

The trial of Dominic Cummings: rules and reason in the pandemic

25 May 2020, the Rose Garden, Ten Downing Street. Dominic Cummings, PM Boris Johnson's Svengali and the most powerful unelected member of the Conservative government, enters stage right holding a sheaf of papers, uncharacteristically smartly dressed in a white shirt (albeit not quite tucked in) instead of his more usual and iconic hoody and beanie. He sits behind a simple table in the open air on the balmy bank holiday afternoon. He firsts reads out a prepared statement on his actions of March 30-April 14, which have been the subject of feverish public debate for the last few days. And then begins his grilling by the members of the press present, familiar faces to him and to most of us too.

The questioning turns on whether or not he broke the rules of social distancing announced by the Prime Minister on March 23, which he was instrumental in drafting, when he drove 265 miles from London to Durham when he and his wife were suffering the onset of coronavirus symptoms. As he explains, his fear was that, if they became seriously ill, they would be unable to care for their four-year old son; emergency childcare in the form of his nieces would be available on his father's estate, where they could stay in a separate cottage. Did he thereby break his own rules? Had his actions undermined the government's public health strategy and put lives at risk? Did they make a mockery of the sacrifices the British public have made? Those were the charges against him, prosecuted with much relish. (Cummings had made much of his disdain for the mainstream media. Now they could return the favour.)

The trial by media of Dominic Cummings – in lieu of more formal proceedings¹ – was a crucial step on the path that would later lead to his exit from Downing Street in November 2020. The moment was charged with anthropological possibilities, but I will focus on its crux, the charge against him. Did he break the rules? The irony was delicious. The man who prided himself on breaking the rules of political convention and government process, who

¹ The affair was briefly investigated by Durham police that May, but to no consequence. The matter was then pursued by former senior prosecutor Nazir Afzal, who submitted a substantial dossier in October 2020 urging the police and the Crown Prosecution Service to reopen the case – without success to date. Cummings had previously also evaded accountability for his role in alleged misconduct by the Vote Leave campaign during the Brexit referendum. His refusal to appear before the Digital, Culture, Media and Sport Committee was ruled an act of contempt of Parliament. That did not, however, stop him entering government.

had been instrumental in bringing to power a prime minister with a notorious disregard for rules himself, would now engage in a minute, legalistic and reasoned discussion of how his behaviour might be excused.

The sense of occasion came not just from the dramatic tensions of the Westminster soap opera, nor the hostility to Cummings already felt by many, not least due to his role in Brexit. These were issues that were recognisable to, and intensely felt by, a far wider audience. The coronavirus pandemic has put rules in the foreground of the human experience. Rules of social distancing and public hygiene have been imposed in one way or another on almost the entire world, for good reason but often at great personal cost. We – like Dominic Cummings – have all been faced with interpreting and applying them in our everyday lives. The use (and abuse) of rules is itself ripe for anthropological discussion.

Rules in a crisis

As is by now notorious, the UK had been somewhat slow to introduce such rules, designed to minimise (physical) social contact and transmission of the virus. The government worried that if they were brought in too swiftly, ‘behavioural fatigue’ might set in: people cannot bear too much constraint. Perhaps also there was the fear that the British people in particular, with their alleged historic love of freedom, would balk at such an infringement of their liberties. No doubt Boris Johnson was jealous of his popularity with a nation so wedded, he thought, to the ‘ancient, inalienable right of free-born people of the United Kingdom to go to the pub’.² And yet, as it turned out, he had underestimated the willingness of the British people to embrace the rules. Perhaps, some mischievously speculated, it was because he and his chief advisor were such habitual rule-breakers themselves.

Rules of social distancing were eventually introduced, summed up in the pithy phrases that Cummings had become notorious for: now not ‘Take back control’ or ‘Get Brexit done’, but ‘Stay home, protect the NHS, save lives’. People were to remain at home, only leaving for food, health reasons or work where working from home was impossible. They should stay two metres away from others at all times, avoiding meeting even friends and family. In global perspective, the rules themselves were hardly exceptional, variations on a common theme. Differences in the degree of restriction imposed and its timing, as well as adherence to it,

² Press conference, 10 Downing Street, 20 March 2020.

were, however, marked – and were closely noted and correlated with numbers of infections and deaths, in a nationalistic competition as to different countries’ success in managing the pandemic. ‘Behavioural science’ – principally psychology – was suggested as a possible means of managing conformity to these new norms (e.g. Van Bavel et al. 2020).

