Theft in Broad Daylight: Racism and Neoliberal Legality

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Abstract

In this article the author examines Fitzpatrick's foundational critique of liberal legality and racism, a theme which remained central to his decades-long excavation of modern law's self-identity. After considering Fitzpatrick's 'separation thesis', the author then turns to consider the ways in which neoliberal legality is parasitic upon liberal legal racial formations while at the same time, obscuring the foundational place of race in contemporary capitalism by subsuming material life within its modes of value extraction.

Keywords Critical race theory · Neo-liberal legality · Housing · Grenfell · Peter Fitzpatrick

It is difficult, in 2021, when considering the relationship between race, racism and the law in Britain, to resist the lure of a certain periodisation of the recent past. The Sewell report, by the Commission on Race and Ethnic Disparities, published in March 2021, was pilloried for wiping out decades of anti-racist work, returning the UK to an earlier moment, prior to widespread acknowledgment of systemic racism by state actors. Uncannily, the Commissioners take an approach not wholly dissimilar to Lord Scarman and his report on the Brixton Riots, whose 40th anniversary passed around the same time as its publication. Scarman, whilst acknowledging racism in the policing of Black people, chose to analyse (and minimise) racism as consisting of discrete, overt acts of discrimination rather than recognising it as systemic, structural, and common sense, as did Justice Macpherson in his ground-breaking report of 1999, at the conclusion of the Stephen Lawrence Inquiry. If the 1980s were the dark days of Thatcherite authoritarian populism (Hall 1988), the mid-90s ostensibly signalled a sea change with New Labour, who capitalised off the ground-work laid by the Tories and pushed through further neoliberal transformations of the NHS, the Higher Education sector, and social housing provision, embarked on

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a lethal and illegal war in Iraq, all the while touting a distinctly more cosmopolitan, democratic, multicultural veneer. This was followed by a turn to the Tory-LibDem-led assault on the racialised and poor in the form of austerity policies. And, unlike the Conservative Party of yesteryear, today's cabinet is the most diverse in the history of the UK Parliament, with Asian and Black MPs undertaking the frontline work of criminalising dissent and protest, setting culture wars afire, and overseeing one of the highest Covid-19 death tolls among developed economies. This kind of periodisation carries with it a kind of psycho-affective pull; we want to be able to clearly identify and delineate different racial and racist ideologies and the way they are confronted by and embedded within legal practices, legislation and judicial interpretation. Moreover, we are invested in seeing and perhaps even quantifying both progress and regression, so that we can prescribe the next action to be taken, or an approach that will remedy, fix, or perhaps break what feels like a vertiginous cycle of racial injustice, riot, inquiry and report, and policy recommendations.

I want to resist this periodisation and instead, focus on Peter Fitzpatrick's engagement with liberal legality as it appeared in the 1980s, with a view to making sense of contemporary race, racism and neo-liberal legality. I understand that moment, and the intervening time between now and then as more of a variegated, if congealed whole rather than as a story plottable along a linear timeline. Taking a conjunctural analysis of the present, I aim to pull at and unravel the threads of contemporary neoliberal legality, race and racism as they present themselves in the 1970s and 80s in order to make sense of how neoliberal legality shapes contemporary forms of racism. While the 'common law right to discriminate on the basis of race', refracted through the rendering of English law as synonymous with the meaning of British national identity itself, is firmly entangled with the vicissitudes of British capitalism across the ages, neoliberal economic policies have reconfigured, in some important ways, the relationship between law, race and racism. Beginning with Fitzpatrick's foundational critique of liberal legality and racism, I will then turn to consider the ways in which neoliberal legality is parasitic upon liberal legal racial formations while at the same time, obscuring the foundational place of race in contemporary capitalism by subsuming material life within its modes of value extraction.

Shifting Tides of Separation

Peter Fitzpatrick's *oeuvre* is fundamentally marked by his capacity to excavate the motor force of modern law's self-identity; a force constituted by Enlightenment ideals imbricated with the history of empire and myths of civilisational and racial superiority. The piece that forms the focus of this article, 'Racism and the Innocence of the Law'¹ was published in the *Journal of Law and Society* in 1987.² Fitzpatrick's

¹ It was also anthologised in *Anatomy of Racism* edited by Goldberg (1990).

