK's Prevent framework, which has been widely questioned. Introduced as a statutory duty under the Counter -terrorism and Security Act 2015, the Prevent strategy aims to "stop people becoming terrorists"[225]. However, in order to achieve its purpose, it requires schools, universities and hospitals, among other institutions, to identify and refer individuals at risk of radicalisation. Thus, whilst we can say that the aim is legitimate, the different aspects of proportionality are questioned. In line with suitability, the Prevent referral system relies on the individual's subjective judgment. In turn, given the widespread ignorance of what constitutes terrorism and who is a terrorist, it is no surprise that the main referrals have been Muslims and neurodivergent children and adults. Recent statistics[226] show that 36% of referrals in the year ending 31 March 2024 were for individuals with "vulnerability present but no ideology or CT risk", in other words, those who are neurodivergent. Further, in the time period, the number of Islamist referrals increased by 17% (following the 7th of October attack). As a result, this exemplifies how existing social

[223] Human Rights Act 1998, s 10
[224] Human Rights Act 1998, s 11
[225] Home Office, *Prevent duty guidance: England and Wales (2023)* (updated 6 March 2024) <https://www.gov.uk/government/publications/prevent-duty-guidance> accessed 1 December 2025.
[226] Home Office, Individuals referred to and supported through the Prevent Programme, April 2023 to March 2024 (HC 2024/1234, 5 December 2024)< https://www.gov.uk/government/statistics/individuals-referred-to-prevent-to-march-2024/individuals-referred-to-and-supported-through-the-prevent-programme-april-2023-to-march-2024 >accessed 1 December 2025.

biases, combined with the widespread effects of geopolitical events, play into subjective incentives in the context of these referrals, rather than being rooted in objective evidence. Consequently, this mechanism is both disproportionate and blatantly unjust as it infringes on an individual's right to freedom of religion[227] and respect for private life[228]. Moreover, there is substantial evidence that the Prevent strategy is not only an intrusive system of surveillance but also one of censorship. For instance, in 2018, the University of Reading flagged an essay about the ethics of the socialist revolution as "security sensitive", meaning that, firstly, only students on the course could read it and only in secure settings, whilst other universities were cautious in including historically significant Muslim books[229] in their teaching. This is demonstrative of how Prevent infringes on lawful expression, protected by Article 10[230], through the application of low threshold tests, which are fundamentally disproportionate in a democratic society that values open debate and learning. This further highlights the imbalance and erosion of our fundamental freedoms to expression, assembly and thought.

Conclusion

In conclusion, the UK's counter-terrorism framework has evolved from temporary, emergency measures into a permanent system of broad powers, where the thresholds for state intervention are increasingly low. Initially designed to respond to immediate threats, these measures now allow pre-emptive action, extensive surveillance, and forms of detention that often bypass the rigorous evidentiary standards of ordinary criminal law. While these powers are justified on national security grounds, evidence indicates that the marginal gains in security are limited and frequently come at the expense of proportionality and civil liberties. Practices such as preventive detention, stop-and-search without reasonable suspicion, and mass data collection may yield intelligence, but they risk undermining public trust in the legal system and can blur the line between exceptional and everyday state authority.

In contrast, ordinary criminal law, when combined with the capabilities of modern intelligence services, provides sufficient tools to investigate and prosecute terrorism effectively while preserving fundamental legal safeguards. Judicial oversight, clear evidentiary thresholds, and procedural transparency ensure that interventions are proportionate and predictable, reinforcing both public legitimacy and operational effectiveness. Reforming counter-terrorism legislation would not compromise security. Rather, it would restore legal certainty and the rule of law, ensuring that extraordinary powers are genuinely reserved for extraordinary circumstances rather than normalized into routine practice. This recalibration would achieve a more balanced framework, safeguarding rights while maintaining the state's ability to respond to genuine threats.

[227] Human Rights Act 1998, s 9
[228] Human Rights Act 1998, s 8
[229] Kenan Malik, 'Prevent doesn't stop radicalisation, and the Shawcross plan will just make it worse' *The Guardian* (London, 12 February 2023)< https://www.theguardian.com/commentisfree/2023/feb/12/prevent-doesnt-stop-radicalisation-and-the-shawcross-plan-will-just-make-it-worse >accessed 1 December 2025.
[230] Human Rights Act 1998, s.10

THE POSSIBILITY OF UNGOVERNABLE SPACE: HOW ROUGH POLITICAL ACTORS HARNESS UNGOVERNABLE GEOGRAPHIES TO CREATE NEW WORLDS

James Morton

Abstract

This article uses the theoretical framework of Michel Foucault's heterotopias and Hakim Bey's work on Temporary Autonomous Zones to explore how rough political actors, those who influence politics from outside of accepted legal and moral frameworks, harness areas of land, sea and cyberspace in attempts to create new worlds. Initially the work of Foucault and Bey are extrapolated before each geography is investigated, with case studies used to illustrate the theories applicability to liberation attempts. For the exploration of land, the FARC's carving out of autonomous space in the jungle of Colombia is compared with the actions of the Zapatista's in Mexico. Moving to the sea, we explore historical piracy and the contention that pirates used the sea to create 'free enclaves.' While cyberspace is explored through hacktivism, online piracy and social networks.

Introduction

"…the boat is a floating piece of space, a place without a place, that exists by itself, that is closed in on itself and at the same time is given over to the infinity of the sea…" – Michel Foucault, 1967, p. 9

"…whole mini-societies living consciously outside the law and determined to keep it up, even if only for a short but merry life." - Hakim Bey, 1991, p. 97

This article explores the ways in which certain rough political actors use ungovernable geographies to create new ways of being, outside of contemporary law and the purview of the state. The term 'rough political actor' refers to those who influence politics from outside of traditional means in potentially illegal, unusual or violent ways.

The two central theories that will allow us to unpack the central claims of the essay are Michel Foucault's concept of Heterotopia (1967) and Hakim Bey's concept of the Temporary Autonomous Zone or TAZ (1991). Foucault describes Heterotopias as sights of the 'other,' spaces outside of the mainstream with "something like counter-sites, a kind of effectively enacted utopia in which the real sites… are simultaneously represented, contested, and inverted." (Foucault, 1967, p. 3). A TAZ is a sight of temporary autonomy that shifts and moves. It is "a guerilla operation which liberates an area (of land, of time, of imagination) and then dissolves itself to re-form elsewhere-else when, *before* the State can crush it." (Bey, 1991, p. 101).

The case studies and examples used to unpack this will be firstly that of guerillas. Principles of guerilla warfare will be expanded upon before delving into the case of the FARC in Colombia, their carving out of autonomous space in the jungle, the creation of a heterotopia and the dialectical relationship their autonomous space had with the stateThis will be contrasted against the demands for concessions of autonomy made by the Zapatistas (EZLN) in Mexico.

Following this, I will move away from fixed physical space to explore the ungovernable sea through Hakim Bey's TAZ and exploration of historical piracy. This will also be explored through the work of

David Graber and Shannon Dawdy, exploring how historical piracy, in the words of Hakim Bey, created and enabled us to see the potential of "free enclave" (Bey, 1991, p. 99) gaps in the system which allow for the creation of anarchist possibilities for living.

Our final exploration will move away from physical space altogether to embrace the internet. I will first cover the internet's emergence as a heterotopia of contemporary society. Next, I will cover how actors, such as digital pirates and hacktivists, aim to create spaces for liberation in both the physical and digital world

Guerillas, the Zapatistas and New Societies within the Old

The Fuerzas Armadas Revolucionarias Colombianas (FARC) were a Marxist-Leninist Guerilla group founded in 1964.They emerged out of Colombia's 'La Violencia' period of violent civil war between 1948 – 1958 (Leech, 2011).

The group operated through traditional guerilla tactics, largely based in jungle areas, while living amongst peasant communities. They sought to utilise the state's lack of familiarity with the terrain as a means to work against the state. Echoing prominent Marxist-Leninist Mao as Guerilla troops necessitated "a precise conception of the political goal of the struggle and the political organisation to be used in attaining that goal." (Tse-Tung, 2015, p. 58).

As part of peace negotiations after the growth in the FARCs power during the 1980s – 1990s, Colombia's president at the time, Andrés Pastrana, granted the FARC a 42,000 km² demilitarised zone in the south of Colombia (mainly in the departments of Meta, Caquetá, Guaviare, Putumayo). Referred to throughout the rest of this essay as the ZDD (La Zona de Despeje) (Leech, 2011). Although created for the purposes of negotiation, the zone existed as an autonomous area governed by the FARC until its destabilisation in 2002. The FARC therefore maintained their presence and contested the space until the peace deal of 2016 (Field, Burgos, 2024).

Foucault's concept of heterotopia is pertinent here. Foucault characterised heterotopias as existing within and inside of society, stating that "heterotopias always presuppose a system of opening and closing, that both isolates them and makes them penetrable." (Foucault, 1967, p. 7). Heterotopias can be: a cemetery, a space of inactivity of reflection on mortality, within a city; a garden, the juxtaposition of the city in a single space; a museum or library, in which time is eternal and frozen; or a boat 'a floating piece of space' (p.9). Heterotopias break time, juxtapose the mainstream, offer an alternative and allow us other possibilities with the suspension of the normative in a limited space. The ZDD could be thought of as a heterotopia of scale, within Colombia.