Anthropology was not uppermost in policy-makers’ minds, although the role of local culture and its variation were in play. For example, cross-cultural psychologist Michelle Gelfand has drawn on some venerable anthropological ideas (Pelto 1968) in developing a comparative framework for comparing the relative ‘tightness’ and ‘looseness’ of different societies. ‘Tight cultures have strong social norms and little tolerance for deviance, while loose cultures have weak social norms and are highly permissive. The former are *rule makers*; the latter, *rule breakers*’ (Gelfand 2018: 3, emphasis as original). Compare Singapore (tight) with the United States (loose), for example. For the US to provide a more effective response to the pandemic, it would need to ‘tighten up’ like Singapore, Gelfand argued.³

I too have been thinking about ‘ruly’ ethical cultures, albeit from a very different standpoint, my especial focus being on sharia – the religious rules important to many (but by no means all) Muslims (Clarke 2015; Clarke and Corran 2021). In that light, I would note first that rule-makers and rule-breakers are not best seen as complementary opposites. Making rules and following (or not following) rules are different activities. The charge against Dominic Cummings was that he was both a rule maker *and* a rule breaker. The enforcement of the rules is another matter again. The United States may celebrate the maverick (the rule-breaker), but it also has a famously prolific body of law (rule-making) and imprisons people at a higher rate than any other country in the world (rule-enforcement). Even if we just focus on rule-following, as I will here, the nature of ‘compliance’ is itself complex, as the trial of Dominic Cummings demonstrated.⁴

³ ‘To survive the Coronavirus, the United States must tighten up’, *Boston Globe*, 13 March 2020. See also Gelfand et al. 2021. Clearly factors beyond normative ‘tightness’ also need considering. Singapore’s infection rate was indeed very low – but not among its migrant workforce, who live in extremely cramped and inadequate housing: ‘Covid-19 Singapore: a “pandemic of inequality” exposed’, *BBC News*, 17 September 2020 (www.bbc.co.uk/news/world-asia-54082861).

⁴ The invocation of ‘compliance’ by behavioural scientists, politicians and the media seems intended as broadly synonymous with following the rules, which is how I take it here. Whether the theme of compliance is in fact best reduced to rule-following is a separate question.

Cummings's defence

Cummings's defence rested on the contention that he was following the rules, rather than breaking them. In philosophers' terms, he put forward a justification, rather than an excuse (Austin 1956). This concerned above all the fundamental question as to whether he should have travelled to Durham at all. His trip was justified, he argued, by the need to ensure proper care of his young child: 'The regulations make clear, I believe, that risks to the health of a small child are an exceptional situation.' As he summed up at the conclusion of his statement:

In this very complex situation I tried to exercise my judgement the best I could. I believe that in all circumstances I behaved reasonably and legally, balancing the safety of my family, and the extreme situation in Number Ten and the public interest in effective government to which I could contribute.⁵

As to those who would say that he nevertheless should have acted otherwise and stayed in London:

I understand these views. I know the intense hardship and sacrifice the entire country has had to go through. However, I respectfully disagree. The legal rules inevitably do not cover all circumstances, including those that I found myself in. I thought and I think today that the rules, including those regarding small children in extreme circumstances, allowed me to exercise my judgment about the situation I found myself in, including the way that my London home had become a target [for protesters] and all the complexity of the situation.

Now came the questions. First was the BBC's Laura Kuenssberg, who took the line that everyone else would follow:

Do you regret what you did? Because many people in this country have made heart-breaking sacrifices in the last couple of months in order to stick to the rules that you were part of putting together. And many people may have listened to you and think you made your own interpretation. And do you understand for some people it seems as if

⁵ Here and throughout I refer to my recording of the press conference, taken from the live stream widely available on the Internet at the time.

there was one version of the rules for you, and one version of the rules for everyone else?