² Peter had been working on the article for some time and had, in the course of writing it, compiled quite a lot of correspondence relating to the research. (When Peter resigned his position from Birkbeck School of Law, I helped him move out of his office, transporting many boxes of files relating to his work on race, racism and the law to my nearby office at the School of Oriental and African Studies (SOAS).

main argument here is that the separation of racism, as a fundamental part of ‘material life’, from liberal legality is central to the production of a ‘universalistic ordering’ that is at the heart of modern liberalism. The separation of the ‘formal rationality of civil society’ from ‘the substantive rationality of material life’ which it must dominate, is a structuring logic of the liberal Enlightenment project, at least, as articulated along Kantian lines (Fitzpatrick 1987). This universalistic ordering appears in ‘terms operatively realized in liberal legality’ which are ‘ostentatiously opposed to racism’ (pp. 121–22).

If we ‘respect’ the terms of separation, that is, if we are not simply to reduce them to something else such as economic relations or treat them merely as a mask for something else, then the only way of integrally linking law with racism is to attack the foundation and show that those very terms of separation are racist. (Fitzpatrick 1987, p. 122)

Here, the seeds of what would become Fitzpatrick’s argument in *Modernism and the Grounds of Law* (2001) appear, with the argument that law acquires its identity by both being in opposition to racism, but also, ‘taking elements of racism into itself and shaping them in its own terms’ (Fitzpatrick 1987, p. 122).³ The separation of law (universalistic liberal legal ordering) from racism (material life) both constrains and contains the law (Fitzpatrick 1987). This foundational logic of separation heightens racism by constraining law and at the same time rendering it compatible with a claim to ‘universalistic competence’ (Fitzpatrick 1987, p. 122). The nature of this separation posits Black lived experience and racialised people’s *articulation* of and resistance to state racism in an impossible position, outside of the grammar in which law operates.

Being radically separate from and ordering of material life, law cannot be brought into definitely complicitous comparisons with that life. Sympathetic connections between law and racism can be presented as exceptional and remediable, with the exceptional serving to contrast and confirm the great vir-

Footnote 2 (continued)

I also managed to capture several volumes before, in a sign of the contemporary University’s true state of being, an entire case of books was inadvertently pulped due to the carelessness of an administrator). Colleagues and friends near (Europe) and far (Australia) engaged in feedback and conversation about drafts of the paper that took the form of notes and letters, meetings at conferences, and academic visits. The materials relating to this research also included newspaper clippings of racist discrimination in the fields of housing, immigration and of course employment, which is the main focus of the article. Conference proceedings of socialist and anti-racist trade unions and activist scholars, drafts from the likes of Cedric Robinson who presented a paper in Brighton during this period, programmes from the early Critical Legal Conferences in the UK, and papers of his fellow travellers in the field of law (a Valerie, an Alan) litter his files and provide a thick impression of the type of critical legal scholarship that emerged in the 1970s and 80s and, also, reflect how academics and educators, journalists, trade unions, community workers and politicians were thinking about the relationship between race and the law.

³ In *Modernism and the Grounds of Law*, if I can indulge in a wild oversimplification for a moment, Fitzpatrick elaborates the tendency of law to be both responsive to social, political and economic transformations while at the same time being determinative of these same transformations, a paradox rooted in the very foundation, constitutive and constituting moments of modern law itself.

tue of the norm. Indeed, the very terms of that separation – terms of universalistic order, terms operatively realized in liberal legality – are ostentatiously opposed to racism. Against accusations of racism, then, law’s innocence is unassailable. (Fitzpatrick 1987, pp. 121–22)

Fitzpatrick uses the example of Lord Scarman’s report on the Brixton Riots, which took place in 1981, to evidence his argument. In declaring that Britain does not suffer from institutional racism, the very language used by Black people to ‘encapsulate their experience of law and of state action’ (1987, p. 121), Scarman actively encloses liberal legality off from critical engagement with peoples’ lived experiences of it. Lord Scarman produces a ‘closed text’ that renders law perpetually innocent (Robinson 2019).

The main focus of Fitzpatrick’s critique is the *Race Relations Act* 1976.⁴ The 1976 Act, unlike its precursors, recognised both direct and indirect forms of racial discrimination in the provision of goods, facilities and services, and in the employment, training and education sectors. It also applied to housing but with some important exceptions for privately let accommodations. The 1976 Act was seen as an improvement upon what had preceded it; however, by the time of the Brixton Riots the limits of the Act and its poor record in ameliorating widespread and systemic racial discrimination were evident. Fitzpatrick focuses solely on claims related to employment, which made up the vast majority of cases brought under the 1976 legislation.

