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## ORIGINAL ARTICLE

# ‘The rules are all over the place’: Mass Observation, time, and law in the COVID-19 pandemic

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## Abstract

This article analyses practices of pandemic time making that surrounded the imposition and communication of laws restricting daily life in parts of the United Kingdom in spring 2020. With colleagues, we commissioned a Mass Observation Project directive in summer 2020, asking contributors about their everyday experience of time during the COVID-19 pandemic. We analyse how legal temporalities emerge across 228 responses. Initially, law making seemed belated, missing the disruptive temporalities of the pandemic. Once they arrived, pandemic rules were sudden, changeable, and confusing. Mass Observation writers forged clusters of improvised practices – tactics of anticipation – to cope with these unsettling temporalities. Meanwhile, the Hansard Society, the Joint Committee on Statutory Instruments, and legal commentators argued that ‘fast-track’ pandemic law making was error ridden, putting the public at risk of unwitting criminal liability. Attentive to ‘polyrhythmic’ temporalities operating across fields of experience and

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action, our study underlines the contradictory qualities of apparently resonant constructions of legal time.

## 1 | INTRODUCTION

This article explores how people made and felt pandemic rules temporally in the early months of the COVID-19 pandemic. We proceed from the observation that ‘time is key to how the pandemic has reconfigured everyday life’.<sup>1</sup> In spring 2020, legal restrictions were imposed on the United Kingdom (UK) population that have been described as the most stringent in its history.<sup>2</sup> People remade their daily routines, responded to new responsibilities or restrictions by altering their daily or weekly patterns, or encountered new forms of extended or emptied-out time.<sup>3</sup> Temporalities of social reproduction were scrambled and un-concealed, resulting in intensely visible gendered experiences of care provision and domestic labour.<sup>4</sup> New temporal patterns of work were freeing for some, and disorienting or oppressive for others.<sup>5</sup> The pandemic continues to have profound effects on social and collective memory,<sup>6</sup> orientations to futures,<sup>7</sup> and understandings of the present, such as the experience of waiting.<sup>8</sup>

In the context of these legal and social shifts, we analyse Mass Observation responses to understand how people read pandemic rules into their lives and how they lived these rules temporally

<sup>1</sup> S. Bailey et al., ‘A Day at a Time: A Research Agenda to Grasp the Everyday Experience of Time in the COVID-19 Pandemic’ *Discover Society*, 15 September 2020, at <<https://archive.discoversociety.org/2020/09/15/a-day-at-a-time-a-research-agenda-to-grasp-the-everyday-experience-of-time-in-the-covid-19-pandemic/>>.

<sup>2</sup> N. Finch et al., ‘Undermining Loyalty to Legality? An Empirical Analysis of Perceptions of “Lockdown” Law and Guidance during COVID-19’ (2022) 85 *Modern Law Rev.* 1419.

<sup>3</sup> D. Lyon and R. Coleman, ‘Rupture, Repetition, and New Rhythms for Pandemic Times: Mass Observation, Everyday Life, and COVID-19’ (2023) 36 *History of the Human Sciences* 26.

<sup>4</sup> D. Andersen et al., ‘Imposed Volunteering: Gender and Caring Responsibilities during the COVID-19 Lockdown’ (2022) 70 *The Sociological Rev.* 39; E. Gordon-Bouvier, ‘Vulnerable Bodies and Invisible Work: The COVID-19 Pandemic and Social Reproduction’ (2021) 21 *International J. of Discrimination and the Law* 212.

<sup>5</sup> K. Bales, ‘Maintaining the Divide: Labour Law and COVID-19’ in *Pandemic Legalities: Legal Responses to COVID-19 – Justice and Social Responsibility*, eds D. Cowan and A. Mumford (2021) 187; T. Vickers and S. Hitchings, ‘Precarity, Precarious Work and COVID-19: Insights from Nottingham’ *Discover Society*, 27 July 2020, at <<https://archive.discoversociety.org/2020/07/27/precarity-precious-work-and-covid-19-insights-from-nottingham>>.

<sup>6</sup> J. Catlin, ‘When Does an Epidemic Become a “Crisis”? Analogies between COVID-19 and HIV/AIDS in American Public Memory’ (2021) 14 *Memory Studies* 1445; F. Mazzucchelli and M. Panico, ‘Pre-Emptive Memories: Anticipating Narratives of COVID-19 in Practices of Commemoration’ (2021) 14 *Memory Studies* 1414; L. Qian, ‘Making Memory Work: The SARS Memory and China’s War on COVID-19’ (2021) 14 *Memory Studies* 1489.

<sup>7</sup> B. Chattopadhyay, ‘The Pandemic that Was Always Here, and Afterward: From Futures to CoFutures’ (2020) 47 *Science Fiction Studies* 338; R. Coleman and D. Lyon, ‘Recalibrating Everyday Futures during the COVID-19 Pandemic: Futures Fissured, on Standby and Reset in Mass Observation Diaries’ (2023) 57 *Sociology* 421.

<sup>8</sup> L. Baraitser and L. Salisbury, ‘“Containment, Delay, Mitigation”: Waiting and Care in the Time of a Pandemic’ (2020) 5 *Wellcome Open Research* 129 [version 2; peer review: 2 approved], at <<https://wellcomeopenresearch.org/articles/5-129/v2>>; M. De Backer et al., ‘“Their Lives Are Even More on Hold Now”: Migrants’ Experiences of Waiting and Immobility during the COVID-19 Pandemic’ (2022) *Social & Cultural Geography* 1.

as a result.<sup>9</sup> Attentive to significant diversity in how the public viewed the legal status of specific lockdown requirements, we focus on how Mass Observation writers acted in response to what they perceived as the rules.<sup>10</sup> In our analysis, ‘pandemic rules’ refers to writers’ conceptions and practices of formal law, advice, guidance, and rules and restrictions created by institutions, businesses, and other people. This term also refers to primary legislation that was enacted or became centrally important during the pandemic, including the Coronavirus Act 2020 (CVA) and the Public Health (Control of Diseases) Act 1984 (PHCDA); secondary legislation that brought into effect coronavirus restrictions on daily life through instructions on mask wearing, gathering with others, travel, and self-isolation, for example;<sup>11</sup> and ‘soft law’ in the form of government guidance.<sup>12</sup> Crucially, we also aim to show how these rules – as ‘pandemic legalities’<sup>13</sup> – were felt and constructed, providing distinct perspectives on the everyday experiences of rules in this time of crisis.

Engaging with time and temporality is necessary to fully understand how people lived pandemic rules. We have argued elsewhere for ‘an approach to law, regulation and time that conceives of time (just as much as law) as made or co-produced, not pre-existing and separate, and which is engaged in dialogue with concepts of time emerging across disciplines’.<sup>14</sup> In this article, we adopt a similar approach to explore the making of time – and specifically the making of legal temporalities – during the pandemic.<sup>15</sup> Despite a tendency within legal scholarship to naturalize time, positioning it as a ‘container’ for social action,<sup>16</sup> recent research explores the many ways in which legal temporalities are made.<sup>17</sup> This is a focus on the ‘social life of time’, investigating time’s agency – its effects in producing social life.<sup>18</sup> Legal temporalities are shown to be often intensely relational<sup>19</sup> and socio-material,<sup>20</sup> achieved and sustained through

<sup>9</sup> M. Enright and D. Duffy, ‘Pregnancy and Childbirth in Ireland under the 8th Amendment: Notes on Women’s Legal Consciousness’ (2022) 49 *J. of Law and Society* 753.

<sup>10</sup> Finch et al., op. cit., n. 2; J. Tomlinson et al., *Law and Compliance during COVID-19* (2022), at <[https://pure.strath.ac.uk/ws/portalfiles/portal/159238583/Tomlinson\\_et\\_al\\_NF\\_2022\\_Law\\_and\\_compliance\\_during\\_covid\\_19.pdf](https://pure.strath.ac.uk/ws/portalfiles/portal/159238583/Tomlinson_et_al_NF_2022_Law_and_compliance_during_covid_19.pdf)>.

<sup>11</sup> S. Barber et al., *Coronavirus: Lockdown Laws* (2021).

<sup>12</sup> Finch et al., op. cit., n. 2.

<sup>13</sup> Cowan and Mumford (eds), op. cit., n. 5.

<sup>14</sup> S. M. Beynon-Jones and E. Grabham, ‘Introduction’ in *Law and Time*, eds S. M. Beynon-Jones and E. Grabham (2018) 1, at 3.

<sup>15</sup> S. M. Beynon-Jones et al., ‘Fixing the Future? How Architects Make Time in Buildings for Later Life Care’ (2021) 69 *The Sociological Rev.* 139; G. Carabelli and D. Lyon, ‘Young People’s Orientations to the Future: Navigating the Present and Imagining the Future’ (2016) 19 *J. of Youth Studies* 1110; R. Coleman, ‘Making, Managing and Experiencing “The Now”: Digital Media and the Compression and Pacing of “Real-Time”’ (2020) 22 *New Media & Society* 1680.

<sup>16</sup> R. Mawani, ‘Law as Temporality: Colonial Politics and Indian Settlers’ (2014) 4 *Irvine Law Rev.* 65.