In their dialogue, Felix Burgos and Les Field discuss Burgos's time living in the ZDD. Burgos's reasons for moving were to "witness firsthand what life was like under a revolutionary organisation" (Burgos, Field, 2024, p. 123). Burgos claimed, however, that that "ZDD failed to establish a utopia-liberated territory" (Burgos, Field, 2024, p. 126). Field characterised the ZDD as anti-utopian, with examples of the FARC Guerillas exploiting their positions of power for their own gain by breaking rules around hunting and the selling of coca. Field claims that "the FARC did not use the ZDD to showcase their plans for a revolutionary society" with no attempts at a new economic system or the building of healthcare infrastructure (Borgos, Field, 2024, p. 125).

There are less conceptual reasons for the failure of the ZDD, such as the prominence of the more militarily minded 'guerroes' generation within the FARC, the FARC's lack of connection to the indigenous communities of Colombia and the restrained economies of coca (illegal) and cattle (legal) in much of Latin America (Field, Burgos, 2024). As well as the eventual hijacking of a commercial airliner with a US senator onboard, which led to the end of peace negotiations (Leech, 2011).

I would propose however that the failure of ZDD was deep within its formation. A heterotopia exists inside an already existing mainstream society and offers other alternatives (Foucault, 1967) but it exists in relation to that which it is within, i.e. "defined by relations of proximity" (Foucault, 1967, p. 2). While juxtaposing and mirroring the state or society in which it lives, the heterotopia does not completely challenge said state. The ZDD project, however, was never intended as an alternative governing structure. The goal of the FARC was not to create a self-governing anarchist society in the ZDD, but to use the ZDD to work towards overthrowing the government of Colombia. For this reason, I find Field's characterisation of the ZDD as anti-utopian, particularly compelling (Field, Burgos, 2024)

It would be illuminating to compare the ZDD and FARC to what many on the contemporary left deem to be one of few recent yet salient victories: the successful movement of the Zapatistas.

The EZLN or Zapatistas (Zapatistas Army of National Liberation) was "initiated in the 1980s by a small group of Marxist revolutionaries." (Flood, 1999). The group became a growing social movement lead by members of indigenous Mexican communities, which protested having "been either passively ignored or brutally silenced for most of the last five hundred years." (Cleaver, 1998, p. 623). On the 1st of January 1994, after the securing of NAFTA and government confirmation of plans to privatise communal land "Units of the EZLN emerged from the jungle and took over a series of towns in Chiapas." (Cleaver, 1998, p. 625). As Leandro Vergara-Camus details, after a short period of violence followed by continued persecution and a global protest movement of international solidarity, the Zapatistas now occupy several autonomous zones with an estimated 60,000 families living within them. The Zapatistas live largely outside of state influence relying "only on their own resources, on micro-development programmes from alternative non-governmental organizations (NGOs) and on donations from international solidarity groups." (Vergara-Camus, 2014, p. 109).

While existing within the state, the FARC'S ZDD was always going to be a defiant mirror, challenging the state's legitimacy rather than aiming to win concessions from the state. In contrast the Zapatistas movement was aiming for the creation of autonomous zones of governance but always in relationship to the state of Mexico. Harry Cleaver makes this evident:

"The Zapatista movement supports autonomy within, not against, Mexican society—a point dramatically symbolized by the flying of the Mexican flag at virtually all Zapatista gatherings. But if the Zapatista-led reform efforts do not threaten the integrity of the Mexican nation, they certainly threaten the integrity of the Mexican state under one-party control." (Cleaver, 1998, p. 626).

The zones have since angered those on the Mexican right and are a constant challenge to the legitimacy of the Mexican state, in their mere existence (Cleaver, 1998). However, the project of the Zapatistas was never the complete overthrow of Mexican society but a carving out of autonomy within an oppressive state.

It is with these observations that we move to the more liquid, moveable concept of the Temporary Autonomous Zone (Bey, 1991). If the failure of the ZDD was due to its existence as a fixed challenge to

the state, the only soluble solution in the case of the Zapatistas, is to aim to win concessions rather than challenge the state itself. In this case as they would continue to live in a state of unsupported hardship, the TAZ offers an alternative.

What would happen if a liberated zone could move, shift and change before the state could attempt to crush it?

Piracy and the Ungovernable Seas

We began this essay with a quote from Hakim Bey. For Bey, if a liberated zone exists in any way, the state will seek to crush it as it challenges its authority. Therefore, the best way for a zone of autonomy to exist outside of state control is for it to be liquid, moving, roaming, ungovernable in its change of direction and location. The TAZ "dissolves itself to re-form elsewhere-else when" evading destruction or capture (Bey, 1991, p. 99).

Looking at autonomous spaces through a geographical lens, for Bey's TEZ the sea remains the perfect topography in its liminality and ungovernability.. While land can be defined, bordered and sectioned as it can be lived within, the sea is a more challenging sight for cartography and control. It is almost impossible to properly govern. As Mueller and Adler maintain:

"Take a maritime geography, which favours local outlaws and disfavours distant law enforcers. Add the chance of enormous profit and little risk. Mix it generously with strife, internal and external. Avoid maritime law enforcement capacity, and do not add common law! Corruption helps for spicing! Make it hot!'' (Mueller, Adler, 1985, p. 288)

With accounts of piracy in many ancient cultures, Michael Kelly posits "Piracy has been with us since men first set sail." (Kelly, 2013, p. 28). Pirates have acted as free agents for themselves, for the state and for the interest of private companies such as the East India Company or even so, moved between them all (Dawdy, Bonni, 2012, pp. 677 – 680). Shannon Lee Dawdy and Joe Bonni define pirate banditry as "morally ambiguous property seizure committed by an organised group which can include thievery, hijacking, smuggling, counterfeiting, or kidnapping." (Dawdy, Bonni, 2012, p. 695.)

David Graeber wrote that "there most certainly were pirate settlements on the Malagasy coast" that were "the place for radical social experiments." Further claiming that "Pirates did experiment with new forms of governance and property arrangements [spending] many hours in political conversation" (Graeber, 2023, p. 9). Through setting up radical enclaves on the Malagasy coast and in reports of communal decision-making, redistribution of wealth and the destabilisation of agents of empire, such as the East India Company, for Graeber, pirates historically embodied anarchist values in praxis (Graeber, 2023).

Pirates in their roving and moving independence from state actors, and destabilisation of actors such as the East India Company, connect to Foucault's concept of the heterotopia to be defined by Dawdy and Bonni as "Pirate Heterotopias" arguing that:

"A pirate heterotopia, whether a ship, a haven, or an information network, reflects real ideals diverse people have about political economies at the same time that it encourages piratical behaviour, be that pillaging, sharing, or revelry." (Dawdy, Bonni, 2012, p. 695).

Foucault himself used the example of the boat as a ''…floating piece of space, a place without a place… given over to the infinity of the sea…" (Foucault, 1967, p. 9.). The pirate therefore manipulates the

ungovernability of the sea to poke holes in the larger state apparatus, to undermine the state. In a historical sense Dawdy and Bonni, further this point claiming that pirates "caused a major, and deliberate, disruption in capitalist trade in the 1710s and 1720s…Their actions did not equate to simple self-interested theft, but rather an all-out war on capitalism itself." (Dawdy, Bonni, 2012, p. 681).

While many agree that there is an inherent anarchism to the pirate bandit, of both history and collective imaginary, there are "those who believe in radical free market capitalism and those who believe in a socialist or communist sharing." (Dawdy, Bonni, 2012, p. 695). Economists such as Peter Leeson (2009) argue that pirates are the pre-eminent rational choice theorists- that everything they did was for a clear economic and selfish motive to maximize their material returns and minimise their risks.

As historian Simon Layton maintains "any attempt to construct piracy within a singular ideological framework is possible, perhaps, but extremely difficult." (Layton, 2011, p. 81). Graeber posits however that both the reality and the stories "might even be said, to adopt Marx's phrase, to be a material force in history." (Graeber, 2023, p. 9). The point is the theory, the tactic and the interpretation are what remain useful for assessing possibilities for the creation of new ways of living. Hakim Bey (1991) maintained that "a certain kind of 'free enclave' is not only possible in our time but existent." (p. 99) Maintaining that it "has been created, will be created and is being created." (p.116). Bey maintains the TAZ needs: conditions of psychological liberation, the building of counter networks of interconnection amongst individuals and the continued petrification of the state. The point is to use these examples, both historical and imaginal, to find gaps within current systems and repeat and retry the tactic to create space for autonomy today (Bey, 1991, p. 132 – 133).

Throughout this article we have seen the relationship of autonomous projects to their geography. Where guerillas such as the FARC have sought to claim spaces to gain = footholds to overthrow a government, the Zapatistas fought to claim autonomous space to live outside the control of, while within, the state. In contrast when land is rejected for the sea, there have been historical projects of anarchist and communal living. While technology evolves, to follow Bey's theory through, we move to investigate perhaps the last space where autonomy can be fought for, and piratical acts can have contemporary impacts: the non-physical space of the internet.