There are two aspects of Fitzpatrick’s ‘separation thesis’ that I will draw attention to here. The first is the form of right that structures the *Race Relations Act*. Fitzpatrick criticises not only the individualised nature of how a claim can be brought under the legislation, but how this form of right that presumes the universal, individual subject of law shapes adjudication itself. The claim here, which he distinguishes from broader critical legal studies literature, is not that the individual nature of the right denies the systemic nature of the harm, but that it posits racism as a deviation from the norm. ‘The complainant... has the onus of establishing that the norm has been disturbed’ (Fitzpatrick 1987, p. 124). One of the effects is the constant denial of the existence of racism in absence of a recognisable intention on the part of the wrongdoer, and instead, the reduction of racial discrimination to another cause that does not disrupt the norm (paranoia, oversensitivity, communication problems etc....).

This form of right and the adjudicative processes that sustain it help produce a ‘community of law’, one that is bound to particular expressions of nationalism. The ‘common law right to discriminate’ on the basis of race, implicitly acknowledged in *Dockers’ Labour Club and Institute, Ltd. v Race Relations Board* (1974), is the

⁴ In terms of legal avenues of redress for the racism that was endemic in the sectors of employment, housing, education, policing and immigration, the government introduced the notoriously limited *Race Relations Act* in 1965, which was then amended in 1968 to include more reasonable provisions for housing and employment. The 1976 *Race Relations Act* was more expansive in its scope and would remain the primary mode of legal redress until it was replaced by the *Equality Act* in 2010 (Lester and Bindman 1972).

ground which any positive anti-discrimination legislation tries to upset. The intimations of those who supported Brexit, that it would allow the government to repeal the Human Rights Act (and presumably the 2010 Equalities Act)⁵ called upon this long history of English nationalism that equates the right to discriminate on the basis of race, nationality and citizenship with sovereignty itself. As Lester and Bindman put it in an early critical engagement with Race Relations legislation, ‘the Common Law does not frown upon racial discrimination’ (Lester and Bindman 1972, p. 26).

Fitzpatrick refers on this point to the work of Paul Gilroy, who, in his contribution to the landmark collective volume *The Empire Strikes Back: Race and Racism in 70s Britain* (1982), painstakingly traces how ‘racialized portraits of criminality derive a new power from the way the law has reconstituted the political-social field in crisis conditions’ (Gilroy 1982, p. 147). The crisis conditions were occasioned by massive unemployment and economic decline, and a re-tooling and hypostasis of racist figures (the ‘mugger’, see Hall et al 1978) with respect to Black and Asian Britons. In relation to one of the more notorious forms of racial violence in the realm of policing, for instance, Gilroy argues that:

The well-known instance of the ‘sus’ law was but a single example of a generalized process in which any Afro-Caribbean youth is assumed to be criminally inclined and anyone of Asian appearance is adjudged an ‘illegal immigrant’ until they can produce acceptable documentation to the contrary. (Gilroy 1982, p. 147)

It is not difficult to see the resonances and persistence of how these racist tropes are continually renewed in the effort to impose more carceral forms of governance in the current conjuncture, particularly in the context of counter-terrorism measures and the prevailing climate of Islamophobia (Kapoor 2018).

When Gilroy writes that ‘[t]he common law which was a battleground for black rights as early as 1670 remains powerless to defend the interests of black people today’ (Gilroy 1982, p. 148), he is pointing to the constitutive and constitutional exclusion of Black subjects from the universal subject of law that is the preserve of the ‘freeborn Briton’ (the object of affection for the many esteemed Left intellectuals that Gilroy rightfully—if mercilessly—critiques). More than this though, we begin to see the intimate bind between a particular form of English nationalism and an identification with the English common law that places racism within the sphere of right (the ‘common law right to discriminate’) and racialised bodies beyond the promises of equality, liberty and freedom that characterise English sovereignty.

⁵ As Professors Fredmen, Young, Campbell and May write: ‘[A]fter Brexit, and the consequent removal of binding force EU law, there will be no obstacle to Parliament repealing or undermining the fundamental right to equality, currently largely contained in the Equality Act 2010 (EA). Even more concerning are proposed powers to be given to the executive by the EU (Withdrawal) Bill 2017–19 (Withdrawal Bill) to amend primary legislation without full Parliamentary scrutiny (so-called Henry VIII clauses). This could include the power to amend aspects of equality law without full Parliamentary safeguards. Moreover, the Withdrawal Bill specifically states that the EU Charter on Fundamental Rights will no longer be part of domestic law after exit day.’ See ‘The Impact of Brexit on Equality Law’ (2017).