<sup>17</sup> E. Cloatre, ‘Traditional Medicines, Law and the (Dis)Ordering of Temporalities’ in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 128; E. Gordon-Bouvier, ‘Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women’s Domestic Work’ (2019) 15 *International J. of Law in Context* 479; C. S. Hargita, ‘Care-Based Temporalities and Parental Leave in Australia’ (2017) 26 *Griffith Law Rev.* 511; S. Keenan, ‘From Historical Chains to Derivative Futures: Title Registries as Time Machines’ (2019) 20 *Social & Cultural Geography* 283; K. McNeilly and B. Warwick (eds), *The Times and Temporalities of International Human Rights Law* (2022); S. Ring, ‘On Delay and Duration: Law’s Temporal Orders in Historical Child Sexual Abuse Cases’ in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 93; E. Rose, ‘Workplace Temporalities: A Time-Based Critique of the Flexible Working Provisions’ (2017) 46 *Industrial Law J.* 245.

<sup>18</sup> M. Bastian et al., ‘Introduction: The Social Life of Time’ (2020) 29 *Time & Society* 289.

<sup>19</sup> L. J. Chua, ‘Interregna: Time, Law, and Resistance’ (2021) 46 *Law & Social Inquiry* 268.

<sup>20</sup> N. Graham et al., ‘Broadening Law’s Context: Materiality in Socio-Legal Research’ (2017) 26 *Griffith Law Rev.* 480.

interactions with objects, artefacts, and legal infrastructures.<sup>21</sup> Critical attention to legal temporalities has enabled assessment of, for example, law's perpetuation of racialized injustices and futures,<sup>22</sup> gendering pasts,<sup>23</sup> and normative processes of adjudication.<sup>24</sup> In relation to this work, our analysis draws on a data archive relatively understudied in socio-legal literature – Mass Observation responses – in order to explore how one group of people lived and made sense of rule making as an essentially temporal and temporalizing set of practices during the pandemic.

In the following section, we discuss the value and challenges of drawing on Mass Observation as an archive for this purpose alongside other sources, such as legal and Parliamentary commentary on the pace and timing of law. We introduce our focus on the 'polyrhythmic'<sup>25</sup> legal temporalities of the pandemic, which we understand in a constructivist sense as the making of apparently resonant but complex and even contradictory 'times' by distinct actors mobilizing an array of concepts, feelings, and preoccupations.<sup>26</sup> Subsequent sections then discuss the legal temporalities that emerged through our research: belatedness, 'fast-track' law, sudden law, and tactics of anticipation. Attentive to polyrhythmic temporalities operating across fields of experience and action, our analysis explores the contradictory and/or dissonant qualities of apparently resonant constructions of legal time in the early pandemic.

## 2 | LEGAL TEMPORALITIES IN THE MASS OBSERVATION PROJECT

The A Day at a Time project explores the everyday experience of time during the COVID-19 pandemic.<sup>27</sup> With colleagues in the project, we commissioned a Mass Observation Project directive in summer 2020, which asked contributors to write about their experience of time

<sup>21</sup> L. Hayes, 'Work-Time Technology and Unpaid Labour in Paid Care Work: A Socio-Legal Analysis of Employment Contracts and Electronic Monitoring' in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 179; Keenan, op. cit., n. 17; K. McNeilly, 'Documents and Time in International Human Rights Law Monitoring: Artefacts, Objects, Things' in eds McNeilly and Warwick, op. cit., n. 17, p. 85; I. van Oorschot, 'Doing Times, Doing Truths: The Legal Case File as a Folded Object' in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 229.

<sup>22</sup> F. Adebisi, 'Black/African Science Fiction and the Quest for Racial Justice through Legal Knowledge: How Can We Unsettle Euro-Modern Time and Temporality in Our Teaching?' (2022) 4 *Law, Technology and Humans* 24; T. Anwar, 'Time Will Tell: Defining Violence in Terrorism Court Cases' (2022) 53 *Security Dialogue* 130.

<sup>23</sup> M. Enright, "'No. I Won't Go Back": National Time, Trauma, and Legacies of Sympiesiotomy in Ireland' in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 55.

<sup>24</sup> T. Chowdhury, *Time, Temporality and Legal Judgment* (2020); M. Wan, 'Queer Temporalities and Transgender Rights: A Hong Kong Case Study' (2021) 30 *Social & Legal Studies* 563.

<sup>25</sup> M. G. Wiber, 'Syncopated Rhythms? Temporal Patterns in Natural Resource Management' (2014) 46 *J. of Legal Pluralism and Unofficial Law* 123.

<sup>26</sup> H. Jordheim and E. Ytreberg, 'After Supersynchronisation: How Media Synchronise the Social' (2021) 30 *Time & Society* 402; S. Keenan, 'Making Land Liquid: On Time and Title Registration' in eds Beynon-Jones and Grabham, op. cit., n. 14, p. 145; K. McNeilly, 'The Temporal Ontology of the Human Rights Council's Universal Periodic Review' (2021) 21 *Human Rights Law Rev.* 1.

<sup>27</sup> The A Day at a Time (ADAAT) project is a collaboration between Simon Bailey (University of Kent), Michelle Bastian (University of Edinburgh), Siân Beynon-Jones (University of York), Rebecca Coleman (University of Bristol), Emily Grabham (University of Kent), Dawn Lyon (University of Kent), and Dean Pierides (Newcastle University). See <<https://research.kent.ac.uk/daat-coronavirus/>>.

during the pandemic with a particular focus on the rhythms and routines of daily life, how people organized time in their households, the role of media and technologies, and people's experiences of waiting during the pandemic.<sup>28</sup> The directive also specifically asked whether changes to writers' daily rhythms, routines, or habits were connected to specific government regulation or advice.<sup>29</sup>

Mass Observation was set up in 1937 and aims to foster an 'anthropology of ourselves'.<sup>30</sup> Its most recent iteration – the Mass Observation Project – has been running since 1981, and along with earlier archives from the Mass Observation Group, is hosted at the University of Sussex.<sup>31</sup> Mass Observation has been described as an enigmatic<sup>32</sup> yet valuable archive that raises distinct methodological challenges for researchers.<sup>33</sup> Like other types of qualitative data, Mass Observation writers' accounts are intensely personal, yet researchers have noted that it is neither easy nor necessarily desirable to generalize in the usual way from the entries,<sup>34</sup> which have been conceptualized as a 'collaborative museum' creating 'collective atmospheres'<sup>35</sup> as much as autobiographies.<sup>36</sup> It is arguably their idiosyncratic nature that renders the responses valuable for responding to the unfixed nature of ordinary experience – particularly in the context of legal change.<sup>37</sup> If, as Ben Highmore puts it, '[t]he ordinary is as much characterised by confusion as clarity, as much by simultaneity and complexity as discrete and separable motifs', then the responses are helpful in enabling us to understand everyday life, especially at a time of social transformation.<sup>38</sup> Mass Observation writers occupy a self-reflexive position, observing and commenting on their own worlds in the act of recording their everyday lives for future readers.<sup>39</sup> This allows writers' own multi-layered experiences and practices of time to emerge as they 'think through' their lives,<sup>40</sup> recounting

<sup>28</sup> The directive can be viewed at <[http://www.massobs.org.uk/images/Summer\\_Directive2020\\_FINAL.pdf](http://www.massobs.org.uk/images/Summer_Directive2020_FINAL.pdf)>. It was prepared collectively by ADAAT project members and supported by a Leverhulme Research Fellowship (Coleman, 'Mediating Presents: Producing 'the Now' in Contemporary Digital Culture', RF-2017-632-8) and the Edinburgh College of Art at the University of Edinburgh (Bastian). Analysis was supported by a British Academy Small Grant led by Rebecca Coleman and Dawn Lyon in collaboration with Corine van Emmerik and Chloe Turner ('Feeling, Making and Imagining Time: Everyday Temporal Experiences in the COVID-19 Pandemic', SRG2021-211073). Socio-legal analysis was supported by a Philip Leverhulme Prize through the Leverhulme Trust (Grabham).

<sup>29</sup> S. Halliday et al., 'Why the UK Complied with COVID-19 Lockdown Law' (2022) 33 *King's Law J.* 386.

<sup>30</sup> Mass Observation, 'History of Mass Observation' *Mass Observation*, at <<http://www.massobs.org.uk/about/history-of-mo>>.

<sup>31</sup> See the Mass Observation website at <<http://www.massobs.org.uk/>>.

<sup>32</sup> N. Hubble, *Mass Observation and Everyday Life: Culture, History, Theory* (2006).

<sup>33</sup> A. Pollen, 'Research Methodology in Mass Observation Past and Present: "Scientifically, about as Valuable as a Chimpanzee's Tea Party at the Zoo"?' (2013) 75 *History Workshop J.* 213.

<sup>34</sup> *Id.*

<sup>35</sup> R. Harrison, 'Observing, Collecting and Governing "Ourselves" and "Others": Mass-Observation's Fieldwork *Agencements*' (2015) 25 *History and Anthropology* 227, at 231, 240.

<sup>36</sup> D. Sheridan, 'Writing to the Archive: Mass-Observation as Autobiography' (1993) 27 *Sociology* 27.

<sup>37</sup> E. Casey, 'Gambling, Status Anxiety and Inter-Generational Social Mobility: Findings from the Mass Observation Archive' (2020) 54 *Sociology* 380; M. Savage, *Identities and Social Change in Britain since 1940: The Politics of Method* (2010).

