

ORIGINAL ARTICLE

Governmental influence over rights consciousness: public perceptions of the COVID-19 lockdown

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Abstract

A focus on rights consciousness has become a mainstay of the socio-legal study of law in everyday life. Such research, much of it critical in orientation, generally uses people's sense of grievance as its starting point. The consequent risk is that we elide rights consciousness with a sense of injustice. This article argues that there is merit for critical studies of legal consciousness in keeping these two things separate, and that this represents a dimension of the critical approach to rights consciousness that is largely missing from the field. We present a study of rights consciousness in relation to the imposition of lockdown in the United Kingdom during the early stage of the COVID-19 pandemic. We show that, despite regarding lockdown as a violation of basic rights, most people did not feel a sense of grievance. Furthermore, rights consciousness was influenced by a range of factors distinct from political orientation, most of which were within the sphere of governmental influence. In this way, governmental power was constitutive of the public's rights consciousness. Further exploration and assessment of when, where, and how this might occur should be part of the critical project of legal consciousness research.

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1 | INTRODUCTION

Legal consciousness has long been a major focus of enquiry within socio-legal studies¹ – sufficiently so, indeed, that it may be difficult to frame it as a coherent field of enquiry. Examination of how the scholarship has developed over time reveals various underlying theoretical convictions and eclectic methodological approaches.² Nonetheless, it is fair to say that a decent amount of the research has been critically informed. The puzzle of state law’s hegemonic force – why people continue to turn to state law despite its failure to live up to its ideals – has concerned many critical scholars.³ Relatedly, there have been examinations of how some seek to resist law’s power,⁴ albeit in ways that may ultimately sustain it.⁵

Some of the work on rights consciousness more specifically has similarly been critical in its orientation. Here, important insights have been offered about the ways in which law, envisaged as a solution to society’s justice problems, falls short of achieving its potential. Legal rights may not fulfil their promise if, for example, the assertion of rights consciousness reinforces a sense of victimhood⁶ or requires the overcoming of significant obstacles,⁷ or if the implementation of rights policies in various non-legal settings alters the meaning of the rights in law.⁸

The starting point for these critical studies of rights consciousness tends to be people’s sense of grievance. As Amy Blackstone et al. have put it, ‘[h]ow do individuals respond when they feel their rights have been violated? Do those who perceive a wrong simply tell the wrong-doer, do they tell others, or do they ignore it?’⁹ Senses of grievance might concern experiences of offensive public speech,¹⁰ instances of abuse and harm,¹¹ or a sense of discrimination in relation to ethnicity,¹² gender,¹³ disability,¹⁴ or body shape.¹⁵

¹ L. Chua and D. Engel, ‘Legal Consciousness Reconsidered’ (2019) 15 *Annual Rev. of Law and Social Science* 335.

² S. Halliday, ‘After Hegemony: The Varieties of Legal Consciousness Research’ (2019) 28 *Social & Legal Studies* 859.

³ See for example A. Sarat, ‘“The Law Is All Over”: Power, Resistance, and the Legal Consciousness of the Welfare Poor’ (1990) 22 *Yale J. of Law and the Humanities* 343; S. E. Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (1990); P. Ewick and S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1995).

⁴ See for example D. Cowan, ‘Legal Consciousness: Some Observations’ (2004) 67 *Modern Law Rev.* 928.

⁵ See for example S. Halliday and B. Morgan, ‘I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination’ (2013) 66 *Current Legal Problems* 1.

⁶ K. Bumiller, *The Civil Rights Society: The Social Construction of Victims* (1988).

⁷ L. Abrego, ‘Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants’ (2011) 45 *Law & Society Rev.* 337.

⁸ A.-M. Marshall, ‘Idle Rights: Employees’ Rights Consciousness and the Construction of Sexual Harassment Policies’ (2005) 39 *Law & Society Rev.* 83.

⁹ A. Blackstone et al., ‘Legal Consciousness and Responses to Sexual Harassment’ (2009) 43 *Law & Society Rev.* 631, at 631.

¹⁰ L. B. Nielsen, ‘Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment’ (1990) 34 *Law & Society Rev.* 1055.

¹¹ M. L. Boittin, ‘New Perspectives from the Oldest Profession: Abuse and the Legal Consciousness of Sex Workers in China’ (2013) 42 *Law & Society Rev.* 245.

¹² Bumiller, *op. cit.*, n. 6.

¹³ M. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (1994).

¹⁴ D. Engel and F. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (2003).

¹⁵ A. Kirkland, ‘Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement’ (2008) 42 *Law & Society Rev.* 397.

Critical scholarship in this vein has produced a large and valuable body of research. However, our suggestion in this article is that there is a dimension of the critical approach to rights consciousness that is largely missing from the field. Because the critical enquiry generally starts with people's sense of grievance, there tends to be an elision of a sense of injustice and rights consciousness, and that elision carries a risk: that we overlook situations where there is not necessarily the coincidence of rights consciousness and a sense of injustice.

To put it in terms of William Felstiner et al.'s framework for analysing the antecedent stages of disputing,¹⁶ much of the critical work on rights consciousness focuses on the 'claiming' stage of the 'naming, blaming, claiming' sequence; it demonstrates the difficulty of claiming, notwithstanding someone's sense that a particular individual or organization is responsible for the unacceptable infringement of their rights. Our argument is that we might usefully shift our attention to the prior 'blaming' stage of the sequence: 'the transformation of a perceived injurious experience into a grievance', as Felstiner et al. put it.¹⁷ The question of whether people do, in fact, regard a breach of rights as an unacceptable experience for which another party should be held responsible ought to be included as part of a broader critical enquiry around rights consciousness. To do so, however, we must keep rights consciousness conceptually distinct from a sense of grievance.

There is good reason to hypothesize that a sense of rights infringement will not always coincide with a sense of grievance. Within political science, for example, empirical research suggests that, in certain situations, the public are willing to trade off civil liberties for security.¹⁸ Likewise, within legal theory, fundamental rights are only rarely seen as absolute; legal doctrine is premised on the idea of human rights frequently being qualified or limited in various ways.¹⁹ Legal consciousness research can build on these insights and broaden its perspective on right consciousness by interrogating rather than presuming the relationship between perceptions of rights violations and a sense of injustice. Importantly, this would open up a new space for critical enquiry around rights consciousness.