So too, Sky News's Beth Rigby:

Mr Cummings, thousands of people watching this, ordinary families, have put up with all kinds of restrictions and hardships regardless of their medical or family requirements, people not going to funerals, people not even going into hospital when their kids have been having cancer treatment. Why are you so different? What those people I think see here is that there's one rule for you, one of the most powerful people in this country, and there's another rule for them.

Almost every other questioner followed suit, with a line that would stick, endlessly recycled thereafter, even taken as the name for a campaigning group, *One Rule For Them* – 'A grassroots campaign fighting back against a Prime Minister who thinks it's one rule for his lot, and another for the rest of us.'⁶ But Cummings was unrepentant. He had no regrets; he would not even apologize let alone resign.

Robert Peston (ITV) did engage with Cummings's justification, noting that 'Your own scientists are worried... that by introducing an element of personal discretion into the interpretation of the rules you are putting lives at risk.' But Cummings rejected this too.

With great respect, Robert, you are allowed to exercise judgement. The rules explicitly say that, as I stressed to you before. The rules explicitly say that when you are living with small children, you have to exercise your judgement in that situation, that's what the rules say. The rules are not millions of pages long, explaining exactly what you do in every possible circumstance. And if we tried to write rules like that then they could easily cause more trouble rather than less trouble. So of course people have to make judgements about these things.

His inquisitors were, one sensed, somewhat nonplussed by this brazen, but reasoned defence. Much of the outraged questioning sounded pre-packaged. Collapsing the issue into one of 'One rule for them...' was certainly effective rhetorically, but hardly forensic in intent. In the context of the theatre of politics, it hardly mattered. Cummings neither resigned (then at

⁶ www.crowdfunder.co.uk/one-rule-for-them, accessed 8 November 2020.

least) nor was sacked, but provided an excellent stick to beat the government with nevertheless. That was due more to his risible justification for other aspects of his story, not least his car trip to nearby Barnard Castle during his stay in Durham. Cummings's claim that the drive was needed to test his eyesight before the longer trip back to London was so patently ridiculous that it may become proverbial as a lame excuse. Worse, that he was allowed to get away with it became a justification in itself not to follow the rules (Fancourt et al. 2020).

Rules and reasons

And yet, however little one thinks of Cummings's behaviour, if we simply collapse the affair into 'One rule for them...', much is lost. After all, it isn't in fact the case that there are two sets of rules, one for close associates of the Prime Minister and one for everyone else. It is true that some categories of people are exempt from some rules – as pilots are from travel quarantine rules, to take an easy example. But Dominic Cummings is supposed to follow the same rules as everyone else. That, surely, was the crux of the case against him. More to the point, the burden of following the rules varies according to one's advantages. Notoriously, self-isolating in a tiny flat in an urban tower block is not the same as in a house with a garden – or as one questioner put it, 'Does your story not make it the case that it's one rule for most of us and another rule for everybody else who can bend it slightly because they've got the luxury of an empty house lying around?' But the suspicion was no doubt more that, in judging whether or not someone has followed the rules, or should be seen as having done wrong by not doing so, someone like Cummings might be granted more licence than those in a less privileged position. Like cases should be treated alike – the basic principle of legal justice. Cummings broke social distance for the sake of his family's comfort and well-being where others did not. Cummings did not lose his job; others who have broken the rules have.⁷ Anger over this unfairness tapped into deeper fury over the inequalities of British society and a pervasive perception of the political class – especially the Conservative government – as a privileged, not to say arrogant, elite.

⁷ For example, 22-year old Carys Ingram was by contrast arrested, held in a cell overnight and then fined £6,000 for breaking self-isolation rules in October 2020. She subsequently lost her job as a carer, with little prospect of future employment due to her public naming and shaming. www.itv.com/news/channel/2020-11-20/covid-isolation-rule-breaker-ive-lost-my-job-and-people-have-wished-me-dead, accessed 19 February 2021.