The Internet, and the Dialectic of Digital and Physical Liberation

The early internet was, as Yanis Varoufakis maintains "a capitalism-free zone… it featured elements of early liberalism, even tributes to …'anarcho-syndicalism': a network without hierarchy, it relied on horizontal decision-making and mutual gift exchange…' (Varoufakis, 2023, p. 66). This is furthered by Jeff Shantz and Jordan Tomblin claiming that "the early internet was seen by users as *theirs*."(Shantz, Tomblin, 2014, p. 1). In this way perhaps more than Bey's TAZ, the early internet can be seen as a Digital Heterotopia (Foucault, 1967). Described by many as a 'Digital Commons' (Varoufakis, 2023, p.66), the early internet allowed a space for sharing ideas, mutual exchange and engagement that did not require capital, contesting the lack of possibility of this in physical spaces. In this way the internet's heterotopic nature can be seen as an alternative to an increasingly privatised and capitalised society in the physical space. ARPANET, beginning in 1969, and Internet One, being launched in 1983, allowed for burgeoning utopian imaginaries during the beginnings of global neoliberalism. As Hakim Bey might have phrased it

the early internet allowed for the expansion of the ‘counter-net,’ a growth of interconnectivities amongst individuals and communities challenging state power (Bey, 1991, p. 133).

As Marx and Engels noted capital “must nestle everywhere, settle everywhere, establish connections everywhere.” (Marx, Engels, 2012, p. 23). And so it was with the internet, once capitalists realised the possibility for economic exploitation and growth “the cyber commons, like the commons of England in the late feudal period, would have to be enclosed, brought within the purview of private property owners…” (Shantz, Tomblin, 2014, p. 2). This would lead to fierce and ongoing contestation of digital space in the form of online piracy and hacker collectives.

Within this context, Hakim Bey’s TAZ gains prominence. If the internet could no longer operate as a heterotopia, then as pirates of old did at sea, hackers and digital pirates would have to create temporary digital spaces of liberation which could shift and move before being shut down. Online piracy would therefore act as Bey noted to not only create “free enclaves” (Bey, 1991, p. 99) but to connect networks of individuals challenging the state.

For Dawdy, pirate tactics and monikers connect across historical, contemporary and digital piracy as amongst all of these actors there is an “organised political consciousness” which is primarily against “monopolistic practices” by state funded/aided or private companies and pro “free market ideals” resulting in exposing “one of the major contradictions between the accumulating structure of capitalism and it’s ideology” (Dawdy, 2011, p. 378).

In a separate article. Dawdy and Bonni maintain similarly that “if there is a Tortuga in the realm of digital piracy it is the website deliberately named by its founders "The Pirate Bay." (Dawdy, Bonni, 2012, p. 690). Pirate Bey, in its infringement of copyright law and distribution of free digital material, allowed unrestricted access to information. The founders themselves became heroic social bandits, like Golden Age Pirates, when “the legitimacy of the political-economy begins to breakdown due to the system's own contradictory excess” of which the pirates themselves had exposed (Dawdy, Bonni, 2012, p. 694).

Paul Taylor and Tim Jordan, in their work on Hacktivism, elucidate how in a similar vein hacktivism exposes the contradictions and monopolistic practices of late-stage capitalism, opening spaces for liberation through the sharing of information and the destabilising of dominant actors (Jordan, Taylor, 2004). Hacktivism was particularly prevalent in the anti-globalisation movement and connects with our earlier exploration of the Zapatistas. In 1994, Electronic Disturbance Theatre created a virtual sit in, loading and reloading targeted websites of those repressing the Zapatistas sites related to the Mexican and American government, until they crashed. Other actions such as hacking the Mexican government’s website so that “Emeliano Zapata appeared on the site, along with slogans such as ‘We’re watching you, big brother!’” (Jordan, Taylor, 2004, p. 73). As a part of the Zapatista struggle, Jordan and Taylor maintain that “the mass action, which gains legitimacy from involving mass numbers of people and not by the effects it generates, would come to dominate this strand of hacktivism,” (Jordan, Taylor, 2004, p. 74).

The Internet has also allowed for networks to be activated outside of state control in physical spaces, again in ways reminiscent of Bey’s desire for alternative networks of reliance and solidarity (Bey, 1991). While the internet allowed for a digital sit in in the case of hacktivism to support the Zapatistas (Jordan, Taylor, 2004), in the context of the Egyptian Arab Spring, the internet allowed for the organisation of the continued occupation of Tahir Square and the eventual fall of the Mubarak Regime. As Manuel Castells describes ‘‘internet networks, mobile networks, pre-existing social networks” allowed for the sustainment

of the “largely leaderless, multimodal networks that enacted the Egyptian revolution” (Castells, 2012, p. 57). The internet facilitated a challenge to, as Weber termed it, the state’s monopoly on violence (Weber, 2004). The result was that “people overcame fear by being together. And they were, in the Internet social networks and in the urban networks formed in the squares.’ (Castells, 2012, p. 82).

A critique of this however is that the internet is a tool, not an all-out solution. While Mubarak fell in Egypt, neoliberalism continued (Castells, 2012) and while the spread of information and resources online has been essential in the case of the Zapatistas, and through online piracy, in challenging the monopolising culture of capitalism, there are obvious horizons and limits to merely opening space without organising alternatives.

In a conversation between political journalist Sean Illing and sociologist Jen Schradie, Schradie makes clear that while the internet is in some ways a ‘neutral’ space, “like other communication tools from the past, people with more power, with more resources, with more organization, have been able to take advantage of it.” In this way conservatives have been able to turn the tide of internet activism by “seizing control of the digital space.” (Schradie, Illing, 2019). The internet, for Schradie, is a tool which can be harnessed by any political actor, but those with more resources to do so can, and will, use it, as any other tool, to gain advantage.

Conclusion

To draw our analysis to a close, we have explored how different rough political actors have harnessed the features of ungovernable geographies to attempt to create new worlds. Our leading theories of analysis were Foucault’s concept of Heterotopias (Foucault, 1967) and Hakim Bey’s Temporary Autonomous Zone’s (Bey, 1991).

Our analysis began with the FARC and their creation of an autonomous space within Colombia, finding that, through first-hand accounts, the space did not attempt a serious alternative to Colombia’s governance, as its focus was on overthrowing the government rather than building an alternative space. In comparison, the Zapatistas movement was more successful in building spaces of autonomy due to seeking concessions from the state rather than challenging its legitimacy outright.

We then moved to the seas, in which historical piracy was used to uncover a theory of Bey’s TAZ in which “free enclaves” (Bey, 1991, p.99) were established to create communal living while challenging developing capitalist monopolies. Questions surfaced around the usefulness of this theory in contemporary society, leading to the exploration of the internet. We explored online piracy, hacktivism and the internet’s role in activism as an attempt to build alternative networks, in Bey’s dichotomy, when the initial heterotopic nature of the internet was challenged.

We have seen throughout that the state will seek to squash any autonomous challenges to its own legitimacy. Movements for liberation should not then seek to violently overthrow the state, in the case of guerillas such as the FARC; or to hide from the state and create their own temporary physical spaces, such as the case of historical piracy. Instead, lessons can be learnt from the more successful examples of autonomy and tools for liberation in the case of the Zapatistas and the internet. While the internet has been used effectively by those with more resources to undermine leftist struggle and to promote conservative ideology, the internet has been a useful tool, allowing for the creation of effective alternative networks. In the case of the Zapatistas the internet was “used to promote international discussion and connections that link struggles challenging dominant policy and ideology in ways that often bypass the nation state.”

(Cleaver, 1998, p. 637). Perhaps then, the best tactic for liberation in today's world is to build communities of resistance and self-reliance, making use of both the theory of the TAZ and the internet as tools and tactics to repeat, repeat, repeat, as Bey insisted, until the state in Bey's usage is "petrified", and communities feel empowered to create their own futures (Bey, 1991).

EXAMINING RAWLS' CLAIM TO JUSTICE THAT "SOCIAL AND ECONOMIC INEQUALITIES…ARE TO BE TO THE GREATEST BENEFIT OF THE LEAST ADVANTAGED MEMBERS OF SOCIETY"

Humayra Salam

Abstract:

This essay critically examines John Rawls's claim that social and economic inequalities are justifiable only insofar they benefit the least advantaged members of society, as articulated in *A Theory of Justice*. Focusing on the Difference Principle, the analysis situates Rawls' account of justice as fairness in contrast to utilitarian approaches, emphasising the normative role of the original position and the veil of ignorance in securing impartiality and protecting basic rights. The essay evaluates the theoretical foundations of the Difference Principle, particularly Rawls' reliance on rational choice reasoning and the maximin strategy, and considers its implications for public policy, including redistribution, fair equality of opportunity, and institutional design. It further engages with libertarian and egalitarian critiques, notably those advanced by Robert Nozick and G. A. Cohen. Despite these challenges, the essay argues that Rawls' framework remains philosophically robust, offering a compelling account of how inequality can be reconciled with justice.

Introduction

In his famous work *A Theory of Justice* (1974), John Rawls presents a persuasive argument on the governance of societal structure by principles of justice. At the core of Rawls' theory is the claim that social and economic inequalities are warranted alone if they advantage the least privileged members of society, known as the 'difference principle.' This essay rigorously examines Rawls' assertion, evaluating the theoretical justification, practical consequences, and philosophical obstacles intrinsic to his methodology. By analysing Rawls' theory in conjunction with critiques from libertarian and egalitarian viewpoints, I intend to illustrate both the philosophical robustness of Rawls' stance and its susceptibility to specific theoretical objections.