This article proceeds as follows. In the next section, we briefly set out the nature of our research project in which we explored rights consciousness, examining whether and in what ways the United Kingdom (UK) public felt the COVID-19 pandemic lockdown to be a violation of their basic rights. We present our quantitative data on the relationship between people's rights consciousness and their sense of grievance around lockdown, showing that, while most people felt that lockdown was a violation of basic rights, they did not feel aggrieved about it. The section that follows interrogates the project's qualitative data to consider people's reasoning processes around rights violations and their acceptability. We then explore the determinants of rights consciousness during the pandemic, analysing our national survey data. Finally, the article discusses the significance of our findings for the critical study of rights consciousness.

¹⁶ W. Felstiner et al., 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ...' (1980) 15 *Law & Society Rev.* 631.

¹⁷ *Id.*, p. 635.

¹⁸ See for example J. Sullivan and H. Henriks, 'Public Support for Civil Liberties Pre- and Post-9/11' (2009) 5 *Annual Rev. of Law and Social Science* 375; C. Bozzoli and C. Muller, 'Perceptions and Attitudes after a Terrorist Shock: Evidence from the UK' (2011) 27 *European J. of Political Economy* S89.

¹⁹ See for example A. Barak, *Proportionality: Constitutional Rights and Their Limitations* (2022).

2 | THE PROJECT: RIGHTS CONSCIOUSNESS DURING THE COVID-19 PANDEMIC LOCKDOWN

In the research project on which this article is based, we explored the consciousness of the public in the UK in relation to a single event: the imposition of lockdown during the early stages of the COVID-19 pandemic.²⁰

At the time, there was considerable media discussion of rights concerns, typically framing objections in terms of the importance of liberty. Most notable among lockdown's critics was Lord Jonathan Sumption, retired Justice of the UK Supreme Court, who asserted that '[it] is our business, not the state's, to say what risks we will take with our own health'.²¹ Lord Sumption's argument prompted significant debate. In an interesting exchange within *Prospect* magazine, for example, Thomas Poole fundamentally challenged Lord Sumption's conception of liberty, criticizing him for failing to acknowledge freedom's dependence on statecraft and regulation.²²

Lord Sumption and his detractors certainly represent important perspectives on the appropriate relationship between lockdown, rights, and public health. Yet, such discourse comprised particularly elite engagement with the question. Our research, by way of contrast, was directed squarely at the public's rights consciousness, exploring whether, or to what extent, ordinary people shared the perspectives on basic rights that were gaining traction in the media.

Our project included both quantitative and qualitative work packages. The project's quantitative element comprised an online survey (n = 1158), conducted by the professional panel provider YouGov, weighted to be representative of the adult population. The survey took place in June 2020, 11 weeks after the imposition of lockdown. By this point in time, restrictions on ordinary activities had become a settled feature of everyday life. For the qualitative work, we recruited participants via a Facebook advertising campaign to participate in a series of online focus groups, conducted on the platform Collabito. Just over 100 people participated, reflecting a range of socio-demographic characteristics, living arrangements, and key worker statuses. These participants were divided into sub-groups of 10 or 11 and invited to participate in five rounds of discussions between April and August 2020. Each round contained three topics and was delivered asynchronously; participants were assigned a pseudonym and were able to log into the platform and post text-based responses at their convenience.²³ Posts were moderated by a member of the research team throughout the study. The process is outlined in Figure 1.

The analyses that follow are based on these parallel datasets. We begin by setting out some descriptive statistics from the survey data.

²⁰ This work was supported by the Nuffield Foundation [JUS /FR-000022588] and a University of York ESRC Impact Accelerator Award [G0066501].

²¹ J. Sumption, 'Set Us Free from Lockdown, Ministers, and Stop Covering Your Backs' *Sunday Times*, 17 May 2020, at <<https://www.thetimes.co.uk/article/set-us-free-from-lockdown-ministers-and-stop-covering-your-backs-kvwrnk9ww>>.

²² T. Poole, 'A New Relationship between Power and Liberty' *Prospect*, 23 May 2020, at <<https://www.prospectmagazine.co.uk/philosophy/a-new-relationship-between-power-and-liberty-lockdown-coronavirus-covid-19>>. For Lord Sumption's reply to Poole, see J. Sumption, 'Lord Sumption: The Only Coherent Position Is Locking Down without Limit – or Not Locking Down at All' *Prospect*, 26 May 2020, at <<https://www.prospectmagazine.co.uk/philosophy/lord-jonathan-sumption-coronavirus-covid-19-lockdown-liberty-freedom-response-thomas-poole>>.

²³ For a detailed overview of asynchronous online focus groups as a method, see A. Gordon et al., 'Asynchronous Online Focus Groups for Health Research: Case Study and Lessons Learned' (2021) 20 *International J. of Qualitative Methods* 1.

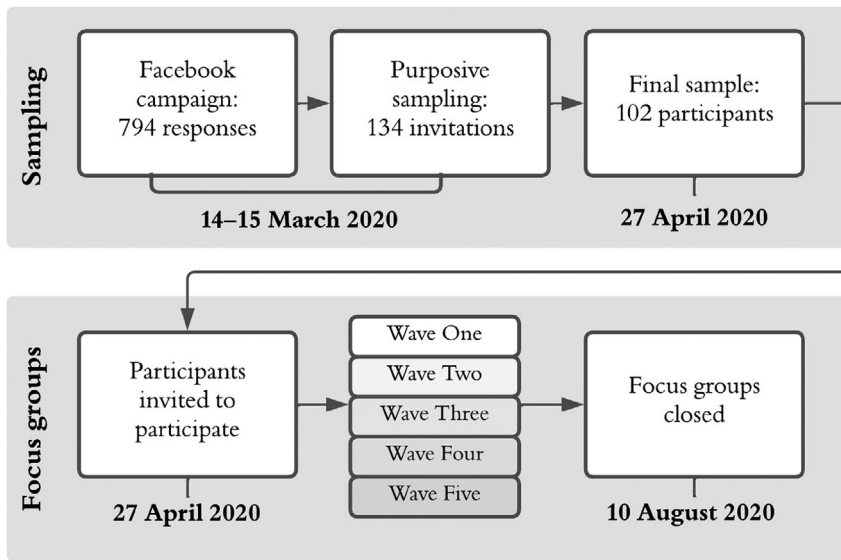


FIGURE 1 An overview of the process used to gather qualitative data

3 | THE NATURE OF RIGHTS CONSCIOUSNESS IN LOCKDOWN

To gain a sense of the variation within the UK public's rights consciousness around lockdown, we presented our survey participants with a set of nine 'rights ideas'. By describing them as 'rights ideas', we draw a clear distinction between the statements used in our survey and those that would be recognized in law. We chose not to replicate rights as expressed in formal human rights instruments, judging that technical legal language could prove difficult or confusing for many participants. Moreover, we recognized that people's sense of basic rights was likely to be culturally derived and so may not perfectly align with fundamental rights formally recognized in law.