Having said that, it has also often been argued that it *would* be right to judge such cases differently for different sorts of people. But that is an argument in the opposite direction, that someone in Cummings's position should be granted less licence, rather than more. Imperial College's Professor Neil Ferguson had been forced to resign from the government's Scientific Advisory Group for Emergencies just weeks before Cummings's media ordeal, after he had been revealed to have allowed his girlfriend to visit his home.⁸ No doubt he had not been the only person in the country to do so. But given that he was one of the most prominent voices arguing for lockdown, his case could not be ignored. Rule-makers should, on this line of thinking, be held to stricter standards if suspected of being rule-breakers, whether because they have compounded their wrong with the further sin of hypocrisy, or due to the fear that, by very publicly not following their own rules, they might undermine compliance more generally.

Cummings thus argued in a different direction – that his case, where the safety of a small child was (he claimed) at risk, fell under one of the exceptions explicitly allowed in the rules. He was *following* the rules rather than breaking them. He still had to make his case: the rules do not provide enough detail to render argument redundant. As he said, one can hardly hope to specify rules to cover every situation. Then the rules would be 'millions of pages long, explaining exactly what you do in every possible circumstance'. That would not be practical: 'if we tried to write rules like that then they could easily cause more trouble rather than less trouble.' And that is exactly what happened in late September when, in an attempt to tailor the rules to the different circumstances of different parts of the country, the rules became so complicated that government ministers, and indeed the Prime Minister himself, couldn't keep track of them – much to their embarrassment.

The practice of the rules requires judgement: how does the general rule fit my particular case? This is true of all rules. Whether or not people are following the rules ('compliance') is thus not a straightforward matter, a fact that can be collected in positivist fashion: it is a question of interpretation. There are open-and-shut cases of course: not all interpretations are plausible. Cummings's justification of his trip to Barnard Castle was so implausible that it

⁸ More seriously, MP Margaret Ferrier was arrested and charged by Police Scotland for travelling to parliament despite having tested positive for Covid-19 (*The Guardian*, 4 January 2021). Sky News's Beth Rigby, who had led the criticism of Dominic Cummings, was herself later suspended for breaking lockdown restrictions, along with a number of colleagues.

became a standing joke. But the question of what to do if you contract Covid-19 when you are in sole charge of a small child or other dependent, and fear that you won't thereby be able to provide adequate care for them, is by contrast a genuine and serious one. And yet it was left largely undiscussed. The press, for reasons that are easy to grasp, were focused on shaming Cummings as a rule-breaker, rather than on a nuanced discussion of the dilemmas of childcare and coronavirus. But if such difficulties are passed over altogether, that is an impoverishment of the public debate.

It is important to note here that following the rules can be seen as a good in itself, regardless of the underlying rationale of the rules themselves. By following the rules we do right. If we highlight our compliance, we thereby signal our virtue. An admission that we have not followed the rules, on the other hand, may signal moral failing. Arguing for an exception can look legalistic. 'Were the public stupid to follow these rules to the letter, rather than looking for loopholes like you did?', asked Anna Mikhailova (*The Telegraph*). Put the other way round, 'whatever legal nicety you may have to say that you haven't broken the letter of these regulations, you've driven a coach and horses through the spirit of them and that is why people are so cross about it' (Jason Groves, *Daily Mail*).

As a result, there has been relatively little public discussion of how to interpret the rules, of the difficulties and dilemmas that that poses. Should one follow the strictest, most literal interpretation ('the letter') of the rules? Such 'rigorism', as the Catholic moral theologians called it, has its attractions (Clarke 2021). You are on safe ground. Indeed many of the rules seem to have been designed with 'playing it safe' in mind: the initial 14-day period of self-isolation for example, which was later thought too long, discouraging compliance (and reduced to ten days). When the schools were open, should you keep your child at home as soon as the inevitable coughs and sneezes arise, even though you know it's not Covid? As the theologians also knew, playing it safe isn't always the best course. Was it really right that parents were thought not to be allowed to visit their children undergoing cancer treatment? (And if so, was that really about upholding the rules for its own sake, as Beth Rigby implied?) Without a public casuistry of coronavirus rules – a discussion of the dilemmas that particular cases give rise to in the face of general rules – we cannot know.

