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Understanding the Legal Constitution of a Riot: An Eventual Genealogy

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Abstract

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This thesis considers the constitution of a riot as an event that ruptures. The aim of the thesis is to use an evental theoretical framework to develop a novel understanding of the constitution of a riot, in response to the absence of sustained theoretical reflection on riots, specifically following events in 2011, and England's so called 'summer of disorder'.

The absence of theoretical reflection on the constitution of riots in much existing riot research follows from the centrality of questions of causality within it, such as: what caused the breakdown of law and order? Existing work rushes to respond to specific events, to explain causality, in a way that quells concern over the destabilisation that the breakdown of law and order generates. The thesis begins by posing the alternative, more contemplative and critical question: what is a riot?

Drawing on evental theory, the thesis develops a conceptualisation of the riot as a particular kind of transgression; a transgression of the aesthetic faultline in the world (Badiou, 2008; Shaw, 2012). This is the line that regulates what can and cannot appear in the world. To develop an understanding of the constitution of the riot as a transgression of the aesthetic faultline in the world, the thesis traces the *drawing* and *policing* of this line through history, specifically in the legal domain, through legal archival work. It takes a historical approach in order to develop understanding of the historical constitution of this line, and how it has been policed during different instances of disorder, such as in Orgreave 1984-5, for example.

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List of Abbreviations

BL British Library

CPS Crown Prosecution Service

HMIC Her Majesty's Inspectorate of Constabulary

IPCC Independent Police Complaints Commission

LMA London Metropolitan Archives

MOPAC Mayor's Office for Policing and Crime

RROs Riot Related Offences

TNA The National Archives

UKSC UK Supreme Court

List of Cases

Bedfordshire Police Authority "BPA" v David Constable [2008] EWHC 1375 (Comm)

DH Edmonds Ltd v East Sussex Police Authority [1988] 7 WLUK 57

Humphreys v The Commissioners for Her Majesty's Revenue and Customs [2012] UKSC 18.

JW Dwyer Ltd v Metropolitan Police District [1967] 2 Q.B. 970

Mayor's Office for Policing and Crime "MOPAC" v Mitsui Sumitomo Insurance Co (Europe) Ltd "Mitsui" [2016] UKSC 18.

Mitsui Sumitomo Insurance Co (Europe) Ltd "Mitsui" v Mayor's Office for Policing and Crime "MOPAC" [2013] EWHC 2734 (Comm)

Mitsui Sumitomo Insurance Co (Europe) Ltd "Mitsui" v Mayor's Office for Policing and Crime "MOPAC" [2014] EWCA Civ 682.

R (on the application of Singh) v Chief Constable of West Midlands Police [2006] EWCA Civ 1118

R (Tigere) v Secretary of State for Business, Skills and Innovation [2015] UKSC 57

R v Blackshaw & Others [2011] EWCA Crim 2312

R v Middlesex Crown Court, ex p Khan "Middlesex Crown Court" [1997] 161 JP 240, [1997] COD 186, (1997) 161 JPN 212

R v Caird (Roderick Alexander) [1970] 54 Cr. App. R. 499

Ratcliffe v Eden (1776) 2 Cowp 485

Rylands v Fletcher [1868] L.R. 3 H.L. 330

Stannard (t/a Wyvern Tyres) v Gore [2012] EWCA Civ 1248

Yarl's Wood Immigration Ltd "Yarl's Wood" v Bedfordshire Police Authority "BPA" [2008] EWHC 2207 (Comm)

Yarl's Wood Immigration Ltd "Yarl's Wood" v Bedfordshire Police Authority "BPA" [2009] EWCA Civ 1110

List of Statues

Table of Archives Consulted

Indexing information used for in-text referencing

In text citation	Collection	Further cataloguing codes
TNA	The National Archives	TNA PREM/19/484 - Prime Minister's Office files, 1981.
SYJA	Sheffield Shoreham Street Archives, South Yorkshire	
LMA	London Metropolitan Archives	MJ – Middlesex Sessions of the Peace MJ/SP – Sessions Papers MJ/SP/D – Riot Compensation Claims
PA	Parliamentary Archives	HL – Records of the House of Lords PO – Records of the House of Lords: Parliament Office JO – Records of the House of Lords: Journal Office
Harvard referencing	British Library Newspaper Archives (1715-1725)	
Harvard referencing	National Police Library, College of Policing	

Statement of Copyright

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1. England's Summer of Disorder: Did a Riot Take Place?

> These riots were not about government cuts: they were directed at high street stores, not Parliament. And these riots were not about poverty: that insults the millions of people who, whatever the hardship, would never dream of making others suffer like this. No, this was about behaviour……people showing indifference to right and wrong……people with a twisted moral code……people with a complete absence of self-restraint. (Cameron, 2011 n.p.)

> When it got as far as the court of appeal, there were two issues in play. Firstly, whether or not there had been a riot. And secondly, and the more expensive question, if the damage did stem from a riot, did the act provide for the recovery of consequential losses as well as for pure damage to the physical property on site? The Court of Appeal attempted to bring some sort of clarity to the 1886 Act definition of a riot…The Court of Appeal looked at the number of people involved, the violence of the attack, and the manner of their assembly and approach to the warehouse and determined that this was a riot. (Case comment: Mitsui v MOPAC, 2013)[1]

1.1 What is a riot? Turning to think about the constitution of riot

In the summer of 2011, unrest arose in cities across England, leading it to become known as England's summer of disorder (Lewis et al, 2011). What began as a small-scale protest in Tottenham, north London, transcended into unrest that spread to Birmingham, Liverpool, Manchester, Leicester, and Nottingham.

In this thesis, I take my initial direction from the legal aftermath of these events, focussing on the Mitsui v MOPAC case, to consider what constitutes a riot. The case relates to dispute over who should cover the cost of damage to property caused during the riots. The dispute was between an insurer, Mitsui, and The Mayors' Office for Policing and Crime which is the body responsible for policing in London. The insurer, Mitsui, actioned the case in an attempt to claim the cost of damages from the police. The police, MOPAC, contested their claim, and maintained that insurers were responsible for paying out.

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[1] Interview, Lawyer, 22/07/2016.

While what happened in the summer of 2011 was named as rioting in the media, by UK politicians, and in academic work, the Mitsui case, which began two years after the events in 2013, opened with the question of whether or not there had been a riot. To use the language from the Mitsui case itself, it asked whether the destruction it was tasked with settling compensation for, had been caused by "persons riotously and tumultuously assembled together" (Mitsui v MOPAC, 2013 p. 1-2). To determine an answer to the question of whether a riot took place, the case worked through the legal history of riot. Such was the antiquated status of riot legislation, the central task of the case was to work out how to apply 18th and 19th century ideas of what a riot was, to the 21st century rioting event. The case drew on historic legislation to first determine whether or not what took place in 2011 was a riot, and then following from the decision on what took place, how the case, and specifically compensation for riot damages, should be settled.

I take the Mitsui case as my starting point in the thesis because of the first question it poses: did a riot take place in 2011? In asking the question of whether a riot took place, the case foregrounds an indeterminacy around the constitution of a riot in 2011, which is what the thesis responds to. I consider the question of whether a riot took place to signal a need to think further about what a riot is. The central question that directs the thesis is, therefore: what is a riot?

In starting with the question *what is a riot,* I offer a different way of thinking about riots to that within much existing research on riots. At present, much riot research in the UK is reactive and focuses on matters of *causality* in response to specific rioting events. The question that dominates much riot research is thus what caused the breakdown of law and order? The dominance of this question on causality stems from the pervasive understanding of riots as violent, ephemeral eruptions. Existing work rushes to explain their taking place in order to quell concern around the breakdown of law and order, and the destabilisation such a breakdown creates. My project begins by posing the alternative, more contemplative and critical question: what is a riot? In the thesis I endeavour to take a step back from specific events and embark on a study of riots that entails an exploration of their *constitution*, rather than causation. While I take initial direction from the response to the 2011 riots, I do not stay with these events, but consider the constitution of riots more broadly, turning to examples from the 1700s and Orgreave in 1984-5, for example.

The constitution of riot as event

To execute the shift from thinking about the causation of riots to the constitution of riots, I turn to theory, and specifically evental theory to think of the riot as an event. An event constitutes a disturbance, differentiation or *rupture* to the normal order of things. I propose that thinking of the riot as an event provides a means to understand its constitution, or eventness, by which I mean the nature of, or its specificity as, something that ruptures the normal order of things. Evental theory provides a means to stay with the rupture of the riot, and to dwell on its constitution.

To first think about the riot as an event that ruptures the normal order of things, in chapter two, I think about it in relation to evental governance; governance that is *ordered* by contingent events that rupture the normal order of things, or where events "reign supreme" (Dillon, 2008a p. 19). I begin here to situate my turn to the evental in political geography, and work on evental governance that considers a range of events such as terrorist attacks, financial crisis and natural disasters, but not yet riots. I review work in political geography that considers the evental ordering of governance and consider what it entails as a particular modality of governing. I suggest evental governance works to get to know and grasp, and then to tame and limit events that rupture. Lobo-Guerrero (2013 p. 1) summarises this modality of governance in saying:

> How the event is understood and conceptualized determines to a great extent the ways in which its related uncertainty will be rendered. This, in turn, will determine how such uncertainty will be managed.

I then move to think more closely, in chapter three, about the constitution of the riot as event, by thinking more specifically about the riot as rupture, where rupture is a defining characteristic of events within evental thought. Here I draw more closely on evental theory and philosophy. I think about the riot as rupture by developing a conceptualisation of the riot as a rupture in terms of a transgression, and a transgression of the laws of the world (Badiou, 2008). More precisely, I think about the riot as a transgression of the laws of the world that regulate appearance, through the notion of the aesthetic faultline. This draws on Shaw's (2010; 2012 p. 12) work in evental geography and in particular his suggestion that power in evental geography should be considered in relation to the aesthetic faultline in the world, which is the line that orders what can and cannot appear, or the line that regulates appearance in the world.

With a specific understanding of the rupture that constitutes a riot, I then turn to think further about its governance. Having set out evental governance as governance that works to know and limit events that rupture, I consider what it entails in relation to the riot as a specific kind of rupture, understood as a particular kind of transgression. I think about its governance in relation to the aesthetic faultline, and specifically the *drawing* and *policing* of the aesthetic faultline. I think about the drawing of the line in relation to the construction of the riot as an object of governance. Then, I think about the policing of the line in relation to how it is rendered actionable, and so what practices of control the riot becomes subject to.

The questions that I take into my empirical work followed from this way of thinking about the aesthetic faultline in relation to governance. In terms of research questions, thinking about how the aesthetic faultline is drawn involved thinking about how the riot is constructed as an object of governance and questions such as: *why* is its appearance limited? Why is the riot a problematized as an object of governance? Thinking about how the aesthetic faultline is policed, opened onto questions such as: what constitutes a transgression of the line? How are transgressions managed and limited? How is the appearance of riots regulated? These questions guided the empirical work and structure the empirical chapters. In the empirical chapters, I first trace the drawing of the aesthetic faultline line, in chapter 5, and then how focus on how it is policed, in chapters 6 and 7.

The legal governance of riot

I ask the above questions of the legal archive, and my empirical work had a distinctly legal focus. The aim of the empirical work was to trace the drawing of the aesthetic faultline and how it becomes actionable, or is applied, in relation to law, where the law is the line that determines that the riot cannot appear by codifying it as illegal. I draw on legal archival work in order to first trace the drawing of the aesthetic faultline in law, or how the riot is constructed as an object of governance in law. Then, I draw on legal archival work and legal ethnography to trace instances of where the line has become actionable, during particular rioting incidents, such as in the 1700s and at Orgreave 1984-85, for example.

In turning to legal *archival* work, I argue that to understand the drawing of the aesthetic faultline, and how it becomes actionable necessitates a *historical* approach. I argue for the necessity of a historical approach to understand how the line is drawn and policed, in order to better understand the events as a transgression of such a line. I do not turn to

history to explain why certain rioting events emerged, but rather to explain how their appearance in the world is regulated in terms of the aesthetic faultline. I thus extend existing work on evental governance through widening its temporal scope, and through engaging history and event.

My focus on the legal follows from the Mitsui case, where questions of governance were central. In asking whether a riot took place, the Mitsui case foregrounded the absence of contemporary knowledge of what a riot was in 2011. The absence of understanding of what a riot was led to uncertainty as to how to respond to it, and render it controllable. One lawyer interviewed as part of the research, said of the start of the Mitsui case, for example: "The square peg of the very 21st century riot starts to get hammered into the round hole of the governing act, which dates from 1886."[2] The case grapples with this temporal disjuncture, and turned to legal history to work out whether what took place was a riot, and how to respond to it. Legal history was used to establish what the case identifies as the 'necessary ingredients' of a riot, and then what action to take on the basis of whether these ingredients were present in 2011, and so the decision as to whether what took place was a riot. In the Mitsui case, such actions included how to settle liability for riot damages, and so determine responsibility for riot damage, and ultimately responsibility for the taking place of rioting itself.

I follow the case by asking questions about the constitution of a riot, in terms of its necessary ingredients in law, and what action the presence of these ingredients leads to and legitimises in particular instances of disorder. Through following a legal case and foregrounding the legal, I propose that law underpins the governance of riots. I argue that law is significant to the construction of the riot as an object of governance, or as something amenable to intervention and control. And, that law shapes the unfolding of practices that control riots.

My proposal that law underpins the governance of riots rests on the prominence of the Mitsui case in the aftermath of the riots, in determining whether what took place was a riot, and what action the decision as to what took place legitimised. The way that the case unpacked these issues was central to settling matters of liability and responsibility for the actual taking place of rioting, and in relation to the policing, penal and juridical handling of

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[2] Interview, Lawyer, 22/07/2016.

the riots, for example. I thus consider the significance of law to transcend the juridical governance of riots, and to play a role in the wider unfolding of riot governance.

In focussing on the constitution of riots as an object of governance, in law, I do not stay with the events of 2011, or England's summer of disorder. My interest does not lie in explaining the emergence of rioting in 2011. My work takes direction from the response to the 2011 riots, and specifically the question of whether a riot took place that emerged in their legal aftermath. I take this question as a signal to ask the fundamental question: what is a riot?

1.2 A genealogical approach: thinking otherwise about riots

Considering the constitution of riots, the thesis offers a different way of thinking about riots to much existing research on riots. Much existing research on riots attempts to explain their taking place, in order to stabilise and quell concern around the breakdown of law and order. It thus focuses on the moment of eruption of the riot, its spectacular nature, and attempts to explain its emergence through foregrounding questions of causality. Through articulating reasons for the emergence of rioting, this work provides refuge from the destabilisation that rioting events create.

In proposing a shift in focus to think about the constitution of riots as events, and in terms of their governance, I follow a genealogical approach in that I propose a way to think *otherwise* about riots, to that which appears as obvious, self-evident and given (Foucault, 1984). I understand genealogy to be a mode of inquiry that works towards thinking *otherwise* to that which appears as obvious (Foucault, 1984; Tiisala, 2017). Understood in this way, the first stage of genealogical work is to outline and describe the emergence of a particular understanding that presents itself as obvious and self-evident, and why it is so pervasive. The next stage is to conduct work that undoes or unsettles the particular understanding that appears as self-evident and obvious. Finally, the last stage is to present other understandings, and ways of thinking otherwise, in my thesis, about riots as objects of governance, which I present in the empirical chapters.

What I have set out so far is the way that I think *otherwise* about riots - in terms of their constitution as events, and in relation to governance. What I turn to now, are the stages of the thesis that underpin this novel way of thinking about riots. I turn to expand on *how* I

work towards thinking otherwise about riots in terms of their constitution as an event, and in relation to governance, with reference to my research aims.

1.3 Research aims

Following a genealogical approach, the first stage of executing this shift in focus to think about the constitution of riots, is to set out what it is that I am thinking otherwise to. It is to set out the pervasive, seemingly self-evident understanding of riots that I think beyond. In what follows, in the rest of the introduction, I thus trace the emergence of the pervasive, self-evident, understanding of riots that I work to think otherwise to. The pervasive, self-evident understanding of riots is the understanding of riots as violent ephemeral eruptions, which I introduce through a discussion of how we came to know the 2011 riots, and through riot iconography. I argue that understanding of riots is captivated to a particular framing of riots that riot iconography exemplifies, but which transcends the visual domain and is prominent within riot research that endeavours to explain its causality, for example. Overall, in this stage of the thesis, my aim is to disrupt pervasive understanding of riots, and execute a shift in focus from thinking about the causality to the constitution of riots.

The second stage, in terms of a genealogical approach, is to conduct work to move understanding of riots on, in a new direction. It is to do the foundational work that allows me to begin to think otherwise, by undoing and unsettling the particular perspective that appears as self-evident. I do this work through abstraction and theory, and specifically thinking theoretically about the constitution of the riot as event, drawing on evental theory in political geography, and evental theory and philosophy more widely.