The list covered a range of issues that were pertinent to the pandemic, drawing on discussions in the public domain about the challenges that people were facing, and reflecting events reported in the media.²⁴ Our ambition was to be sufficiently expansive in our coverage of 'rights ideas' that we could obtain a snapshot of the UK public's rights consciousness as it related to lockdown. The nine 'rights ideas' were as follows:

1. my right to earn a living
2. my right to spend time with family and friends
3. my right to worship as I please
4. my right to enjoy the outdoors as I please
5. my right to live life as I choose
6. my right to fully support those who need me
7. my right to protest outside with others
8. my child's or grandchild's right to an education
9. my right as a parent or guardian to choose what is best for my child.

²⁴ Thus, we included a 'rights idea' regarding public protest in light of the Black Lives Matter protests that were happening at the time.

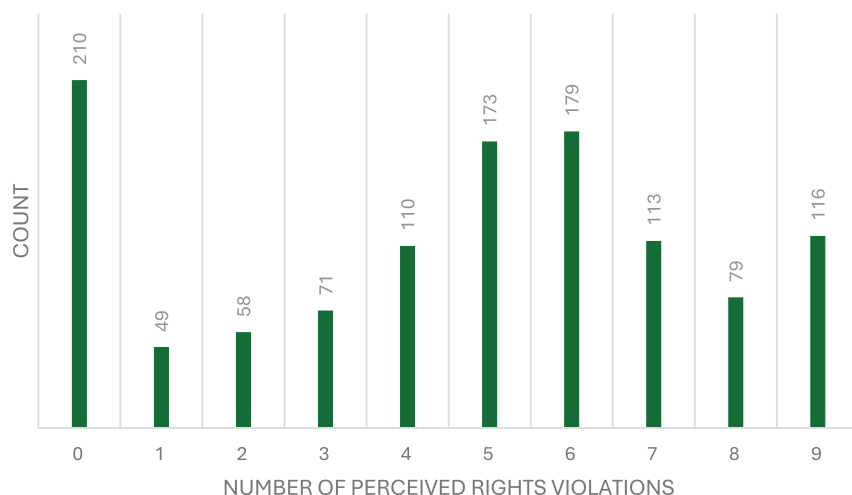


FIGURE 2 Extent of perceived rights violations during lockdown

In relation to each ‘rights idea’, participants were invited to select one of three response options, reflecting different perspectives on whether lockdown violated basic rights and, if so, whether that sense of rights violation coincided with a sense of grievance. The three options were as follows:²⁵

1. Lockdown does violate my rights.
2. Lockdown violates my rights but, given the circumstances, is acceptable.
3. Lockdown does not violate my rights.²⁶

The data suggest that, in terms of the extent to which our survey participants felt that their basic rights were being violated by lockdown (unacceptably or not), there was considerable variation. As Figure 2 shows, for some participants lockdown represented a rights violation in respect of only one of our nine ‘rights ideas’, whereas for others it represented a violation in respect of all nine. Nonetheless, a large majority of participants – more than four out of five people – held the view that, in some respect at least, lockdown represented a violation of rights.

Yet, at the same time, within that majority group, roughly only one in three people expressed the view that the violation of basic rights was unacceptable (Table 1). In other words, most people holding the view that lockdown violated basic rights felt that the violation was justified in the circumstances.

Within the minority group – participants who felt that lockdown unacceptably violated basic rights in some respect – most held that view on the basis of either one (40 per cent) or two (17 per cent) ‘rights ideas’, as Figure 3 shows.²⁷

These findings confirm the value of methodologically maintaining a separation between rights consciousness and a sense of grievance. As we can see, roughly two thirds of those who felt that

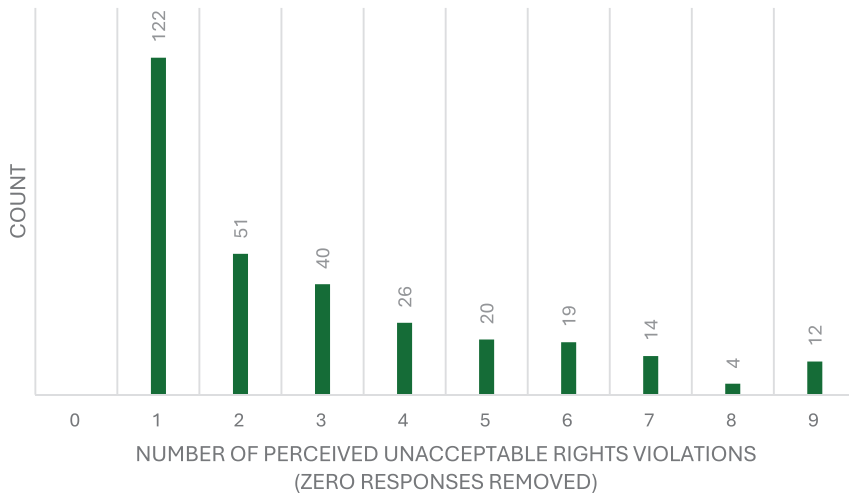
²⁵ Again, this range of potential responses was designed to capture different positions on the nature of the interference with rights in sufficiently plain language to make for a viable public opinion survey.

²⁶ Participants could also select a ‘not applicable to me’ option if, for example, they did not have children or did not worship.

²⁷ There was no single ‘rights idea’ that attracted a disproportionate ascription of ‘unacceptable rights violation’ by these participants.

TABLE 1 Rights consciousness during lockdown

	No violation (none of the nine rights ideas have been violated)	Acceptable violation (all rights violations have been acceptable in the context of the pandemic)	Unacceptable violation (at least one of the rights violations is unacceptable)	Not applicable to me (none of the nine rights ideas are applicable to me)
Percentage of participants	15.5	55.3	26.6	2.6

**FIGURE 3** Extent of perceived unacceptable rights violations during lockdown

lockdown represented a violation of basic rights nonetheless supported it as an acceptable policy response in the context of the pandemic.

To gain an understanding of the reasoning behind these rights consciousness narratives during lockdown, we must turn to our qualitative data.

4 | RIGHTS REASONING DURING LOCKDOWN

In the third round of focus group discussions, we asked participants to respond to a short clip from a BBC radio interview with Lord Sumption, where he expressed the view that lockdown represented ‘the worst interference with personal liberty in [UK] history, for what [was] – by historical standards – not a very serious pandemic’.²⁸ The dataset comprised 73 responses across ten online focus groups.