<sup>38</sup> B. Highmore, *Ordinary Lives: Studies in the Everyday* (2011) 2.

<sup>39</sup> Casey, *op. cit.*, n. 37; A. Pollen, 'Shared Ownership and Mutual Imaginaries: Researching Research in Mass Observation' (2014) 19 *Sociological Research Online* 214.

<sup>40</sup> Casey, *id.*, p. 385.

memories and sharing hopes for the future, giving them the kind of freedom to ‘articulate the ways in which future, present and past co-exist’ that can also be found in unstructured interviews.<sup>41</sup>

We focused on pandemic rules as they were ‘subjectively conceived’ by writers.<sup>42</sup> Our directive was sent out in summer 2020. It asked:

In the first days of the lockdown, did your daily rhythms, routines, or habits change? If so, please say how and describe how this felt. Can you recall how these changes came about? Were they connected to specific government regulations or advice?<sup>43</sup>

Writers self-selected to respond, replying to the Mass Observation Project via email or post in autumn 2020. Through diverse narratives of improvised actions and changes to routine, the responses evidence multiple practices and ideas of legality, sensed and practised in the everyday<sup>44</sup> and changing as writers grappled with new personal challenges shaped by the pandemic. As Naomi Finch and colleagues show, there was a great diversity of beliefs in the early pandemic about the legal status of particular restrictions – whether certain practices were permitted, prohibited, or merely the subject of government advice.<sup>45</sup> Our directive was worded in such a way as to capture a diversity of conceptions of law, legal status, and rules, and descriptions of how these were practised.

Writers do not always refer to law or regulations as such, sometimes describing advice or guidance as if it had legal status or vice versa.<sup>46</sup> In this way, their approaches to pandemic rules did not result from detailed knowledge of formal law, nor did formal law always regulate the areas of life that writers felt were being regulated.<sup>47</sup> Writers also use multiple terms when describing restrictions arising during the pandemic, including advice (M5015; B7084), guidelines (W7130), rules (R860; E6705), regulations (B7084), and restrictions (A6936; F5890).<sup>48</sup> For example, P7411 describes how

[e]ach tea time there would be a government update which we watched on television every night. It was a way to keep up to date with corona infections/deaths each day. Also kept you informed on what you could/couldn’t do each day. (P7411, female, 58, married, carer, England)

We analysed these as ‘rules’ while paying attention to how they arise in writers’ narratives. We did not (and would not have been able to) analyse people’s reasons for complying (or not)

<sup>41</sup> L. Mulcahy et al., ‘It’s about Time: Investigating the Temporal in Socio-Legal Studies through Unstructured Interviews’ (2021) 48 *J. of Law and Society* S104, at S115.

<sup>42</sup> Halliday et al., op. cit., n. 29, p. 387.

<sup>43</sup> See n. 28.

<sup>44</sup> P. Ewick and S. Silbey, *The Common Place of Law* (1998); A. Philippopoulos-Mihalopoulos, ‘Atmospheres of Law: Senses, Affects, Lawscapes’ (2013) 7 *Emotion, Space and Society* 35.

<sup>45</sup> Finch et al., op. cit., n. 2, p. 1426.

<sup>46</sup> See for example W7130, who we cover later in the article. In this case, W7130’s mention of ‘guidelines’ probably refers to lockdown, which contained a range of formal and soft law restrictions.

<sup>47</sup> Ewick and Silbey, op. cit., n. 44; Enright and Duffy, op. cit., n. 9.

<sup>48</sup> We have only quoted from extracts that are quoted more fully in the article, so that readers can assess how these terms came up in the responses. A wider range of terms appeared in the responses as a whole.

with lockdown laws<sup>49</sup> or whether writers' understanding of the status of a rule affected their compliance with it, both of which have been addressed by the Law and Compliance during COVID-19 project.<sup>50</sup> Instead, we were interested in the temporal aspects of writers' experiences of interpreting and living in relation to pandemic rules. We focused on what people expected of pandemic rules – what they thought the rules required or wanted them to do.

Our temporal analysis focused on identifying patterns in comments, narratives, or stories of rules that appeared temporally inflected<sup>51</sup> – when a story about the timing of someone's day reveals what they understood of government restrictions, for example, or when they lament the confusion that rules bring with them because they seem so changeable. As we outline below, we also focused on the temporal practices and strategies that writers report developing in relation to the rules of the early pandemic. Writers often reflect on the initial 12-week lockdown as a separate temporal event distinct from their own present, positioning it as something that has 'happened' and can be reflected on. Present life – that is, from August to October 2020 – is being lived in relation to the relaxation of restrictions, or their localized reimposition. Many writers – particularly those commenting later in autumn 2020 – centre pandemic rules in their reflections on the future, positioning the reintroduction of restrictions as inevitable or expressing dread about the winter that is to follow.

In total, we analysed 228 responses. At the time of the directive, Mass Observation gathered demographic data relating to gender, age, labour market and occupation status, marital status, and location, but not sexuality or ethnicity. Following Dawn Lyon and Rebecca Coleman,<sup>52</sup> we did not analyse the responses in relation to this demographic data but present an outline in order to situate the accounts centred in our analysis.<sup>53</sup> The majority of the sample were female (68 per cent, with 23 per cent male and  $n = 2$  non-binary), 53 per cent reported being married, the majority were over 50 years old, 40 per cent were retired, and equally 40 per cent were working. The largest self-reported occupation group was lower managerial, administrative, and professional occupation at 21 per cent, though a high proportion did not disclose (16 per cent), and 17 per cent were from higher managerial, administrative, and professional occupations.

Among the significant limitations of the Mass Observation data is the lack of information about sexuality and ethnicity. As has been widely observed within sociological<sup>54</sup> and epidemiological scholarship,<sup>55</sup> the risks of the pandemic were hugely unevenly distributed, amplifying existing

<sup>49</sup> Halliday et al., op. cit., n. 29.

<sup>50</sup> Finch et al., op. cit., n. 2.

<sup>51</sup> Mulcahy et al., op. cit., n. 41.

<sup>52</sup> Lyon and Coleman, op. cit., n. 3.

<sup>53</sup> D. Haraway, 'Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14 *Feminist Studies* 575.

<sup>54</sup> S. Arber and R. Meadows, 'Class Inequalities in Health and the Coronavirus: A Cruel Irony?' *University of Surrey Department of Sociology Blog*, 23 March 2020, at <<https://blogs.surrey.ac.uk/sociology/2020/03/23/class-inequalities-in-health-and-the-coronavirus-a-cruel-irony/>>; J. A. Meza-Palmeros, 'Risk Perception, Coronavirus and Precariousness: A Reflection on Fieldwork under Quarantine' (2020) 29 *Health Sociology Rev.* 113; S. Y. Rahman, "'Social Distancing" during COVID-19: The Metaphors and Politics of Pandemic Response in India' (2020) 29 *Health Sociology Rev.* 131; G. Scambler, 'COVID-19 as a "Breaching Experiment": Exposing the Fractured Society' (2020) 29 *Health Sociology Rev.* 140; N. Finney et al. (eds), *Racism and Ethnic Inequality in a Time of Crisis: Findings from the Evidence for Equality National Survey* (2023).

<sup>55</sup> C. Bambra et al., 'The COVID-19 Pandemic and Health Inequalities' (2020) 74 *J. of Epidemiological Community Health* 964.

healthcare inequalities. Those working in lower-paid positions, in which racialized groups are over-represented, were less likely to be able to make the choice to isolate due to having to go outside the home as key workers, and people on lower incomes were also more likely to share spaces with multiple others, such as at home or on public transport.<sup>56</sup> While drawing conclusions about the class background of Mass Observation writers is notoriously difficult,<sup>57</sup> many of those writing in response to the directive were in a position where the space of home could be reconfigured for isolated work and/or daily living relatively comfortably (with some, who were retired, describing this as being little different from 'normal' life). Awareness of the structural protections afforded to many (though not all) of the Mass Observation writers, then, is vital in situating the legal temporalities that emerge from their accounts. In our analysis, we both draw attention to the limitations of our data and, where possible, highlight data from other studies that illustrates the differential impacts of the pandemic.

We juxtapose analysis of the Mass Observation responses with analysis of legal commentary on how lockdown law was unfolding in another domain: Acts of Parliament and particularly statutory instruments (SIs). Pablo Grez Hidalgo and colleagues have identified the government's use of temporary powers and sunset clauses under the CVA, and limiting of debate time, as legal-temporal mechanisms that marginalized Parliament and avoided scrutiny.<sup>58</sup> For the Hansard Society (through its 'coronavirus dashboard'<sup>59</sup>) and the Joint Committee on Statutory Instruments (JCSI), the challenge was that fast-track pandemic law making confounded the usual deliberative temporalities of liberal law.<sup>60</sup> Sympathetic to these concerns, we are interested in the emergence and discursive shape of fast-track law, especially alongside constructions of time articulated by Mass Observation writers.