In the theoretical stage of the thesis, chapters two and three, my aim is to theorise the riot as event. My aim is to develop a new sensibility of riots, in terms of their constitution as events that are objects of governance. What I develop through this work, is a way of thinking about riots as rupture, and as a moment of transgression. More specifically, drawing on work on evental thinking in political geography, I develop a conceptualisation of the riot as a transgression of the aesthetic faultline in the world (Shaw, 2012 p. 12). I relate to the aesthetic faultline as the line that regulates what can and cannot appear in the world. I extend Shaw's (2012) conceptualisation of the faultline to think about it in relation to law. This is the sensibility of riots I take into my empirical work, to ask the questions: how is the riot constructed as an object of governance? Why is its appearance limited? And, how is the aesthetic faultline policed? What constitutes a transgression of the

faultline? How are transgressions managed and limited? How is the appearance of riots regulated?

Finally, the last stage, in terms of my genealogical approach, is to present other perspectives, and ways of thinking otherwise about riots, informed by the theoretical understanding of the constitution of riot that I develop. I first present legal archival work that traces the drawing of the aesthetic faultline in the world, and then instances of where this has become actionable during particular rioting events. My aim here is to present the empirical material, informed by the theoretical framework, which evidences how I think otherwise about riots as events that are objects of governance. All of this follows from the central research aim that is to think about the constitution of riots and develop a response to the question: what is a riot?

Guided by genealogy, to execute this shift to think about the constitution of riots, to summarise, my thesis thus comprises three stages. First, I set out what I think otherwise to. In this stage, in the introduction, I aim to distinguish what I differentiate my approach from, and explain why a particular way of thinking about riots, as violent ephemeral eruptions, is so pervasive and leads to work on the causality of riots. Second, I turn to theory to enable me to move thinking about riots in a new direction. Here I aim to develop a novel theorisation of the riot as event that I then take forward into my empirical work. Third, I present thinking otherwise about riots, drawing on legal archival work. Here I aim to evidence how I put my theoretical framework to work to enable me to execute the shift to thinking about the constitution of riots.

In what follows, in the rest of the introduction, I set out the pervasive, self-evident understanding of riot that I think otherwise to, and consider how it emerges and functions. Here I ask, if genealogy is to think otherwise to that which appears as self-evident, what it is that I think otherwise to?

1.4 Thinking otherwise to the riot as an ephemeral eruption: iconography and the framing of riots

I introduce what I think otherwise to through a discussion of the pervasive iconography of riots that resurfaced and was prominent in the aftermath of the 2011 riots. While my thesis is not about the 2011 riots themselves, I introduce the pervasive understanding of riots that I aim to think beyond, through its most recent iteration, in England, which was following the 2011 riots. In this section, I draw on riot iconography as a way to open into

a wider discussion about the enframing of understandings of riots, which involves a particular mode of inquiry that focuses on the causality of riots, and it bound to the time-space of the riot's moment of eruption.

To go back to the 2011 riots, in the media, the riots played out as the latest episode of discontent expressed in the tumultuous year of 2011. The riots appeared as a series of abstracted images, with the same familiar and now paradigmatic riot iconography that we see in representations of manifestations of unrest: "it's night, a car or two burn in the near distance and, in the foreground, a young man (preferably brown) wearing a balaclava is in the midst of tossing a projectile" (Douglas, 2017 n.p.; figure 1).

Kerim Ökten's widely circulated image taken in Hackney on August 8, depicts exactly the aesthetic arrangement Douglas describes (figure 2). It became one of the most widely published and recognised images from the 2011 riots; it made the front page of the Guardian and The Independent the following day, August 9, and the cover of TIME magazine on August 22 (Millington, 2016). In 2012 it then re-appeared, edited, as the cover of Žižek's book, *The Year of Dreaming Dangerously*, with Žižek's own figure replacing the anonymous subject that stands within the original frame (figure 3).

Figure 1: No Church in the Wild (Gavras et al, 2012).
Figure 2: Hackney, London, UK, 8 August 2011 (Millington, 2016; photo by Kerim Ökten).
Figure 3: The Year of Dreaming Dangerously (Žižek, 2012)

Through the media, the 2011 riots were thus subsumed into a series of manifestations of unrest taking place in 2011. Since January of that year, through the media, viewers had witnessed the unfolding of a series of rioting events. First, in Sidi Bouzid, Tunisia, following the self-immolation of Tarek al-Tayeb Mohamed Bouazizi. Then, in Tahir Square, Syria and Libya as the 'Arab Spring', declared its force, and following this, Europe, namely, Athens and Madrid (Mason, 2012).[3] Uniformity in the coverage of unrest in that year led viewers to experience what Truong (2017 p. 11) relates to as a "a paradoxical form of 'diplopia': the impression of seeing double after having witnessed so many times the same images of a complex event, in a double effect of 'looping' and 'déjà vu'". The riots in England thus became seen as yet another manifestation of unrest, interchangeable with others unfolding in 2011.

The enfolding of disruptive events into a comprehensible series like this is common to responses to disruptive events (Closs-Stephens and Vaughan-Williams, 2008). Closs-Stephens and Vaughan-Williams (2008) explain this through the example of the London bombings in 2005 within their work on the politics of response. In their work they question and seek to counter the speed that sense is proclaimed in the aftermath of disruptive events. Taking the London bombings as their primary case, they set out to make these familiar events unfamiliar once more, and question framings that described these events as self-evident (Closs-Stephens and Vaughan-Williams, 2008). In particular, they question the framing of the events as '7/7', and the way this enabled the bombings to be emplaced in a sequence, as the latest in the series encapsulating '9/11'; '11/3'; 'Bali', 'Istanbul'; '21/7'. They argue that this suturing in sequence contributed to the "(re)production of a seemingly continuous sequence that has come to appear self-evident, straightforward and uncomplicated" (Closs-Stephens and Vaughan-Williams, 2008 p. 4).

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[3] The connection that I draw between these places is primarily temporal. As Dikeç (2018) writes, 2011 was witness to a series of expressions of urban rage across the world. As well as this, however, Dikeç and Swyngedouw (2017 p. 2) suggest that "despite their historical and geographical heterogeneity, there is an affinity between the eruptions of discontent in cities as diverse as Istanbul, Cairo, Tunis, Rio de Janeiro, Montréal, Athens, Madrid, Lyon, Lisbon, New York, Tel Aviv, Cincinnati, Chicago, London, Berlin, Thessaloniki, Santiago, Stockholm, Barcelona, Oakland, Paris, São Paulo, Bucharest or Hong Kong." These expressions of urban rage, they suggest, staged, albeit in distinct ways, a profound discontent with the present urban condition (Dikeç and Swyngedouw, 2017).

And, in the case of the London bombings, made the events appear self-evident and as something that we expected to happen.

I consider the sequencing of the riots in the media as significant to how we came to know, and now recall, and thus *still know* the riots: as anonymous, violent ephemeral, eruptions. I start here to make the point that the kinds of images circulated in the media in 2011 begin to stick as the dominant imaginary of riot; they accumulate and create riot iconography that is pervasive and structures sense and understanding of what riots are. Images of the riots circulated through the media are afforded a natural status, and assume an inherent stability (Amoore, 2007). As Amoore (2007 p. 4) writes "the image itself becomes an artefact that is, of all media, least vulnerable to 'subjective intrusion or ambiguity'" (Daston and Galison, 1992 p. 92). The image based representation of the riot thus sustains ways of seeing that prohibit other possible ways of seeing, or a blindness to other ways of seeing as Feldman (1997) puts it.

I relate how we came to know and still know the riots through the media to foreground how images in particular enframe understandings of riots. I consider the way in which the frame of the picture enframes, as a way to reflect how understanding of riots more generally is framed. To be framed, as Butler (2009) writes, is to be set up, as a person might be set up for a crime. The iconography of riots sets riots up as a violent, ephemeral eruption, instigated by the brown hooded figure, and usually involving some kind of confrontation with police. This framing makes it difficult to think of the riots as other to this.

The framing that I take as an example, of riots as violent, ephemeral, eruptions, takes place in the news media. It recruits people into a particular way of understanding riots. Our passive reception of this framing of riots is limiting to our intelligibility of them (Butler, 2009). What I mean by this, drawing on Butler, is that our receptiveness to this framing, our passive acceptance of it, shapes our understanding of riots. The visual is central to our recruitment into a particular way of thinking about and knowing something, and accepting such knowledge (Butler, 2009). Butler exemplifies this through the example of war reporting in the news media, and how this recruits people into a certain framing of reality where war appears as legitimate. Butler's (2009) work is arguing for resistance to the way in which war is conscripted to the visual, meaning that ways in which support for war takes place through the visual. Butler exposes the way in which particular version of reality, of places, are framed in war reports in news media in ways that make violence and war appear as necessary or legitimate (2009).

How framing works, then, is by delimiting the sphere of appearance, or the visual field (Butler, 2009). It delimits what we see. Through this delimitation of what we see, framing jettisons a certain version of reality (Butler, 2009). Through framing, a certain reality is therefore built, which creates a blindness to and makes untenable other ways of seeing the real (Feldman, 1997). In jettisoning or privileging a certain version of reality, the frame does not exhibit a reality, but what will come to count as a reality. It offers a particular version of reality. As Butler (2009 p.xiii) writes:

> The frame does not simply exhibit reality, but actively participates in a strategy of containment, selectively producing and enforcing what will count as reality…this means that the frame is always throwing something away, always keeping something out, always de-realizing and de-legitmating alternative versions of reality, discarded narratives of the official versions.

The frame seeks to contain, but there is always excess. The frame is always throwing something away, the things that it cannot fit in (Butler, 2009). It de-realizes other versions of reality, or other ways of seeing things (Butler, 2009). While it is privileging certain versions of reality, Butler argues, it is "busily making a rubbish heap whose animated debris provides the potential resource for resistance (2009 p.xiii). This debris pile for Butler is lively, it is animated, and has the potential to devalidate the particular version of reality that the frame presents to us (2009).

This point speaks of the vulnerability of the frame. For Butler (2009 p. xiii) the frame is only ever "polishing the surface", or only every working at a surface level. It only ever initiates or finalises a way of seeing and thinking about something, and works alongside other forms of recruiting people into ways of seeing and thinking, or war waging as Butler's writes in relation to (Butler, 2009). Framings are thus always troubled by the debris that they shut out and leave behind – the other ways of seeing and thinking about reality that they try to devalidate.

I introduce what I aim to think otherwise to in relation to the iconography and the visual to emphasise the significance of the visual in understanding riots. As Butler (2009) foregrounds, the visual is powerful in recruiting us into particular epistemological positions, or into particular ways of thinking about reality. The visual assumes a position as the sovereign sense, as detached and protected from contestation, which means that these images stick, circulate and resonate more widely (Amoore, 2007). Our *understanding* of the reality of riots, I argue, is enframed by this way of *seeing* riots. This way of seeing

riots recruits us into a particular way of *knowing* riots, by forming the horizon of our broader intelligibility of riots.

My thesis works to break from the framing of riots as violent, ephemeral eruptions, and to think otherwise about riots, specifically through thinking about their constitution.

1.5 Genealogy, aspectival captivity and critique

> Critical Theory as ideologiekritik is directed to freeing us from captivity to an ideology; genealogy is directed to freeing us from captivity to a picture or perspective. (Owen, 2002 p. 1)

In the preceding section, I set out what it is I think otherwise to – the framing of riots as a violent, ephemeral eruption. In this section, I reflect further about how I situate this understanding of riots, which I aim to think otherwise to, within my methodological approach of genealogy.

As philosopher Michel Foucault articulated, genealogy works to present the "possibility of no longer being, doing, or thinking what we are, do, or think" (1984 p.46). In other words, it works to present the possibility of thinking otherwise about something. It is a practice of reflecting on the limits of what we know, in a practical way that works towards the transgression of these limits (Foucault, 1984). Significantly, as Foucault emphasised, "we are not talking about a gesture of rejection" (1984 p. 45). In genealogy, it is not about rejecting a particular framing of reality, but showing how it is possible to think otherwise about a particular reality, which in my thesis is how we understand riots. It is a philosophical exercise that works to re-orient thinking away from versions of reality that appear as given and self-evident (Ashenden and Owen, 1999). The version of reality that I work to re-orient thinking away from is the framing of riot as a violent, ephemeral eruption.

The core idea of working to think beyond the limits of a particular framing underpins why I engage a Foucauldian genealogy. While Foucault's work does underpin my approach to how to think otherwise about riots as event, I take more specific direction from Owen's work on Foucauldian genealogy, as it is more prescriptive in terms of how to conduct genealogical critique. I draw specifically on Owen's (2002) articulation of genealogy as a practice of critique that frees us from the condition of unfreedom that is aspectival captivity. The condition of unfreedom is the condition of being help captive to a picture or perspective (Owen, 2002). Owen (2002) relates to it as a condition of unfreedom because of the way the picture limits our capacity to see as other: "we are enslaved", he says,

"because we are entranced" (2002 p. 218). The picture that captivates limits ways of seeing and thinking differently because it becomes taken for granted, not questioned, not contested, and functions as the implicit horizon of our thinking (Owen, 2002).

Owen (2002) develops this way of thinking about genealogy as a practice of overcoming aspectival captivity as a corrective to misinterpretations of genealogy that relate to it as a misguided or bad form of ideologiekritik (Owen, 2002). For Owen, genealogy, as freeing us from a condition of aspectival captivity, is not about judging the way things are, and whether things may be true or false, right or wrong, well or not well (Tiisala, 2017). Rather, is it about recognising and understanding this particular form of restricted consciousness (Owen, 2002). This is how and why Owen (2002) distinguishes genealogy as a critical practice from critical theory as ideologiekritik, the critique of ideology, which is directed to freeing us from a particular ideology, or the condition of ideological captivity. Ideological captivity is characterised by the condition of being held captive by false consciousness or false beliefs (Owen, 2002). In contrast, the condition of aspectival captivity has no relation to the truth or falsity (Owen, 2002). Aspectival captivity is a condition of restricted consciousness that has no relation to what is true or false, but what can count as true or false (Owen, 2002).

To exemplify this point, Owen (2002 p. 12) thinks of the picture or perspective as masquerading as a comprehensive account. This points to the way it restricts consciousness, by posing as a full account of something when it is really only ever a partial, incomplete perspective, which is all we are ever able to access (Owen, 2002; Jenkins, 2011). The task of genealogy is thus to reveal this partiality, and re-orient thinking to other possible ways of seeing and thinking about something. This emphasises the point that genealogy does not seek to negate particular perspectives, or make the case that they are wrong or false. It is not a critical practice oriented to correction (Thaler, 2014). In this case, the aim of the thesis is thus not to deny that a riot is an ephemeral, violent eruption, but to argue that it is other to this, too.

On a technical note, the picture or perspective that Owen writes of relates to more than images. Owen (2002 p.2) uses the terms to relate to pictures and perspectives in the "technical sense", where a picture is a system of judgments through which our being in the world becomes intelligible, and a perspective relates to a system of judgements through which we make sense of ourselves as beings in the world. Owen (2002) makes this distinction to then go on to relate critique directed to a picture to Wittgenstein, and critique directed to a perspective to Foucault and Nietzsche. Here Owen (2002) alludes

to the way that Wittgenstein's approach, in very brief terms, focuses on ways of seeing things through notions of aspect seeing and aspect blindness (Thaler, 2014). And, in distinction, how Nietzsche's genealogy explores how we make sense of ourselves as moral beings in the world, and Foucault's work considers how we make sense of ourselves as modern subjects in the world (Owen, 2002; Thaler, 2014; Jenkins, 2014).

While Owen (2002) makes this distinction between a picture and perspective, he continues to state that the two are co-extensive. He summarises through saying that a picture or perspective refers to a way of conceptualising the real. To reiterate, both delimit "what is intelligibly up for grabs", rather than what might be true or false (Owen, 2002 p. 2). This emphasises how the practice of genealogy is thus normatively neutral; it is not about taking a stance on a particular matter or struggle, but of revealing the conditions that have led to its emergence and certain, restricted, ways of thinking about the real (Allen, 2014; Koopman, 2010a).

I note the distinction between picture and perspective, which opens into complex questions around the nature of critique and approaches within critical theory, to better contextualise the structure of the thesis and the critical approach that I take. I refer to this distinction to be as specific as possible about the restricted way of thinking about the real that I take as the object of my genealogy, or the obstacle to thinking that I confront and work to overcome (Tiisala, 2017). The obstacle that I work to overcome is the framing of riot as a violent, ephemeral eruption.

To move beyond describing the obstacle to thought that I start with, in the rest of the chapter I expand on why the obstacle of the framing first *emerges,* and then how it *functions* to create the condition of captivity to it. I follow Tiisala (2017) here in thinking about critique as targeted to things endowed with the appearance of obviousness, which prevent us from readily grasping the full scope of possibilities for thought. And, attacking obviousness as necessitating elaboration on the nature of the obstacle that constrains thought, specifically through thinking about how the obstacle came to be, and then how it functions to limit thought.

To think about how the condition of aspectival captivity came to be, I think about two characteristics of the riot: the riot as excessive, and the riot as spectacular. I argue that these two characteristics contribute to the creation of the condition of unfreedom that is aspectival captivity. Then, turning to think about how this condition of unfreedom of aspectival captivity functions, I look to existing literature on riots and outline its tendency

to focus on the emergence of riot and questions of causality. I argue that it focuses on explaining the appearance of the moment of eruption and is bound to the time-space of the emergence of the eruptive moment, in a way that holds analyses captive to specific eruptive instances of rioting and forecloses thinking and theorising on the object of the riot itself.