The analysis of the responses revealed evidence of all three strands of thinking about basic rights and lockdown explored in the survey: ‘no rights violation’, ‘acceptable rights violation’, and ‘unacceptable rights violation’. However, the form of rights reasoning employed towards these different positions betrayed a common structure. Even where participants thought that their rights

²⁸ BBC Radio 4, *PM*, 11 May 2020. See Appendix A3 for the full transcript of the interview excerpt.

were unacceptably violated, or not violated at all, their reasoning relied on similar factors to those invoked by participants who believed the violation of rights to be acceptable. This reasoning took the form of balancing the extent of the public health threat against the extent of intrusion on their liberty. We set out below this balancing-style rights reasoning, starting with the majority group of participants:²⁹ those who believed that lockdown was an acceptable violation of their basic rights.

Most participants here focused on the necessity of action to avoid an even higher number of deaths and/or an overwhelmed National Health Service (NHS). Participants spoke of the benefit to 'society' and 'the vulnerable', and of the dangers of the 'NHS not coping' and the 'number of lives that could be lost'. References to 'the greater good' abounded in the sample. For example, Participants A and B rejected Lord Sumption's critique of lockdown, arguing that sacrifices were justified:

[H]e is certainly right about the loss of civil liberties, but ultimately it is for the greater good ... Given the numbers of deaths we have had, if there was no lockdown, and thus loss of civil liberties, there would be far more deaths and a real risk [of] the NHS not coping. (Participant A)

British citizens have had their liberty curtailed and their livelihoods disrupted. The British government should have been better prepared to handle a crisis of this nature. The virus does disproportionately affect some people. However, these considerations need to be balanced against the number of lives that could have been lost had restrictive measures not been put in place. (Participant B)

Importantly, these views did not appear to differ according to participant demographics, including by age. In the focus group stimulus material, Lord Sumption had argued that 'it is people who are fit and under 65 [who are required to] sacrifice ... their liberty [for] something that hardly affects them at all'.³⁰ In our study, however, younger participants (those aged 18 to 25) were supportive of such 'sacrifices' for the good of society as a whole, as illustrated in the excerpt below from a 21-year-old participant:

I do agree to some extent in the sense that it is younger people who are making a majority of the sacrifices ... when they themselves are not likely to be severely affected unless they have underlying medical conditions. However, from my experience, I do believe that a vast majority of young people are happy to make these sacrifices in order to protect the more vulnerable elderly people in our communities. (Participant C)

A second common theme that emerged from the focus group data from those who felt that lockdown was an acceptable rights violation concerned the uncertainty of the evidence base on the COVID-19 pandemic. In the face of such uncertainty,³¹ many participants expressed some form

²⁹ A total of 49 focus group participants expressed the view that, while lockdown was a rights violation, that violation was acceptable. By contrast, 16 participants believed that lockdown was an unacceptable rights violation, while only three participants expressed the view that there was no rights violation at all. The five remaining responses did not engage with the clip in sufficient detail to be able to categorize them.

³⁰ See Appendix A3.

³¹ For an academic analysis of 'uncertainty' in the context of the proportionality of lockdown restrictions, see Marion Oswald and Jamie Grace's arguments on 'experimental proportionality' in the use of contact tracing tools: M. Oswald and

of a ‘precautionary principle’ argument of ‘better safe than sorry’.³² Participant D, for example, referred to the importance of being ‘cautious’, arguing that this warranted ‘sacrifices’:

We have been dealing with the unknown and personally I would prefer to be cautious. Yes, it has been hard making these sacrifices, but young people including children have died and I would not be prepared to take any risks at all. (Participant D)

What emerged from these data, therefore, was an interesting set of rationales rooted in the balancing of factors and precaution in the face of uncertainty. Yet, we found similar ideas expressed by those who felt that lockdown was an *unacceptable* rights violation. Their reasoning similarly involved a balancing exercise, albeit that they felt that the UK government’s response had been too extreme, and that the pandemic was not a sufficiently serious public health problem. Participant E, for example, drew a comparison between COVID-19 and influenza as comparably significant health threats – a common argument in contemporaneous criticisms of the use of lockdown restrictions internationally:³³

This is the biggest removal of hard-won liberties in my lifetime. The lockdown and subsequent restrictions are totally disproportionate to the threat (which is actually very small) ... On 16 March the Secretary of State said when introducing the Coronavirus Bill that ‘[t]he measures ... are strictly temporary and proportionate to the threat we face’, despite it becoming clear that CV-19 has about the same infection fatality rate as flu and that the total death from the disease is far less than from air pollution. The British public still, several months later, have their freedom curtailed ... I am under house arrest in my own home and very, very angry. (Participant E)

For some of this group, the sense of lockdown’s disproportionality included concerns about governmental transparency:

To be fair, it took some weeks for the statistics to show that this was an illness attacking only the old and vulnerable. But this information has been kept quiet rather than publicized. Once the stats were in, it was clear. Why on earth children are off school when they are unaffected is beyond me. (Participant F)

Similar balancing reasoning was also evident among the very small minority of participants who felt that lockdown did not go as far as violating basic rights at all. Participant G, for example, suggested:

I think to say we’re being deprived of our liberty is a bit extreme compared to the people in history who did not have liberty at all ... We have most of our liberties,

J. Grace, ‘The COVID-19 Contact Tracing App in England and “Experimental Proportionality”’ (2021) *Public Law* 27, at 31–32.

³² For an extended analysis of this, see K. Meßerschmidt, ‘COVID-19 Legislation in the Light of the Precautionary Principle’ (2020) 8 *The Theory and Practice of Legislation* 267.

³³ S. Director and C. Freiman, ‘Civil Liberties in a Lockdown: The Case of COVID-19’ (2023) 48 *J. of Medicine and Philosophy* 613.

unlike people in the past, so it's extreme to say we've lost our liberty just because we can't go to the gym, etc. (Participant G)

Likewise, Participant H noted:

I don't personally feel my liberty has been seriously or unjustifiably affected. I understand that every year a typical number of people die of health conditions or natural causes each month. Knowing that thousands of people over that amount have died this year is enough information for me to know that drastic measures must take place. (Participant H)

These qualitative data suggest that, rather than rights being thought of in absolutist terms, a more nuanced, balancing form of reasoning played a prominent role in rights consciousness during lockdown, cutting across all three positions on the relationship between lockdown and liberty (no rights violation, acceptable violation, and unacceptable violation). The variation among the participants seems not to have been based on the presence or absence of this type of thinking, but rather on differences in perspective on three substantive matters that lay at the heart of the balance of factors in this context: (1) the extent of the loss of liberty, (2) the gravity of the public health risks, and (3) the appropriateness of the balance being struck between the two.