No doubt the government feared that such public debate as to how best to apply the rules might undermine their effectiveness. They seemingly preferred to trumpet draconian

punishments as a deterrent instead.⁹ The Prime Minister on occasion urged people to use their ‘common sense’; but without more openness, the sense can only be individual rather than common. (The manner in which the rules have been enforced, where they have been, has also varied considerably.¹⁰) Judging by the mood of the second lockdown that began in November 2020, the result is not necessarily greater compliance – more a creeping cynicism. Worse, the very idea of a common sense of how to interpret the rules, far from being shared, has been politicised. From the populist right, Nigel Farage and the Brexit Party announced a makeover in November as a new movement (Reform UK) dedicated to ‘build[ing] immunity in the population’ by protecting the vulnerable and letting the rest of us get on with life, ‘with simple hygiene measures and *a dose of common sense*’ (my emphasis).¹¹ This followed the libertarian right in the United States, largely opposed to the restrictions (whereas Boris Johnson has found himself implementing them, self-confessedly against his own inclinations and to the dissatisfaction of some in his own party). On the other hand, one of the highest profile British proponents of theories that the pandemic is a hoax, Piers Corbyn, is a former Labour councillor and brother of the former leader of the Labour Party. Attitudes to the rules can signal political commitments as much as virtue, although – like Brexit – this is not politics along conventional party lines nor conducted in ways best suited for forging consensus.

Conclusion

Rules are superb technologies for social coordination, not least in moments of crisis, as Gelfand (2018) notes. ‘Compliance’ then becomes a matter of governmental concern. In the pandemic at least, it has largely been imagined as either on or off: either people are following the rules, or they are not. But what it means to follow rules is not straightforward. I have alluded to one very sophisticated moral tradition, Christian moral theology; my own research

⁹ Such as the claim by health secretary Matt Hancock in February 2021 that breach of travel rules might incur a ten-year prison sentence.

¹⁰ Contrast, for example, Derbyshire police’s much publicised use of drones to film walkers breaking the first lockdown in the Peak District, with Metropolitan Police commissioner Cressida Dick’s assertion at the end of 2020 that the police would not be ‘barging through doors’ during the Christmas period to enforce the restrictions on social gatherings: www.standard.co.uk/news/uk/police-christmas-day-families-home, accessed 19 February 2021.

¹¹ www.thebrexitparty.org/reformuk/, accessed 12 November 2020. A new ‘Common Sense Group’ of Conservative MPs has also emerged, but more devoted to attacking ‘political correctness’: www.theguardian.com/politics/2020/nov/11/dissatisfied-tory-mps-flock-to-erg-inspired-pressure-groups, accessed 12 November.

focuses on another, the Islamic sharia. What constitutes piety in both, as regards the observance of religious norms, has been richly debated, and they are not alone in that. This is to say nothing of the subtleties of state law. But one does not need to be a philosopher, lawyer, priest or *'alim* to understand that rules have exceptions, that circumstances matter, that seeming non-compliance may be justified or excused, that the rules can be interpreted 'to the letter' but may better not be, that upholding the rules can be a good in itself, but that sometimes the good may be better served in other ways. We all know that; we all argue in these ways all the time. Finessing the tensions between the generality of rules and the particularity of life is a staple of ordinary ethics.

The trial of Dominic Cummings was not, however, an ordinary event. That it was a very public one, with high political stakes, no doubt determined its dynamics. From the rule-maker's point of view, to talk publicly of justifications for not following 'the simple rules' (in Robert Peston's words) might undermine them. (The subtleties of the Jesuit casuists thus fell into disrepute for encouraging 'laxism'.) But amongst rule-followers too there is a tendency for us all to bracket off the complexity, to imagine rules as 'rails invisibly laid to infinity' (Wittgenstein 1958: 85 §218): you are either on the tracks or off them. Privilege is then a matter of being on different rails – the inside track. 'One rule for them, one for the rest of us.' Anthropology is not immune from the tendency to flatten this fascinating landscape into 'mere' rules, either blindly followed or more excitingly broken, although the pandemic may change that.¹² But this isn't a specialist concern. That following the rules is not wholly straightforward is something that we all understand. What might or might not count as a reasonable justification is something we can debate. We can have a public anthropology of the rules. More than that – we need to.

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¹² That is not to say there has been no interesting anthropological work on rules: see e.g. Egerton 1985, Sidnell 2003, Dresch and Scheele 2015, Heywood 2015.

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