Excess

All excessive events are met with reductive responses. By excessive, I refer to the way in which events *exceed* capacitates to understand, by rupturing all existing frameworks for thought and making sense (Grondin, 2014). In the aftermath of trauma, for example, as Edkins (2003 p. 13) writes:

> In the rational west we tend to seek certainty and security above all. We don't like not knowing. So we pretend that we do… We forget the uncertainties involved and adopt a view that what we call social reality – which Slavoj Žižek calls social fantasy – is basically knowable.

The emergence of aspectival captivity is one iteration of responses that reduce eruptive, excessive events into something that makes sense and appears as familiar (Closs-Stephens and Vaughan-Williams, 2008). Closs-Stephens and Vaughan-Williams (2008) focus on this tendency within their work on the politics of response. Their work takes responses to the July 7 2005 London bombings as its central example, and works to make these *familiar* events *unfamiliar* once more. They do not focus on what happened, but how the events were *framed*. They question, for example, the creation of a pretence of knowledge; the "ease with which Blair seemed to have decided what had happened and why" (Closs-Stephens and Vaughan-Williams, 2008 p5).

What Closs-Stephens and Vaughan-Williams (2008) relate to here, is the way that excessive events that exceed capacities to understand, that are hostile to knowing and to inscription, are rendered knowable and familiar, in a reductive way (Grondin, 2014). From a space of non-sense, *some* sense is made into a reductive account that offers stabilisation (Grondin, 2014). The reductive account is a fix that frames in the midst of uncertainty; it is an account of the event circulates to limit and quell confusion and concern.

In the case of the 2011 riots, this characteristic of excess was amplified by failures to anticipate rioting on a national level, here, in England.[4] Excess is compounded, as O'Grady argues, "where predictions concerning emergencies fail to come to fruition" (2019 p. 12). In 2011, failures of anticipation thus contributed to the manifestation of excess that obfuscated the ability to generate an understanding of what was taking place, and thus also efforts to stabilise, in a reductive way.

Failures in anticipation emerged following a long period of relative peace in terms of public disorder in England. Before 2011, the last significant rioting events, significant in terms physical intensity, material loss and that which is calculable, were in 2001 in Bradford, Burnley and Oldham, and before this in Brixton, 1981.[5]

As a result of this period of relative calm, riots were distant on the horizon of the UK's risk imaginary in 2011. In bureaucratic and strategic terms, they did not feature in the National Risk Register for Civil Emergencies maintained by the Cabinet Office, and the police had no national level framework for the management of public disorder (Kinghan, 2013). Their intrusion was therefore met with "a general unpreparedness" (Edmonds, 2014 p. 5; Edmonds and Strickland, 2015).

A measure of unpreparedness is inherent in all responses to destabilising events. There is always a disjuncture between the risk imaginary and the manifestation of disruption. However, this *general* unpreparedness was significant. It signals that the riots unfolded as an actualisation of a future that had not been imagined (Grusin, 2010). In other words, the riots were not anticipated. Their coming into being eluded anticipatory security techniques that work to grasp and to manage disruptive events *to be* (Grusin, 2010; Anderson, 2010a; Dillon, 2008b).

Anticipation works through this performative duality of making a potential future known, and acting on this knowledge of potential (Anderson, 2010a). It is not about predicting

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[4] I focus specifically on England in the thesis as a means of delimiting focus, maintaining a specific fidelity to the events that took place in 2011 and because of the legislative focus that uses English law. The absence of discussion of events in Northern Ireland follows from this. While I do not turn my attention to events in Northern Ireland, Allen Feldman's (1991; 1997) work on political violence, visual culture and violence and security in Northern is significant to the arguments in this chapter.

[5] Events in Brixton led to the Scarman (1981) report, led by Lord Scarman. Lord Scarman's terms of reference for the inquiry, as directed by then Home Secretary William Whitelaw, were: "to inquire urgently into the serious disorder in Brixton on 10 to 12 April and to report with the power to make recommendations". I note the undertaking of an inquiry under Section 32 of the Police Act 1964 as evidence of the 'significance' of the 1981 riots (TNA: PREM/19/484).

futures, but developing a better grasp of futurity in order to be able to intervene and protect ourselves from shocks that may await us (Grusin, 2010). It is about paying continuous partial attention to the temporality of pre-existence and generating a proliferation of future scenarios, or premediations, which may materialize or may not (Grusin, 2010; Anderson, 2010a). The imperative is to proliferate rather than predetermine a singular actuality, in order to build precognition that allows for the remedying of the future (Anderson, 2010a; 2010b; Grusin, 2004). In essence, it works to preclude the possibility of the actualisation of an unmediated, unthinkable, future (Grusin, 2010; 2004).

Responses to the riots that proclaimed they were "wholly unprecedented" and "took everyone by surprise: the police, the insurance industry, central and local Government and, of course, the people living and working in the areas concerned" demonstrate this absence of anticipation (MPS, 2012 p. 3; Kinghan, 2013 p. 5). Vulnerabilities within police intelligence systems played a significant part in this. A 2011 HMIC report into the disorder noted, for example, "[t]he current focus [in intelligence] is inducing a situation where police are 'unsighted' in respect of a range of risks" (2011 p. 35). This unsighted-ness, or limited ability to foresee, inhibited the capacity to intervene and limit, but not prevent, the endurance and severity of the riots (MPS, 2012).

To be more specific, owing to the vulnerabilities within intelligence analysis, it was national level rioting that was unsighted. Firstly, the collation of intelligence was localised and there was no means of building a national level picture of disorder (HMIC, 2011). Secondly, in order to manage the volume of evidence they were faced with, local forces prioritised conventional intelligence analysis of sources that were formally assessed and corroborated (HMIC, 2011). This meant that some vital information regarding the spread of disorder was not counted, specifically rumour of disorder (HMIC, 2011). With no time or capacity to assess rumoured unrest, these potentialities were left unchallenged, meaning that "support systems were insufficient to recognise the true picture of what was really building on the ground" (HMIC, 2011 p. 30; Williams et al, 2013). With no true picture of what might unfold, effective intervention could not be mobilised.

These structural limitations in intelligence analysis stemmed from decisions further back in time that the excluded the possibility of large scale rioting events from imaginaries of futurity. In London for example, The Metropolitan Police Report into the riots stated that public order intelligence gathering had been "honed around the policing of pre-planned peaceful protest events" (MPS, 2012 p. 105). Due to this honing in, public order

intelligence fell beyond the remit of the Met Intelligence Bureau (MIB) that provides an intelligence service to support pan-London activity. Instead, working with the assumption that public (dis)order events were pre-planned, public order intelligence was the responsibility of smaller dedicated public order intelligence teams who could conduct intelligence work in the planning stages of public order events (MPS, 2012). Correspondingly, beyond intelligence, police working within specialised public disorder units were specialised in handling pre-planned protest events (MPS, 2012). As a result of this honing in on the pre-planned, the possibility of an un-planned, pan-London, and in fact pan-national, public order event had been written out of the policing risk imaginary.

In detailing the limitations of anticipation here I aim to make the point that these limitations contributed to the severity and *excessiveness* of the rioting events. Failures of anticipation meant that the riots appeared as an actualisation of an unforeseen future, and as wholly unexpected. This heightened their excessive nature, by which I the way that events exceed capacities to generate and circulate understanding of them, and contributed to the way in which they were met with a reductive response (O'Grady, 2019). In sum, I outline the characteristic of the riot as excessive as one characteristic that contributed to the emergence of the condition of aspectival captivity. In the next section, I consider another characteristic that compounded this condition - the event as spectacular.

A Spectacle

> The London riots spectacle was triggered by the police killing of a twenty-nine-year-old black man, Mark Duggan, who had been shot by police in Tottenham, North London, after armed officers searching for illegal weapons stopped the minicab in which he was traveling…The spectacle appeared to be inspired less by Public Enemy's "Fight the Power" than by 50 Cent's "Get Rich or Die Tryin'. (Kelner, 2012 p. 19, 20)

In this section I turn to think about the riot as a visual staging, and then a spectacle. Here I argue that the riot as a visual staging, and spectacle also contribute to the creation of aspectival captivity and blindness to other perspectives of riots.

The understanding of riot as a visual staging of disquiet transcends literature on riot and unrest. It rests on the idea of the riot as a visible intervention in the public sphere that disturbs the public tranquillity (Body-Gendrot, 2014). It is all about the intervention and presence of a collective in a public space. Swyngedouw (2011), for example, writes of this kind of political activity as the claiming of a space for the performative staging of equality. This underlines the necessity of riot taking place in a public space where people present

themselves and stage an intervention (Swyngedouw, 2011). For Swyngedouw (2011), this kind of coming together of people constitutes a dissensual spatiality; a space that is claimed by bodies who make visible the wrong within a situation. There is thus a duality to the visual for Swyngedouw; the riot is the visual being together of bodies in a public sphere, who together make visible a wrong (2011).

Body-Gendrot (2014) extends the point that the riot relies upon the visual being together of bodies in a public space, arguing that "Its existence is conditioned on being visible" (2014 p. 2). Body-Gendrot (2014) suggests that if one cannot see the disorder, it cannot have an effect. The tacitly defined notion of order, for Body-Gendrot, thus becomes politically problematic when disorder becomes visible (2014). Body-Gendrot develops this idea through framing riots as a visually communicative act and conceptualising them in relation to the notion of the 'dramaturgy of disorder' (2014 p. 1). Through this framing, she considers riots as a visual staging of power that expresses outrage and grievance.

Others develop the point that the being together of bodies in a public space makes visible a wrong, and articulate the riot as a visually communicative tactic of collective action (Clover, 2016). Truong (2017), for example, conceptualises the riot as an aesthetic transfiguration of everyday life. Drawing on empirical examples from the urban riots in French banlieues in 2005, his work stresses that the communicative power of the riot that is faceless and non-verbal, rests on aesthetics, and more specifically in this case the "aesthetic power of pyromaniac despondency" (Truong, 2017 p. 9). He writes that for the rioters in 2005, mostly young men, "burning cars and throwing stones is a way to stand out and to fit in by catching public attention" (2017 p. 10). Such visual acts, Truong (2017) argues, were simultaneously expressive of the rioters demand for visibility and recognition. Truong (2017) writes of how rioters in 2005 realised and utilised the visibility capital of riots in the media regime to amplify their demands for visibility. By this he means the rioter's realisation of their potential to define the media agenda and the power of riots to captivate an audience.

The riot is thus a visual staging in that it involves the visual presence of a collective in public space. At the same time, it is a visual mode of communication that makes "highly visible precisely what is ignored in the public discourse of elites: injustice and emotions" (Body-Gendrot, 2014 p. 12; Bertho 2009). Halberstam's (2012) work on anarchy further reinforces and develops this idea of the riot as a visual communicative act through relating to the riot as a 'performative excess': a noisy, chaotic, unreadable display of drama. This conceptualisation alludes to the effect of the visual character and power of the riot, and

helps to think through what it means to consider the riot as more than visual staging, and as a *spectacle.*

To think of the riots as a spectacle, firstly, is an extension of the idea that it is a visual staging, and to say that its essential character is visual: that it appears to us. Albeit transient, the riot finds its expression through visual display. This thought draws on the basic premise of Debord's influential work on the concept of the spectacle where he relates to it as "mere appearance…a negation of life that has *invented a visual form for itself"* (1994, p.14). In brief, the spectacle is a visual display of power, it manifests in visual form, and commands our attention in a visual way.

More than this, however, the spectacle commands our attention in a way that is all consuming. For Halberstam (2012 p.xv; 2013) it is the excessiveness of the performance that makes the riot unreadable, and in his terms, what makes us unable "to size up all of its dimensions", which, ultimately for Halberstam leads to a resignation and acceptance. This process echoes Debord's (1994) conceptualisation of the spectacle as something that monopolises the visual and through this presents itself as seemingly incontrovertible, as beyond dispute, and as something that demands our acceptance.

The riot as a spectacle that monopolizes the visual creates a distance between the subject, or spectator, and the object of spectacle (Crary, 2001). This idea is bound to the conceptualisation of the spectacle as alluring, as something that shocks, surprises and beholds, and the spectacle as something that conquers attention (Crary, 1989). This capacity to conquer attention is what creates the distance between the spectacle and spectator. The spectacle imposes itself upon the spectator; it holds the subject in its moment of arrival, makes them docile, unable to reach or attend to reference points that allow the subject to formulate sense (Crary, 2001). In this way, it creates a perpetual focus on the present, and in doing so annihilates the past (Crary 1989). In that moment of encounter with the spectacular, the subject has a limited ability to engage reason, to reach for reference points, and to make sense. This inability to reach for reference points is what creates the condition of restricted consciousness.

The riot as spectacle, then, is something that commands attention in a visual way, in a way that makes it difficult to dispute and to see as other (Debord, 1994). The spectacle consumes our attention in a way that makes it difficult to review or dispute (Debord, 1994). It creates what Debord (1994) relates to as a passive acceptance. The sense of

sight is elevated to a positon such that all we have is the visual, and the riot becomes knowable through its ephemeral appearance in the world.

What I arrive at here is how the riot as spectacle, and the power of the visual, has implications on how the riot becomes knowable. I have outlined how the aesthetic power of the riot monopolises attention in a way that makes it difficult to see the riot as anything other. The riot as a spectacular eruptive event creates a resignation or acceptance to this restricted view of it (Debord, 1994). What I seek to emphasise here, through thinking through the riots as spectacle, is that the basis of what is knowable of the riot is bound to its appearance in the world, and that this knowledge assumes the position of self-evident, obvious, and protected from contestation.

In summary here, I have set out two characteristics of riot, as excessive and spectacular, and argued that these have led to the emergence of the condition of aspectival captivity to one perspective of riots – riots as violent, ephemeral eruptions. I first suggested that excessive events invoke reductive responses that offer stabilisation, and second, that spectacular events inhibit our capacity to draw on reference points beyond the visual appearance of an event to make sense of it. Thus far, then, I describe the emergence of the condition of aspectival captivity. The next section will consider how the obstacle of aspectival captivity functions through an analytical 'event trap'.

1.6 The event trap: a literature review on riots

To think about how the obstacle of aspectival captivity functions, I now turn to engage with and reflect on existing and interdisciplinary literature on riots. In this section, I argue that the obstacle of aspectival captivity delimits the scope of this literature. I argue that much existing work on riots focuses on their emergence and specifically appearance in the world. I relate to this as falling into what Wendy Brown refers to as the 'event trap' (1997 n.p.). In this section I will outline the idea of the event trap, and review existing literature that I suggest falls into it.

I take this notion of the event trap from Brown's (1997) reflections in her essay in the inaugural Theory and Event. In this piece Brown reflects on what constitutes the proper angle of encounter with political events within political theory. Brown warns against approaches that rush to respond and offer judgment on the emergence of events. As Brown (1997) notes in this piece, approaches that do this, which rush to respond and offer judgement, run the risk of substituting political positions for political thinking, and of

substituting readings of events for theorisations of events. As such, for Brown, theorists who adopt this approach run the risk of "sacrificing the distinctive offering of the theorist to politics and becoming simply another hubristic pundit, milking too much meaning from too little knowledge" (1997 n.p.). She adds that analysing the taking place of events is better left "to those fluent in the relevant languages and erudite in the relevant historical, economic, political and cultural formations". In the case of riots, this would be those in fields such as public order policing, police-community relations and crowd control, for example.

What Brown is cautioning against here is the rush to judgement. Or, understood in Janet Roitman's terms, the frenzy to explain emergence, and to speculate reasons for the emergence of particular events (2014). Brown (1997) urges a more contemplative angle of encounter with the event that ruptures. Brown (1997) urges the decentring of the event, and rather than attempting to explain its emergence, to use it as a backdrop for re-considering the possibilities of political life. For Brown (1997), this way of working is about stepping back from questions of why, to think about how the event speaks of political possibilities. It is about drawing on the event to consider politics and our contemporary situation anew, through and in terms of the event that ruptures.

Work that does rush to respond and explain, Brown argues, falls into what she relates to as the event trap. This work rushes to explain an event's appearance in the world, and is bound to the time-space of that particular event. Much work within riot literature falls into this trap. It is compelled to respond to the emergence of events in their immediate aftermath. Work on riots thus tends to be reactive and bound to specific instances of rioting. The pattern of riot research reflects this; it arises in waves, and swells in the aftermath of a riot, and then fades as that rioting incident dissipates into the order that it interrupted (Nunes, 2013). In England the riots in Bradford, Burnley and Oldham in 2001, and across England in 2011 therefore motivate much recent work (Amin, 2003; Alexander, 2001; 2004; Kundani et al, 2001; Alam 2006; King and Waddington, 2004; 2013; Body-Gendrot, 2014; King, 2013).

Within these waves, work that falls into the event trap and rushes to respond and offer judgement on events with pace, incorporates a tendency to foreground and address matters of causality. In the wake of disorder, the question that much research asks is: what led to the breakdown of law and order? It responds to the eruptive event by seeking to make sense of its emergence and reason as to why it happened. Work that falls in to

the event trap thus presents a range of causal factors, from ephemeral triggers to deeply entrenched grievances (King, 2013; King and Waddington, 2005; Dikeç, 2007).