It is important to pause for a moment and to reflect on the background to the Race Relations Act 1976, and the intense focus on the state in critical scholarship engaged with questions of liberal legality, racism and nationalism. The UK of the 1970s and 80s saw a veritable explosion of work on race, emerging from sociology, cultural studies and engagements with critical theory. Fitzpatrick's work stands out in the field of critical legal studies, which, in the UK at least, was hardly dealing with questions of race, colonialism and empire during that period, which is perplexing given the social political upheaval of the time. From the 1940s onwards, immigration from formerly colonised and decolonising countries, from the Commonwealth, was understood to be a major catalyst in accelerating social change; although as the authors of *Colour and Citizenship: A Report on British Race Relations* argued, these processes of change were already underway in the fields of education and housing (Rose 1969). They write '[t]he redefinition of the immigrants as a separate, problem-generating group began to take hold and provided the stimulus for the campaign to control their entry into the UK, which eventually became the dominating element in the political debate' (Rose 1969, p. 404). Large-scale shifts in immigration to the UK exacerbated existing racial and class tensions that played out in the spheres of housing, education, employment and policing.

After the Notting Hill Riots in 1958, we see a consistent cycle of government reports, White Papers, Commissions of Inquiry, and recommendations for change happening at regular intervals. Accordingly, as we approach the tenth anniversary of the riots that spread across England after the unprovoked police killing of Mark Duggan in Tottenham, London in the summer of 2011, we could look to the Inquiry that David Cameron initiated in its aftermath, which in any case was not constituted under the official Inquiries Act, and reflect upon the performative nature of these exercises, and how with few exceptions (the MacPherson Inquiry being an exemplary one here), Inquiries tend to maintain the line of separation between a universalising liberal legality and the material life of racism. In the Grenfell Inquiry, for instance, we can witness a separation drawn between the legal parameters of the Inquiry and the broader questions of class, race and organised abandonment that contributed to the deaths of 72 people. Multiple requests by counsel for BSRs (Bereaved, Survivors and Residents) to investigate how race, class and disability were implicated in the criminal levels of negligence involved in the refurbishment of the Tower have been met with a response that implies racism, and discrimination on the basis of religion or class must be borne out through explicit conduct or acts in order to enter the remit of the Inquiry.⁶

⁶ On the Grenfell Inquiry Podcast episode 149, host Sharon Hemans reports that they received a statement from the Inquiry noting that they 'will investigate all the decisions that were taken in relation to the refurbishment of Grenfell tower and if any of them were motivated by considerations of race or social class the panel will be sure to find out'. Available here: <https://www.bbc.co.uk/programmes/p09dxxhp1>. This is somewhat different from the formal response to Imran Khan QC who argued in his Phase 1 opening statement to the Inquiry that race, religion and social class had to be taken into account to fully understand how and why the fire happened. The judge rejected this argument, stating that the issues of class, race, and religion, being political and social in nature, would be too far outside of the terms and references set for the Inquiry. See also Tuitt (2021).

Separation and Saturation

Fitzpatrick notes how Enoch Powell's infamous 'Rivers of Blood Speech' in 1968 had 'an immense popular response' (Fitzpatrick 1987, p. 129). Reacting to the idea that legislation (in the form of the Race Relations Bill referred to above) could provide positive protections for people of colour in the UK, Powell warned whites that this would give Black people preferential treatment in the law, whilst also, presumably, infringing the natural liberty and freedom that inhere in English law for truly English subjects to discriminate. It may seem as though Powellite racism was an outlier, on the far right of the political spectrum. As Avtar Brah has noted, however:

Thatcherism, as you know, was linked to Powellism in the previous decade. Enoch Powell famously, or infamously, talked about young people, Black people, Asians, saying that they could be born in Britain but could never be *of* Britain.... Margaret Thatcher built on and continued the same kind of discourse. She didn't always use the same language, but it was a very similar discourse. In a 1978 TV interview, she talked about the British people being scared that Britain might be 'swamped by people of a different culture' (Interview with Avtar Brah in Bhandar and Ziadah 2020, p. 35, emphasis in original).

Racism was not the only common ground between Powell and Thatcher. While Powell is largely remembered for his Birmingham outrage, his commitment to neoliberal market economics was perhaps as integral to the formation of Thatcherism as the 'keep Britain white' ethos. As Paul Gilroy notes, 'Thatcher's honeyed mixture of romantic nationalism and free marketeering provided Powellism with a clean uniform, ventriloquising his old populism to compete politically with the resurgent National Front' (Gilroy 2021, p.14). The assault on trade unions, corresponding attacks on employment standards and the privatisation of social goods were enwrapped within a populist nationalism that gave cover, if not legitimated, racist discourses of Englishness.