After the very early days of the pandemic, lockdown laws differed by jurisdiction across England, Wales, Scotland, and Northern Ireland. We did not analyse differences in the timing of law and in temporal strategies used by executives across the devolved jurisdictions, nor material on fast-track law relating specifically to those jurisdictions.<sup>61</sup> Mass Observation collects data from writers across the UK and some who are located abroad. However, due to the relative paucity of responses from writers outside of England, we were not able to draw conclusions from our material about the effects on writers of law making in devolved jurisdictions. When quoting writers, we have noted (where possible) the country in which they were located, though not all writers disclosed their location. The largest proportion was from England (77 per cent overall): 28 per cent from the Midlands, followed by 25 per cent from London and the South East, and roughly equal proportions from the South/South West and the North East/North West (11 per cent and 13 per cent respectively). Only 3 per cent were from Scotland, 5 per cent from Wales, and 2 per cent

<sup>56</sup> Id.

<sup>57</sup> Casey, *op. cit.*, n. 37.

<sup>58</sup> P. Grez Hidalgo et al., 'Parliament, the Pandemic, and Constitutional Principle in the United Kingdom: A Study of the Coronavirus Act 2020' (2020) 85 *Modern Law Rev.* 1463; D. Lock et al., 'Parliament's One-Year Review of the Coronavirus Act 2020: Another Example of Parliament's Marginalisation in the COVID-19 Pandemic' (2021) 92 *The Political Q.* 699.

<sup>59</sup> Hansard Society, 'Coronavirus Statutory Instruments Dashboard' *Hansard Society*, at <<https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>>.

<sup>60</sup> S. Opitz, 'Informing Life: Temporal Politics of Information in the Administration of Pandemics' in *Temporal Boundaries of Law and Politics: Time Out of Joint*, eds L. Corrias and L. Francot (2017) 170.

<sup>61</sup> Many thanks to an anonymous reviewer for helping us to clarify this point.

from Northern Ireland.<sup>62</sup> For these reasons, the analytic weight of the Mass Observation part of study is best read as England focused, and the analysis of fast-track law is limited, with notable exceptions, to commentary focused on the UK and England.

Adopting a pluralist approach to law,<sup>63</sup> we note striking resonances between those concerned with tracking the making of lockdown law and those concerned with how to go about living it. Yet we have stood back from suggesting that what appear sometimes to be similar constructions of time in Mass Observation responses and in legal commentary mean that these resonances can be theorized as ‘shared’ legal temporalities. Instead, we mobilize Melanie Wiber’s insights about the temporal pluralism of legal orders, drawn from her research on fisheries regulation in Canada. Wiber writes that ‘international normative orders, state regulation and local fishing patterns can form a type of polyrhythm when considered together’.<sup>64</sup> Her concept of polyrhythmic legalities allows us to pay attention to ‘tangled hierarchies’ of law and regulation and analyse ‘how rapid changes in requirements arising at one scale play out as conflicting slow or fast regulatory polyrhythms at another scale’.<sup>65</sup> Working across the everyday observations of writers and the concerns of legal commentators, we illustrate how belatedness, speed, suddenness, and anticipation emerged in accounts of pandemic law making in the UK in 2020.

### 3 | ‘DOING NOTHING’ FOR FIVE WEEKS

Simon Halliday and colleagues note the likely ‘unusually and deeply personal’ effect of law making on the population during the pandemic:

During a time of national emergency, the entire population, with heightened attention, observed the development of rules that required radical and immediate changes to their lives. The pandemic was thus a context where law creation, despite happening remotely, is likely to have felt unusually and deeply personal.<sup>66</sup>

Mass Observation writers describe how these ‘deeply personal’ experiences of the rules were interwoven with time-related feelings, decisions, and actions. They describe expecting action in the early weeks of the pandemic in the form of law making, rules, advice, and the provision of protective resources, but finding that this did not materialize. M5015 writes:

The government did nothing for 5 weeks when the virus was known. After this the government did too little too late and everything, yes everything they touched they completely messed up. So the supply of PPE [protective medical garments,

<sup>62</sup> Office for National Statistics, ‘The National Statistics Socio-Economic Classification (NS-SEC)’ *Office for National Statistics*, at <<https://www.ons.gov.uk/methodology/classificationsandstandards/otherclassifications/thenationalstatistics socioeconomicclassificationnssecbasedonsoc2010>>.

<sup>63</sup> M. Davies, *Law Unlimited: Materialism, Pluralism and Legal Theory* (2017); B. Z. Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’ in *Legal Theory and the Social Sciences*, eds M. Del Mar and M. Giudice (2010) 447.

<sup>64</sup> M. G. Wiber, ‘Syncopated Rhythms? Temporal Patterns in Natural Resource Management’ (2014) 46 *J. of Legal Pluralism and Unofficial Law* 123, at 124.

<sup>65</sup> Id., p. 126.

<sup>66</sup> Halliday et al., op. cit., n. 29, p. 395.

including gloves and masks] never arrived on time, were in short supply, did not meet the correct standards [...] Government advice has been too little too late, conflicting and naive. (M5015, male, 64, married, retired, England)<sup>67</sup>

M5015 identifies this period of inaction with precision as five weeks, but it is also noted by another writer as an undefined period of ‘weeks’ during which they knew that ‘the virus must be coming’ but the government ‘dithered’:

Even though we understood that the virus must be coming because of the huge numbers of deaths and serious illness cases all round Europe, but especially in Italy, Spain and France, the government dithered and let the situation carry on for weeks without taking control. It seemed to have been too busy working on Brexit to pay attention to what the virus was likely to do here. (M6790, married, retired)

Other writers, reflecting on relations with regulations over a longer time period, highlight how they lived through cumulative cycles of government failures to anticipate the threats of the pandemic. For example, W7130 observes:

The change in daily life due to the government guidelines in March seemed easier to deal with than the uncertainty and dread that I feel now whilst we wait for the government to make an announcement in the light of rising cases, and importantly rising hospital admissions and numbers of people needing intensive care. I was due to have a routine hospital appointment next week which has been cancelled, not postponed. They’ll ‘be in touch’. An outbreak on a non-COVID ward at a local hospital sends shivers down the spine. Tomorrow’s flu jab (‘queue outside the health centre please, wear a face mask, and your temperature will be taken before you’re allowed in’) – the regular annual attempt to protect asthmatics like myself and my partner. These are all reminders of a long winter ahead, made the more challenging by the pandemic and a government that seems way out of its depth, or if I’m being honest simply doesn’t care. (W7130, female, 59, married, former teacher, England)

This writer describes waiting for ‘an announcement in the light of rising cases’ – presumably an announcement about the extension or reimposition of lockdown restrictions. She refers to by-now frighteningly predictable markers that legal action is needed and is coming, but has not yet been announced. Here, we see how pandemic rules become entangled with the threat of the virus – the risks of one becoming part of the threat of the other. ‘Shivers down the spine’ are both a response to rising case numbers *and* a form of apprehension about future lockdown restrictions that are both inevitable and always too late. We explore what writers did in response to their hybrid legal-viral apprehension, and the ways in which it became interwoven with activities in daily life, later in this article.

<sup>67</sup> In some cases, Mass Observation writers did not provide in their responses information about (all or any of) gender, age, marital status, or occupation. We provide all of the demographic information that writers provided – with the exception of occupational details that are unusually specific (and thus potentially identifiable, as well as unnecessary for analytic purposes). Where no demographic details were provided, we note this where relevant.

Writers' critiques of belatedness seem to reference anxiety about law arriving 'out of synch' with the virus.<sup>68</sup> Writing about the linear temporality of law, Carol Greenhouse notes that 'linear time's most powerful claim is that of its own redemptive power in relation to an individual's life'.<sup>69</sup> In this instance, belatedness threatened law's redemptive promise in/of linear time. For many writers, the disjuncture between the timing needed and the timing in effect undermined law's perceived effectiveness in relation to the rapid spread of the virus. Belatedness or missing the moment to act seem to have signified a failure in state responsibility or leadership in the Durkheimian sense of collective and symbolic 'social time'.<sup>70</sup> 'Doing nothing' was confounding because it happened *despite* the threat of the pandemic being well known for many weeks. In this sense, writers are registering a lack of temporal congruence between law making and the disruptive powers of the virus, a symbolic as much as practical failure of law within its own conditions of linear promise.

In a very different archive, legal commentators also registered an initial lag in law making. The Hansard Society, a registered charity focusing on research and education on Parliamentary democracy, gathered data on coronavirus-related SIs produced during the pandemic. They published this data in a range of summary and visual forms online as a coronavirus dashboard. The CVA granted the government emergency powers to respond to the pandemic, but the vast majority of coronavirus legislation was secondary legislation in the form of SIs.<sup>71</sup> As the coronavirus dashboard illustrates, SIs relating to coronavirus were made under a wide range of enabling laws including 140 Acts of Parliament, not merely through the Acts that gained wide media attention, such as the CVA.<sup>72</sup> Using a bar chart (Figure 1), with dates along the horizontal axis and numbers of SIs along the vertical axis, the dashboard shows the weekly number of coronavirus SIs laid before Parliament in relation to the total number of SIs, with coronavirus SIs in a darker shade and other SIs in a lighter shade. The bar chart indicates that there was a period from 27 January to 16 February 2020 when only two coronavirus-related SIs were laid before Parliament.<sup>73</sup> In the same period, 48 non-coronavirus-related SIs were laid before Parliament, suggestive of an apparent mismatch between the growing level of urgency and the legislative response.<sup>74</sup> This maps roughly onto the period noted by M5015 when the 'government did nothing for 5 weeks' despite knowing of the virus.