This identification of causal variables maps onto different temporalities of a specific riot event (Body-Gendrot, 2014). Some research stays close to the occurrence itself and explores how public order policing influences the unfolding of unrest (Reicher et al, 2004; King and Waddington, 2004; 2013; Waddington, 2013; King, 2013; Stott et al, 2018). King and Waddington's work for example, looks at how policy guidelines, from organisations like the Organisation of Chief Police Officers (ACPO) unfold on the ground at public order events. Waddington's (2013) work considers the success of the 'kinder blue' approach at the Sheffield anti-'Lib-Dem' protest in 2011. The 'kinder blue' refers to the Police Liaison officers in blue tabards, who were deployed to enhance police-protester communication and enable a communications-oriented approach to policing. Despite South Yorkshire police's pre-event fear of major disorder, the tolerant, communicative, softer policing approach contributed to the limitation of disorder and only one arrest (Waddington, 2013).

The 'kinder blue' approach, proposed through policing guidelines, followed a less successful event in terms of public order policing – the G20 protests in London, 2009. At this event, the controversial tactic of kettling was used. Kettling is a tactic originally used to separate opposing football teams to reduce the possibility of confrontation, and involves herding crowds into pens to contain them (Managhan, 2012). At the 2009 G20 protests, in the cold of December, thousands of people were kettled for up to 8 hours without access to food, water or toilets (Managhan, 2012). Managhan (2012 p. 61) suggests that at this event:

> Many protesters suggested the police wanted to start a riot, attributing a new meaning to the kettle: to raise the temperature in an enclosed space until there is an explosion of energy in the form of public disorder.

Overall, such work relating to public order policing generally focuses on one event and the tactics deployed at that event. They offer a kind of de-brief, often in relation to the last significant public order event and its influence on policy guidelines.

Another focus within riot research is the moments, or flashpoints, that ignite disorder (Body-Gendrot, 2014; Waddington, 2013). Work from 2011 that takes this approach foregrounds the fatal police shooting of Mark Duggan, and the anger that grew in the days following his death around the police's lack of, and miscommunication, about what

happened (Trott, 2013). [6] Lewis et al (2011), for example, identify Mark Duggan's death as a major spark for the events, most directly in his local neighbourhood of Tottenham, but also beyond and in the rest of the country (Trott, 2013). This spark brought feelings of distrust and hostility towards police to the fore for many, including many beyond Tottenham. The Reading the Riots project, led by the Guardian and The LSE, for example, found that 73% of people interviewed as part of the project said that they had been stopped and searched in the previous year (Trott, 2013). The flashpoint of Mark Duggan's death thus contributed to the emergence of a shared antipolice identity, which formed the basis of empowered action in 2011 (Stott et al, 2018).

Others trace causality further back, to the deeper social and political conditions that breed resentment (Amin, 2003; Alexander, 2001; 2004; Kundani et al, 2001; Alam 2006; Dikeç, 2017). Dikeç's (2018) book, *Urban Rage*, for example, considers urban rage as the revolt of the excluded; the product of structural, institutional practices that produce injustice. His work sets out to understand the expression of rage as political, and considers its political element as the exposure of structures of exclusion, oppression and inequality that have become routine and normalised (Dikeç, 2018). For Dikeç (2018) the expression of urban rage in England in 2011 exposed grievances from racist policing, to wider inequality and exclusion. Ministry of Justice data showed that 64% of those convicted for participating in the riots were from the twenty most deprived areas of the country (Dikeç, 2018). Relatedly, Dikeç (2018) also underlines the significance of increasing unemployment, poverty, financial insecurity including the increase of insecure work, and austerity in the UK as the context that prepared the fuel for the unrest.

Something that transcends the existing riot research that I review here is that it is bound to the occurrence and temporality of a singular event, which again is why riot research tends to arise in waves, and swells in the aftermath of significant rioting events (Dikeç, 2007). While the identification of causal variables maps onto different temporalities, research that falls into the trap necessarily has a narrow temporal concern on one event.

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[6] After Mark Duggan's death, a protest was planned for August 6, in Tottenham. It was led by Mark's family who, "almost tongue in cheek", wanted to go to the police station to report that Mark had been killed (Slovo, 2011a p.9). This was in response to the police's failure to inform Mark Duggan's family of his death. After his death, Mark Duggan's name was released to the media before his next of kin. False information that there was an exchange of shots at the scene where he was killed in Tottenham was also released. Mark Duggan did not fire a gun. The inquest into his death makes this clear, it states: the officer armed with an MP5 carbine, "a short rifle of the kind armed police have in airports" fired twice, and "no-one else fired a gun." (Cutler, 2014 p. 7; IPCC, 2014)

It pursues only lines of inquiry that arise from the reading of *an* event (Brown, 1997). Absent are lines of inquiry that consider, for example, "what the conditions of certain events means for political possibilities" (Brown, 1997 n.p.). For Brown (1997), this wider mode of inquiry is what constitutes a significant political story worth theorising.

An example the Brown offers to explain her point here is Foucault's engagement with the liberation movement. Brown (1997) writes of how in response to the question of whether he wrote '*The Use of Pleasure and Techniques of the Self*' "for the liberation movement", Foucault replied "not for, but in terms of, a contemporary situation." (1988 p. 263). Foucault states how the movement prompted his work, and he began his analysis with it as a problem in the present, but he set out to work out its genealogy, and specifically the relations between sexuality and prohibition that led to its emergence (Foucault, 1988). Foucault (1988) describes his work as an intellectual in relation to this as questioning "over and over again what is postulated as self-evident" (p. 265). He speaks of this as opposed to work that arrives "a sudden illumination in which ones eyes are opened" (p. 264). In other words, Foucault does not set out to arrive at a causal explanation. Instead he distances himself from the event, and considers it in terms of a series of relations, primarily between sexuality and prohibition, but also ethics and morality (Foucault, 1988).

By seeking a *point* of origin, then, the riot work that I address here falls into the event trap in that it foregrounds questions that restabilise in the aftermath of destabilisation (Zabala, 2014). In the immediate aftermath of shocking, destabilising events we see politicians, authorities and the media assume this task of restabilisation (Closs-Stephens and Vaughan-Williams, 2008). The authorities commit themselves to the task of narrating a response that characterises the enemy, highlights their alterity in a way that separates us from them, so that some kind of action against them can be taken (Massumi, 2007; Zabala, 2014). Much research on rioting events tends to continue this process of restabilisation, through falling into the event trap. Much work is bound to the time-space of particular events and sets out to achieve cognizance - a total explanation of what happened and why it happened (Zabala, 2014).

In the preceding section, I reach two key summary points. First, existing riot research is reductive in two interrelated ways: temporally and politically. In terms of temporality, existing work has a narrow temporal focus and delimits analysis to particular rioting events. This highlights how riots as spectacular events attract research attention and compel researchers to offer judgement on them, but that into their aftermath, their

capacity to draw attention diminishes. Riot research then, as Dikeç (2007) notes, citing Hall (1987 p. 45), has a cyclical pattern:

> The cycle goes something like this. There is a problem that is followed by a conference; the conference is followed by research; the research reinforces what we already know, but in elegant and scholarly language. Then nothing happens.

Second, this limits the scope of political questions that are asked. The fixation on matters of causality forecloses other lines of inquiry into, to draw on Brown again, "what the conditions of certain events means for political possibilities" (1997 n.p.).

Following this discussion of the emergence of our captivity to one way of thinking about riots, and how this captivity functions, next I will turn to set out how the thesis reorients thinking away from this framing. This again follows Owen's (2002) structural framing of genealogy in which he details the step that follows describing the emergence of aspectival captivity, as practically working out how to reorient our ways of seeing and thinking.

1.7 Avoiding the event trap

Thus far, the chapter has described the emergence of aspectival captivity: the captivity to one perspective of riots, as depicted by Douglas' description of the iconography of riots we see everywhere. What the thesis sets out to do is address the problem of riot without falling into the event trap. To do this, following Brown (1997), I value distance as "a source of intellectual richness". Specifically, a distance between the event and my judgment of it. This distance is what prevents work on events reading like a commentary akin to that of a "hubristic pundit" (Brown, 1997 n.p.). This distance allows theorists to conduct comprehensive studies rather than hastily taken positions (Brown, 1997).

Brown (1997) takes this idea of the event trap from a debate between Maurice Merleau-Ponty and Jean-Paul Sartre. To contextualise the idea of the event trap further and describe the form that this distance takes, I will refer back to this debate between Merleau-Ponty and Sartre. The debate endured through Merleau-Ponty and Sartre's careers, in the era of post-war France, about the figure of the engaged intellectual and their relevant level of political engagement (Brown, 1997; 2001). [7] In one particular conversation on this, in 1994, Sartre accuses Maurice Merleau-Ponty of withdrawing from

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[7] A visible manifestation of the long lasting debate was the creation of their journal *Les Temps Modernes* that was dedicated to political and cultural intervention (Chauí, 2011).

political engagement and of renouncing politics, by not taking a stand on political events (Brown, 1997; Chauí, 2011). Maurice Merleau-Ponty responds:

> I have in no way renounced writing about politics…With the Korean War, I made the decision - and this is something entirely different - to stop writing about events as they occur…In times of tension, taking a stand on each event…becomes a system of "bad faith."…That is why on several occasions I suggested in this journal [Les Temps Modernes] that we present comprehensive studies rather than hastily taken positions….This method is closer to politics that your methods of continuous engagement. That in itself makes it more philosophical, as it creates a distance between the event and our judgement of it, defusing the trap of the event. (1994 p. 74-76)

Maurice Merleau-Ponty here refutes Sartre's view that philosopher's must maintain a constant vigilance and provide interventions in response to events as they take place (Chauí, 2011). Maurice Merleau-Ponty critiques this way of working, suggesting that it leads to an understanding of events in isolation, and that this risks the blurring of the wider picture, and also the risk of dismissing events as exceptional. Maurice Merleau-Ponty cautions the way that taking a stand on events as they take place permits a present-based understanding, without context or historical analysis (Haddow, 2015). Haddow (2015) identifies this in the institutional response to the 2011 riots. He refers to the way that the British Prime Minister's labelled the riots as 'criminality, pure and simple', which foregrounded an understanding of them as a manifestation of "freak collective delinquency" (Haddow, 2015 p. 2). This view, presented by many UK politicians in 2011,[8] enabled the riots to become dismissible as an aberration (Haddow, 2015).

Merleau-Ponty contends that this way of working, without historicism, assumes a presupposition of a completed history, or a history that is known (Chauí, 2011). If the philosopher believes he can take a position on an event and assess the importance of events, it is because he believes he possess the master key to history (Chauí, 2011). Merleau-Ponte disagrees with this, and argues that the philosopher cannot have this master key. He refutes this positioning of the philosopher as able to create this kind of meaning and to know history (Chauí, 2011). Instead, Maurice Merleau-Ponty urges wider reflection, through creating a distance between the event and our judgement of it and defusing the trap of the event (Merleau-Ponty, 1994; Brown, 1997; 2001).

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[8] Bridges (2012 p. 5) lists some expressions of this: "'criminality, pure and simple' (Prime Minister David Cameron), 'needless and opportunist theft and violence' (Deputy Prime Minister Nick Clegg) and the product of 'a feral underclass' (Justice Secretary Kenneth Clark)."

This disagreement arises from Merleau-Ponty and Sartre's different conceptions of philosophy and therefore also on the status and position of the philosopher. The two philosophers think about the consciousness of philosophers is different ways. Writing about this in relation to the figure of the engaged intellectual, Chauí (2011 p. 41) summarises:

> [f]or Sartre because consciousness is light and insubstantial, the philosopher can accept the call from all facts and all events, without being impregnated by them, therefore, conserving his sovereignty. For Merleau-Ponty, because consciousness is embodied and situated in an intercorporeality and intersubjectivity, the philosopher cannot, to use his own expression from In Praise of Philosophy, "assent to the thing itself, without restriction." This means, as he states, "one must be able to withdraw and gain distance in order to become truly engaged, which is also always an engagement with truth."

Central here is that Chauí (2011) foregrounds how Merleau-Ponty thinks that the philosopher cannot assent, give approval or agreement, to things themselves. Rather, they must withdraw, and take some distance from the thing itself in order to become properly engaged with it. To invoke a distance is to stop taking a stand on matters in the present, or on events as they take place.

This distance, then, is a critical distance. It is a distance from political life that the intellectual must value to do thoughtful work that is itself useful for political life (Brown, 2001). It is a distance from politics and particularly political prescription (Brown, 2001). To elaborate on this Brown (1997; 2001), draws on Stuart Hall's (1991 n.p.) characterisation of the distinction between theory and politics, which he considers "as that between a domain in which meaning is opening up, potentially infinitely, and one which it is intentionally and strategically arrested". For Hall (1991 n.p.), politics fixes meaning. Brown (2001) adds that it is made up of bids for power to put forward nonnegotiable representations. The task of theory on the other hand, is to make meaning slide (Hall, 1991 n.p.). Theory invokes a distance from the kind of position taking that politics involves. Brown (2001) suggests that by invoking this distance, "we usurp the increasingly sparse space allocated today for thinking, to making meaning slide" (Brown, 2001 p. 41). The distance that I endeavour to take and work with in the thesis thus entails a turn to theory and abstraction, as this is what allows me to create the space to make meaning slide.

Again the example Brown draws on to demonstrate what it means to work with this distance is Foucault and his work in 'The Use of Pleasure and Techniques of the Self', in

which he wrote not in response to the situation, but in terms of it. Foucault identifies his work as critical thinking, and distinguishes this from position taking (Brown, 2001). For Brown (2001), this way of working, with distance, exemplifies what it means to be an engaged intellectual. This way of working engages the proper angle of encounter with political events, so as to be illuminative, rather than reductive through offering a position or stand (Brown, 2001).

Overall here, the distance that I take is a distance from politics, thought of as taking a stand, fixing meaning, and putting forward nonnegotiable representations (Hall, 1991; Brown, 1997; 2001). To take this distance, and to avoid the event trap that I relate to here, entails the abstraction from political life. It entails holding up political life to examination (Brown, 2001). The aim is to undo meaning, through abstraction and theory, which also draws on history, so as not to allow events to be dismissible as an aberration. In sum, taking distance from politics means to theorise, and theorise historically.

My specific aim is to undo meaning in relation to the riot. My aim is to undo the framing of riot that I outlined earlier in the chapter, to let this slide, and to present ways to think otherwise about riots. I do this by turning first to theory to theorise the riot, as an object of governance, and then more directly to history, to present a genealogy of the governance of riots.

1.8 Chapter overviews

In the introduction, I have introduced the pervasive understanding of riots that I work to think otherwise to. I have detailed the emergence of this pervasive imaginary, arguing that it arises, in part, from two particular characteristics of the rioting event: the riot as excessive, and spectacular. I then think about how this pervasive imaginary of riot delimits existing modes of inquiry on riots to questions of causality, and falls into what I explain in relation to the event trap.

Two theoretical chapters follow from the introduction. In the first, I detail how I confront the absence of theoretical work on riots that arises from work falling into the event trap. I think about my intervention as an intervention that confronts the condition of unfreedom of aspectival captivity that I have described in the introduction. As Owen (2002) writes, to re-orient thinking away from the condition of unfreedom that is aspectival captivity necessitates practical work. The work that I do is theoretical, and specifically engages evental theory. The first theoretical chapter asks: why theory? And why evental theory? I

review work in political geography that draws on evental ideas to situate my work in this field and respond to these questions. I work through how drawing on theoretical work enables me to execute the shift in focus in riot research from causation to the constitution of a riot. I theorise to abstract, and specifically, draw on evental theory to think about the riot as an event, where events that rupture the normal order of things order governance. I think about evental governance as a specific modality of governance and propose that it works to get to know and to grasp events, and then to tame and limit events.

In the second theoretical chapter, I dwell more on the notion of rupture and outline its centrality in evental work, and thus why I aim to stay with the rupture of riot. I then turn my attention to think about the riot as a specific form of rupture that is a transgression of the laws of the world that regulate appearance, here drawing on Badiou's evental theory (Badiou, 2008). I then extend this notion of the riot as a transgression of the laws that regulate appearance to think about the rupture in terms of a transgression of the *aesthetic faultline in the world* (Shaw, 2010; 2012 p.12). By which I mean the line that regulates appearance, or what can and cannot appear.

In chapter three, I also develop an argument to suggest that to better understand rupture conceptualised in this way necessitates looking to reference points beyond the time-space of eruption, and through looking back to *history*. I argue for a need to engage history to *trace* the drawing of the aesthetic faultline, and to understand how it is policed (Shaw, 2012). My focus on the drawing and policing of this line follows from Shaw's (2012 p. 12) suggestion that *power* in evental geography should be studied in relation "the capacity to police the aesthetic faultline in a world."

The methodology chapter follows from the suggestion in chapter three that to better understand moments of rupture necessitates a historical approach. I detail how my historical approach entailed archival work, and set out what the archive means within the project. I argue that the archive is a space that discloses how the aesthetic faultline is drawn and policed, thus setting out how my empirical work is informed by the theoretical conceptualisation of the riot that I have developed in chapters two and three. The methodology chapter also contextualises the legal focus I adopt. I set out how my legal focus follows from my conceptualisation of the riot as a transgression of *the laws* of the world that regulate appearance, or the aesthetic faultline in the world. I set out how I think about the laws of the world in specific relation to *legal* laws.