Rawls' Concept of Justice and the Difference Principle

Rawls' theory emerges as a counterpoint to classical utilitarianism, which evaluates societal structures based on the concept of maximising overall welfare. He critiques utilitarianism for permitting inequities to be rationalised exclusively by the aggregate of happiness, potentially neglecting individual rights. To address this, Rawls presents two principles of justice derived from the hypothetical "original position," a

thought experiment intended to simulate fairness behind a "veil of ignorance," wherein individuals select principles without awareness of their own social status, abilities, or inherent attributes (Rawls, 1974). The initial concept guarantees equal fundamental liberties. The second, pertinent to our discourse, is divided into two components: fair equality of opportunity and the difference principle. The difference principle articulates clearly: “Social and economic inequalities are to be arranged so that they are both: a) to the greatest benefit of the least advantaged, consistent with the just saving principle and b) attached to offices and positions open to all under conditions of fair equality of opportunity” (Rawls, 1974, p. 302). Rawls defends inequalities only to the extent that they improve the circumstances of the least advantaged, basing justice on reciprocity and mutual benefit.

Rawls contends that rational agents in the Original Position would support the Difference Principle, as the Veil of Ignorance prevents them from knowing their eventual social status, potentially placing them in the most disadvantaged position. Considering this uncertainty, they would implement a maximin strategy selecting the choice that maximises the least potential outcome thus guaranteeing that even the most disadvantaged members of society obtain the maximum possible advantage (De Coninck, et. al, 2022). This theory reconciles efficiency with equity, acknowledging that certain disparities may stimulate productivity and innovation, provided they enhance the welfare of the most disadvantaged individuals.

Theoretical Justifications for Rawls’ Claim:

Rawls defends the difference principle by invoking rational choice from the original stance, contending that risk-averse, rational individuals would endorse norms that ensure optimal outcomes for the least advantaged. Under the veil of ignorance, rational individuals would refrain from wagering on fundamental life opportunities. Rawls posits that this risk aversion would inherently lead decision-makers to adopt a norm that guarantees the least advantaged individuals obtain the greatest potential advantages from any disparities (Rawls, 1974). This rationale demonstrates Rawls' dedication to equity and reciprocal benefit, guaranteeing that social collaboration does not solely exploit the underprivileged but improves their circumstances. Moreover, Rawls asserts that aiding the least advantaged cultivates a more stable community, promoting cohesion and cooperative willingness by ensuring universal support and involvement (Rawls, 1974).

In addition, Rawls defends the Difference Principle by asserting that permitting a degree of social and economic inequality might provide incentives that eventually assist the least privileged members of society. In a structured society, individuals possessing superior talents or skills may be incentivised to exert greater effort, innovate, or undertake risks provided they receive enhanced money or status as a reward. According to Rawls, such inequalities are only legitimate if they enhance the circumstances of the worst-off, for example, through economic growth, job creation, or redistribution via taxation and social assistance

(Audard, 2023). This corresponds with efficiency reasons, as a system that completely eradicates inequality may hinder productivity and dissuade ambition.

Furthermore, Rawls contends that rational individuals in the Original Position would implement a maximin approach, emphasising laws that guarantee the optimal outcome for those in the lowest social strata. Uncertain of their future social status, they would endeavour to create a system that ensures, even if they find themselves among the least privileged, they remain in a tolerable position. Empirical data indicates that Rawls' theory has impacted Scandinavian welfare states, where social democracy integrates economic incentives with robust redistributive measures, ensuring that income inequalities do not result in severe conditions for the most disadvantaged. Countries such as Sweden and Denmark sustain competitive market economies while implementing progressive taxation, universal healthcare, and comprehensive social programs to ensure equity (Kenworthy, 2025). These instances demonstrate the operational efficacy of the difference Principle, achieving an equilibrium between economic efficiency and social justice. This adherence to Rawlsian ideals highlights the applicability of his theory beyond theoretical philosophy, demonstrating its concrete impact on contemporary administration.

Practical Implications of the Difference Principle

Rawls' theory possesses considerable practical implications. It primarily endorses redistributive policies and comprehensive social safety nets, specifically designed to enhance the material circumstances of society's most marginalised populations. Education, healthcare, and welfare programs, as justified by Rawlsian principles, would therefore be essential components of a just society rather than mere acts of charity. Progressive taxation and redistributive mechanisms may be utilised morally, as they ultimately give advantage to individuals on the periphery of society (Kymlicka, 2002).

Moreover, Rawls' difference principle encourages public policy aimed at mitigating structural disparities by promoting full equality of opportunity. Rawls underlines fairness in competition and social interventions to rectify entrenched inequities by linking inequalities to offices open to all, hence legitimising affirmative action programs or substantial investments in education to mitigate historical disadvantages (Lindblom, 2018). These ideas assert that initiatives aimed at improving the wellbeing of marginalised people are regarded as justice-based responsibilities rather than simply acts of charity, so successfully confronting structural disparities and past injustices.

The Difference Principle not only advocates for welfare and equitable opportunity but also has significant ramifications for institutional design and political responsibility. Public initiatives, including social

housing, public transport, and universal digital access, can be warranted if they mitigate obstacles for the disadvantaged. The idea necessitates that governments establish and consistently monitor the efficacy of redistributive processes, potentially via equity audits or social impact evaluations. In professional environments, the principle would endorse policies including minimum wage legislation, equitable hiring practices, and employee development programs that facilitate upward mobility for economically disadvantaged individuals (Pereira, 2016).

Additionally, regarding taxation, Rawls' theory robustly advocates for progressive taxation systems, ensuring that those who derive the greatest benefits from social cooperation contribute a proportionately larger share to sustain institutions that safeguard the disadvantaged (Sugin, 2004). This establishes a society in which economic contributions and social responsibilities are interconnected. Nonetheless, it necessitates public endorsement and political determination, which can be challenging to maintain in more individualistic or market-oriented cultures. Therefore, although Rawls' principle offers a morally sound foundation, its implementation requires meticulous, context-aware governance. Also, it necessitates ongoing institutional assessment to guarantee that justice adapts to new manifestations of inequality and systemic transformation.

Philosophical Challenges to Rawls' Difference Principle:

Although Rawls' difference principle holds intuitive allure, it has faced substantial philosophical critiques, particularly from libertarian and egalitarian thinkers. Libertarian philosophers such as Robert Nozick contend that Rawls' concept of redistributive justice is flawed, positing that justice is about safeguarding individual entitlements and property rights rather than implementing redistribution. Nozick (2016) asserts that if inequalities stem from lawful voluntary exchanges, coercively allocating resources to fulfil Rawlsian aims infringes upon human autonomy and, hence, constitutes injustice. Nozick states "taxation of earnings from labour is on a par with forced labour… Taking the earnings of n hours labour is like taking n hours from persons; it's like forcing the persons to work hours for another's purpose" (Nozick, 2016, p. 169). This viewpoint emphasises the libertarian belief that justice pertains to the protection of individual rights and property, rather than the execution of redistribution. Libertarians argue that Rawls' methodology sacrifices freedom in pursuit of equality.

Nonetheless, Nozick's stance erroneously assumes that original property rights and voluntary transactions invariably arise from just and equitable circumstances. Rawls' theory accurately emphasises systemic inequalities that sustain unfair starting distributions, contending that genuine autonomy necessitates the

rectification of structural injustices via morally acceptable redistribution, hence refuting libertarian concerns concerning absolute property rights.

Further to this Nozick's Entitlement Theory posits that individuals own rightful ownership of their property if acquired through just methods, such as consensual exchange or inheritance, deeming any forceful state redistribution as unjust. This is pointed out when he asserts, "that a distribution is just if it arises from another just distribution by legitimate means" (Nozick, 2016, p. 151). His argument regarding Wilt Chamberlain exemplifies this: if individuals willingly choose to pay to observe Chamberlain's basketball performance, he will accumulate wealth, resulting in inequality; however, this disparity is not intrinsically unjust as it stems from voluntary exchanges (Duignan, 2026). Nozick argues that Rawls' theory neglects individual autonomy by enforcing a perpetual system of redistribution.

From an egalitarian perspective, authors like G.A. Cohen critique Rawls for permitting significant inequities provided they offer minimal advantages to the disadvantaged. Cohen contends that Rawls' dependence on incentives to generate advantageous inequalities tacitly endorses greed or self-interest as driving forces in economic existence, so compromising authentic egalitarianism and communal solidarity. Cohen further argues that authentic egalitarian justice must entirely eliminate inequities rather than permit them conditionally (Narveson, 2012).

G.A. Cohen critiques Rawls for tacitly supporting inequality through self-interest-driven incentives. Yet Cohen's argument assumes an implausible lack of self-interest in human drive. Rawls' pragmatic recognition of human motives does not advocate for greed but strategically employs self-interest to assist the poor, so preserving communal cohesion and improving collective welfare.

From a utilitarian standpoint, Rawls' maximin strategy, which emphasises enhancing the circumstances of the least advantaged, has faced criticism for being excessively risk-averse and inefficient. A strictly utilitarian society may rationalise considerable inequities if they result in enhanced overall enjoyment, despite the suffering of the least advantaged (Wenar, 2021). Rawls contends that utilitarianism may allow for significant social inequalities, resulting in some persons enduring unacceptably inadequate conditions. However, this utilitarian critique overlooks Rawls' core moral commitment to individual dignity and the prioritisation of safeguarding essential rights over collective usefulness. Rawls compellingly contends that utilitarian frameworks may legitimise severe inequities and unacceptable conditions for the marginalised, so undermining justice.