Across these two archives – the coronavirus dashboard and the Mass Observation responses – it is possible to discern a sense of inaction in the face of quickly-developing events. Within the Mass Observation responses, belatedness emerges as a distinctively affective legal temporality,

<sup>68</sup> Keenan, op. cit., n. 26.

<sup>69</sup> C. J. Greenhouse, 'Just in Time: Temporality and the Cultural Legitimation of Law' (1989) 98 *Yale Law J.* 1631, at 1636.

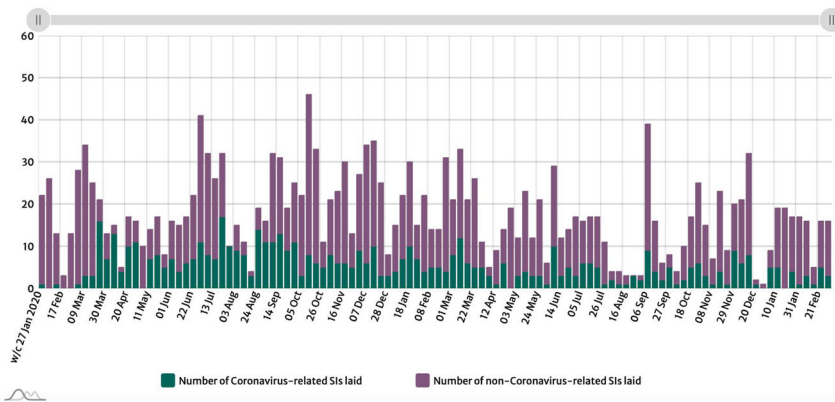
<sup>70</sup> C. J. Greenhouse, 'Time's Up, Timed Out: Reflections on Social Time and Legal Pluralism' (2014) 46 *J. of Legal Pluralism and Unofficial Law* 141.

<sup>71</sup> The CVA has been criticized for its punitive approach by Liberty and other groups who drafted an alternative Coronavirus (Rights and Support) Bill: see Liberty, *Liberty's Briefing on Repealing and Replacing the Coronavirus Act 2020* (2021), at <<https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/03/Protect-Everyone-Briefing-March-2021.pdf>>. The House of Lords Select Committee on the Constitution's inquiry on the constitutional implications of COVID-19 is ongoing at the time of writing.

<sup>72</sup> Hansard Society, op. cit., n. 59, 'What Powers Were Used by Ministers to Make and Lay the Coronavirus-Related Statutory Instruments?' at <<https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#total-coronavirus-sis>>.

<sup>73</sup> Id., 'How Did the Coronavirus-Related Statutory Instruments Show the Pressures of the Crisis?', at <<https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#how-did-the-coronavirus-related-statutory-instruments-sh>>.

<sup>74</sup> However, it is very likely that at this time coronavirus SIs were being drafted by the relevant government departments or the Office for the Parliamentary Counsel and had not yet been made public.



**FIGURE 1** Coronavirus-related and non-coronavirus-related SIs laid before Parliament by week, 27 January 2020–3 March 2022.

Source: Hansard Society Coronavirus Statutory Instruments Dashboard

entangled with feelings of fear, anger, and mistrust, and as evidence of the government's failure to act in synch with a crisis. The dashboard presents a relative paucity of legislative action. This related-yet-distinct capture of an initial 'lag' is, arguably, a product of the concern that the dashboard was designed to diagnose and track: legislative speed and proliferation.

#### 4 | FAST-TRACK PANDEMIC LAW

According to the Hansard Society and the JCSI, the problem with pandemic law making was that it happened too quickly and outside of usually mandated Parliamentary time periods. This is not surprising; many socio-legal accounts position speed as something that undermines good-quality law making that would otherwise be attentive to the idiosyncrasies of people's lives, the fair administration of justice, or the practicalities of working towards social justice.<sup>75</sup> Slowness generally equates to deliberation and care, or the delivery of non-arbitrary decisions.<sup>76</sup> However, in the context of immigration decisions, slowness can also be oppressive, showing that both slowness and speed have context-specific valances.<sup>77</sup> As Wiber puts it, 'controlling the tempo of regulatory change is as much a locus of power struggles as is the content of regulatory change', suggesting that it is just as useful to interrogate debates about the pace of law as it is to analyse law's substance.<sup>78</sup>

By the time the pandemic hit, a conversation about the dangers of fast-track legislation had already been underway for many years, involving Parliamentary committees and a range of

<sup>75</sup> L. Francot and S. Mommers, 'Picking Up the Pace: Legal Slowness and the Authority of the Judiciary in the Acceleration Society (A Dutch Case Study)' (2017) 24 *International J. of the Legal Profession* 275; J. Hambly and N. Gill, 'Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickening' (2020) 47 *J. of Law and Society* 3.

<sup>76</sup> B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (2010).

<sup>77</sup> A. Masoumi, 'Fast Refugee Protection: Temporality and Migration Control' (2022) 31 *Social & Legal Studies* 197; M. Reneman and M. Stronks, 'What Are They Waiting For? The Use of Acceleration and Deceleration in Asylum Procedures by the Dutch Government' (2021) 30 *Time & Society* 302.

<sup>78</sup> Wiber, op. cit., n. 64, p. 124.

non-governmental organizations (such as Liberty, Justice, and the Hansard Society) and legal academics.<sup>79</sup> During and after the pandemic, critiques of error-ridden and constitutionally risky law making were advanced by academics, legal experts, and legal and policy organizations, who noted the government's limitation of debate time and weakening of Parliamentary scrutiny procedures on major legislation, including the CVA.<sup>80</sup> As the pandemic continued, legal organizations and Parliamentary bodies began tracking the speed and progress of pandemic law making and commenting on its constitutional and rule of law implications. The House of Commons Library published a briefing paper on the topic of fast-track legislation on 25 March 2020, the same day that the CVA received Royal Assent,<sup>81</sup> and the JCSI eventually published a report specifically covering pandemic SIs titled *Rule of Law Themes from COVID-19 Regulations*.<sup>82</sup>

The coronavirus dashboard evidences and further reifies these concerns. It suggests that after the initial slow weeks of the pandemic, the picture quite quickly changed to a period of very rapid and voluminous law making. From 6 March 2020 to 3 March 2022, 580 coronavirus-related SIs were laid before Parliament at an average rate of six per week, a very rapid rate, using SIs produced mainly through existing Acts of Parliament. The speedy pace of legislating through SIs was positioned by some as an inevitable result of the virus, where swift action was needed to respond to the danger of further spread. As the JCSI stated,

[i]t is only to be expected that the pandemic has required legislation to be made and brought into force at speed, as the Government has been forced to respond to the fast-changing facts on the ground and to take proactive steps to prevent damage from escalating further.<sup>83</sup>

Yet because of the role of SIs and the apparent 'need for speed', otherwise arcane matters of Parliamentary procedure concerning SIs assumed considerably more significance. Within debates on pandemic fast-track law, Parliamentary procedures and conventions for making law provided a form of safety net, protecting the public against potentially abusive practices of the executive that could lead to the erosion of individual and collective rights. Notably, these procedures and conventions rely on time periods that supposedly enable transparency, deliberation, and scrutiny. SIs can be either 'made affirmative', 'draft affirmative', 'made negative', or 'laid only'. Each of these procedures specifies a period that should elapse between laying the SI (or a draft of the SI) before Parliament and the SI coming into effect – usually 28 or 40 days, during which time

<sup>79</sup> See submissions and oral evidence to the House of Lords Select Committee on the Constitution's inquiry into fast-track legislation: House of Lords Select Committee on the Constitution, *Fast-Track Legislation: Constitutional Implications and Safeguards, Volume II: Evidence* (2009), at <<https://docslib.org/doc/2790024/fast-track-legislation-constitutional-implications-and-safeguards>>. See also J. Marshall, 'Fast-Tracked Legislation/Emergency Legislation' *Institute for Government*, 8 April 2019, at <<https://www.instituteforgovernment.org.uk/explainers/fast-tracked-legislation>>; R. Kelly, 'Fast-Track Legislation' House of Commons Library Briefing Paper No. 05256, 25 March 2020, at <<https://researchbriefings.files.parliament.uk/documents/SN05256/SN05256.pdf>>; R. Fox and M. Korris, 'Reform of the Wash-Up: Managing the Legislative Tidal Wave at the End of a Parliament' (2010) 63 *Parliamentary Affairs* 558; N. Parpworth, 'The Parliamentary Standards Act 2009: A Constitutional Dangerous Dogs Measure?' (2010) 73 *Modern Law Rev.* 262.

<sup>80</sup> C. Haddon et al., 'Coronavirus Act 2020' *Institute for Government*, 20 March 2020, at <<https://www.instituteforgovernment.org.uk/explainers/coronavirus-act>>; Grez Hidalgo et al., op. cit., n. 58.

<sup>81</sup> See Kelly, op. cit., n. 79.

<sup>82</sup> Joint Committee on Statutory Instruments, *Rule of Law Themes from COVID-19 Regulations* (2021) HC600, HL 57, at <<https://committees.parliament.uk/publications/6952/documents/72746/default/>>.