I then turn to a more practical discussion of my empirical work and how I divided the archival work into two stages: first, to think about the constitution of the riot as an object of governance, and second, to think about the conduct of governance. Here I reflect on how I translate the theoretical understanding of riot, as a specific kind of transgression of the aesthetic faultline, into questions that could be put to work in my empirical work. To note these here, questions of how the aesthetic faultline is drawn become: how is the riot constructed as an object of governance? Why is its appearance limited? And, how is the aesthetic faultline policed becomes how is this object subject to practices of governance? What constitutes a transgression of the line? How are transgressions managed and limited? How is the appearance of riots regulated?

Finally in the methodology chapter, I turn to talk through the archives, other materials I consulted, and empirical work that I did, before setting out how I present my empirical material through *scenes* from the archive. I relate to the work that I did in terms of it place within my genealogy, the overall methodological approach that I adopt in the thesis, but in this section focus more on the specifics of the empirical work that I did as part of my legal archival work, and legal ethnography that supplements it.

Moving on to address the empirical chapters, in the first of these, I outline how the aesthetic faultline is drawn in law, and how the construction of the riot as an object of governance takes place in the legal sphere through the legal case. This chapter begins from the apparently straightforward question: what is a riot? It works through the Mitsui that details what it calls 'the necessary ingredients of riot' in law. I consider how law renders the riot into a legal-calculable form, and how this makes it graspable and therefore controllable as an object of governance. What I argue in this chapter is to think about the significance of the legal case to the legal construction of the riot as an object of governance. Drawing on work that foregrounds creativity within law, I argue that rather than looking to statutes to determine what constitutes a riot, it is the case, in creating a re-enactment of the event, which settles what constitutes a riot in law.

The second empirical chapter transitions to think about how the riot becomes subject to control, and the actionability of riot governance. I think about this in terms of how the aesthetic faultline is policed, and specifically how transgressions of it are managed and limited. It turns to the criminal sphere, and cases from Orgreave 1984-5 and the riots in 2011. I think specifically about actionability in relation to naming, here framing naming as an act, and a specific instance of actionability. I consider how at Orgreave and in 2011 anti-naming took place, and what took place was not named and counted as rioting. I argue

that this creates a specific kind of absence – where riots take place but are not counted. I consider this in relation to the politics of naming and suggest that not naming events as riots reflects an indifference to them, and a refusal to let them matter. What I argue here is that the riot is tamed or limited in a way that negates its taking place, leading to the situation where it takes place but is not counted. I suggest that this denies the potential of the riot to communicate a form of resistance.

The final empirical chapter considers techniques of control that the riot is subject to in the twenty-first century. I consider this in relation to the contemporary policing of the aesthetic faultline. I take a legal focus and reflect on this this in relation to the contemporary legal structuring of responsibility for riots. I first outline the history behind the re-drafting of the legal responsibility of riot following events in 2011, which led to a new Act: The Riot Compensation Act 2016. I then dwell on its obscurity, in relation to the inclusion of police strict liability, which makes police wholly liable for the maintenance of good order and the prevention of riots. Finally, I consider the complex unfolding of the legal structuring of responsibility for riot, and foreground its fragmented nature. Here I argue that the contemporary legal structuring of responsibility for riots creates an ambiguity around the policing of the aesthetic faultline, which specifically arises from the retention of strict liability, alongside practices of sub-contracting responsibility for public order.

Finally, the conclusion reflects on the thesis whole, its main arguments and contributions to the discipline. I draw out three central contributions. First, my contribution to the question: what is a riot? This is the central question that guides the thesis. I reflect on my thinking and theorisation of riots that I develop in response to an absence of work that thinks specifically about what a riot is, and endeavours to theorise it, particularly following the 2011 riots, or the year of 'urban rage', that made evident a lacuna in the library of riot (Dikeç and Swyngedouw, 2017; Dikeç, 2018 p.1). I then turn to think about my contributions to work on rupture and event, and evental work more broadly. In relation to evental work, I reflect on how I contribute to emerging work in this field that widens the temporal parameters of it, through engaging history and event. I contribute empirical work to this, at present, largely theoretical work that considers what it means to try and engage history and event. Further, in drawing connections between evental work and law, I contribute to emerging work in critical legal studies and theory that engages evental thinking.

2. Theory and Event: From Causation to Constitution

2.1 Introduction

In this chapter I set out how I turn to think about the riot as an event, in relation to evental governance. I first reflect on my engagement with theory in general, and then turn to think more specially about evental theory. I review work on evental governance in political geography that considers governance as ordered by events that rupture the normal order of things, such as riots. My aim in the chapter is to reflect on how I turn to theory to begin to think otherwise about riots, and other to the riot as a violent, ephemeral eruption. I argue in this chapter that a move to evental theory allows me to think *beyond the causation* of riots, and begin to think about riots in terms of their constitution as an object of governance.

In the chapter I continue to think about the trajectory of the thesis in relation to aspectival captivity; the condition of being held captive by one particular perspective, where to be held captive is to be captivated; to be unable to question, to think other, or to see beyond (Owen, 2002). To recap, and in relation to the example of the 2011 riots, the perspective that captivates is the perspective of the riot as an eruptive, excessive and ephemeral force. This is the perspective that appears as given and that obstructs the possibility of others emerging (Owen, 2002). Within research, it is a perspective that enframes reflection; it puts parameters around thinking and channels inquiry that focuses on the matter of eruption and asks, for example: how did it occur? Why did the riot take place? Overall, through this enframing, it is a perspective that enforces the centrality of understanding the moment of eruption and therefore matters of causality (Roberts and Hough, 2013).

In this chapter, my attempt to loosen the grip of this perspective does not reflect an attempt to refute it, nor an attempt to create a space to present an alternative in its place; one that is closer to the real or truth, for example. A perspective does not determine what is true or false, but is a framing that channels a particular way of reflecting on and conceptualising the real (Owen, 2002). The perspective of the riot as an ephemeral, excessive eruption, then, is not false but restricted, and reflects just one way of seeing riots that then frames what matters, is counted and becomes intelligible within inquiries into their taking place (Owen, 2002). What motivates my endeavour to loosen the grip of

this dominant, enveloping perspective is rather an attempt to overcome this restricted consciousness that it creates, in order to develop intelligibility of other realities of riot, in terms of their constitution as an event that is an object of governance (Owen, 2002). Here, by restricted consciousness, I mean the blindness to other realities of riot that are shut out by the framing of riot as a violent, ephemeral eruption. This is not to say I am working towards a full consciousness of riot, but rather I am working to present other realties of riot, in terms of their constitution, that the enframing that I conceptualise in the introduction shuts out.

In the sections that follow, I first describe the register of much existing work on riots, which I propose consists of *readings* of riots. I consider reading events, such as riots, as one kind of response to events, drawing on the 2011 riots as an example. I argue that readings of events are bound to the time-space of the event in a way that forecloses space for the theorisation of events. I suggest that, particularly in relation to the aftermath of the 2011 riots, this tendency to read events has led to an imbalance within current riot research, where theory is absent. I consider this absence as a prompt for theoretical elaboration on the constitution of riots. Through this section I thus aim to specifically contextualise the theoretical register of my thesis and my own theorising practice (Zeiderman, 2018).

I then review work on evental governance in political geography, which understands governance as ordered by events that rupture the normal order of things. I set out how evental governance entails a specific modality of governance that works to render knowable, and to limit and tame events that rupture. What I argue from this review, is that thinking about the riot as an event, in relation to evental governance, offers a way to begin to think about their constitution, specifically as an object of governance.

2.2 On the need for theory

In general terms, this turn to theory aims to redress an imbalance within riot research, and particularly current research that followed the 2011 riots. At present, there is a lot of work on the emergence of riots, but little that extends this into theoretical reflection on riots. In general, this research offers a series of *readings* of the riots and lacks theoretical development on their constitution. Again, my aim is not to refute or challenge these existing approaches, but to pursue a different, theoretically specific approach to thinking about riots, which emerges from a different context. To explain the rationale behind this

move, this section will outline what is meant by readings, the context from which they emerge, and their limits.

This distinction between reading and theorising is again drawn from Wendy Brown's (1997) piece in the inaugural Theory and Event: The Time of the Political. Here Brown (1997 n.p.) remarks that "there is a world of difference between reading events and theorizing the conditions and possibilities of political life in a particular time" and, more emphatically, between responding to events as a "hubristic pundit" and "political theorist" (Brown, 1997 n.p.).

What underpins this emphasised distinction and constitutes this world of difference becomes clearer through thinking through what a reading is. If to read something is to absorb it and bring it into grasp, a reading is the summation of this process. A reading reflects a particular grasp of something that comes from a particular route of absorption. In research, particularly in the case of reading events, this route is bound to the time of the event's unfolding (Closs-Stephens and Vaughan-Williams, 2008). As Closs-Stephens and Vaughan-Williams (2008) suggest in their work on responses to events, reading events entails asking questions about 'what happened' and their causality. For them, this way of working is one approach available to academics when thinking about how to respond to events.

A notable example of work that adopts the approach, they suggest, is Hannah Arendt's work on the trial of Adolf Eichmann in Jerusalem. They note how this work follows the unfolding of the trial in a way that reports on and offers an account of what took place (Culbert, 2002). The title of this work alludes to this; it is a *report* on the banality of evil (Arendt, 1963). Also, as Butler (2011a) observes, in the most part, Arendt is writing in the third person to give an account of the man and the trial. She works through the technicalities of Eichmann's job, his crime, the court and the legal conventions that the case coalesces around (Culbert, 2002; Butler, 2011b). This careful and systematic way of writing and reporting on the unfolding and what happened leads Arendt to offer reflection on causality, in relation to morality, responsibility and the human condition (Butler, 2011b; Culbert, 2002).

The example of a reading that Brown (1997) offers also relates to court proceedings. Brown (1997 n.p.) draws on Morrison's (1993) edited volume on the Hill-Thomas hearings as an example of work within what she calls "the contemporary intellectual industry devoted to what has come to be called reading events". This volume gathers a series of

reflections on Anita Hill's testimony against Clarence Thomas' nomination to the Supreme Court in 1991, on the grounds he repeatedly harassed her while being her employer. In the introduction to the volume, Morrison (1993), sets out its intention to make clear what happened, how it happened and why it happened. She relates to this as an effort to *learn* what happened. More than describing what took place, this emphasises the way that readings consider what happened and why, through thinking about the unfolding of events and questions of causality.

These kinds of responsive accounts, like Arendt's and Morrison's, follow the event in a linear, sequential way. There is a rapidity to their formulation as this event-response sequence has a call and response format (Closs-Stephens and Vaughan-Williams, 2008). In the case of the 2011 riots, the seminal 'Reading the Riots', project, for example, was developed in the immediate aftermath of the events (Lewis et al, 2011). As co-director, The Guardian journalist Paul Lewis noted, it was initiated because "no one at that time was conducting any research into the riots, and the government was resisting calls to open a full public inquiry. So there was a very obvious gap that needed to be filled" (Trott and Lewis, 2013 p. 2).

Readings thus have a distinct temporality that is bound to the time of response and the event's aftermath. Their value is also paired to this temporality of the aftermath. In the case of 'Reading the Riots', for instance, the project fulfilled the event-response or event-reading sequence in a way that was critical to the development of research. First, in the simple sense that it contributed a base level understanding of what took place. As Allen et al (2013) note, for example, the project and other such rapid response interventions mapped what took place in a way that formed an empirical representation of what happened. This laid strong foundations for the development of further critical empirical interrogation of the riots, and became a base from which to refute common fallacies that arose within the popular memory of the riots (Allen et al, 2013; Keith, 1993). Second, as Murji and Neal (2011) suggest, the Reading the Riots project was critical to the development of rigorous research on the riots as it set an example of how social science could access and keep pace with the phenomenon of disorder and anchor commentary on it in empirical work. This is reflective of the collaborative nature of the project, between The Guardian and The London School of Economics, and how the pooling of journalistic and academic resources helped to hasten the pace of conducting research whilst maintaining an academic rigour (Trott and Lewis, 2013).

Research that followed this and was devoted to reading the riots thus also followed in sharing a distinct temporality and having a value paired to this. These attributes outline what constitutes a reading: a close, responsive account of 'what happened' that follows the unfolding of an event, in a way that allows us to *learn* what happened, and so consider why and matters of causality.

2.3 The limits of reading events

Valuable though readings are in context, then, readings engage what Shapiro and Dean (2009 n.p.) relate to as "closural and hermeneutic modes of analysis". That is, analysis that sets out to explain, interpret and represent what happened in a particular moment, in a way that offers meaning and therefore closure from the destabilisation that the moments generates (Lundborg, 2009). In the case of riots, this materialises as work that seeks to explain and interpret the emergence of the riot and through this offer stabilisation and closure in the aftermath of the destabilisation that it creates. Significantly, this closural mode of analysis means that much work is closed to theoretical interrogation and elaboration on the matter of the riot. As Phillips (2015 p. 8) writes, there is a "tendency towards coherence" in work on dissent, rather than theoretical work that tends towards the disruption of understanding (Brown, 1997).

It is this tendency towards coherence and closure that I view as limiting and takes as my departure point in the thesis. I read the tendency towards coherence as a closure that opens onto unexplored space; space for theoretical elaboration and space to develop new lines of inquiry. Rather than smoothing over and seeking refuge from the eruptive moment through interpretation and meaning, my approach seeks to disrupt it and interrogate it in a novel, theoretical way (Phillips, 2015; Zabala, 2014). My turn to theory therefore entails a return to the eruptive moment, in a way that draws on theory to ask new questions of it. Rather than asking what happened in that moment of eruption, and why, this approach engages theory to explore more fundamental questions and ask: what constitutes that moment? *What is a riot?* It is through asking these questions, I am able to work towards presenting other realities of riot that are ordinarily shut out by the frame of intelligibility that delimits how we ordinarily see and understand riots.

The re-orientation in thinking about riots that the thesis pursues thus consists of a shift from thinking about matters of causation to the matter of constitution. In riot research at present, work with a focus on causation crowds out work on constitution, or the very thing that it responds to. Rather than developing another responsive approach, this thesis

thus develops a more comprehensive approach; one that does not focus on reading one riot, but considers a series of events over an extended period of time in order to develop thinking on the very thing that the riot is. Like Mackenzie, in 2008 (p.2), who argues that what is needed in political theory is an account of "political events qua events", the thesis argues that what is needed within riot research is an account of *riots qua riots*.

Following MacKenzie (2008) what this means in an account that foregrounds the 'event-ness' of events. For MacKenzie (2008 p. 2) this is about attempting to understand the *nature* of events rather than the epiphenomenal meanings that they acquire through interpretation. By epiphenomenal MacKenzie (2008) is relating to meaning(s) that arises after the phenomenon, with the prefix *epi* depicting after and so interpretation that arises after the event. Foregrounding event-ness is thus about returning to something more fundamental. It depicts an attempt to understand the essence of the riot as an object itself (Iyer, 2014).

In practice, what an account of political events qua events means is taking the event seriously in its own right. Claudia Aradau's work in security studies on the mobility of crowds offers a related example of what this means (2015a; 2016; Aradau and Huysmans, 2009). Aradau's work pushes for the movement of crowds to be taken seriously *in its own right* and not as something of concern only if and when it emerges as something that follows another event, in most cases a terrorist attack. Aradau (2016 p.6) thus directs attention to the formation of the crowd and particularly focuses on it as a number of people – "literally: being many". For Aradau (2016), it is the very mobilisation of many, or a number of people, that affords the crowd the capacity to constitute political action. Understanding the constitution of the crowd as a multitude of people is thus critical to understanding its political qualities and significance.

As far as possible, an account of riots qua riots thus entails a more fundamental account of the riot itself, rather than an account of responses to it (Meillassoux, 2008). Through directing attention to the object of the riot, my aim is to make clearer what it is other existing work is responding and responsive to. My approach is afforded by a distance from a specific instance of rioting and the purposeful valuation of this distance. Again this takes influence from Wendy Brown's (1997) cautionary words about rushing to respond to the call to read events in their immediate aftermath as doing so runs the risk of "sacrificing the distinctive offering of the theorist to politics and becoming simply another hubristic pundit, milking too much meaning from too little knowledge" (Brown, 1997 n.p.).

Significantly, this illuminates what it is that constitutes the world of difference between reading and theorising, which is time. Brown (1997) suggests that readings emerge in a time that keeps pace with the tempo of politics. Theorisation, however, necessitates more time and takes place in the time of the political. This suggestion draws on Wolin's (1997) distinction between politics and the political, but what is significant here is the suggestion that the pace with which readings emerge means that they then tend to take political positions, rather than properly engage political thinking and therefore the domain of political theory, which takes time. Brown (1997) therefore urges the valuation of indirectness and a distance from events, in order to be able to engage in theorisation.

Rather than negating the value of readings these points serve to emphasise that their formulation is different to the formulation of work in political theory. Echoing Closs-Stephens and Vaughan-Williams (2008) suggestion that close readings of events reflects *one* approach available to academics when thinking about responding to events, this work seeks to develop another approach that develops from such readings, that is made possible through the valuation of time.