In the next section, we explore the factors that shaped the outcomes of this rights reasoning around lockdown. To do so, we return to our quantitative survey data.

5 | WHAT INFLUENCES THE SENSE THAT RIGHTS HAVE BEEN UNACCEPTABLY VIOLATED?

In this section, we seek to understand the different rights consciousness narratives on the issue of lockdown. Here we follow Laura Beth Nielsen's advice about 'the value of studies ... that hold constant legal doctrine and social phenomenon to better understand variations in legal consciousness'.³⁴

We explored the factors that increased the odds of someone holding the view that lockdown constituted an unacceptable violation of basic rights, compared with those who deemed it an acceptable violation, or no violation at all. In other words, we examined the factors that inclined survey participants towards a perception that the loss of liberty was too severe, or that the public health risk was insufficiently significant, or that the balance struck between personal liberty and public health was inappropriate.

5.1 | Analytical method

To try to understand what shaped convictions on whether lockdown was an unjustifiable restriction of liberty, we conducted a logistic regression analysis. This identified variables that, while controlling for other variables, were significantly associated with increased odds of a participant

³⁴ Nielsen, op. cit., n. 10, p. 1086.

holding the view that lockdown constituted an unacceptable violation of basic rights. Our dependent variable was thus expressed in binary terms; all survey participants were divided into two groups. The first group included all of those who, in relation to at least one of our nine 'rights ideas', had indicated that lockdown unacceptably violated their rights. The second group included everyone else.

Drawing on a range of relevant literatures, we created a pool of factors that were potentially relevant to rights consciousness about lockdown and inserted them into the logistic regression model. First, we considered people's recent political persuasion, recognizing the potential for political orientation to shape perspectives on the importance of liberty.³⁵ We used the data held by YouGov about participants' voting behaviour at the 2019 general election, applying a basic binary – either voted Conservative in the 2019 General Election or not³⁶ – as an approximation for right/left political persuasion.³⁷

Second, noting the significance of trust in government competence for public responses in prior pandemics,³⁸ we considered people's trust in their government's handling of the pandemic, focusing on the governments where participants lived within the UK.³⁹ Participants were coded as either trusting or not.⁴⁰

Third, we examined people's sense of obligation towards NHS workers, who, at the time, were putting themselves at risk to care for people.⁴¹ Participants were coded as either feeling the obligation 'a great deal' or not.⁴²

Fourth, consistent with the findings of public health research about the potential significance of individuals' health concerns for behaviour during pandemics,⁴³ we explored people's estimation of how seriously COVID-19 would impact on their personal health if they were infected.⁴⁴ Participants were coded as either feeling that it would impact seriously or not.⁴⁵

The above four variables were entered into the regression analysis in binary terms. The fifth variable was entered into the model as a categorical variable. The issue of knowledge of pandemic

³⁵ See for example Y. Peng, 'Give Me Liberty or Give Me COVID-19: How Social Dominance Orientation, Right-Wing Authoritarianism, and Libertarianism Explain Americans' Reactions to COVID-19' (2022) 42 *Risk Analysis* 2691.

³⁶ Voted Conservative, n = 447; did not vote conservative, n = 711.

³⁷ We acknowledge that the presence of independence parties in the UK's devolved nations (the populations of that constitute approximately 15 per cent of the UK population) makes the task of deriving political persuasion from voting behaviour challenging, as support for independence is not necessarily an issue of right/left ideology.

³⁸ J. Rubin et al., 'Public Perceptions, Anxiety, and Behaviour Change in Relation to the Swine Flu Outbreak: Cross Sectional Telephone Survey' (2009) 339 *Brit. Medical J.* 1; C. Tan and C. Wong, 'An Outbreak of the Severe Acute Respiratory Syndrome: Predictors of Health Behaviors and Effect of Community Prevention Measures in Hong Kong, China' (2003) 93 *Am. J. of Public Health* 1887.

³⁹ We asked: 'To what extent, if at all, do you trust the government in its handling of the coronavirus crisis?'

⁴⁰ Trusted 'a lot' or 'a fair amount', n = 637; trusted 'not very much' or 'not at all', n = 521.

⁴¹ We asked: 'To what extent, if at all, do you feel you owe it to [NHS workers] to comply with lockdown rules?'

⁴² 'A great deal', n = 848; 'a fair amount', 'not very much', or 'not at all', n = 310.

⁴³ A. Bish and S. Michie, 'Demographic and Attitudinal Determinants of Protective Behaviours during a Pandemic: A Review' (2010) 15 *Brit. J. of Health Psychology* 797; R. K. Webster et al., 'How to Improve Adherence with Quarantine: Rapid Review of the Evidence' (2020) 182 *Public Health* 163; N. Plohl and B. Musil, 'Modeling Compliance with COVID-19 Prevention Guidelines: The Critical Role of Trust in Science' (2021) 26 *Psychology, Health & Medicine* 1.

⁴⁴ We asked: 'How seriously do you think [the coronavirus] would affect your health, if at all?'

⁴⁵ 'Very seriously' or 'fairly seriously', n = 765; 'not very seriously' or 'not at all', n = 393.

restrictions has also been explored extensively in public health research on pandemics.⁴⁶ Accordingly, we considered people's self-confidence in their understanding of lockdown restrictions.⁴⁷ Participants were coded as either 'knowing exactly' what they were allowed to do, 'knowing mostly', or being 'unclear'.⁴⁸

The remaining variables were entered into the analysis as scaled variables, where participants were each assigned a value on a 0–100 scale according to their responses across several questions. Thus, first, we examined people's perceptions of the effectiveness of lockdown restrictions in preventing transmission of the virus.⁴⁹

We also explored people's sense of social norms around lockdown. Drawing on Tom Tyler's approach to social norms,⁵⁰ we asked participants to consider five adults in the UK who they knew best and to indicate the extent to which these peers would disapprove of them breaking the rules.⁵¹

Furthermore, we gathered data about people's perceptions of the procedural justice of policy making during the pandemic, building on research that has shown that such perceptions can affect people's assessments of the legitimacy of policy outcomes.⁵² We developed a 'procedural justice' measure on the basis of nine questions, focusing on government honesty, transparency, the opportunity for frontline workers and ordinary people to tell government about the effects of lockdown on their lives, the extent to which government was listening to frontline workers and ordinary people, the opportunity for scientists to advise government, the extent to which government was listening to scientific advice, and how hard public officials and politicians themselves were trying to act fairly during the crisis.⁵³ Participants were asked about the government where they lived.⁵⁴

⁴⁶ See for example T. Bogg and E. Milad, 'Demographic, Personality, and Social Cognition Correlates of Coronavirus Guideline Adherence in a US Sample' (2020) 39 *Health Psychology* 1026.