Finally, Marxist critics contend that Rawls' theory neglects the fundamental reasons of inequality, as it does not confront capitalist institutions but merely aims to regulate them. From a Marxist viewpoint, authentic justice necessitates structural reforms, including the elimination of private property in the means of production, rather than merely dispersing wealth within an intrinsically unequal framework. Nevertheless,

Rawls' method does not exclude structural reform; rather, it offers a pragmatic framework within current societies to alleviate and gradually diminish inequities. Consequently, Rawls' framework provides a pragmatic and modest strategy for enhancing equity, serving to complement rather than oppose more extensive structural improvements. These objections highlight conflicts within Rawls' theory, challenging its adequacy as a foundation for justice in profoundly unequal society.

A Defence of Rawlsian Justice:

Nonetheless, these criticisms do not entirely invalidate Rawls' methodology. Rawls addresses libertarian criticisms by asserting that a just society founded on equity necessitates establishing conditions in which collaboration is advantageous for all, even the marginalised. Redistributive policies are ethically defensible since they yield reciprocal advantages and uphold social stability, rather than simply reallocating wealth indiscriminately (Rawls, 1974).

In response to egalitarian critiques, Rawls posits that absolute equality is neither attainable nor inherently desirable, owing to the unavoidable variations in human abilities and exertions. The difference principle offers a pragmatic and ethically defensible equilibrium, facilitating advantageous incentives while protecting society's most disadvantaged (Rawls, 1974). Moreover, Rawls does not advocate for total economic equality but asserts that inequalities must be morally justified; they are permissible only if they enhance the circumstances of the least advantaged. This differentiates his theory from just redistributive models, since it facilitates incentives and economic dynamism while ensuring that inequalities do not result in the destitute of the most disadvantaged (Koppelman, 2023). Rawls emphasises the primacy of liberty, guaranteeing that attempts to rectify inequality do not result in oppressive governmental authority or the infringement of essential freedoms. This focus on liberty is fundamental to Rawls' overarching political liberalism, since it asserts that justice must enhance material conditions while safeguarding essential individual liberties that enable individuals to live autonomously. Nevertheless, certain theorists advocate for alterations to enhance Rawls' stance. Amartya Sen's Capabilities Approach posits that justice should be assessed not merely by resource allocation but by individuals' actual freedoms and capacities to engage in societal functions, such as access to education, healthcare, and political involvement (Kumari, 2023).

In addition, Elizabeth Anderson opposes conventional distributive theories of equality and promotes a relational approach that underlines equal standing and involvement in democratic institutions. In her influential article ‘What is the Point of Equality?’, Anderson contends that justice necessitates not just the redistribution of wealth but also the eradication of social hierarchies that obstruct individuals' capacity to engage as equals in political and economic spheres. She argues the following that “democratic equality seeks to establish a community where individuals are in equal relations with one another (Anderson,

2019).” This clearly illustrates her emphasis on the imperative of removing structural impediments that impede comprehensive participation, therefore fostering active involvement in societal activities.

Despite these criticisms, Rawls robustly defends inequalities as ethically permissible only if they benefit the least advantaged, aligning with principles of fairness, reciprocity, and stability. The recommendations proposed by theorists such as Amartya Sen and Elizabeth Anderson, which promote expansive interpretations of capabilities and active political engagement, further reinforce Rawls' fundamental ideas. These improvements highlight Rawls' flexibility and significance in modern views of justice, reaffirming his fundamental ideas.

Conclusion

Rawls asserts that justice necessitates disparities that assist society's least privileged, providing a robust theoretical framework rooted in fairness, reciprocity, and rational self-interest within the veil of ignorance. Practical implications for public policy offer a persuasive justification for progressive social structures and redistributive initiatives. Philosophical objections from libertarians and radical egalitarians highlight significant discussions about individual rights and the validity of incentives; yet Rawls' difference principle continues to be a compelling framework for establishing a just and equitable society. Consequently, despite criticisms, Rawls offers a persistently strong basis for addressing economic and social fairness, strongly integrating moral philosophy with actual policy implications.

POPULIST STAGECRAFT: A THEORETICAL FRAME FOR PERFORMANCE POLITICS

Ruby Dolan McQuie

Abstract

A theatrical framework illuminates contemporary populism as a political performance in which authority is enacted through embodied, aesthetic, and affective practices that render power legible. Political life unfolds through bodies, symbols, rituals, and spaces that operate as constitutive mechanisms rather than mere representations. Drawing on performance theory and political thought, including Shirin Rai's account of political staging and Judith Butler's theory of assembly, politics emerges as a domain where legitimacy and collective identity are produced through visibility, repetition, and spatial choreography. Case studies of left- and right-populist actors reveal contrasting modalities, from relational authenticity to aestheticised dominance, while historical precedents in fascist theatricality are considered without collapsing contemporary formations into interwar state structures. Uneven mastery of spectacle and mediation has produced divergent outcomes: right-populist actors have adapted more effectively to affect-saturated political environments, while left-populist strategies grounded in moral legitimacy and procedural critique have struggled to command equivalent performative force.

Introduction

Modern politics unfolds less as a sequence of rational decisions than as a series of scenes. Bodies assembled, voices amplified, gestures repeated, symbols circulated, emotions orchestrated. Authority is staged as much as legislated. From lawmaking chambers to the street protest, political power is made legible through performance, through tone, posture, costume, rhythm, and spectacle. This produces a political ecosystem in which perception and ritual are inseparable from governance. The historical continuity of political theatre attests to the constitutive power of performance: politics has never been purely rational; it has always been performed.

Populism exemplifies these dynamics, leveraging spectacle and emotion to construct moral communities and demarcate adversaries. Populism, as this essay employs the term, is less a fixed policy programme than a performative strategy for constructing political identity and moral communities. Following Ernesto Laclau, populism can be understood as a logic of articulation, in which "the people" are constructed in opposition to a designated "elite" or outsider, producing a unifying collective subject through affective and symbolic means (Laclau, 2005). This construction relies not on detailed policy prescriptions but on the dramatisation of crises and the mobilisation of emotion, generating a moral dichotomy of inclusion and exclusion. Cas Mudde and Cristóbal Rovira Kaltwasser (2017) define populism as a "thin-centred ideology" that can attach itself to multiple policy platforms, highlighting its flexibility: it provides a framework of moral judgment rather than a coherent programme. Mudde and Kaltwasser emphasise that populism's core is the people-versus-elite narrative, which can be suffused with nationalism, anti-globalism, or social justice depending on context. Margaret Moffitt (2016) further distinguishes populism as a political style, marked by performative traits such as direct communication, emotional signalling, and symbolic dramatisation, separating the aesthetic and theatrical dimensions of populist politics from the ideological content it may carry.

In this sense, populism is simultaneously a repertoire of performance and a moral grammar, a style that constructs belonging and grievance while functioning as a vehicle for diverse ideological agendas. Populist actors cultivate immediacy, authenticity, and emotional identification – the urgency of a rally, the cadence of a speech, the visual shorthand of costume, and the resonance of a meme or image produce political cohesion, moral legitimacy, and elevate leaders who inspire familiarity or even worship. Populist performance operates on a deeply visceral and highly strategic level; fear emerges as a dominant pathos, mobilised in rhetoric and public discourse. Narratives of "invasion" or "threats," coupled with increasingly aggressive language, saturate political messaging, structuring collective action towards extremity and deepening cultural divides. This analysis proceeds through four pillars. First, it examines the script, the

performative frameworks through which politics is staged, analysing the constitutive and ritualised dimensions of political performance based on historical context and theoretical conversation. Second, it considers the actors, contrasting left-populist and right-populist figures, demonstrating how different forms of costumery and rhetoric produce moral, image-bound communities and pathological cohesion. Third, it interrogates the theatre of politics: both institutional stages (the actual "Halls of Power") and guerrilla arenas. Fourth, it explores artistic interventions by the "Everyman", which exposes and reframes political performance in a manner of "heckling". Through this mimicked theatrical production, we can understand the space of populist performativity and explore its consequences. While political performance is foundational, the intensification of spectacle risks privileging emotion over deliberation, producing authoritarian aesthetics that can facilitate fascism. Understanding contemporary politics, therefore, demands attention to both the constitutive power of performance and its ethical and democratic stakes.