<sup>83</sup> Id., para. 59.

a particular type of scrutiny is required and the SI is either effective or not depending on the procedure.<sup>84</sup> In this way, time periods help to knit together different degrees of power balance between executive and Parliament, different types and starting points of legal effectiveness, and different opportunities for Parliamentary scrutiny in the making of SIs.<sup>85</sup> For example, there is a convention – the ‘21-day rule’ – that any SI made using the negative procedure should not come into force less than 21 days after being laid before Parliament.<sup>86</sup>

During the early pandemic, fast tracking pandemic law was identified as breaching these procedures and leapfrogging Parliamentary and wider oversight. Writing on legal developments in residential security during the pandemic, Dave Cowan characterizes the government’s approach as ‘panicked techniques of governing beyond the rulebook’, which heightened executive power through very last-minute action.<sup>87</sup> The coronavirus dashboard indicates that of the 417 SIs that were made using the ‘made negative’ procedure up to March 2022, 288 breached the 21-day rule. The implication is that fast-track coronavirus SIs were numerous and too rapidly introduced for effective scrutiny, often made at the last minute and/or in breach of Parliamentary conventions. They were also technically rushed and error ridden, being made with amendments to implement policy changes as they occurred, sometimes only days apart. Lawyers following the progress of legal changes found it hard to keep up, not only because of the speed of law making but also because of the manner in which SIs interrelated through the amendment and revocation processes.

In its 2021 report, the JCSI’s concern was slightly different: fast-track SI making created errors in communicating legal obligations to members of the public – errors that were often connected with timing. In one of the most extreme examples, the Prime Minister’s address to the nation on 23 March 2020 announcing the first national lockdown, which contained the phrase ‘From this evening I must give the British people a very simple instruction – you must stay at home’, referred in fact to restrictions on movement that did not come into effect until 26 March 2020.<sup>88</sup> However, the JCSI was also concerned about ‘lack of notice and confusion about commencement’ and regulations ‘coming into force before being laid’. It noted that some SIs were made on a Friday, came into force at the weekend, and were laid before Parliament the following Monday. It pointed out the intrusive, potentially criminalizing effects of some legislation on people’s lives, which it said necessitated ‘as much notice as possible’.<sup>89</sup> While the JCSI viewed the technical problems of rapid law making as contributing to the concerns that it outlined in its report (citing the coronavirus dashboard regularly), it focused on how issues with the timing of SIs could affect people in their

<sup>84</sup> For an SI that is ‘made affirmative’, the SI is signed into law (made) by the minister and effective, but does not remain law unless it is approved by both Houses of Parliament within 28 or 40 days. For the ‘draft affirmative’ procedure, the SI is first laid before Parliament as a draft and is then approved (or not) by both Houses of Parliament before the minister can make it into law. The ‘made negative’ procedure requires signing the SI into law and then laying it before Parliament for 40 days, during which it can be annulled through a motion of either House. Finally, the ‘laid only’ procedure simply requires the SI to be laid before Parliament with no further action.

<sup>85</sup> On the use of ‘made affirmative’ regulations under the CVA, see Grez Hidalgo et al., op. cit., n. 58.

<sup>86</sup> See for example House of Lords Select Committee on the Constitution, *Fast-Track Legislation: Constitutional Implications and Safeguards* (2009) para. 140, at <<https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/11602.htm>>.

<sup>87</sup> D. Cowan, ‘Ruling the Pandemic’ in eds Cowan and Mumford, op. cit., n. 5, p. 15, at p. 20.

<sup>88</sup> Joint Committee on Statutory Instruments, op. cit., n. 82, p. 28, Annex, Table C.

<sup>89</sup> Id., para. 74.

everyday lives, when believing themselves to be covered by a new restriction, or not knowing that a criminal offence had already come into force, could have significant consequences.

## 5 | SUDDEN RULES

Mass Observation writers, too, note the last-minute and changeable nature of pandemic law making. While this has resonances with fast-track law, we suggest that writers are nonetheless articulating a legal temporality that is ontologically distinct. Fast-track law is concerned with excessive speed, avoiding the deliberative temporalities of democratic scrutiny, endangering the functioning of law itself, creating errors, and risking inadvertently criminalizing citizens. As an object of concern, fast-track law contains its own temporal remedy: the slowing down and restoration of proper legal process. Fast-track law is still fundamentally linear, even as it proliferates.

For Mass Observation writers, the problem is not so much the pace of law as its suddenness. Suddenness is distinct from surprise, an affective response to the unexpected that has been variously theorized as ‘short-term flustering or discomforting’ that ‘ultimately helps to avert damage, smooth over cracks and restore micro-social order’<sup>90</sup> or – within studies of affective economies – as even a subtle form of governing behaviour.<sup>91</sup> Suddenness is the temporal mode through which the unexpected is delivered. When something happens suddenly, it happens quickly *and* unexpectedly. The Mass Observation responses show sudden rules entering without warning into people’s living rooms via televised announcements, disrupting the time of everyday life, reshaping daily rhythms, and creating chaos and uncertainty. Writers do not describe reacting with surprise but rather a sense of fragmentation or disorientation. For A6936, the Prime Minister’s announcement of a national lockdown on 23 March 2020 was ‘shattering’: ‘On March 23rd the draconian restrictions announced in the Prime Minister’s address were like nothing else in my lifetime. To be told that we could only go out for daily exercise, essential shopping or caring responsibilities was shattering’ (A6936, female, 69, widowed, retired civil servant, England). Lockdown’s dramatic interruption of the usual rhythms of everyday life created ‘disconnection from the past’.<sup>92</sup> Yet, alongside this sense of ‘rupture’,<sup>93</sup> narratives of day-to-day legal *confusion* also abound in the Mass Observation archive, resonating with the findings of the Law and Compliance during COVID-19 project.<sup>94</sup> Crucially, the implications of confusion were experienced differently by different populations in the UK, with racialized over-policing and unequal distribution of fixed penalty notices exacerbating the already starkly unequal race and class effects of the pandemic.<sup>95</sup>

Mass Observation writers describe confusion about what the rules required and uncertainty about how to conduct their everyday lives and plan future activities due to what they perceived as unclear and contradictory regulations:

<sup>90</sup> S. Scott, ‘Surprise: A Micro-Sociological Analysis’ (2021) 3 *Emotions and Society* 191, at 201.

<sup>91</sup> S. Plage and R. E. Olson, ‘Surprise Reveals the Affective-Moral Economies in Cancer Illness Narratives’ (2021) 31 *Qualitative Health Research* 2730.

<sup>92</sup> Lyon and Coleman, op. cit., n. 3, p. 32. See also A. Parui and M. Simi Raj, ‘The COVID-19 Crisis Chronotope: The Pandemic as Matter, Metaphor and Memory’ (2021) 14 *Memory Studies* 1431.

<sup>93</sup> Coleman and Lyon, op. cit., n. 7.

<sup>94</sup> Tomlinson et al., op. cit., n. 10.

<sup>95</sup> S. Harris et al., *A Threat to Public Safety: Policing, Racism and the COVID-19 Pandemic* (2021), at <<https://irr.org.uk/article/policing-racism-covid-19/>>.

I am also very frustrated by the government's lack of clarity regarding masks, social distancing etc. A lot of it seems ill thought out and quite frankly wishy washy, it would have been much better if the government tackled the issues head on in the beginning, imposing more stringent measures and maybe we would have been in a better place now, rather than in a deep recession. (R7226, female, 72, widow, retired civil servant, England)

Feelings of confusion and bewilderment go hand in hand in writers' responses with discussion of hybrid legal-viral threats. In these accounts, pandemic rules are positioned as ever proliferating, accumulating in a haphazard manner, and failing to grapple with – and indeed worsening – the problem that they seek to regulate. As one writer puts it, '[t]he rules are all over the place, it is a sad state of affairs and I don't feel that govt leadership is strong' (E6705, female, 68, married, England). In the Mass Observation responses, pandemic-related rules, changing day to day, are described as irrational, creating a sort of perpetual uncertainty that for H2639 had the capacity to conjure a 'collective nervous breakdown'. She describes the nonsensical nature and timing of the rules in relation to people's perceptions about what should (or should not) be social priorities, such as opening schools before pubs:

I don't feel as though the country is on 'hold'. I feel as though the country is having a collective nervous breakdown! There are so many changes from one day to another about what the population can do, or where they can go. Do we wear masks or don't we? Will Life ever be 'normal' as we knew it? I feel we have lost our basic common sense! What Politician or Civil Servant thought of opening the pubs before the schools? (H2639, female, 80, widow, retired library assistant, England)

In many accounts, confusion and uncertainty particularly arose when restrictions were being eased. This is often connected with regional differences in lockdown status. Joe Tomlinson and colleagues have shown that public confidence in understanding lockdown restrictions waned – and confusion grew – as the rules were eased and when differences emerged between jurisdictions.<sup>96</sup> Similarly, K7066 suggests that the March–June lockdown was more straightforward and easier to understand and comply with than the easing of restrictions from July 2020, 'whereby the country has differing rules across its regions and there is more confusion about what can and can't be done, [which] has made the waiting seem more chaotic and frightening' (K7066, female, 49, in a relationship, librarian, England). Related confusion was felt acutely by many disabled people, who received contradictory advice about when to 'end' the practice of shielding, making it very unclear what was safe and for whom.<sup>97</sup>

Within this context, a *lack* of legal restriction on personal freedoms could become an ongoing source of mistrust and anxiety. M6737 describes how,

[a]s life starts to draw some kind of 'normality' but there is a lack of information and what I suspect (on behalf of the government with an increasing need to kick start the economy) lots of misinformation or playing down of risk, there is now a sense of waiting that I didn't feel before. It feels like we're a herd of cows desperate for [a]

<sup>96</sup> Tomlinson et al., op. cit., n. 10.