⁴⁷ We asked: 'To what extent do you think you understand, if at all, what activities you are and are not allowed to do under lockdown?'

⁴⁸ 'Know exactly', n = 595; 'know mostly', n = 516; 'unclear', n = 47.

⁴⁹ Survey participants were presented with a list of 12 lockdown restrictions and asked to answer the following question: 'If you were to break these rules, how much of a risk would there be of catching or spreading the virus?' In relation to each restriction, participants could rate the risk as 'big', 'medium', 'small', or 'no risk at all'. If they felt that a particular restriction was not relevant to them, they could indicate 'not applicable to me'. Numbers were assigned to these answers, from 3 for 'big risk' to 0 for 'no risk at all' or 'not applicable to me'. Thus, each participant was assigned a score of between 0 and 36, re-scaled to a value between 0 and 100.

⁵⁰ T. Tyler, *Why People Obey the Law* (2006, 2nd edn).

⁵¹ Survey participants were presented with the list of 12 lockdown restrictions and asked to indicate how much their peers would disapprove of them breaking those rules. Answer options were 'a great deal', 'a fair amount', 'not very much', 'not at all', and 'not applicable to me'. Numbers were assigned to these answers, giving each participant a score of between 0 and 36, re-scaled to a value between 0 and 100.

⁵² T. King and K. Murphy, 'Procedural Justice and the Australian Environment: The Case of the Wonthaggi Water Desalination Plant' (2009) 4 *Public Policy* 105.

⁵³ Each of these questions had options, ranging from low to high. For eight of the questions, we assigned a value to these answers ranging between 0 and 3; in one question, it ranged between 0 and 4. Thus, in relation to the nine questions in combination, each participant was assigned a score between 0 and 28, re-scaled to provide a value between 0 and 100.

⁵⁴ The nine questions were: 'To what extent do you think the government has been honest or dishonest during the coronavirus pandemic?'; 'Thinking about how much information the government is sharing with the public, which of the following comes closest to your view?'; 'In your opinion, how much opportunity do people like you have to tell the government about the effects of the lockdown on their lives?'; 'To what extent do you think the government is listening to

We also asked survey participants about the adverse impacts of lockdown on their lives. We presented them with the following list of potential lockdown-related problems and invited them to indicate all of those that applied to them:

1. employment
2. money
3. housing/accommodation
4. relationships within the home
5. violence or abuse within the home
6. relationships with wider family or friends
7. education
8. treatment from the police
9. mental health
10. physical health
11. looking after children
12. loneliness
13. other
14. none of the above.

Lastly, consistent with Nielsen's findings about the potential importance of demographics to rights consciousness,⁵⁵ we controlled for demographic data held by YouGov about their panel participants: age,⁵⁶ gender,⁵⁷ social grade,⁵⁸ and education.⁵⁹

5.2 | Findings

Our findings suggest that only six of the 13 variables that we tested were found to have a statistically significant association with increased odds of people believing lockdown to be an unacceptable

the effects of the lockdown on the lives of people like you?'; 'In your opinion, how much opportunity do frontline health and care workers have to tell the government about the challenges of the current crisis?'; 'To what extent do you think the government is listening to what frontline health and care workers have to say about the challenges of the current crisis?'; 'In your opinion, how much opportunity do scientists have to advise the government about the current crisis?'; 'To what extent do you think the government is listening to the advice of scientists about the current crisis?'; 'Now thinking about how public officials and politicians themselves have acted during the crisis, in your opinion how hard are they trying, if at all, to act fairly during the crisis?' Each participant was assigned a score of between 0 and 13, re-scaled to a value between 0 and 100. In Appendix A1, we set out the confirmatory factor analysis applied to these data, supporting the scale as a measure of procedural justice.

⁵⁵ Nielsen, op. cit., n. 10.

⁵⁶ This was re-scaled to five-year blocks.

⁵⁷ This was recoded as male or female.

⁵⁸ This was recoded as a binary variable. Participants were placed into one of two groups: (1) social grades A, B, and C1, or (2) social grades C2, D, and E.

⁵⁹ This was recoded into three groups, drawing on the UK government's nine qualification levels: UK Government, 'What Qualification Levels Mean' *UK Government*, at <<https://www.gov.uk/what-different-qualification-levels-mean/list-of-qualification-levels>>. Entry level to Level 2 qualifications were recoded as 'GCSE', Levels 3 to 5 as 'A-level', and Level 6 and above as 'degree'.

violation of basic rights:⁶⁰ (1) perceived impact of COVID-19 on personal health,⁶¹ (2) perceived obligation to NHS workers,⁶² (3) lockdown life impact,⁶³ (4) perceived rule effectiveness in preventing transmission,⁶⁴ (5) social norms,⁶⁵ and (6) policy procedural justice.⁶⁶

How might we best interpret these findings? Our argument is that each of these six variables can be related to the balancing-style rights reasoning explored in Section 4. The significance of lockdown's impact on people's lives is best understood, we suggest, as shaping their assessment of the severity of the loss of liberty; the more people encountered problems as a result of lockdown, the worse was their lived experience of the loss of liberty, leading to perceptions of the greater severity of lost liberty. Conversely, people's sense of their own health vulnerability to COVID-19 influenced, we suggest, their assessment of the seriousness of the health risk and the importance of health protection. The same can be said of people's sense of obligation to NHS workers; the risks that frontline NHS workers were undertaking on the nation's behalf represented a particular aspect of people's assessment of the weight of the health protection problem that the country faced. These three variables operated as countervailing pressures in the balancing act between liberty and health protection, influencing whether people drew the conclusion that lockdown comprised an unacceptable rights violation.

The remaining three variables, we suggest, are best interpreted as shaping people's assessments of the appropriateness of the balance being struck between liberty and health protection. First, people's assessments of the effectiveness of the rules in preventing virus transmission appear to have influenced balancing-style judgements. Where lockdown restrictions were viewed as ineffective, the necessity of the loss of liberty could be called into question, thus impacting on rights consciousness. Second, the same is true, we suggest, in relation to perceptions of the procedural justice of the development of the lockdown policy. Concerns about the fairness of the policy process – such as about whether government was really listening to or being honest and transparent with the public or the scientific community – may have prompted scepticism about whether the strictness of lockdown was really necessary; certainly, our qualitative data discussed above is suggestive of this. Third, people's thinking about the appropriate balance between liberty and health

⁶⁰ See Appendix A2.