The Script: Defining the Performative

Political performance is grounded in a long history of theatrical practice as a space for negotiating power, justice, public space, and communal identity. Greek theatre, for instance, was not mere entertainment; tragedies staged in Athens acted as civic pedagogy, dramatising ethical dilemmas and the consequences of human and institutional action. The Oresteia, a trilogy by Aeschylus, confronted audiences with questions of justice and civic responsibility, implicating spectators as moral participants rather than passive observers (Aeschylus, 1984). Citizens deliberated, even if only emotionally, on the fate of rulers and collective choice. Theatre in this sense was a laboratory for civic engagement, a visceral space where the polis rehearsed ethical judgment and communal coherence. The performative dimension of politics is thus historically imbricated with the governance of feeling and collective judgment. This lineage continued in medieval and early modern Europe, where public performance made political hierarchy and dissent visible to collective audiences. Pageants and morality plays dramatised rulers as divinely sanctioned while staging ethical dilemmas that instructed civic conduct, embedding political order within spectacle. Within this tradition emerges the figure of The Everyman, first articulated in the late fifteenth-century morality play Everyman, where an ordinary protagonist stands in for humanity (Everyman, c. 1495). The Everyman functions as a universal proxy through whom moral obligation is negotiated, symbolising the common folk as the moral core of the political community and legitimising claims against institutional power. As Bakhtin observes in his account of carnival culture, popular performance created temporary spaces of inversion and critique, where power could be mocked and reimagined through participation (Bakhtin, 1984). Across these forms, theatre operated not merely as representation but as a rehearsal, where communal sentiment was negotiated. Political life is inseparable from the performative strategies that render it intelligible to a body politic (Rai, 2015). In contemporary politics, these performative roots persist, and politics increasingly unfolds in visceral registers that operate independently of formal deliberation. Fear, resentment, nostalgia, joy, and pride often drive political engagement more effectively than policy analysis.

Populist actors, in particular, cultivate emotional, cultish identification, constructing a sense of shared moralism or collective grievance that binds supporters to a leader and to one another in a tribalistic fashion. A chant, a rhetorical cadence, or an article of clothing can communicate belonging more powerfully than any written policy agenda, legislative process, or partisan affiliation. Emotional contagion is particularly visible at rallies, protests, debates, and parliamentary showdowns, where bodily synchronisation (cheering, booing, marching, clapping) creates a feedback loop of aural power. In this context, populism succeeds by transforming the political stage into a space of moral drama, in which the stakes are existential, enemies are personalised, and the people are made simultaneously fragile and sovereign through collective affect.

The construction of a "script" organises these performances. Scripts designate roles (the people, the enemy, the saviour) and choreograph how actors should embody them. They translate complex structural problems into moral narratives that are legible, repeatable, and emotionally compelling, and, often, oversimplified or obfuscated. A populist script simplifies the world into a drama of right and wrong, belonging and exclusion. Costumes, symbols, and props function as visual shorthand, signalling

allegiance. Scripts reproduce themselves through ritual repetition and amplification across media platforms, from televised addresses to viral social media ephemera, generating both coherence and contagion. In this way, performance is not accidental or creatio ex nihilo, but an intentional mechanism for constructing political legitimacy and resonance. Judith Butler's theory of performativity offers a complementary lens. In Notes Toward a Performative Theory of Assembly (2015), she extends her earlier work on performativity from Speech and Identity into the domain of collective political action. Butler's central claim is that the physical gathering of bodies in public space is itself a political claim, one that precedes and exceeds articulated demands. Assembly is not merely expressive; it is constitutive.

In this sense, Butler reframes performativity away from theatrical intention and toward corporeal insistence – the body is a site where power is imposed and re-signified through presence. For Butler, political subjects do not preexist their performance; they emerge through repeated acts that materialise identity in public space. She observes, "'The people' are not a given population, but are rather constituted by the lines of demarcation that we implicitly or explicitly establish" (Butler, 2015:3). The repeated acts of bodily presence, chants, speech, or gesture materialise political categories such as "the people" or "the worker," producing both visibility and audibility in public discourse. Assemblies, marches, and demonstrations are thus sites where bodies become legible as political actors; norms govern which bodies are recognised, which acts carry authority, and which voices are ignored or erased. Populist leaders exploit these dynamics by performing scripts that produce a unified, affectively coherent "people," leveraging repetition and visibility to render their political base intelligible as a moral and political subject. Shirin M. Rai, by contrast, emphasises the staging of political processes rather than the formation of subjects. Rather than beginning with bodies in the street, Rai focuses on formal political institutions, including parliaments, leaders, rituals, and media events. Her central claim is that democratic politics operates through performances that seek to produce command and meaning for audiences. She defines political performance as "...those performances that seek to communicate to an audience meaning-making related to state institutions, policies and discourses" (Rai, 2015: 1179). In Rai's framework, rituals, symbols, spatial arrangements, and choreographed acts produce a sense of democratic process or entitlement. Whereas Butler foregrounds the production of the political subject, Rai elucidates how authority and legitimacy are dramatised through staging and orchestration. Together, their insights illuminate the dual constitution of politics: the people are made through repeated, embodied acts, while authority is staged through visible, affect-laden performance.

In contemporary populism, these theoretical frameworks converge. Leaders construct the people through repeated bodily and rhetorical acts (Butler) while simultaneously orchestrating spectacles and mobilising spatial and visual props to dramatise authority (Rai). Each theoretical standpoint addresses a different "theatre" of performance: Rai's institutional stage versus Butler's guerrilla stage. The political script shapes both the experience and the perception of power. Populist performance is thus simultaneously constitutive, visceral, strategic, and theatrical, producing subjects and moral communities in a continuous, highly mediated dramaturgy. Understanding these scripts is therefore crucial for understanding contemporary politics: the political is not merely represented, it is performed, embodied, and made tangible in real-time.

The Actors: Left and Right Populist Performers

The performative script of politics comes alive through actors who inhabit and transmit it, as a written role must always be filled. Populist actors rely on the embodied enactment of their "cult of personality" to construct the people and establish moral authority. Their performances are simultaneously theatrical and strategic, producing the sense that politics is urgent and consequential. Examining left and right-populist figures reveals contrasting approaches to performance, which illuminate the interplay between aesthetic choices and political affect. The key differences between the left and right styles of populism could also profitably be analysed in terms of their effectiveness, as we see the global right ascendant in contemporary politics.

On the left, Fidel Castro represents a more ritualised and enduring form of left-populist performance, defining the left populist in new terms. His olive-green uniform functioned as both costume and symbol, communicating revolutionary commitment while signalling anti-elitism. Oratory was central to his performance; marathon speeches became acts of ritual endurance, in which the sheer length and intensity of delivery demonstrated revolutionary dedication. The iconic moment of the white dove landing on his shoulder in 1959 (Figure 1) became a mythologised image, codifying him as a divinely sanctioned figure. Sceptics certainly questioned whether this was a planned act of political theatre; however, "Whether or not these were trained pigeons or divine messengers, this event became part of the Castro legend which holds that mystical powers protect him" (Miller, 2000). The power of coincidence lies in its impact. Castro's balcony addresses in Havana produced performative intimacy, in which Castro embodied both father and martyr for the Cuban people. These performances combined emotional intensity and visual iconography to construct both authority and collective identification.

Figure 1: Fidel Castro giving a victory speech in Havana, 8 January 1959, as white doves of peace land on his podium. Taken by Tor Eigeland. Source: Alamy.

In the 21st century, Vermont senator and former presidential candidate Bernie Sanders exemplifies an aesthetic of earnest authenticity, certainly different in energy but not so different in realpolitik policy. His physicality – hunched posture, finger-pointing, raised voice – communicates urgency and moral rectitude. His cadence, inflected with an old-school New York sincerity, situates him as an interlocutor of the people rather than an elite orator. As a figure who introduced much of the Democratic Party to the core tenets of socialism during a period of post-Obama hope politics, his earnest and grandfather-like personification resonated with many looking for new paths forward. Iconic imagery amplifies these qualities of authentic personality: The photograph of a bird alighting on his podium during a rally in 2016 (Figure 2) has been interpreted as a symbol of providential affirmation and collective hope, and importantly, reflects back on Castro's dove image. Sanders's performance produces a moral community, one that is defined by shared concern and empathy among the American middle and lower classes, rather than emphasising spectacle or dominance.

Figure 2: A small bird lands on Bernie Sanders' podium during a rally in Portland, 25 March 2016. Photo by Steve Dykes/Associated Press.

Zohran Mamdani, the new mayor of New York City, exemplifies a more relatable, more pedagogical left-populist performance. His political labour occurs in everyday spaces, like street corners, buses, laundromats, and bodegas (Figure 3). These locations are integral to the performance, emphasising accessibility, intimacy, civic care, and the daily life of NYC Everyman. Mamdani's spatial choices communicate politics as community-building, world-building, and ethical responsibility rather than spectacle. His embodiment of the worker-intellectual integrates scholarship and advocacy, producing legitimacy through proximity and relational engagement rather than mediated myth or grandiose visual spectacle. Indeed, a common thread among the left-populist actors is the creation of a familial proximity to the people; Castro as father, Sanders as grandfather, and Mamdani as brother. This is, of course, strategic and effective.

Figure 3: Zohran Mamdani, New York City mayoral candidate, walks out of a deli with an iced coffee after a campaign event in Queens, 19 June 2025. Photo by Adam Grey/Bloomberg via Getty Images.

On the right, the performance of populism is more explicitly aestheticised, drawing from theatricality and aggression. Benito Mussolini, the father of Fascism himself, remains instructive. He demonstrates the aestheticisation of politics at its most explicit, orchestrating mass rallies and choreographing disciplined movements to dramatise unity and virility in a dictatorship. Mussolini's performances reveal how political actors can manipulate scale and spectacle to produce authority, serving as a precedent for contemporary right-populist theatricality. His rallies codified an affective grammar of obedience and heroism, illustrating how emotional mobilisation can precede institutional or policy work (Figure 4). At the same time, important discontinuities separate interwar fascist state formation from contemporary right-populism, particularly in terms of media ecology, party organisation, and the relationship to state violence; present-day actors operate through electoral systems and digital mediation rather than consolidated paramilitary or total state apparatuses.