<sup>97</sup> T. Shakespeare et al., 'Disabled People in Britain and the Impact of the COVID-19 Pandemic' (2022) 56 *Social Policy Administration* 103.

drink from the lake but we know lions are present in the bushes waiting for us to take our first steps. Life is more uncertain now that it was six months ago. (M6737, female, 47, married, planning, England)

M6737's account foregrounds an acute tension between the possibility of action and a fear of what it might bring, with individuals acting on their (now permitted) desires for more freedom, in the knowledge that they will bear the consequences. In this sense, the removal of legal restrictions is encountered as an intensification of individual responsibility for the management of health risks.

Many Mass Observation accounts of uncertainty similarly dwell on waiting or suspension, a sense of helplessness in the face of unrelenting and unpredictable legal change. Several writers, reflecting on the joys of reconnection experienced over the summer easing of restrictions, but writing at a time when local lockdowns were being reintroduced, express their apprehension about what the law might yet bring forth:

At the time of writing it seems that we are likely to be put back under some more stricter local lockdown measures [...] It has become apparent that, although we have managed to have some kind of 'normal' life over the summer – we even managed a socially distanced camping holiday in Devon – life is different. I have gone from waiting for things to 'get back to normal' to waiting for the 'next restriction'. I am waiting for it to get worse. (F7368, female, 46, occupation administrator, England)

As illustrated by the extracts above, writers vary in terms of their views about the different measures and restrictions, and whether they found these desirable. Given this variation in perspective on the regulations themselves, the similarities in their descriptions of the rules as a site of future-oriented insecurity are arguably all the more striking. Sudden rules share many qualities with belated rules in appearing temporally misaligned with a hoped-for legal response and generating mistrust. Yet whereas belated rules failed to respond to the disruptions of living through the pandemic, sudden rules brought those disruptions into writers' lives in unpredictable, confusing, and frightening ways.

## 6 | TACTICS OF ANTICIPATION

For Mass Observation writers, pandemic rules were not 'in time' or 'in synch' with the pandemic; law makers were not properly anticipating each new dilemma that the pandemic brought with it. Simultaneously, when rules arrived, they were sudden. Crucially, writers were not simply passive in the face of the rules' disruption of everyday time and temporalities; they drew on multiple time-making and time-measuring practices to restore rhythm in small ways to everyday life, making the living of pandemic time bearable.<sup>98</sup> Our analysis illustrates how these practices were often anticipatory; they were oriented in relation to what the writers thought pandemic rules should be or would be.<sup>99</sup>

Contemporary scholarship on anticipation shows how laws and governance bodies act predictively on populations to ward off threats, also encouraging these populations to shape their

<sup>98</sup> Lyon and Coleman, op. cit., n. 3.

<sup>99</sup> J. Meers et al., "'Creative Non-Compliance': Complying with the "Spirit of the Law" Not the "Letter of the Law" under the COVID-19 Lockdown Restrictions' (2023) 44 *Deviant Behavior* 93.

behaviours to specific ends.<sup>100</sup> The point about anticipation in its many forms – conscious and unconscious, individual and collective – is that it works to avoid what Vincanne Adams and others have termed surprise, uncertainty, and unpreparedness.<sup>101</sup> What emerges from the Mass Observation responses is a cluster of improvised anticipatory practices oriented in relation to the uncertainty and suddenness of pandemic rules, less subversive than a ‘swarm of resistance’ but different from compliance.<sup>102</sup> Writers’ actions included moving a canal boat to a place closer to a Canal & River Trust services point a couple of weeks before lockdown to maintain their access to essential services (F7368); stopping ‘doing things before the government told us to stop because we were following the science’ (L7501); going into lockdown or self-isolation one or two weeks earlier than the date announced by the government (F5746; H2418; W2322); persuading elderly parents to go into lockdown (S7094, female, 50, married, teacher trainer); and coming home from holiday in Portugal because lockdown was already in place there and the writer expected it shortly in the UK (S7592). We return to these and other examples in more detail below. These actions evidence an approach to pandemic rules temporally askance from notions of compliance and even creative non-compliance,<sup>103</sup> formed and refined through ‘tactical adaptation’ and ‘forced improvisation’.<sup>104</sup> These were tactics of temporalization, reintroducing timely order where possible, or acting ‘in time’ to re-ground their lives and hopes. With these varied legal ‘tactics of anticipation’, writers worked practically on and against law’s out-of-synchness.<sup>105</sup>

Some writers describe having to act in advance of law in order to ensure their own safety, or that of others:

My house went into lockdown a week or two before the government made it official policy. Largely, we found the government’s slowness in regards to the pandemic negligent to the point of genocidal. (F5746, non-binary (male), 31, single, research, England)

My sister [who works in intensive care] has been my source of advice [...] I had a call from her saying, ‘this is happening, the government aren’t acting quickly enough’ and I was called into action to help persuade our elderly parents to go into lockdown so she did not have to worry. [...] We did as she told us, persuaded the parents to shield, bought hand-gel and one extra pack of loo roll. (S7094, female, 50, married, education, England).

<sup>100</sup> L. Amoore, ‘Data Derivatives: On the Emergence of a Security Risk Calculus for Our Times’ (2011) 28 *Theory, Culture & Society* 24; B. Anderson, ‘Emergency Futures: Exception, Urgency, Interval, Hope’ (2017) 65 *The Sociological Rev.* 463; B. Anderson, ‘Preemption, Precaution, Preparedness: Anticipatory Action and Future Geographies’ (2010) 34 *Progress in Human Geography* 777; M. de Goede, *Speculative Security: The Politics of Pursuing Terrorist Monies* (2012); E. Stokes, ‘Beyond Evidence: Anticipatory Regimes in Law’ (2021) 43 *Law & Policy* 73.

<sup>101</sup> V. Adams et al., ‘Anticipation: Technoscience, Life, Affect, Temporality’ (2009) 28 *Subjectivity* 246.

<sup>102</sup> Chua, op. cit., n. 19, p. 284.

<sup>103</sup> Halliday et al., op. cit., n. 29; Meers et al., op. cit., n. 99.

<sup>104</sup> E. Cloatre and M. Enright, ‘“On the Perimeter of the Lawful”: Enduring Illegality in the Irish Family Planning Movement, 1972–1985’ (2017) 44 *J. of Law and Society* 471, at 496.

<sup>105</sup> P. Jeganathan, ‘On the Anticipation of Violence: Modernity and Identity in Southern Sri Lanka’ in *Anthropology, Development and Modernities: Exploring Discourses, Counter-Tendencies and Violence*, eds A. Arce and N. Long (1999) 111.

Here, acting promptly and curtailing one's personal freedom represented the establishment of certainty and security, in contrast to law's delays and its failures to anticipate – and thus contain – the risks of the virus. Notably, the second extract draws attention to how Mass Observation writers and many others personalized responsibility for protecting elderly or 'vulnerable' relatives, a theme to which we return shortly.

Just as some writers indicate the need to act in advance of lockdown rules to circumnavigate their belatedness, several comment on the importance of ongoing, and possibly increasing, anticipatory vigilance in the context of the uncertainties of sudden rules, with their proliferating and rapidly changing web of regulations. Writers from both England and Scotland describe embodying responsibility for regulating and preventing the spread of the virus by improvising their own strategies of caution. These went beyond what was required by the rules, precisely because the rules could not be relied on to contain risk.

Although this [households visiting one another] can be done under current government regulations, I choose a more cautious approach. I no longer trust government advice about COVID-19 and have formulated my own strategies to keep healthy and avoid spreading the virus. My own strategies are normally stricter than the official advice. (B7084, female, 62, married, retired, research, England)

My partner owns a garage 45 miles away and lives about 35 miles away so he couldn't come up for the weekend as he normally would due to the 5-mile restriction. Even when that was lifted, we weren't sure if it would be safe as he is in and out of dozens of different cars every day. We waited until the end of July. (F5890, female, 71, divorced, retired, Scotland)

Writers' descriptions of caution equate slowness with care, whereby taking time to act generates protections and safeguards. F5890 above illustrates how, in addition to adopting a tempo of action that was deliberately slower than that required by law, writers made use of the *timing* of action – in this case, waiting until a specified time – to protect one another. The responses also contain several examples of family members desperate to see one another, and legally permitted to do so, but who delayed contact – in some cases indefinitely – in an attempt to manage the risks of transmission. For example:

I could now travel there if I wanted (subject to quarantine) but my mum is in a high-risk category and so there is no way that I would want to expose her to the unknown. This has really been the hardest part for me. [...] Now that we are in October, we are still worried about what could happen and also it sadly seems ever more unlikely that we will be able to get over safely to see them at Christmas. (H6968, working)

Here, the uncertainty of the transmission risk permitted through law's many failures is resolved through the practice of waiting and ensuring the protection of a 'vulnerable' loved one, in turn introducing an open-ended, and almost unbearable, uncertainty about the possibility of any future contact. These 'dynamic experience(s) of waiting in a paused present'<sup>106</sup> resonate with

<sup>106</sup> Coleman and Lyon, op. cit., n. 7, p. 429.