Thatcher's commitment to the freedom to trade above all else, her enduring support of the Pinochet regime, and refusal to join the international boycott of South Africa during the anti-apartheid struggle can also be placed within the larger context of neoliberal economic thought and its relationship to race. As a member of the Mont Pèlerin Society, Powell found kindred spirits in the likes of William H. Hutt, Wilhelm Röpke and others who combined a vision of a globalised free market with limited democracy and racially stratified citizenship (Slobodian 2020). The values of Powell and Hutt are particularly clear as they related to the situation of apartheid in South Africa. While the 'market is color-blind' and the 'racialised closed-shop' of

apartheid was a bar to labour mobility, Hutt openly argued for a racially weighted franchise in South Africa were apartheid to ever end.⁷

But one need not travel so far afield to grasp the relationship between the racial politics of neoliberalism that characterised Thatcherism. The Geneva neoliberals and their Chicago counterparts were committed to remaking the world after the fall of empire and the rise of decolonisation to ensure the imperium of the market; national sovereignty in the decolonised world was despised insofar as it enabled the possibility of democratic reform and restraint of private property and contract law, the fundamentals of neo-liberal, global capitalism (Slobodian 2020). In the United Kingdom, neoliberal economic policies, which were thoroughly intertwined with the Powellist racism describe above, produced crisis conditions that impacted racialised communities differentially: mass structural unemployment, the weakening of trade unions, the largest sell-off of social housing stock and a post-imperial nostalgia that found an outlet in the launching of war in the Falkland Islands (Hall 1988).

However, considering the legal dimension that inheres in the relationship between race and neoliberal economic policies as they emerge in Britain with the election of Thatcher is not as straightforward. The international dimension of neoliberalism reflects a vision of a globalised order in which the sovereign boundaries of the nation state do not impede capital flows and the rights of the investor, and democracy is weakened or hollowed out to the point that it cannot pose a threat to the sanctity of private property ownership. In the UK, like the US, neoliberal economic policies were parasitic on the racial order embedded within liberal democratic capitalism, both seeking to include racialised communities who had been previously excluded from the ‘freedoms’ of the market (gaining access to credit markets, becoming indebted), and intensifying the dispossessive effects of well entrenched structural racism. The racial dimensions of neoliberal legality do not replace or transcend the racial regime produced by liberal legality, but rather, operate in conjunction with it.

What is neoliberal legality? Proponents of the view that there is such a thing argue that the legal form, in reflecting the material conditions of capitalist modalities of accumulation, has undergone some significant shifts in response to prevailing modes of neoliberal economic policies. One of the most important changes is in the relationship between the juridical sphere and the legal subjectivities it both presupposes and produces (Knox 2017). In other words, the de-collectivised subject in the arena of employment and industrial relations (Knox 2017); the owner as investor in the private law realm of property (Bhandar 2022); the consumer rather than citizen in the political sphere (Brabazon 2017) have all become predominant forms of legal subjectivity. A second aspect of neoliberal legality is the reality of a market society and what it requires. The globalised market order envisioned by the likes of Friedrich Hayek looks to law to ‘shape social relations accordingly and construct

⁷ ‘The fact that blacks were the majority population in South Africa made the situation exceptionally perilous, in his view. The apparent solution of universal suffrage would only “mean the transfer of power to a new political majority, *with no constitutional limitations to prevent retaliatory abuse*”’ (Slobodian 2020, p. 174, emphasis in original).

a specific worldview that enables the market to define the manner in which societies operate in practice' (Veitch 2017, p.78). The competitive free market, counter-intuitively for many, demands a legal system that can re-shape social relations in its image. In other words, the laws of private property and contract may have been foundational to the colonial modern liberal legal order but became insufficient to support the transformation of society that neoliberal doctrines envisioned.