Figure 4: Crowd at one of Mussolini's mass rallies holding banners reading "DUCE!" ("The Leader") in the 1930s. Photo by Tallandier / Bridgeman Images.

Donald Trump's performances, rooted in reality television dramaturgy and pro-wrestling style diction, emphasise conflict and dominance. Gestures such as exaggerated pouts, thumbs-up, and pointed fingers are amplified by rallies that function as orchestrated spectacles, complete with chanting crowds and the delineation of villains and heroes. Costume and props, most notably the red MAGA hat, operate as mobile symbols of loyalty and belonging. Iconic images, such as his mugshot or the photograph of his bleeding ear following an assassination attempt (Figure 5), are performatively repurposed by supporters as emblems of martyrdom and mythic endurance, even divine interference. The emotional register is grievance and nostalgia; the performance does not seek empathy but mobilisation through resonance. He positions his supporters as enemies of their neighbours, co-victims of political persecution, and promises protection against the mythical threat of the "deep state."

Figure 5: President Donald Trump raises his fist as his ear bleeds moments after an attempted assassination at a campaign rally, 13 July 2024. Photo by Evan Fucci/Associated Press.

Nigel Farage demonstrates a subtler but equally calculated right-populist performance. He cultivates "pub populism," projecting the image of the ordinary man through gestures like holding a pint and leaning casually against a bar (Figure 6). Humour and anti-elitist affect function as performance tools, translating political messages into approachable, relational registers. Nationalism and nostalgia are staged through costume, props, and public settings, producing images that encode collective identity and historical continuity, whilst simultaneously fearmongering about the threat of invasion due to

immigration, and inducing anger among the British population about the alleged loss of their culture and history. Farage's formula is an exclusionary populism, founded on fear, the conviviality of the pub notwithstanding. Farage's performance operates less through theatrical spectacle than through embodied familiarity, yet it achieves the same objective – constructing the people through constructing enemies.

Figure 6: Nigel Farage holding a pint of ale at a pub while wearing an apron with the flag of England, 23 April 2015. Photo by Gareth Fuller/PA Images.

Comparing the left and right illuminates the interplay between performance and political narrative. Left-populist actors rely on authenticity and pedagogical intimacy to produce moral communities and shared identification. Right-populist actors, in contrast, deploy theatrical spectacle and choreographed visual codes to mobilise grievance and loyalty. Both create affective cohesion, but through distinct modalities: one emphasises relational and moral authenticity, the other aestheticised power and emotional intensity. While charisma is the engine of both vehicles, one drives the folksy path and the other, Old Testament defiance. But there is more in common here than meets the eye; our two most modern examples, Farage and Mamdani, both situate themselves in working-class establishments among the commonfolk, whether pub or bodega, to signal proximity to their base. Understanding these performances clarifies the centrality of the actor in the orchestration of political meaning, demonstrating that politics is enacted in bodies, gestures, costumes, and rhythms as much as it is legislated in halls or written in law.

The Theatre: Institutional and Guerrilla Stages

Political performance unfolds not only through individual actors but within the spaces they inhabit. The architecture, rules, and affordances of these spaces shape both the performance itself and the perception of legitimacy and authority. Institutional stages (parliaments, electoral debates, and legislative assemblies) produce formalised theatricality, while guerrilla stages (streets, soapboxes, digital platforms, and symbolic forums of assembly) offer amateur arenas for improvisation and spectacle. Together, these theatres reveal the extent to which politics is inherently spatial and embodied. The filibuster in the United States Senate exemplifies the ritualised performance of political obstruction and ethical dramatisation. This tactic of intervention features marathon speeches in the Senate chamber, holding the legislative process hostage in a show of performative endurance. Cory Booker's 2024 record-breaking 25-hour filibuster speech illustrates how these spaces operate simultaneously as institutional procedures and theatrical platforms. Delivered directly to the camera rather than the chamber, Booker's address performed vulnerability, apology, anecdote, and rage for a national audience, transforming the procedural into a spectacle. The viscera of his mania and exhaustion prove intensely powerful. The filibuster becomes a stage not for debate alone but for the production of narrative urgency and the amplification of public scrutiny beyond institutional walls. In this sense, institutional ritual is inseparable from spectacle, and the procedural mechanisms of governance are co-opted as performative tools.

In the United Kingdom, Parliament functions as a similar theatre, structured to encourage verbal combat and ceremonial gestures. The architecture, the standing order, and the performative rules of engagement –"Order!" and "Hear, hear!"– produce an audible dramaturgy that makes debate legible and visceral. Figures such as John Bercow, former Speaker of the House of Commons (Figure 7) demonstrate how roles intended as procedural arbiters can themselves become performative. Bercow's vocal intonations, gestures, and insistence on decorum transformed the Speaker from administrator to spectacle and celebrity, illustrating that institutional authority is inseparable from the embodied enactment of roles. And certainly, Bercow himself went on to join the cast of the popular reality TV show "The Traitors," proving his transformation from institutional referee to genuine celebrity. Parliament, in this light, is less a deliberative chamber than a theatre in which speech and procedural symbolism carry both emotive and normative weight.

Figure 7: John Bercow yelling among other members of Parliament during Brexit negotiations, 2019. Photo by Mark Duffy/UK Parliament via Associated Press.

Outside formal institutions, guerrilla stages offer unregulated and improvisational amphitheatres for political performance, and their impact is not lessened by their lack of political authority. The commonfolk discuss their individual political views from spaces that allow for autonomy of platform and opinion. Digital debate culture has been popularised immensely in the past five years, exemplifies this phenomenon. Platforms such as YouTube, Twitch, TikTok, and X reward brevity and spectacle over reasoned deliberation. Actors like Charlie Kirk, Ben Shapiro, and TPUSA affiliates deploy rapid-fire rhetoric and performative dominance to construct micro-theatres of ideological combat thick with fallacious logic. Viral clips of "destroyed" interlocutors (Figure 8) produce an almost pornographic viewing experience of domination narratives, moral vindication, and guilty pleasure. Algorithms amplify these spectacles, privileging conflict, rage, and humour, transforming online discourse into a theatre of emotions, where affective resonance substitutes for deliberative nuance. Politics becomes a series of skits in which humiliation and "victory" are the currency of authority.

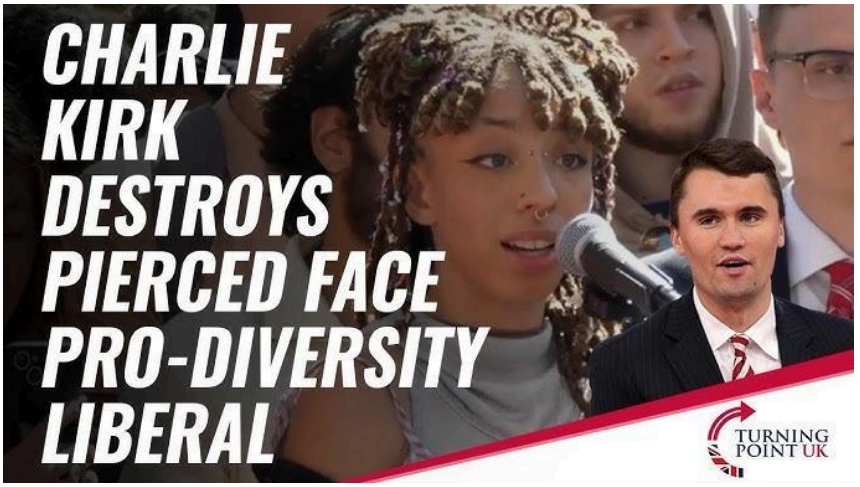


Figure 8: YouTube thumbnail of a debate between Charlie Kirk and a young woman, uploaded by Turning Point UK. Source: Turning Point UK YouTube channel.

Speakers' Corner in Hyde Park, London (Figure 9), offers a pre-digital analogue of such guerrilla theatre. The soapbox serves as a literal and symbolic platform, elevating both body and voice, and rendering speech a visible and performative act. Individuals may articulate reasoned arguments, inflammatory polemics, or theatrical stunts; the audience, in turn, responds with laughter, derision, applause, or perhaps all three at once. The space dramatises democratic ideals such as freedom of expression, civic engagement, and public visibility – while simultaneously revealing their limitations: the conflation of extremism, performance, and voyeurism is unavoidable. Speakers' Corner illustrates that democratic speech is enacted rather than simply permitted, highlighting the inseparability of public space and body in political legitimacy.