⁶¹ Participants who believed that COVID-19 would have a 'not serious' impact on their health were only two-thirds as likely to deem lockdown an unacceptable rights violation compared to those who believed that it would have a 'serious' health impact.

⁶² Participants who felt that they owed it to NHS workers 'a great deal' to comply with lockdown were 1.93 times more likely to deem lockdown an unacceptable rights violation compared to those who felt the obligation 'not a great deal'.

⁶³ The marginal effect on the probability of a participant deeming lockdown an unacceptable rights violation changed according to the value of a respondent's 'lockdown life impact' score. Thus, a respondent scoring 0 on the 0–100 scale would have an 18 per cent probability of deeming lockdown an unacceptable rights violation. This increased to nearly 30 per cent at a score of 25, 42 per cent at 50, 56 per cent at 75, and 68 per cent at 100.

⁶⁴ A respondent viewing the restrictions as entirely ineffective (a score of 0 on the scale) had a 37 per cent probability of deeming lockdown an unacceptable rights violation. This decreased to 30 per cent at a score of 25, 24 per cent at 50, 19 per cent at 75, and 14 per cent for a respondent who saw the restrictions as perfectly effective (a score of 100).

⁶⁵ The probability of a participant deeming lockdown an unacceptable rights violation was 32 per cent for participants who scored 0 on the 'perceptions of social norms' scale, 27 per cent at a score of 25, 23 per cent at 50, 19 per cent at 75, and 16 per cent at 100.

⁶⁶ The probability of a participant deeming lockdown an unacceptable rights violation was 32 per cent for participants who scored 0 on the 'perceptions of procedural justice' scale, 26 per cent at a score of 25, 21 per cent at 50, 17 per cent at 75, and 14 per cent at 100.

protection was influenced by social norms; rights thinking did not, it seems, happen in a social vacuum, but rather was influenced by the opinions of peers.

6 | DISCUSSION

The debate between Lord Sumption and his detractors mentioned in Section 2 can be interpreted as an application of political theory to a pressing contemporary issue. Such debates are very important. Yet, in observing such discussions, the temptation is to presume that what matters theoretically also matters empirically. While the difference between, for example, Lord Sumption and Poole may be accounted for by competing ideological perspectives on the meaning and significance of liberty, the same was not true for the UK public. Our analysis suggests that broader political ideology is unlikely to be a good explanation of what separated those who regarded lockdown as an unacceptable rights violation from everyone else; rather, the UK public's rights consciousness was empirically sensitive to a range of alternative non-political factors.

At the micro level, people's lived experience of lockdown and their own sense of health vulnerability during the pandemic influenced their assessments of the severity of the loss of liberty, on the one hand, and the gravity of the public health risk, on the other. Equally, their sense of obligation to NHS workers also contributed to their assessment of the public health risk. At the macro level, people's assessment of the procedural justice of the lockdown policy-making process (governmental honesty, transparency, openness to critical voices and scientific advice, and the good faith of politicians and officials themselves) could tip the balance either way. Negative appraisals could incline people towards scepticism about the gravity of the public health threat; positive appraisals could incline people towards the sense that the loss of liberty was justified. The same is true, of course, of people's beliefs about the effectiveness of lockdown rules in reducing virus transmission; perceptions of ineffectiveness could incline people towards the conviction that lockdown was a disproportionate policy response.

What are the implications of this analysis for a critical approach to rights consciousness? The most significant implication, we suggest, is that much of the above was within governments' sphere of influence. This is most obviously true in relation to the procedural justice of the policy-making process. Practices of honesty, transparency, and good faith in the development of policy fell within governmental control. Yet, it is also true in relation to the effectiveness of lockdown rules, where governments had the ability to adjust lockdown policy in the light of emerging science about virus transmission – and to communicate such effectively. Equally, the lockdown policy of furlough, protecting individuals and families from extreme financial loss, is likely to have ameliorated significantly the lived experience of lockdown for many. Moreover, governmental messaging to the effect that 'we are all in this together' is likely to have influenced social norms, which, we argued above, were significant too. Relatedly, the emphasis that governments placed at the time on the importance of protecting the NHS and the heroism of NHS workers will have influenced not only people's senses of the gravity of the public health threat but also their sense of obligation towards the NHS.

All in all, given that roughly only a quarter of the UK public were of the view that lockdown was an unacceptable violation of their basic rights, we might conclude that the governments of the UK were highly successful in minimizing this strand of rights consciousness. As we can see, disquiet about liberty was, generally speaking, trumped by concerns about public health.

Yet, more critically, we might also observe an interesting paradox for the study of rights consciousness: that while fundamental rights may be conceived as a 'protective shield against

unwarranted governmental intrusion',⁶⁷ governments – of whatever political stripe – hold significant power to shape public consciousness about *whether* such intrusions are unwarranted (in some contexts, at least). In other words, in our study, governmental influence over the determinants of rights consciousness meant that they held significant power over what we might call the 'blaming' stage of rights consciousness as regards its relationship to a sense of grievance. Governments were capable of orchestrating that relationship, and their interventions succeeded in keeping these issues separate for most people. Thus, most people in the UK, irrespective of their political orientation, did not consider 'claiming' to be necessary or appropriate.

7 | CONCLUSION

The governments-imposed lockdown during COVID-19 represented the most extensive restriction on personal liberty in recent UK history. In this article, we have presented an analysis of the public's rights consciousness around lockdown: what ordinary members of the public felt about the tension between liberty and public health.

The vast majority of the UK public was supportive of lockdown, notwithstanding that most people felt that it was, at the same time, a breach of basic rights in some respect. Rights consciousness around this issue was marked by balancing-style reasoning. We have advanced the argument that a range of factors distinct from political persuasion, mostly within the sphere of governmental influence, shaped the outcomes of such reasoning.

Irrespective of one's assessment of the pandemic lockdown specifically, our study suggests that the relationship between public power and rights consciousness more generally is not necessarily one of antagonism. Public power may sometimes be constitutive of rights consciousness, rather than always being kept in check by it. In such situations, rights consciousness loses its protective potential and becomes largely irrelevant to the control of public power. Further exploration and assessment of when, where, and how this occurs should be part of the critical project of legal consciousness research.