For my purposes, it is worth emphasising that neoliberalism requires a legal architecture that can advance the objectives of transforming existing commodities and non-commodities into assets (Adkins et al. 2020) and marketising material life. This legal paradigm relies on the fiction of equal individuals before the law, but also goes further, in its active efforts to incorporate ever more people into legal-economic relations as an entrepreneurial, indebted subject, or an investor, or a mortgagee. As Costas Lapavistas has remarked, the 'catalyst of 2007/8 [global financial crisis] was speculative mortgage lending to the poorest workers... In the nineteenth century, it was impossible to imagine global disruption of accumulation that materialised because of debts incurred by the workers, individuals, the poorest...' (Lapavistas 2013, p.2). What Lapavistas leaves underexplored are the profoundly racialised dimensions of the crisis. As mentioned previously, neoliberal forms of extraction that have elevated the value of household and mortgage debt to global proportions are parasitic on embedded forms of racism and an international order that has never transcended its colonial history. We can think of the subprime mortgage crisis and reverse redlining as a prime example of this phenomenon (Chakravartty and Ferreira da Silva 2012).

In resisting the periodisation that places neo-liberalism as being sequentially ordered in relation to liberal democratic capitalism, we can return to Fitzpatrick's 'separation thesis' and re-pose this question as one about the line between neoliberal legality and material life. The line has clearly shifted, and with the veil that characterised the divide between the putative public and private realms, upon which the liberal legal order depends, shredded. As remarked upon by many, neoliberalism is characterised by its very capacity to extend the market, through deregulation and privatisation into spheres once considered to fall within the bounds of the public; social goods that at least nominally, are the entitlement of those included within the body politic. These same social goods are the ones that touch us in our most vulnerable, intimate spheres of life: housing and shelter, healthcare, eldercare, social welfare. The line between 'material life' and the 'formal rational world of law' has been eviscerated, rendering even the racially stratified public sphere of social goods open for business. Nowhere is this clearer than in the realm of housing.

As mentioned above, Thatcher's Right to Buy scheme initiated the largest ever sell-off (privatisation) of social housing stock; its moniker combined the ancient English right to trade, buy and sell with the neoliberal imperative to privatise social goods. The 1980s and even more acutely, the 1990s, witnessed the creation of a legal architecture to enable the privatisation of the management, maintenance and refurbishment of housing stock, and further, the incursion of private finance initiatives into the housing sector (Hodkinson 2019). The deregulation and marketisation of social goods such as housing and the regulatory regimes they are situated within

are not simply about ‘privatisation’ but represents a sea change in how property and property rights are conceived of within neoliberal legal regimes.

The financialisation of real estate is a topic that is too extensive to cover in any detail here. Suffice to say, it has become central to contemporary modes of capital accumulation. One of the reasons for this is the active intervention of the state, in inflating land values and asset price inflation. In relying on the ‘active and continuous’ intervention by the state to facilitate financialisation (Lapavistas 2013), we have witnessed an unprecedented blurring of the lines between private and state actors in the provision of what were once social goods provided by the state. The state is intimately involved in the financialisation of urban development and residential real estate. The line of separation between neoliberal legality and material life, in this case, the locus of social reproduction and shelter, is not so much blurred as reconfigured altogether. Thinking about resistance to the financialisation of residential real estate is less a matter of prising back state control, but in understanding the creation of a ‘financialised urban governance regime’ in which some quasi-state actors ‘exercise considerable autonomy’ (Wijburg 2019, p.210).

We can turn to the specific context of the Grenfell Tower tragedy to consider how neoliberal legality operated in such a way as to make it difficult to hold any single authority accountable, particularly before the devastating fire occurred. The owner of the building, the Royal Borough of Kensington and Chelsea (RBKC), contracted out the management duties to a private Tenant Management Organisation (KCTMO), as is the norm with social housing buildings in the UK (Hodkinson 2019). The TMO effectively seemed to exercise a high degree of autonomy in how it managed the building without a corresponding level of responsibility. As mentioned above, it is significant that the residents tried repeatedly to warn the management housing association that they had concerns about fire safety as a result of the refurbishment but were ignored. Furthermore, it is clear that at least some residents tried, without any success, to voice their concerns with a number of different corporate actors involved in the refurbishment, but they too were persistently ignored. The fact that dozens of corporate actors were involved in the refurbishment process has created an ‘anti-accountability structure’. One after another, the entities and individuals involved in overseeing the refurbishment have inevitably stated that it was someone else’s responsibility to ensure the design and materials used were not flammable (Hopkirk and Dunton 2020).