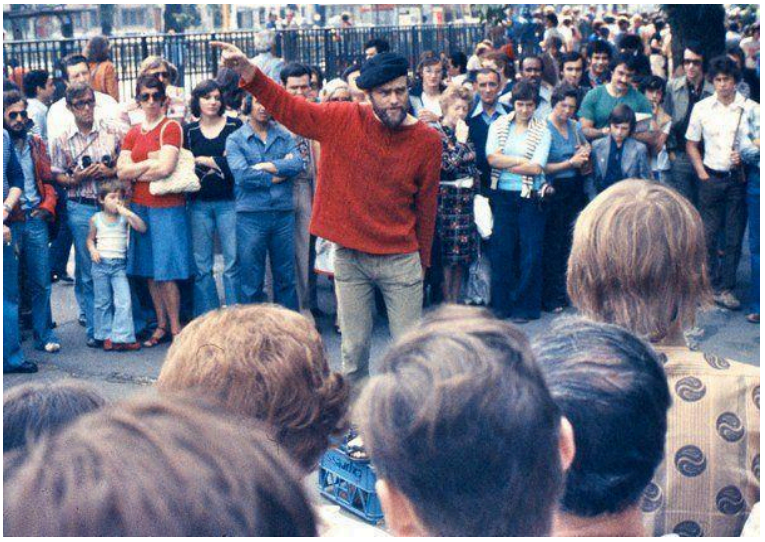


Figure 9: Orator at Speaker's Corner surrounded by a crowd, 1974. Photo by George Louis/Wikimedia Commons.

The interplay between institutional and guerrilla theatres emphasises that political performance is both formalised and improvisational. Institutional stages encode rules that structure speech and participation, producing legitimacy through ritual and procedural coherence. Guerrilla spaces instead foreground improvisation and visual or symbolic coding, producing legitimacy through emotional resonance and viral amplification. Both arenas operate according to performative principles, yet they differ in many ways, most importantly in the speed of dissemination and the expectations of participants. Populist actors navigate both simultaneously, performing ritualised authority within institutional stages while leveraging guerrilla spaces to amplify moral urgency and the dramatisation of conflict. Institutional and guerrilla theatres are mutually reinforcing. Cory Booker's filibuster, transmitted to digital platforms, draws on legislative ritual while exploiting media infrastructures to generate spectacle. Speakers' Corner participants may mimic parliamentary performative logic, translating public norms into performance for viral audiences. Political theatre is recursive: It draws on precedent and codifies norms while inviting improvisation and emotional contagion.

Populism thrives here because the emotional and visual dimensions of politics outweigh reasoned deliberation. The theatre is both stage and mechanism, site and instrument, medium and meaning. Understanding these theatres illuminates how political legitimacy, authority, and belonging are constructed and contested. The choreography of gesture and staging of spaces produces collective identification and political coherence. Yet these mechanisms can be exploited: guerrilla and institutional stages alike can prioritise spectacle over deliberation, manipulating audience emotions and risking authoritarian forms of aestheticised politics. Recognising the theatre of politics is therefore essential for comprehending the performative dimensions of contemporary populism.

The Hecklers: Artistic Intervention

If the theatre of politics is the stage upon which actors perform legitimacy and mobilise affect, artists intervene as both critics and counter-performers, exposing the mechanisms of authority. Their interventions operate as reflexive performances, in which the logic and strategies of political power are refracted. Artistic counter-performance reveals that political authority is contingent and legible only through repetition and visibility. Tania Bruguera's work offers a compelling illustration of this dynamic. In her "Tatlin's Whisper" series, Bruguera exposes the interplay between state power and civic performativity.

Tatlin's Whisper #5 situates mounted police within a museum, performing crowd control techniques: the aesthetic frame transforms instruments of repression into visible objects, making legible the choreography underlying state authority. By relocating these gestures into an artistic space, Bruguera illuminates the degree to which public compliance and legitimacy are choreographed and mediated, turning attention to bodies in space and the ritualised control of such.

Tatlin's Whisper #6 (Figure 10) places a podium in the museum and invites participants to speak freely for one minute. The apparent openness reveals structural limitations – even in an ostensibly free space, proximity and social norms shape who is heard and how authority is exercised. Bruguera's reworking of iconic Cuban imagery, such as the aforementioned dove that famously landed on Fidel Castro's shoulder, demonstrates how symbolic acts can be mythologised and aestheticised. The dove becomes a pivot around which political authority is narrativised, even satirised, and Bruguera's intervention exposes this construction for critical reflection.

Figure 10: People speaking at the podium for Tania Bruguera's Tatlin's Whisper #6 performance, Havana, Cuba, 2009. Screenshots from the video. Credit: Tania Bruguera.

The Yes Men, a duo of left-wing artist-activists, engage in a parallel approach through satirical impersonation. By assuming the identities of corporate or state officials, they disrupt the performance of authority itself, revealing the superficiality and performativity embedded in public office and media spectacles. Their interventions are humorously charged: embarrassment and absurdity become tools for political revelation. For example, the group created a fake GATT website and posed as WTO representatives at a public conference, delivering exaggerated presentations of corporate cruelty and unveiling a gold jumpsuit costume (complete with phallic prop) to symbolise institutional wealth and power (Figure 11). The Yes Men demonstrate that legitimacy and authority are not intrinsic; rather, they are performed through costume, gesture, tone, and media framing. By mimicking institutional scripts, they highlight the thin line between official credibility and performative artifice. Their work underscores the conceptual link between populist political actors and theatrical performance: both rely on codified signs

and repeated gestures to produce legitimacy, yet the Yes Men reveal that these same signs can be remediated, parodied, or subverted to expose underlying power dynamics.

Figure 11: Andy Bichlbaum of the Yes Men wearing a "Golden Phallus" costume while posing as a WTO official at a conference in Finland, January 2001. From the documentary The Yes Men: The True Story of the End of the World Trade Organisation.

Artistic interventions such as these function as critical mirrors to political theatre. The affective dimension is central. Bruguera's work cultivates awareness of bodily and emotional labour; her audiences experience the tension and discomfort imposed by state power. Similarly, the Yes Men manipulate absurdity to provoke cognitive reflection. By intervening in these scripts, artists reveal how emotional and aesthetic manipulation underpins political authority, making visible what is otherwise naturalised or unquestioned. The juxtaposition of populist political actors and artistic interventions illuminates key dynamics in contemporary political life. Where Sanders, Castro, Mamdani, Trump, Farage, and Mussolini perform scripts to produce belonging and authority, Bruguera and the Yes Men stage interruptions that make these scripts legible and contestable. In one, performance consolidates power; in the other, performance destabilises it. The critical distance created by artistic intervention exposes symbolic codes that constitute political authority, allowing audiences to apprehend the contingency of both democratic and authoritarian spectacle, and to bear witness to the semiotic warfare of modern politics.

Conclusion

Politics is, as Shirin Rai insists, fundamentally performative; it is enacted and experienced through bodies, scripts, spaces, and images (Rai, 2015). Political power emerges not solely from law or policy, but through iconic saturation, dramaturgy of the polis, voyeurism, spectacle, and fallacy. Populism, left and right, depends on the cultivation of performative expertise: performance is constitutive. Populist actors such as Sanders, Castro, Mamdani, Trump, Farage and Mussolini illustrate the strategies by which leaders produce affective cohesion and ideological authority – the left emphasises authenticity, endurance, moralism, and relational identification; the right relies on spectacle, visual codification, narratives of winners and losers, and choreographed intensity. In both cases, political meaning is inseparable from performative enactment.

Yet performance carries risks. When it privileges spectacle over deliberation, emotional intensity can overwhelm reasoned discourse, creating conditions in which loyalty or grievance supersedes policy analysis. Walter Benjamin's reflections on the aestheticisation of politics offer a salient lens. He argued that turning politics into spectacle facilitates authoritarianism, allowing visual drama to function as the primary instrument of cohesion and control (Benjamin, 1936). Perhaps it began with Mussolini, yet contemporary right-populist performances echo similar strategies – iconic imagery and dramatic crises operate as aesthetic glue. Benjamin's warning underscores the ethical stakes: aestheticised spectacle can seduce and preclude democratic reflection. A leader does not need an army to control a population if they can manipulate them into psychological submission. Political performance is unavoidable. Bodies and spaces will always mediate power and belonging.

Yet understanding the mechanics of enactment allows for the cultivation of forms of performance that enhance democratic accountability rather than manipulate emotion, privilege spectacle, or aestheticise authority. Politics is theatre, but not all theatre is benign: the challenge of contemporary democracy lies in discerning the performative that educates, binds, and legitimates from the performative that seduces, coerces, and consolidates power. If Rai is correct that political life is constituted through performance rather than merely represented by it, then the uneven success of contemporary populisms must be understood as a failure of staging as much as of ideology. Benjamin's warning that the aestheticisation of politics tends toward fascism remains persuasive, particularly in light of the right's accelerating reliance on mythic imagery and affective saturation.

Though the present political moment raises something more unsettling, the possibility that the left's recognition of these dangers has not translated into effective counter-performance. I submit that the rise of the global far-right is indicative of the success of right populism in the Trump era. Left populist strategies, often oriented toward procedural critique and moral legitimacy, appear increasingly misaligned with a political environment governed by visual and algorithmic amplification and intensity. This certainly does not invalidate the theoretical diagnoses offered by Rai, Butler, or Benjamin; rather, it exposes their strategic insufficiency when detached from practice. If fascist aesthetics operate through performance, then refusing performance does not negate their power but leaves the stage uncontested, allowing unchecked propagandising. To remain off-book, committed to ethical clarity while the opposing actors move confidently downstage, is to misunderstand the conditions under which political meaning now circulates. The implication here is not that the left should replicate the authoritarian dramaturgy of the right, but that it may need to take a page from its script to re-enter the scene at all. In a political theatre already saturated with spectacle, moral reluctance reads less as resistance than as abdication.