To summarise here, referring back to the formulation of genealogy that is to reveal and re-orient, this task of re-orientation requires practical work and the work that this thesis engages is theoretical. I draw on theory to break the frame that enframes and encloses thinking about riots, in order to look again at the riot, and develop thinking on its constitution. The execution of this re-orientation necessitates a distance from the time of the unfolding of the event.

2.4 The event in political geography: evental governance

Thus far, I trace my thought process behind the turn to theory. I articulate the intention to draw on theory as a way of resisting the closural tendency within existing riot work, and to return to and dwell on the constitution of the eruptive moment.

Theorising riots differently requires that we focus for a while on the eruptive moment. My aim in this section is to draw on evental theory, in particular work on how events are governed in political geography, to begin to consider the eventness or eventfulness of riots. While multiple, and with lineages that date back to the origins of philosophy itself, all lines of evental thought cohere around the notion of rupture. The event is something that disrupts or interrupts; it introduces an otherness to the normal order in an intrusive way (Widder, 2002). As Zabala and Mardar (2014) put it, the event reflects a jolt – something

that shakes our being. Such jolts surprise us, they perturb the ways we normally think and act, and undo what we know. This creates space for contemplation, the potentiality to think anew, and therefore opens onto the potential for change.

These philosophical fundamentals – disruption and change – underpin the usefulness and significance of the concept in political geography. The notion of the event as an active force that disrupts and therefore creates the potential for change and transformation is useful for thinking through ruptures to political life, across varying scales and spaces, from the everyday to the multinational (Shaw, 2012; Berlant, 2011; Ingram, 2017).

Thus far, the currency of the concept within political geography rests more on its association with disruption, and more specifically contingency. Work that engages evental thought does so to think through the contingent present, thought of as a present filled with contingent events (Dillon, 2008b). In brief, its preoccupation is with thinking about how to stop undesirable events happening (Aradau et al, 2008). Its focus is therefore largely on risk based practices of governing that attempt to combat emergent events, and thus limit the manifestation of a rupture to the normal order (Cooper and Konings, 2015). It is a field that takes concern with events as a problem of governing, which I relate to as evental governance.

Work on the governance of emergent events takes its initial direction from Foucault and his discussion of the relation between government and event within the 1977-78 Security, Territory, Population lecture series. In the series, Foucault (2007) speaks of events as objects of government, precisely because of their capacity to introduce rupture. He discusses the relation between these two things, government and event, in practice, and so how government works to manages events. Following work on risk based practices of governing events, my endeavour to think further about what constitutes the event itself takes this as its starting point. This rests on the idea that through understanding the forms of governance that they command, we can begin to understand the nature of events.

Drawing specifically on the event of the riot, Foucault (2007 p. 31) suggests that: "urban revolt is, for sure, the major thing for government to avoid". Here Foucault draws on the example of revolt as one event within a field of aleatory events that government seeks to know and, if potentially undesirable, to tame before their taking place (Massumi, 2009; Aradau et al., 2008). This notion that it is one *of many* immediately points to the multiplicity of events that government must work to tame. For Foucault this *is* the central task of government - to manage an "indefinite series of events that will occur" (Foucault,

2007 p.20). This idea also points to the inevitability of events – they *will* occur and cannot be prevented. This leaves government with the task of working to reduce and limit them.

Understood in this way, governing is a practice ordered by events, such as riots. It works to get to know and to limit these events that have the capacity to rupture, or as Foucault sets out in this lecture, the capacity to bring scourge, that is, to afflict suffering on the population (2007). It is this ontology of governing that considers contingent, irreducible events as its object that anchors my turn to evental thought here in Foucault's work (Cooper, 2015; Dillon, 2008a). It is through the prominence that Foucault affords to events in his discussion of governing that makes this work valuable for thinking about the constitution of rupture, or events themselves.

This section will further expand on this grounding to add depth to this overall rationale for starting here with Foucault. This overarching note serves to emphasise the intention of situating this work in the field of political geography that engages this ontology of governing. This is a field that takes concern with practices of governing contingent events. Work within this field considers multiple events such as financial crisis (Cooper and Konings, 2015), terrorist, nuclear and cyber-attacks, natural disasters and pandemics, but not yet riots (Collier and Lackoff, 2010; 2015; Simon and de Goede, 2015). My intervention thus seeks to add to this field with a study of the event of the riot as an object of governance.

Within the lecture that discusses the relation between government and event Foucault (2007) outlines changes to the evental ordering of governance over time. He details a key transition, taking place at the end of the 18th century, from practices of governing that aim to completely prevent events to practices that aim to avoid and limit them. For Foucault this transition is part of the transition from disciplinary ways of governing to the deployment of apparatuses of security. For Foucault, the transition to "liberal measures", that aim to limit and curb events, is profoundly linked to the establishment of liberal ideologies and politics in that time (2007 p. 48).

Foucault (2007 p. 48) turns to the example of the grain trade to expand on this relation between government and event within the "the game of liberalism". He takes scarcity as a specific example of an event which he conceptualises as a two-sided scourge – a phenomenon that inflicts suffering on the population, and brings crisis or catastrophe for government (Foucault, 2007). With the aim of making events treatable, Foucault sets out how the art of governing events first rests on a recognition of events as natural (Foucault,

2007 p. 42). To do this entails an embrace of the event as something that cannot be prevented: an "it is what it is approach" (Foucault, 2007 p. 36). For Foucault this involves the discard of any moral explanation for events. With the example of scarcity, for instance, it entails the rejection of any notions that this arises as a result of bad fortune, or as punishment for the evils of human nature. Rather, Foucault emphasises that it "should not be thought of as an evil, that is to say, it should be considered a phenomenon that, in the first place, is natural, and so consequently, secondly, neither good nor evil. It is what it is" (2007 p. 36).

This principle of letting reality take its course leads onto a second component of the art of governing events which is to establish connections to the reality of events (Foucault, 2007). This means to the spaces that they emerge from and evolve in. Continuing with the example of scarcity, Foucault states that to connect to its reality involves taking a few steps back from the "obsessive fear of scarcity", and taking the "reality of grain" as the object of governance (2007 p. 36). This entails taking its history and everything that might happen to it from seeding to market, and all protagonists involved, into consideration (Foucault, 2007). Things such as the quality of land it is planted in, the availability of heat and how it is marketed, for example (Foucault, 2007). For Foucault (1980 p. 227) this is a progressive process that necessitates the "multiplication of analytical salients", or the ever broadening of analysis in a centrifugal way (Foucault, 2007). It is through this, and so establishing a grasp of the event at the level of its nature, that it becomes possible to limit, keep in check, or compensate for the phenomenon (Foucault, 2007). Rather than preventing it, the focus is thus on tracing and tracking its constitution and creating possibilities to intervene so that events manifest within socially and economically acceptable limits (Foucault, 2007). In relation to scarcity, for Foucault, this equates to establishing connections that enable an intervention to avoid "a massive form of the scourge" (Foucault, 2007 p, 42).

Overall here, Foucault's outline of the relation between government and event outlines an understanding of the event as something that ruptures, is multiple, inevitable and irreducible.

That events order governance is a notion that Michael Dillon, drawing on Foucault, develops and has written on more expressly (2008a; 2008b; Dillon and Lobo Guerrero, 2008). Dillon (2008a; 2008b) takes the notion more directly to the level of the ontological and expands it through reflecting specifically on temporality and the temporal ordering of the real. In a 2008 piece, Lethal Freedom, Dillon poses that *evental t*ime orders the real.

For Dillon (2008a n.p.) this is "a radically contingent time without warrant"; a time of no-rule and no order. The real that this invokes is a real punctuated by radically contingent interventions that cut into and open time (Dillon, 2008a). Or, a real punctuated by events.

Echoing Foucault, Dillon (2008a) identifies changes in approaches to governing evental time. Again like Foucault, Dillon (2008a) documents a shift from political rationalities and techniques that attempted to identify causal pathways and so prevent the risk of events, to rationalities and techniques that prioritised the embrace of contingency (Aradau et al, 2008). Dillon (2008a) emphasises how this shift marks the graduation of contingency to the pre-eminent factor ordering security. To expand on this, it marks the letting go of anthropocentric thinking and the idea that subjects possess the agency to identify the cause of events, and so the capacity to act to prevent them (Dillon, 2008a; Aradau et al, 2008). As Dillon continues, it marks a shift to thinking of evental contingency as the primary ordering mechanism of government and the emergence of a condition where "'the event' rather than 'the will' reigns supreme" (Dillon, 2008a p. 19).

In detailing these developments in thinking, again like Foucault, Dillon makes clear that the evental ordering of governance has a long history. Dillon (2008a) suggests that evental time has been a problematic of governance since the advent of modern time. Dillon's (2008a) argument, for example, is written through a discussion of modern freedom in relation to Machiavelli and the evental contingency of Machiavellian time. Here Dillon (2008a p. 2) suggests that "man is free, then, not because he is a bearer of rights but because the time in which he exists takes place without any divine, natural or historical warrant." In other words, man is free because of the indeterminate nature of time. For Dillon (2008a p. 3) this time of no rule affords man the capacity to intervene into it to change its course, "if he contains within himself the wherewithal to do so".

To summarise Dillon's contribution here, Dillon expands on Foucault's notion that events order governance, in particular through introducing the notion that *evental contingency* orders governance, summed up by the notion that events reign supreme. Through echoing Foucault's prominent placing of events within the ordering of governance, Dillon's work add to the impetus and interest in interrogating the concept of the event to think through the rupture of the riot.

2.5 Embracing, anticipating and surviving events

Foucault's and Dillon's work frame an ontology of governing in which evental contingency orders governance. This opens onto a field of work that considers how, if the initial condition of governance is evental contingency, governance takes place. Here I will expand on ideas that illuminate its spatiality and modality.

Simon and de Goede (2015) develop thinking on the corresponding spatiality of evental governance, that is, both the space from which events arise and the space that governance mechanisms target. Drawing on Foucault, they relate to this as the milieu - a space of possible, incipient events (Simon and de Goede, 2015). This incipience and the possibility of events unfolding within this space arises through circulation. Again this draws on Foucault (2007) and his conceptualisation of the milieu as a space of circulation. For Foucault it is a space composed of the circulation of people and things; both material and immaterial, physical and virtual (Foucault, 2007; Feldman, 2005; Simon and de Goede, 2015). In normal times, within this space of the milieu every body and thing occupies a set position and fulfils a set function (Feldman, 2005). Normalcy is thus the non-event; when nothing happens and everybody and everything keeps to its mandated position and function within the milieu (Feldman, 2005). The possibility of an event arises when this ordering is disrupted, and improper or transgressive circulation takes place. These are what are feared and attacked within the space of the milieu that evental governance operates through (Feldman, 2005).

This point, that transgressive circulations are feared and attacked, depicts the dual nature of the taking place of evental governance. It first entails getting to know possible transgressions. These can accumulate fear, which then drives the attack or intervention into the space of the milieu. As noted from Foucault's work, getting to know and becoming alert to possible, and possibly fearful, transgressions relies on a process of gathering details of what is taking place within the milieu in a centrifugal way (Foucault, 2007).

Details are then processed, together and cumulatively, to invoke imaginaries of possible futures. The imperative is to proliferate a plurality of possible futures, what Grusin (2010) relates to as premeditations, in order to preclude the possibility of surprise: the unfolding of an unmediated, unthinkable future (Grusin, 2010; 2004). A plurality of details and premeditations is central to this practice. Underpinned by a determination not to miss anything, this proliferation of future scenarios rests on ever-proliferating series of

practices that work to gather knowledge of possibilities that may materialise or may not (Collier, 2008; Grusin, 2010).

This proliferation of possibilities enables the detection of the possibly fearful - transgressions and incipient events. This then makes possible, to use Feldman's (2005) term, the attack: the intervention into the milieu to limit the unfolding of an event. This duality, of invoking possible futures and intervening, names the anticipatory nature of evental governance. To anticipate is to make a potential future known, and to act on this knowledge of the potential (Anderson, 2010a). It is therefore performative in the sense that knowledge of a potential future becomes actionable; it guides intervention that seeks to tame a possible, possibly fearful, future that in this case is a possible event.

The way in which this knowledge becomes actionable, through an act of taming, is significant. Rather than prevent, evental governance aims to tame and limit the unfolding of feared events. Opitz and Tellman (2015) relate to this way of governing as a way of surviving rather than living the future. This reflects the way in which it involves a complete embrace of the inevitable contingency of the future, whilst also always attempting to dampen, limit, regulate and overcome it.

This idea of surviving the future also speaks of the reality of the actual unfolding of evental governance. It describes the always falling short of evental governance that Simon and de Goede (2015) reflect on in their discussion of what happens when logics of governing translate and appropriate the ontology of evental contingency. They note that although the ontology of evental contingency pervades contemporary anticipatory governance, it can never be fully appropriated in practice (Simon and de Goede, 2015). In their example of the governance of cybersecurity, they suggest:

> [it] deploys an impoverished sense of contingency – it seizes upon a notion of the incipient and unpredictable in the name of emergent governing, but ultimately requires the restoration of the transcendental script of an event and a protocol of 'right' responses that are thought compatible with crisis in the 'real world'. (Simon and de Goede, 2015 p. 22)

This details the tension between the desired embrace of contingency within governance frameworks but inability to fully appropriate this, specifically alongside response systems with already embedded or pre-made hierarchies, protocols and decision making processes, for example (Simon and de Goede, 2015; Elmer and Opel, 2006). Simon and de Goede (2015 p. 5) argue that governance desires "but can never fully realize, a self-organising, emergent governance process that can meet and metabolize emergency

events". In other words, it will always fall short: there will always be shocks and excess that are not tamed, attacked or combatted.

In such cases, Simon and de Geode (2015) stress that the imperative is to redirect and routinize shocks and excess. Similarly, Massumi (2009) stresses the imperative of dampening and dissipating disruption to the normal order of things. Massumi (2009) relates to this as the "anti-accidental vocation" of power within the governance of emergency events. This engenders interventions that seize upon the unfolding of contingency, both in a visible way through the deployment of response mechanisms that meet the rupture, such as the 'first responder' who goes out to meet the accident "at the first flush of an eventfulness setting in" (Massumi, 2009 p.11). And, through responses that submit disruption to total cognizance, or explain away disruption in a way that allows it to dissipate into the order that it initially disrupted (Zabala, 2014; Nunes, 2013).

To go back to Foucault, what this really speaks of is a practice of governing underpinned by the rationality of liberalism. Putting Foucault's work on the relation between government and event in context, it emerges within a broader epoch of his work where he considers governmentality - government as a series of practices, animated by a series of rationalities (Gordon, 1994). The rationality that Foucault brings to the fore in this work is liberalism, which he introduces and discusses as an "innovation in the history of governmental rationality" (Gordon, 1994 p. xxvii). This work on the practice of governing events therefore reflects one insight within a larger body of work that considers the series of practices, underpinned by liberalism, that constitute government.

For Foucault, the emergence of the rationality of liberalism at the end of the 18th century was a response to excessive but inefficient ways of governing (2007). It was a critique of the idea that the entity of the state could wholly and completely know and control a territory, its subjects, and the reality that they interacted within (Foucault, 1982). It was a critique of the proliferation of laws, regulations and discipline that attempted to do this and to achieve a specific end goal (Foucault, 2007). The innovation of liberalism was therefore about stepping back and, as Gordon (1994 p.xxvii) summarises, introducing "a doctrine of limitation". This points to both the way in which liberalism came from calls for the state to recognise and know its limits and to govern less, and in practice, how liberalism introduced ways of governing that set out to limit, rather than to prevent bad things happening.

This point attempts to reiterate how government and here evental governance works as a limiter, and to keep things within acceptable limits. Foucault's first lecture in the same Security, Territory, Population series expands on this idea more directly, and suggests that that these limits are set around an average that he calls an optimum (Foucault, 2007). This aim of maintaining order around an average allows for some deviation, but things must be kept within a range that Foucault calls the bandwidth of the acceptable (Foucault, 2007). To keep things within this range, government works to minimise and avoid what is risky and inconvenient, like events (Foucault, 2007). While never able to supress them, it works to tame, limit and avoid them, and bring them within the bandwidth of the acceptable.

2.6 Governing to limit events

To summarise here, I turn to Rosenau's (1995) work that highlights that the etymology of governance is *to steer* or *to pilot*. This insight helps to illuminate and to summarise the modality of governance discussed here, which takes evental contingency as its object. Thought of as a practice of steering or piloting, governance here works to steer and pilot through rupture; to minimise its potential, and to make possible a swift return to the normal order or status quo. In a circular way, this brings things back to the starting point of Foucault and his notion of governance as a means of maintaining the circulation of people and things, letting things take their natural course, and responding through regulating (Foucault, 2007).

Overall, this work, from Foucault to Rosenau, focusses on practices of limiting bad things and specifically events. What we get to know about events from this is that they rupture, that they are multiple, inevitable and irreducible, and that they take a relational form and emerge within the space of the milieu.

This helps to begin to understand the constitution of the riot as an event, in sum, as something that ruptures the normal order, and that commands a modality of governance that works to know, and to tame and *limit* it. Lobo-Guerrero (2013 p. 1) summarises this modality of governance through suggesting that:

> How the event is understood and conceptualized determines to a great extent the ways in which its related uncertainty will be rendered. This, in turn, will determine how such uncertainty will be managed.