The fragmentation of ownership interests and contractual liabilities that neoliberal legality accomplishes through such devices as the design and build contract (which governed the refurbishment of Grenfell Tower) intensifies racial inequities in at least two different ways. One, this legal form is parasitic upon historically embedded relations of marginalisation and subordination, in ways that are specific to each place. For instance, the financialisation of housing requires a legal architecture that affords favourable tax status to entities such as Real Estate Investment Trusts, which play a central role in producing insecure tenancies. These tax laws and land planning policies do not ostensibly target, or conversely, exclude racialised communities in an easily legible way. However, while the model of financialised housing relies

on greater and intensified modes of abstraction,⁸ it also lands in sites that have their own particular histories of racism, class subordination and exclusion. In the case of Lancaster West Estate,⁹ the voices of a multiracial working class including immigrant communities from Africa and the Middle East, many of whom are Muslim, a longstanding Afro-Caribbean community in the area, Europeans and white British residents, and poignantly, those with disabilities, are the people dealing with the effects of a de-regulated, privatised system of social housing provision that is situated within a larger scene of financialised real estate development.

The second way in which neoliberal legality obscures racism is not, contrary to the separation thesis put forward by Fitzpatrick, to erect a wall between its form and the material life of racism. Rather, it is to multiply and compound the interfaces where one comes into contact with the racial dimensions of privatised and deregulated housing, healthcare, social welfare and education. Neoliberal legality presents us not with an additional layer of racism to be considered alongside liberal legal ones but presents a multiplication of contact points with a system shaped by market logics and values. Neoliberal legality intensifies racism by infiltrating and saturating the sphere of material life with debt, privatised and individualised forms of responsibility, and cultures of anti-accountability at the state/corporate nexus. Thus, to recognise and apprehend how neoliberal legal form has, like liberal legality, race hardwired into its substance, requires a different grammar, a different way of seeing, a different sensibility.

In the Grenfell Tower Inquiry, we can witness this other grammar at play. Now in Phase 2, the month of April saw testimony from BSRs read into the record and also given in person. The subject matter of this evidence relates to the information about fire safety provided by the KCTMO and Rydon, the main contractor responsible for the refurbishment. Two witnesses, both racialised workers and social housing tenants, gave their testimony. Youssef Khalloud, who works in a hotel, knew that one should not ‘stay put’¹⁰ in a fire, no matter the circumstances, because they have regular safety drills at his place of work. The other witness, Betty Kasote, remembers seeing a single notice on the ground floor telling the residents to ‘stay put’ in case of a fire. The witnesses were asked if they read the *Link* magazine produced by the KCTMO, if they read the Tenancy Handbook when they moved in, or if they saw the glossy one-page leaflet meant to keep residents apprised of refurbishment plans, produced by Rydon (the lead contractor), or if they attended the occasional

⁸ Financialisation and its abstractions are not in and of themselves ‘new’ but rather, are recurrent (Fields and Raymond 2021), and operate along a similar logic to the commodity form of abstraction that underlies the transformation of land, resources, ideas, into property (Bhandar 2018); whilst also taking manifestly different forms via algorithmic and digitised technological encoding (Bhandar and Toscano 2015).

⁹ Grenfell Tower is located on the Lancaster West Estate, which is a housing estate located in North Kensington, west London.

¹⁰ The ‘stay put’ policy was based on the principle of compartmentation of the fire in separate flats. Compartmentation catastrophically failed. In the Phase 1 Report of the Inquiry, Justice Martin Moore-Bick found that the failure to revoke the ‘stay put’ policy earlier than when it was eventually abandoned led to more deaths than would have otherwise occurred. Available here: <https://www.grenfelltowerinquiry.org.uk/phase-1-report>.

information sessions put on by the KCTMO. The implication of this line of questioning is to show that from the point of view of the corporate actors involved, the onus was on the tenants to make themselves aware of fire safety. What were clearly tick box exercises for the entities responsible for a lethal refurbishment become a basis upon which to shift responsibility for safety and security to individual tenants.¹¹ An audit culture, rather than meaningful engagement with a particular population of residents, confronts individuals who as Black, Arab, Muslim, immigrant, working class have been historically constructed by a liberal legal order as inherently untrustworthy and non-credible subjects.

In the evidence of another tenant, a white social housing tenant who was actively involved in attempting to hold the KCTMO and RBKC to account for safety failings (many of which foretold the tragedy that unfolded on 14 June 2017), the fragmented nature of responsibility and liability of the actors involved becomes a basis upon which to challenge him. Having to make multiple efforts with different parties to try to gain clarity on issues relating to fire safety during the refurbishment, he is cast as a troublemaker. He had to become well versed with the regulations to hold power to account, but this becomes a basis for challenging him on why he directed his questions to particular parties, and why he did or did not write to different authorities regarding specific fire safety-related issues. Ed Daffarn notes he could not spend all of his time writing to the London Fire Brigade (Daffarn 2021).