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APPENDIX

A1 | Confirmatory factor analysis

Here we set out the confirmatory factor analysis (CFA) conducted in relation to our use of 'procedural justice' as a variable within the regression analysis. The variable was constructed from four items (voice, neutrality, trustworthiness, and dignity and respect), which, in turn, were the product of our nine survey questions.⁶⁸ A CFA model was constructed using the lavaan package in the R statistical software programme. Five tests were then run on the model to assess model fit (see Tables A1, A2, A3, A4, and A5).

⁶⁷ S. Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (2004, 2nd edn) 59.

⁶⁸ See n. 54.

A1.1 | Chi-square test

TABLE A1 Chi-square test output

chisq.scaled	Df	pvalue.scaled
1.642	2.000	0.440

A1.2 | Root mean square error of approximation (RMSEA)

TABLE A2 RMSEA output

rmsea.scaled	rmsea.ci.lower.scaled	rmsea.ci.upper.scaled	rmsea.pvalue.scaled
0.000	0.000	0.055	0.923

A1.3 | Comparative fit index (CFI) and standardized root mean square residual (SRMR)

TABLE A3 CFI/SRMR output

cfi.scaled	srmr
1.0	0.004

A1.4 | Correlation residuals

TABLE A4 Correlation residuals

	vc_scl	ntrlt_	trstw_	dg_rs_
voice_scale	0.000			
neutrality_scale	0.005	0.000		
trustworthiness_scale	-0.003	-0.007	0.000	
dig_resp_scale	-0.003	-0.001	0.008	0.000

A1.5 | Standardized factor loadings

TABLE A5 Standardized factor loadings

	standardized	ci.lower_	ci.upper_	SE	Z	pvalue
voice_scale	0.855	0.834	0.876	0.010	81.433	0.00
neutrality_scale	0.808	0.782	0.834	0.013	60.440	0.00
trustworthiness_scale	0.730	0.696	0.764	0.017	42.110	0.00
dig_respect_scale	0.880	0.860	0.900	0.010	85.913	0.00

A2 | Logistic regression analysis

The binary variable indicating whether a respondent felt that their rights were unacceptably violated at any point can be modelled using a logistic regression. This returns the probability of a respondent reporting their rights to have been unacceptably violated for a given set of independent variables. Figure A1 shows the regression output and the exponential function for each of the independent variables.

The estimates for dependent variables in Figure A1 differ dramatically in size. It should be noted, however, that while the estimates for nine independent variables reflect the difference between up to four categories, four variables are scaled to between 0 and 100 (see Section 5). As a result, the estimates reflect the change for a single point shift on the 0–100 scale. This helps to explain the estimate size differential between the different types of variable.

```
Call:
glm(formula = unacc_viol__binary ~ age + gender_f + social_grade_rc +
  education_rc + tory_voter + trust + health_impact_binary +
  lockdown_impact + peer_pressure + pj_latent + York1_rc +
  restriction_effectiveness_scale + NHS_obligation, family = binomial(link = "logit"),
  data = wave2)

Deviance Residuals:
    Min       1Q   Median       3Q      Max
-1.7509  -0.7669  -0.5531   0.8756   2.5182

Coefficients:
                Estimate Std. Error z value Pr(>|z|)
(Intercept)      0.518524   0.408633   1.269 0.204468
age              -0.003524   0.005296  -0.666 0.505699
gender_fmale     0.043705   0.155837   0.280 0.779129
social_grade_rcC2DE 0.267052   0.159444   1.675 0.093953
education_rcDegree 0.106892   0.181146   0.590 0.555134
education_rcGCSE  0.160219   0.215055   0.745 0.456265
education_rcNo quals 0.472258   0.379530   1.244 0.213381
tory_voter1      0.334390   0.175794   1.902 0.057149
trusttrust      -0.333256   0.217273  -1.534 0.125076
health_impact_binarySeriously 0.384879   0.173777   2.215 0.026775 *
lockdown_impact  0.022597   0.005985   3.775 0.000160 ***
peer_pressure    -0.008915   0.003029  -2.943 0.003248 **
pj_latent        -0.010860   0.005357  -2.027 0.042644 *
York1_rcMostly clear 0.076260   0.158407   0.481 0.630217
York1_rcNot clear 0.637714   0.366567   1.740 0.081913
restriction_effectiveness_scale -0.012447   0.003514  -3.542 0.000398 ***
NHS_obligationNot great deal 0.658967   0.172453   3.821 0.000133 ***
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

(Dispersion parameter for binomial family taken to be 1)

Null deviance: 1221.5 on 1036 degrees of freedom

> exp(model2$coefficients)
                (Intercept)                age                gender_fmale
                1.6795476                0.9964818                1.0446743
social_grade_rcC2DE                education_rcDegree                education_rcGCSE
                1.3061087                1.1128139                1.1737675
education_rcNo quals                tory_voter1                trusttrust
                1.6036115                1.3970878                0.7165866
health_impact_binarySeriously                lockdown_impact                peer_pressure
                0.6805328                1.0228541                0.9911249
pj_latent                York1_rcMostly clear                York1_rcNot clear
                0.9891987                1.0792435                1.8921512
restriction_effectiveness_scale                NHS_obligationNot great deal
                0.9876302                1.9327939
```

FIGURE A1 Logistic regression

A3 | Focus group stimulus: clip of Lord Sumption being interviewed by Evan Davis on BBC Radio 4's *PM* programme, 11 May 2020

Lord Sumption: The fact is that – according to the Office of National Statistics – 91 per cent of the deaths have been people with serious underlying conditions. Eighty-eight per cent have been people over 65. The number of deaths for people under 50 is so tiny that the Office of National Statistics isn't even able to show it on their colourful charts. Yet, it is people who are fit and under 65 who are being asked to sacrifice not just their liberty, but their jobs, their businesses, and all the ordinary collective activities that make life worth living, for something that hardly affects them at all.

Evan Davis: So, let's be clear about your approach. It is to say that someone like yourself – you're, what, 70 plus – you will make your own choice about how much risk of exposure you want to take, and you will decide whether you lock down, but the rest of us will make our own choice, and young people could just get on with things.

Lord Sumption: Exactly. I doubt whether it was ever justifiable to deprive people of their liberty because the government had failed to properly prepare for a pandemic ...

Evan Davis: [interrupts] ... I come back, I think it's about getting it to such a low level that we can, more or less, live with it suppressed without the need for any lockdown ...

Lord Sumption: That is not a good enough justification for a qualified house imprisonment applicable, in principle, to the whole population. It really is not. This is the worst interference with personal liberty in our history, for what is – by historical standards – not a very serious pandemic, except for particular categories of vulnerable people who can isolate themselves voluntarily.

Evan Davis: That position ... well you're not alone in holding that position.