What is significant to my argument is how this work on evental governance allows me to execute a shift in thinking about riots, to think about their constitution. I consider evental

governance as ordered by events that rupture the normal order, and as consisting of a modality of governance that works to know, and then to tame and limit events. I consider the riot as one event within a field of aleatory events that government seeks to know and, if potentially undesirable, to tame before their taking place (Massumi, 2009; Aradau et al., 2008). As Foucault (2007 p. 31) suggested, to reiterate: "urban revolt is, for sure, the major thing for government to avoid".

In sum, what I want to foreground here is how thinking about the riot as an event, in relation to evental governance, allows me to think about the riot as a rupture. I now turn to take this base understanding of the riot as an event that ruptures, to now think more about the specific nature of the rupture of the riot. With a more specific understanding of the rupture that constitutes a riot, following this I turn to think further about its governance.

2.7 A return to the eruptive moment through evental theory

To think more about the rupture of riot, I engage a more direct engagement with evental work itself. I now move beyond work on the evental ordering of governing, to turn to think about the riot as event itself and through drawing specifically on evental work.

It is important to note here that this theoretical work via the event supplements the already extensive theoretical work on riots. Yet, although "the library of riot is dark and deep", as Clover (2016 p. 7) suggests, in this "new era of riots" its lacunae are evident, exposed and require attention. In this section I present the argument that one of its gaps is the absence of focus on the eruptive moment, which underpins and warrants my theoretical engagement with evental thought to think of the eruptive moment of riot as event.

> Riots are coming, they are already here, more are on the way, no one doubts it. They deserve an adequate theory. (Clover, 2016 p. 1)

> These articles, we hope, will inspire urban scholars to explore urban uprisings in other contexts, not as issues of disorder and violence, but as 'collective embodiments of fidelity to the presumption of equality and freedom' (Swyngedouw and Wilson, 2014 p. 310). Such fidelity will require hard work and patience, but it is worth pursuing both politically and theoretically. (Dikeç and Swyngedouw, 2017 p. 16)

My attempt to return to and dwell on the eruptive moment of the riot sits alongside others working form the same starting points outlined thus far - the absence of theoretical work that focuses on the rupture itself, and that lets the *event* of the riot matter.

In specific relation to the event of the riot, this turn to the eruptive moment reflects a turn away from structural approaches to theorising riots. A large part of what Thörn et al (2016) group as 'classical riot research', in their work, from a European context, adopts a structural perspective and works from the premise that riots act on inequalities within particular phases of modern capitalism. A large part is therefore made up of Marxist-oriented work, and more specifically work that adopts a 'Thompsonite' approach (Winlow et al, 2015). This is work that draws on the seminal contributions of Marxist historian E.P.Thompson on the organisation of political opposition. Broadly, such approaches frame the riot as an organised collective response to the struggles inherent in capitalist systems (Clover, 2016).

My move away from such approaches is not to say they are now irrelevant or unimportant. Clover (2016 p. 7) and Thorn et al's (2016) work, for example, attempts to renew and update this now lapsed body of work in this 'new era' of riots. In his book Riot. Strike. Riot, Clover (2016) reassesses the relation between riot and the transformation of capital. He considers the riot as testimony of the status of capitalism and particularly the "ongoing and systematic capitalist crisis" (Clover, 2016 p.1). Drawing on the method of historical materialism and building an argument around the concepts of crisis, surplus and circulation struggles, he thus continues to offer an extension of Marxist-oriented theorisations of riot. Thörn et al (2016) also read recent uprisings as a "call for revisiting structural theories, and particularly Marxist-oriented perspectives that emphasise the link between crisis and opportunity" (Thörn et al, 2016 p. 9).

My intervention and turn to the evental thus reflects an attempt to widen the remit of riot theory. In this new era of riots that calls for theory "to catch up to a reality that lurches ahead", it breaks from structural approaches in order to think more closely about the eruptive moment of the riot (Clover, 2016 p. 3). This echoes Dikeç and Swyngedouw (2017) whose work emphasises the need to pull riots out of the theoretical and disciplinary confines that they are typically contained within. They make this general claim in response to recent insurrections, and the underdevelopment of "theoretical tools to study such incidents" (Dikeç and Swyngedouw, 2017 p.7). They continue to make the more specific case that riots "hitherto confined mainly to the research agendas of riot specialists in criminology departments, deserve the attention of urban scholars, as they

are—and will be, it seems—part of our urban futures" (Dikeç and Swyngedouw, 2017 p. 16).

Dikeç and Swyngedouw (2017) prescribe an urgency to this elevation of riots to the fore of the urban research agenda. More specifically, they make an urgent case for the placing of riots at the heart of urban *political* theory. This arises from their overview of the short fallings of current political thinking and theorisation of uprisings and insurgent moments. They state: "the various insurgent urban movements that dot the landscape of planetary urbanism testify to the urgent need to rethink 'the urban political' as an immanent field of action, as a process that proceeds through 'the act'" (2016 p. 7). This notion of the political as immanence or an immanent process is central to their argument. For Dikeç and Swyngedouw (2017) this is what current theorisation of insurgencies lack the capacity to grasp. They suggest current work rests too much on understandings that frame insurgencies as organised, or as consequences of particular socio-economic or political-economic contexts (Dikeç and Swyngedouw, 2017). In these, the political relates to context; to state or institutionalised practices that insurgencies react or respond to. While they affirm the notion that politics does not take place *ex nihilo*, out of nowhere and from nothing, but in relation to structures, spaces and practices, they emphasise that it can elude these (Dikeç and Swyngedouw, 2017). In such moments, of rupture and excess, they outline how the challenge is to understand this excess in political terms, rather than render it part of a moment of abnormality, criminality or deviance (Dikeç, 2015).

What Dikeç and Swyngedouw (2017) help to articulate here is that the present need for further theoretical work on riots equates to a need to better understand and theorise the constitution of the eruptive moment. Their work outlines how this has been overlooked in work on recent uprisings, and also within older work on riots. They reiterate how it prioritises understanding the process of its emergence or causality, and how this relates to existing political structures, orders and practices. My thesis aligns with Dikeç and Swyngedouw's (2017) in that it aims to bring riots into a disciplinary space, in this case geography, which has hitherto engaged very little within them in a theoretical way.

2.8 Conclusion: the constitution of riot as rupture

Overall, this chapter considers the 'need for theory' (Lefebvre, 1969 p. 24).[1] I have argued that theorisation provides a way to reorient thinking about riots, away from causation and

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[1] A chapter tittle within 'The Explosion: Marxism and the French Upheaval' (Lefebvre, 1969).

to constitution. In the chapter I have reflected on my turn to theory and evental theory. This reflection is a way of being self-reflexive about my own theorising practice in geography (Zeiderman, 2018). By this I mean, a way of reflecting on why I turn to theory, and *how* abstraction allows my thesis to create a distance from the event of riot that allows me to think beyond causation, which is so prominent in existing work, and what I differentiate my approach from. In sum here, my theoretical intervention addresses an absence of work that theorises the riot. I set out how, in political geography in particular, the theory of riot necessitates revisiting.

I have developed a theoretical understanding of the constitution of riot through thinking about the riot as event, in relation to evental governance: governance ordered by events, which works to tame, limit and avoid events, and bring them within the bandwidth of the acceptable. I set out how evental governance works to steer through the destabilisation that events generate.

What is significant to my argument is the base understanding of the *constitution* of the riot as rupture, which commands a modality of governance that works to know and grasp the event, and then to tame and to limit it. In the next chapter, to develop this focus on the constitution of the riot as rupture, I depart somewhat from work in political geography on the event and evental governance, to engage more distinctly evental work, where rupture is a defining characteristic of the event.

3. Evental Rupture: The Riot as a Transgression of the Laws of the World

3.1 Introduction

The overall aim within the distinctly theoretical work, chapters two and three, is to work towards a better grasp of the event of riot at the level of its identification and specification, this being the ethos behind evental work, and what it means to do work *worthy* of the event (Patton, 1997). To relate back to the introduction, where I introduce the core aim of the thesis as thinking beyond the framing of riot as violent, ephemeral eruption, the aim of my theoretical work is to do the work that breaks the frame that contains intelligibility of riots in order to think otherwise about riots.

Thinking about theory as that which can break the frame that enframes intelligibility, again draws on Owen's (2002) guidance on the structuring of genealogy, and specifically how he sets out that to re-orient a perspective away from one that appears as given and self-evident requires work. I employ theory to do the reorientation work. In the previous chapter, I set out my rationale behind *the need for theory* as that which enables the re-orientation from thinking about riots in relation to causality, to thinking about their constitution, or the very thing a riot is. Drawing on current evental thought in political geography, I developed a way of thinking about the riot as an event, in relation to evental governance. I argued that evental governance works to tame, limit and dampen events, in order to steer through the rupture that they generate. I concluded the discussion by pointing to how thinking about the riot as an event in terms of evental governance contributes to understanding the constitution of the riot as rupture.

This chapter focuses directly on eruptive moment of the riot itself, through evental theory. My turn to focus on the event itself responds to the need to develop new thinking on events that rupture that became evident following the tumultuous year of 2011. The intensity and scale of events in 2011, including the riots across England, foregrounded the absence of theoretical tools to understand them, and a need to review thinking on collective events that rupture (Dikeç and Swyngedouw, 2017).

In what follows, I first offer further detail on the need to review our theoretical vocabulary of events that rupture, particularly following events in 2011 that were met with confusion, and responses that failed to grasp their political nature, or understand their

status as a collective. I then introduce my contribution that supplements the emerging field of work on understanding rupture, which draws specifically on evental thought. I detail the parameters of my engagement with evental thought as it so fundamental to philosophical inquiry, which means it brings "philosophical baggage" (Shaw, 2012 p. 1). I then consider the evental in specific relation to the riot and evidence how I draw on evental thought to develop understanding of the constitution of a riot, in terms of its spatiality and temporality. In relation to temporality, I argue for the need to widen the temporal parameters in evental work. I suggest that, although difficult, and on the surface oxymoronic, thinking about event and history together enables a better understanding of their constitution. I make the case for pursuing a historical approach within evental work, in a way that supplements emerging work that engages history and event. What I argue in the chapter is that engaging evental thought allows me to develop a specific understanding or the riot at an event that ruptures, and that a historical approach contributes to understanding this specificity.

3.2 Understanding rupture

Writing in an introduction to a symposium on theorising the politicising city, Dikeç and Swyngedouw (2017 p. 4) articulate the need to grasp what they refer to as recent insurgent events as the need to better theorise ruptural politics. For them, this task necessitates new interlocutors, who "have hitherto rarely been at the forefront of urban critical theory". They list: Jacques Rancière, Hannah Arendt, Alain Badiou, Slavoj Žižek, Chantal Mouffe and Jodi Dean. The thread that holds all of these theorists together is rupture, articulated in different ways; dissensus, new beginnings, apparitions, and gaps of possibility (Rancière, 1992; Arendt 1978; Badiou, 2012c; Dean, 2016a).

Their call to better grasp rupture follows the recent 'wave' in urban insurgencies, and failures to engage with them as political, and their politicising effects.[1] Dikeç and Swyngedouw (2017) consider how counter-insurgencies staged by the state work to make

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[1] In this wave, Dikeç and Swyngedouw (2017 p. 2) incorporate "the eruptions of discontent in cities as diverse as Istanbul, Cairo, Tunis, Rio de Janeiro, Montréal, Athens, Madrid, Lyon, Lisbon, New York, Tel Aviv, Cincinnati, Chicago, London, Berlin, Thessaloniki, Santiago, Stockholm, Barcelona, Oakland, Paris, São Paulo, Bucharest or Hong Kong." As noted in the introduction, while geographically disparate and also very different in other ways, Dikeç and Swyngedouw consider the link between these eruptions to be that "all had politicizing effects—by exposing deeply embedded injustices and by contributing to the creation of new political subjectivities and movements." (2017 p. 2).

sure such events are nullified; that normality is returned, and they are prevented from having a sustained, transformative political effect. They suggest:

> Counterinsurgencies staged by the state through violent removal of insurgents, the militarized control of their spaces and the material and/or digitized monitoring of activities testify precisely to the extraordinary violence the state mobilizes to ensure that nothing really happens, to prevent the insurrectional event to turn into a political sequence of transformation. (2017 p. 11)

Dikeç and Swyngedouw (2017) thus consider their task to be to confront this norm that meets and follows rupture: the norm that nothing really happens. They position their work as confronting what they name as the *violence* that ensures nothing happens, and begin by first proposing a political reading of insurgent events. This necessitates an expanded political imagination that incorporates the political demands insurgent events create (Dikeç and Swyngedouw, 2017). They argue for a political imagination that recognises political demands that surface from beyond institutionalised practices of governances, and organised social movements. These are the two things that they distinguish ruptural politics from: institutionalised politics and organised social movements. They draw on Kalyvas' (2008) depiction of ruptural politics as *extraordinary politics* to reinforce this, and the idea that ruptural politics is not organised, and unfolds at a distance from the state.

As Dikeç and Swyngedouw (2017) argue, this extended political imagination is what is needed for events that rupture to be understood as political, rather being dismissed as deviant, criminal acts, because they unfold at a distance from the state, and are not staged in established theatres of everyday governance, such as parliaments and committee rooms, for example (Dikeç and Swyngedouw, 2017; Wilson and Swyngedouw, 2014). It is what is needed to place rupture in a political register, and recognise legitimate political claims that are ordinarily dismissed because they break with and elude conventional government practices and structures (Dikeç and Swyngedouw, 2017).

Echoing this call to place such kind of rupture in a political register, Dean (2016a) foregrounds the need to better grasp the political significance of rupture, and specifically rupture that takes a collective form as *the crowd*. Again, events in 2011 and what Dean (2016a p. 4) refers to as the "global wave of popular unrest" prompts Dean's thinking on collective rupture. Dean (2016a p.4) argues that this wave of unrest has forced "the Left to return again to questions of organization, endurance, and scale". For Dean (2016a), this situation, where the Left has been forced to confront the event of the collective, follows

from the intensity and ubiquity of individualism in twenty-first century life: in society, sociality and politics. Her work (2016a) describes how capitalism commands individualism, and how, in terms of politics this manifests as the "presumption that the individual is the fundamental unit of politics" (2016a p. 4).

Dean (2016a) argues that the ubiquity of individualism has led to a politics that is all about personal experience, where individual difference and what differentiates us from others forms its basis. She (2016a p. 31) explains this through the idea that "the second-wave feminist notion that the "personal is political" has become twisted into the presumption that the political is personal: how does this affect *me*?" Through calling on people to ground their politics in personal experience, we are pushed to learn to enjoy our difference, celebrate our uniqueness, but also have no choice but to take care of ourselves, work on ourselves, and make a difference, all by ourselves (Dean, 2016a). For Dean (2016b n.p.), this is what leads to a politics where:

> Taking care of oneself now appears as a politically significant act, rather than as a symptom of the dismantled social welfare net and obscenely competitive labor market wherein we have no choice but to care for ourselves if we are going to keep up.

For Dean (2016a) the foregrounding of the personal prevents the foregrounding of commonality and thus the cultivation of politically powerful collectives. This is why events in 2011 were met with such surprise. This wave of unrest demonstrated the political strength of collectively, which was difficult to recognise from within a political system that individuates. For Dean (2016a) this is why it led to such fundamental and vast questions about the collective and political organisation: what do they mean politically? What political forms do they advance? How might these collectives endure and extend?

Common to both Dikeç and Swyngedouw and Dean's arguments is the necessity to foreground and think through the object of contingency, or rupture. Both discussions consider how a restricted political imaginary has created this condition where the unplanned, collective rupture is difficult to attribute meaning to. They both thus foreground a need to ask: what is rupture?

To summarise, my turn to the evental to think about constitution of riot contributes to wider attempts to think further about rupture, so that state counter-insurgencies, as Dikeç and Swyngedouw (2017) suggest, cannot erase rupture, and resume normality so that nothing happens. Or, as Haddow (2015) put it, so that these events do not become

dismissible as an aberration. In work specifically on the 2011 riots in England, Haddow (2015) argues for the need to concede with the exceptionality of the rioting events, rather than conceding to the paradoxical situation where the exceptionality of the 2011 rioting events enables them to be dismissed as an aberration; as a freak manifestation of collective delinquency, for example.

My work adds to these efforts that endeavour to counter the adherence to what Foucault (2002 p. 149) calls the "law of coherence" which constitutes:

> almost a moral constraint of research; not to multiply contradictions uselessly, not to be taken in by small differences; not to give too much weight to changes, disavowals, returns to the past, and polemics.

Following the law of coherence, Foucault (2002 p. 25) argues, erases "the irruption of a real event" (Phillips, 2015). Engaging with rupture works to counter this tendency towards coherence in a way that gives weight to discontinuities. My approach is about staying with the contradictions that rupture exposes, rather than smoothing over them and writing them off as an aberration. The next section turns to think about the way in which I give weight to rupture and think through discontinuity - through engaging evental thought.