One gets the sense from the BSRs testimony, many of whom were labouring under the intersecting axes of race, class, gender, disability, citizenship status, of contemporary social relations, who then had to somehow find the time and energy to fight what were clearly changing and, in some important respects, declining housing conditions created by refurbishment plans of the Tower that were taking place as one part of the larger gentrification of the Borough; a culture of indifference within the KCTMO and RBKC, and a legislative environment that was complex but clearly geared towards deregulation, privatisation and the financialisation of the housing sector.

Conclusion

At the time of writing, the fourth anniversary of the Grenfell Tower fire has just passed. Not a single piece of legislation has come into effect to overhaul deficient fire safety regulations; nor to provide adequate financial resources to ameliorate the hundreds of residential buildings still clad in flammable materials. Some of these buildings are occupied by owner-residents; leaseholders who have invested everything they have into the purchase of their flats. A neoliberal political programme

¹¹ Individual tenants whose first language may not have been English; tenants who work at jobs that do not give them the flexibility to attend information sessions; tenants who had learned that their complaints would not be taken seriously in any event. See Grenfell Tower Inquiry, hearings on 20 April 2021, available here: <https://www.grenfelltowerinquiry.org.uk/hearings/bereaved-survivors-and-residents-evidence-20-april-2021>.

that sacrificed the figure of the noble working-class council tenant on the altar of individual ownership seems to have reached a limit point. No longer the respectable possessive individual deserving of the state's munificence, the realm of the investor-developer and the multinational corporation has taken precedence as the primary stakeholders in the direction of governmental travel.

The legal architectures that financialisation, privatisation and deregulation require have multiplied the points of contact that individuals, households, families, and communities have with a different grammar of economic and political organisation. This is seen in the sheer enormity of the fragmentation of responsibility for the management and lethal refurbishment of the Tower, and the number of parties involved. This fragmentation has not only enabled different actors to implicate other entities in the attempts by legal counsel and the Grenfell community to hold them to account for grave errors and criminal levels of negligence but reflects a different configuration of state and corporate power vis-à-vis residents in the Lancaster West Estate. Compounded by a *modus operandi* of tick box exercises and poor practices of data collection on vulnerable residents (particularly as this related to fire safety),¹² the cost-cutting imperatives of RBKC, and a culture of indifference if not hostility towards tenants when it came to dealing with complaints about fire safety (and much else),¹³ this configuration produces an 'anti-accountability structure' wherein the potential for catastrophic events was immense, with each individual brought before the Inquiry refusing to acknowledge their own responsibility in the structural failure of multiple safety systems. The failures were cultural, structural, individual, corporate, and produced by a particular mode of neoliberal state governance of housing, of the home, the most intimate sphere of daily life.

The Inquiry has drawn a line of separation between liberal legality, recognising the role of racism and class-based subordination insofar as it can be evidenced by way of explicit, overt or direct acts and omissions. In this way, the parameters of the Inquiry re-inscribe the putative innocence of the liberal legal form, separating it off from the very racism and class subordination it entrenches through its maintenance of a fictitious divide between the public sphere of civil society and citizenship, on the one hand, and the sphere of private right on the other. The 'material life of racism' is kept distinct from the very realm (liberal legality) that has played such a fundamental role in constructing and maintaining it. At the same time, shifts to neoliberal modes of governance have eviscerated this divide, revealing the fictitious nature of the public/private divide, but only to compound and multiply the surfaces along which individuals, households, families, and communities come into contact with ever more extractive and punitive rationalities. Neoliberal economic policies and the legal architecture they require have always been, at least in the UK, if not globally, part of a racial nationalist project. The buccaneering spirit of neo-liberal, authoritarian Brexit Britain privileges the force of possessive nationalism over the

¹² See the evidence given by David Noble, Equality and Diversity Officer for KCTMO, 22 April 2021. Available here: <https://www.grenfelltowerinquiry.org.uk/hearings/kensington-chelsea-tenant-management-organisation-evidence-22-april-2021>.

¹³ See the evidence of Edward Daffarn, referred to above.

figure of the possessive individual, peddling the fantasy of an orderly, race-blind meritocratic Britain, as antidote to decades-long degradation of working and living conditions. Neoliberal legality, parasitic on liberal legal forms of racism, has intensified and multiplied its effects, producing a grammar of power unbound by familiar lines of separation and opposition.

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