studies exploring the opportunities for care through the politics of waiting and delay during the pandemic.<sup>107</sup>

Policy deployments of medicalized discourses of ‘individual vulnerability’ during the pandemic endangered the lives of disabled people, locating vulnerability within their bodies as opposed to within the social structures that produce vulnerability, facilitating disabled people’s sequestration and abandonment, and individualizing family members’ responsibilities for care provision.<sup>108</sup> Echoes of these discourses are clear within writers’ accounts of their embodiment of personal responsibility for protecting ‘vulnerable’ others. At the same time, writers’ narratives are grounded in multiple forms of relationality, centring on taking action in conditions of uncertainty along with and out of concern for the others with whom their lives are materially and temporally interwoven.<sup>109</sup> It is through this explicit articulation of interconnectedness, we suggest, that writers’ accounts refuse the apparent carelessness of sudden law, through the temporal improvisation of patterns of care: ‘We shop for husband’s elderly mother and any meetings with friends and other family including the grandchildren, now back in school, are timed around not transferring possible infection’ (W7502, female, 69, married, retired, England). Yet writers’ capacities to regulate time in ways that facilitated the enactment of care and protection were shaped by their material circumstances. The anxieties carried by those who were unable to reduce or regulate their contacts in order to protect loved ones are starkly illustrated by the findings of the COVID Realities project, which demonstrates how low-income families in the UK were impacted by the pandemic’s intersection with failures of social security.<sup>110</sup>

The accounts considered thus far have centred on the practices through which writers sought to contain the risks of the virus in a legal context of uncertainty and unpredictability. These reflect the actions of some writers but not the entire archive. In other accounts, writers are less concerned with managing risks to health and more focused on the risks of sudden law to the possibilities of being able to go about their usual lives. Some responses reference a mixture of these concerns. Frustrated by attempts to plan in the context of ever-changing legal restrictions, several writers describe mobilizing hesitancy and waiting as deliberate anticipatory strategies to generate some certainty, thus disrupting the uncertainties and insecurities of law:

With the easing of the lockdown, I have been able to start swimming again, and have been going three mornings per week. Likewise we are making more plans to visit family and friends, and take short (UK-based) holidays. This may of course change if the situation worsens, so we are hesitant when booking things in. (B7287, female, 40, married, wine and spirits advisor, England)

The biggest wait is waiting to see what will happen in September. My daughter’s school plans to open but what if my town becomes another Leicester in the mean-

<sup>107</sup> See for example Baraitser and Salisbury, op. cit., n. 8.

<sup>108</sup> T. Mladenov and C. S. Brennan, ‘Social Vulnerability and the Impact of Policy Responses to COVID-19 on Disabled People’ (2021) 43 *Sociology of Health and Illness* 2049.

<sup>109</sup> Chua, op. cit., n. 19.

<sup>110</sup> R. Patrick et al., *COVID Realities: Documenting Life on a Low Income during the Pandemic* (2022), at <<https://covidrealities.org/learnings/write-ups/covid-realities>>.

time? I am trying to avoid buying any uniform until I know for sure it will actually be used! (M4859, female, married, working, higher managerial)

In other accounts, writers describe how waiting and putting things on hold – bringing with it ‘a sense of constrained energy’<sup>111</sup> – might be interspersed with periods of frantic action in anticipation of legal restrictions being suddenly reintroduced:

As the seasons change into Autumn I feel a sense of urgency to get everything sorted out in case we have a local lockdown, or are forced to self-isolate. Time is going slowly but also too fast. I had a stressful couple of days when I needed to defrost the freezer and replace the stock again. The time flew by but I felt as if I was trying to beat the clock, just in case the dreaded track & trace phone call came. I still feel this every night before the weekly shop is due. I did not see my parents for six months. This is the longest we have not seen each other. [...] We finally met this week. It was all very last minute in the end, with a kind of ‘now or never’ feel to it, because we worried that if we didn’t meet now we could be banned from mixing households again. (T7415, female, 49, married, speech and language therapist, England)

For T7415, a seemingly endless period of hesitancy and waiting to see her shielding parents was very suddenly brought to an end by the fear of being legally prohibited from doing so. Similarly, she describes how anticipation of law’s unpredictable actions required the urgent completion of practical tasks (restocking the freezer and shopping). In worrying about food supplies, she references the ever-present, yet unknown, threat of ‘the dreaded track & trace phone call’, which might have required her to self-isolate without notice. In all of these instances, the threat of sudden rules formed a prompt for rapid action to anticipate and mitigate potential disruptions to everyday life and relationships.

Within Mass Observation writers’ accounts, therefore, anticipation is pragmatic. When rules were experienced as belated, untrustworthy, insecure, and sudden – as many writers felt pandemic rules to be – anticipation secured a future of a sort. Anticipation, as a mode of feeling and action, positioned the writers in relation to ‘a future that may or may not arrive, is always uncertain and yet is necessarily coming and so therefore always demanding a response’.<sup>112</sup> Writers describe acting in advance of the rules, increasing their anticipatory vigilance, and improvising strategies of caution that extended care-ful actions beyond what formal law required (such as delaying social visits). Yet as Lyon and Coleman argue, writers’ accounts also show that the pandemic reshuffled writers’ imaginaries of the future(s), in some cases fissuring the future and in other cases expanding the present or resetting ideas of the future and sometimes making the future powerfully absent.<sup>113</sup> For these reasons, we have refrained from reading tactics of anticipation as *securing* futures in a rational or teleological sense. Instead, we view these legal tactics as non-linear, extended modes of working on a present in which previous iterations of personal and collective futures are absent or under reconstruction.

<sup>111</sup> Coleman and Lyon, op. cit., n. 7, p. 429.

<sup>112</sup> Adams et al., op. cit., n. 101, p. 249.

<sup>113</sup> Coleman and Lyon, op. cit., n. 7, p. 427.

## 7 | CONCLUSION

In this article, we have focused on practices of pandemic time making accompanying the imposition and communication of new restrictions on daily life in spring 2020. We have traced how legal temporalities emerge in Mass Observation writers' accounts of everyday life. Juxtaposing these accounts with commentary from the Hansard Society, the JCSI, and other legal bodies, we have explored what happened when the rules were felt to be constantly at odds with the temporalities of the pandemic, when rules did not materialize or materialized in late or unpredictable ways, or when they arrived too quickly and with insufficient time for scrutiny.

Understanding pandemic legal temporalities as polyrhythmic enables us to hold concerns about state law in critical tension with the lived experience of pandemic rules, tracing the diverse meanings and effects of apparently resonant legal temporalities across scales and between different legal actors. Legal commentators focused critique on the rapid making and amendment of SIs as contradictory, lacking scrutiny, and failing in terms of the temporalized processes that were supposed to regulate them. In doing so, they created and circulated a legal temporality of fast-track coronavirus law, which encouraged attention to the executive's (non-)adherence to conventional timeframes for creating SIs. Concerns about fast-track coronavirus law were linked to concepts of deliberative law making that permeate many socio-legal approaches to the pace of law as well as underpinning formal principles of public law. Within these accounts, pandemic law making was error ridden and put the public at risk of confusion at least in part because it was fast. Furthermore, the JCSI was concerned that fast-track law or miscommunication about when legal changes took effect potentially criminalized people going about their everyday lives. This legal temporality posed the dangers of law being too quick, putting people at risk of non-compliance through timing-related issues – not understanding, for example, when a new law had come into force.

Yet what the Mass Observation responses capture is a feeling that, at least initially, the rules missed the disruptive temporalities of the pandemic. They were both too late and felt to be late; they were belated. Once they arrived, they were not simply fast but characterized by suddenness and changeability, producing confusion about what types of action were permissible or safe. Belated and sudden rules are sites of future-oriented insecurity in writers' accounts, which are infused with fear and/or uncertainty about what might happen, as well as – often – anger with those responsible for allowing it to be so. As such, our study also points to the rich possibilities of understanding pandemic rules, and their relationship with time, through Mass Observation writers' complex practices of anticipation. In focusing on how the rules felt and what they set in motion in everyday life, our analysis contextualizes socio-legal studies focused on legal compliance and creative non-compliance.<sup>114</sup> We have explored how writers forged their own practices to live with belatedness and suddenness and to anticipate hybrid future legal-viral risks. Through everyday decisions about when to go into lockdown, for example, and when to see relatives, writers improvised personal and collective patterns of action, interpreting the rules and reshaping them in their own lives, with attention to others' needs or simply their own ability to live a 'normal' life. These improvised tactics were temporalizing; they created legal temporalities in their own right, such as by altering rhythms and schedules. They give a glimpse of what Mass Observation writers thought the rules were, what they should be and should do, when they should arrive, and how, if/when they arrived, they should shape their own lives and futures.

<sup>114</sup> Halliday et al., *op. cit.*, n. 29; Meers et al., *op. cit.*, n. 99.

A constructivist approach to legal temporalities, critical of universalistic and linear accounts of time, remains open to varied practices and discourses of making time that can be found, for example, across debates over fast-track law and Mass Observation accounts of living through the early pandemic. Far from being merely different interpretations of time, these constructions were forged as distinct social and legal realities through the everyday practices of Mass Observation writers and in the work of legal experts, inflected with particular calls to action. In analysing the legal temporalities of the pandemic, then, our study underlines the necessity of remaining open to plural constructions and everyday experiences of time and law.

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