3.3 Scope of engagement with evental thought

The concept of the event is foundational to philosophical thought. Conceptualised as a disturbance, differentiation or disruption to being, it provides a vantage point from which to approach the question of the new and to ask: what is the nature of change? How does something new come into the world? And, what does the new promise? (Adkins, 2012; MacKenzie, 2008; Zabala and Mardar, 2014). Its centrality to philosophy means that drawing on the concept "is fraught with philosophical baggage" (Shaw, 2012 p. 1). To offload some of this, it is important to delineate the scope of my engagement with the concept. The body of evental philosophy that I draw on stems from the re-popularisation of evental thought that began around sixty years ago when the concept became a core concern within both the analytical and continental traditions (MacKenzie, 2008). As MacKenzie (2008 p.2) outlines:

> Since the 1960's, Anglo-American analytical metaphysics and post-Heideggerian, especially French, speculative ontology have both witnessed the return or re-emergence of the event to the centre stage of philosophical discussion.

Albeit in diverging ways, these engagements follow Deleuze and Guattari in their aim of practicing a philosophy 'worthy' of the event – a philosophy that creates concepts that express the contingency of life itself: the dimension that is not-actualised, representable or translatable (Lundborg, 2009; Patton, 1997). Or, as Patton (1997 n.p.) writes, a kind of engagement that "engages with events at the level of their identification and specification", and works to create concepts that give expression to events.

This task emerges from the nature of the event as a rupture that seems to exceed its causes; that surprises and overwhelms us, escapes every framework, is hostile to inscription, and is defined by this rebellion (Žižek, 2014; Grondin, 2014). The aura of mystery that surrounds the event and its air of indetermination underpins the recent infatuation with the concept (Grondin, 2014; Zaradar, 2009). The event as unpredictable and destabilising, as rupture that undoes Being, and therefore shakes ontology itself, as Zabala and Mardar (2014 p. 10) argue,

> [t]hrows into disarray all pre-delineated paths towards truth, all methods a priori framing and delimiting the experience of the possible. The (disturbing, perhaps) absence of objective veracity is the only admissible frame, permitting the flourishing of freedom.

Here Zabala and Mardar (2014) associate freedom with post-metaphysical philosophy; philosophy that confronts the conjunction of Being and Event, in a way that is free from rational meta-physical organisation, and pre-established foundations for knowing. This emphasises the dichotomy between Being's objective determination, and the indetermination of the evental rupture and therefore the foregrounding and focus on the radically contingent nature of events within evental philosophy (Zabala and Mardar, 2014).

This attention to understanding contingency is thus a focus that transcends and synthesises the diverging philosophies that are part of this recent development of evental thought and is what has led evental thought to become influential in political theory (Mackenzie, 2008; Lundborg, 2009; Coombs, 2015). The notion of the event as an active force that ruptures and creates the potential for transformation and new ways of being has been widely adopted into political theorisations of social and political change (Lundborg, 2009). From new affective sense to new world orders, the notion of the event as a force that creates has been invoked to think through the actualisation of all kinds of rupture and its effects (Shaw, 2012; Lundborg, 2009).

It is this notion of the event as a force that creates rupture that I turn to, in order to think further about the riot as rupture. I draw specifically on Badiou's evental thought to

develop my evental response to this gap in research. I turn to Badiou's work because of the way he foregrounds a focus on rupture in itself, as something that creates possibilities for change. Badiou is insistent that events create *possibilities* for change, and not new realities. For Badiou (2013), the event *proposes* change, and does not open onto change. In stressing this point, Badiou distances his work from evental work that focuses on the event and novelty production, which understands the event as rupture that opens onto something new (Human, 2015; Massumi, 2011). Work that focuses on events and novelty production follows the new, and asks: what is the change that people want? What direction of change will the event generate? Badiou, instead, stays with the moment of rupture and theorises its emergence as a transgression of the laws of the world. This is significant to my argument as I draw on Badiou's thought to develop thinking about the *riot as rupture*.

3.4 Badiou's event and thinking riot as event

For Badiou (2006) events are interventions that rupture the stable and bounded world (Shaw, 2012; Bassett, 2008). They arise from the inexistent excesses, or the void (Shaw, 2012; Bassett, 2008). For Shaw (2012 p. 7) the void translates to the "wordly leftover"; those who do not appear as objects in the world, those who are unpresentable (Bassett, 2008). It is the void that thus nurtures events; they arise in the moment that those within the void declare their existence (Shaw, 2010; 2012). It is the moment the 'nots' find a space to stand up and be counted (Dewsbury, 2007; Shaw, 2010).

Badiou (2012a; 2012c) draws on the example of the riot to explain his ideas on the event. In his 2012 book that followed the tumultuous year of 2011, *The Rebirth of History: Times of Riots and Uprisings,* for example, Badiou offers a definition of the event, using the example of the riot. Badiou (2012c p. 56) writes:

> Definition of the event as *what makes possible the restitution of the inexistent* is an abstract but incontestable definition, quite simply because the restitution is *proclaimed*: it is what people are saying in the here and now.

There are two aspects of this definition that I want to dwell on to think about the constitution of the riot in terms of Badiou's evental philosophy: restitution and the inexistent.

First, the notion of restitution points to the eruptive nature of events. Bound to matters of (in)justice, and attempts to right a wrong, the practice of restitution is tumultuous

(Vernon, 2003). It ruptures the normal order of things, or puts things out of joint (Bassett, 2008; Dillon 2003). Badiou (2012a; 2012c) relates to this through the binary of the possible/impossible. For Badiou (2012a) events unsettle the prevailing power's control of possibilities. They bring to light a possibility that was previously impossible, invisible or even unthinkable (Badiou, 2012c).

Thinking with Badiou, the riot as an event thus reflects a restitutive act; it is an apparition of a possibility previously unexpected (Badiou, 2012c). Badiou's example of the 2011 uprisings in Egypt reinforces this idea. For Badiou (2012c) these movements - the rising up of people previously lying down, submissive, were wholly unpredictable (Saldanha, 2007, Badiou, 2012a; 2012c). In early 2011, all of a sudden, people started to think that there *is* another possibility, and they seized it (Badiou, 2012a). For Badiou (2012a) this is telling of the state's control of possibilities (Badiou, 2012a). Badiou (2012a) argues that the power of the State, or more generally the state of things, *claims* to have the monopoly of possibilities, but that events event unsettles this. They unsettle the status quo (Badiou, 2012a). For Badiou (2012a) the event thus reflects a possible that is wrested from the impossible.

For Badiou, the event and understanding events is thus a problem of possibility (Badiou, 2009a). The event itself unsettles the state's control of possibilities, and the notion that it itself is the only thing possible. As Badiou (2013 p. 11), writes:

> The power in place doesn't ask us to be convinced that it does everything well – moreover, there is always an opposition to say that it does everything badly – but to be convinced that it's the only thing possible.

The event ruptures the notion that the power in place is the only possible power, and that this power controls possibilities. Badiou (2013 p. 11) draws on the example of "the rallying cry of '68: 'Demand the impossible!" to exemplify this, here arguing that while slogans of this type are excessive and superficial, they are also extremely profound. They make clear a demand not to return to what has been declared possible or impossible within the normal order (Badiou, 2013). In rupturing this control of possibilities, the event creates a new possibility. Badiou makes clear, however, to avoid a return to the normal order, the political possibilities that the event creates must be grasped and elaborated; there must be an effort to sustain this "possibility that wasn't calculable in advance" (Badiou, 2013 p. 10). The event is thus a starting point, it creates *possibilities* rather than new realities (Badiou, 2009a; 2013 p. 12).

To emphasise the notion that the event creates possibilities, rather than new realities, Badiou (2013) considers such possibilities as Ideas. The Idea, for Badiou, is "the conviction that a possibility, other than what there is, can come about" (2013 p. 14). Taking the example of the French Revolution, Badiou expands this point through articulating the three major ideas of the French Revolution as liberty, equality and fraternity. Badiou relates to these as ideas in order to underline that they are possibilities, and are not things that are going to be concretely achieved (Badiou, 2013). He goes on to discuss the complexity of realising these ideas alongside private property, for example. In relation to riots, Badiou is clear that the Idea does not precede the riot, but is what enables the duration of the rupture that it creates (2012a). For Badiou (2012a), the Idea is what organises the duration of the riot that ruptures, and allows it to be more than an immediate, spontaneous, ephemeral riot.

Moving onto the second focus, it is *the inexistent* that perform this act of seizing another possibility. The inexistent are those present in the world but absent from its meaning (Badiou, 2012c). They are those that count for nothing, that "have only a fictional voice in the matter of the decisions that decide their fate", and who cannot appear in this 'world' (Badiou, 2012c p. 56; Wright, 2008a). For Badiou (2007) the inexistent of the world, or the 'nots', are dispelled to the space of the 'void'. This space of inexistent excess is thus an unstable space that nurtures events (Shaw, 2010; 2012). Events arise in the moment that those within the void declare their existence (Shaw, 2010; 2012). The event is the moment they find a space to rise up and be counted (Dewsbury, 2007; Badiou, 2012c).

The event is thus a confrontation with the space of the void (Wright, 2008a). Ordinarily, the space of the void is a space that the state[2] avoids, represses and does not count (Wright, 2008a). The event reveals the void, as Wright (2008a n.p.) explains:

> The void 'is' but it does not exist, unless, that is, an evental truth-procedure turns the 'transcendental logic of appearance' of that world upside down, pushing the void from a constitutive invisibility to a maximal intensity of appearance.

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[2] The *state* for Badiou thus controls through ordering who and what *counts*, in terms of representation and belonging in the world (Hannah, 2015). Hannah (2015) discusses Badiou's notion of the state further through reference to examples of struggle that work towards the aim of *being counted*. An example that Hannah draws on is a "a high-profile movement by self-identified 'mixed-race' people [that] emerged with the goal of having the category 'mixed-race' included among the official racial categories collected by the US government" in the 1990s (2015 p. 14).

Wright's (2008a) contention here that the void 'is' but does not exist, reflects how the event enacts an increase in intensity of existence. This is because, for Badiou (2012c p. 67) "a world always ascribes *intensities of existence* to all the beings inhabiting that world". All beings thus exist, but the intensity of their existence varies. This is what makes being extensive, and existence an intensive predicate (Badiou, 2012c). For Badiou, "everyone presents themselves in the equality of being a human living thing", but existence is hierarchically ordered (2012c. 67). For Badiou (2012c), to some the world ascribes a weak, negligible quantity of existence that leads to their being virtually inexistent. The inexistent are thus are alive, but the world confers a minimal intensity to their existence (Badiou, 2012c). For Badiou, (2012c p. 56) "that is why we refer to uprising: people were lying down, submissive; they are getting up, picking themselves up, rising up. This rising is the rising of existence itself".

For Badiou, this rising up allows the being of the inexistent to appear as existent (2012c). In the moment of the event, the inexistent appear in a site, and no one can publically deny this (Badiou, 2012c). The event thus transforms the rules of visibility. The inexistent create a site of presence to exhibit their existence (Badiou, 2012c). This is why, for Badiou, in relation to the event, appearance is more significant than the scale of the event and number of people involved (Badiou, 2012c). Badiou refers to uprisings of the inexistence as the "massive minority", to infer that while maybe small in number, the intensification of appearance is what matters. Badiou suggests:

> During a massive popular uprising, a general subjective intensification, a violent passion for the True occurs…Even when a majority of people revert to ordinary existence, they [the inexistent] leave behind them an energy that is subsequently going to be seized on and organized. (2012c p. 90-91)

In terms of the character of the riot, Wright (2008a n.p.) considers the appearance of the inexistent and confrontation with the void as having a "syntax of refusal" and unleashing a spirit of revenge. Similarly, Badiou (2012c p. 25) argues that this confrontation summons the rebellious, and the subjectivity of the riot is "is composed solely of rebellion and dominated by negation and destruction". For Badiou (2012c), it stirs up masses of people compelled to act because things as they are must be regarded as unacceptable.

Overall, thinking with Badiou, the riot reflects a moment of transgression; when the inexistent announce themselves and so their existence in the world. It is the moment they rise up and declare, or as the etymology of riot points to, *to roar*, 'we exist!' (Shaw, 2010).

It is the moment the inexistent create a site of presence and exhibit their appearance in the world (Badiou, 2012c). This notion of appearance is significant for understanding what the event does: it makes manifest in space, in a site of presence, a possibility wrested from the state's control of possibilities. It makes manifest in space a transgression of the state's control of possibilities that is seen, in a way that cannot be denied (Badiou, 2009a).

3.5 Spatiality and event: disruptive politics and intensity of appearance

If we conceptualise riots as creating a site of presence, then how to think about the spatiality of that presence? For Dikeç (2015), the event as moment of transgression where the inexistent announce themselves and so their existence in the world, makes manifest their grievance in space. Space here gives the capacity for the inexistent to appear (Dikeç, 2015). It enables the inexistent to give form to their grievances (Dikeç, 2015). Its function is thus aesthetic; space performs an aesthetic function by giving form to grievance. This conceptualisation of space is central to Dikeç's (2018) book on what he calls the current epoch of *Urban Rage*. In this, Dikeç argues for a shift in thinking about manifestations of rage in terms of pathology and behaviour, to thinking about them as political (Dikeç, 2018). Dikeç (2018) argues that to do this, necessitates thinking about the manifestation of urban rage as the exposure of grievance and the denial of equality within the existing order of things, and to think of this exposure as political. These ideas lead Dikeç (2015; 2018) to characterise manifestations of urban rage as contestation *in* space.

In Badiou's evental work, he relates this notion of the event staging grievance in space through reflection on regimes and intensities of appearance. The matter of appearance is a central focus in Badiou's 2009 Logics of Worlds, conceived as a sequel to Being and Event (2006). In this, Badiou considers the laws under which appearance can be thought of, and unfold (Badiou, 2003). Badiou considers the event as the moment when something whose value within the world attains a strong level of existence; or, when it appears. The event is the moment when the inexistence which did not appear, comes to appear, in space.

It is in Logics of Worlds that Badiou infers this spatiality of appearance as localizaing the inexistent. In a discussion on the topology of this, Badiou et al (2009) underlines his point that this moment of transition from minimal to maximum appearance takes place in the logical rather than ontological realm. For Badiou et al (2009 p.2), "topological notions of space, place etc, are not directly ontological notions". This is to say the appearance of

something does not equate to its being in the world; for Badiou et al, this remains invariable (2009). Rather, the appearance of the inexistent in the world takes places in the logical realm. It ruptures logic understood as a power of localization: a power that keeps things in place, which establishes rules of appearance that rule what appears and does not (Badiou et al, 2009; Constantinou, 2009). Appearance is not being, but being-there, localised in space (Bassett, 2008). As Badiou et al (2009 p. 7) summarise:

> Regarding existence, I would be more reserved. For I take `existence' as a more logical notion than an ontological one. Or a notion tied more to the appearing of a manifold in a determined world than to the intrinsic manifold theory.

As Constantinou (2009) argues, this makes clear the shift in Badiou's thinking from *Being and Event* to *Logics of Worlds*. *Logics of Worlds* focuses on a phenomenology of appearance, as opposed to an ontology of being. As Badiou himself writes, his undertaking within *Logics of Worlds* is to "unravel the thread of logic", where logic is understood as that which structures appearance, and where "'logic' and 'appearing' are one and the same thing" (Badiou, 2009a p. 99). Or, as Hallward (2008 p. 8) puts it, more simply, the logic of a world consists of the norms that regulate the way in which things appear; "as more or less discernible, significant or 'intense'".

Constantinou (2009 p.7) argues that this turn to logic in Logics of Worlds reflects a shift in Badiou's thinking "to a more affective spatialization of the determined world". By this, Constantinou (2009) refers to the way Badiou applies topology, here deploying this concept to think about spatial arrangement, to question the laws or logic that determine the appearance of beings. Constantinou (2009 p. 7) argues that "Badiou applies topology in order to probe truth and the rules of incorporation into a subjectivizable body". Here Constantinou touches on the question of what it means to become a subject to Badiou, but in sum here, what is significant and what I want to draw attention to is how the rupture of the event unsettles the laws or logic that determine appearance, and allows the inexistent to appear, in a localised space.

Badiou draws on the example of riots to exemplify this; he relates to riots as uprisings in which the inexistence rise up and exhibit their presence in a way that no one can publically deny it: "you *know* that the being of an inexistent has just appeared in a site specific to it" (2012b p. 69). The event is the moment the inexistent create a site of presence; it is a moment of real presentation in which the inexistent affirm that they exit and must exist (Badiou, 2012c).

In summary, what I detail here is how for Dikeç and Badiou respectively, the event is something that exposes a grievance in space, and allows the inexistent to appear in a localised space, in a way that cannot be denied. Common to both, and more generally within work on what Dikeç relates to as disruptive politics, is the idea that the event ruptures the existing spatial order. Through exposure, or allowing the inexistent to appear, the event unsettles the normal, spatial order that structures appearance. It undoes what Badiou (2009a) relates to as logic, understood as the laws that structure appearance.

It is this notion of the event as something that ruptures the normal order of things that is critical to understanding its spatiality. For Dikeç (2015) the existing spatial order is the consolidated spatial ordering that structures how we perceive and relate to the world. Underpinning this is the conceptualisation of space as "a form and mode of apprehending the world and worldly relations, departing from a conception of space as something already given" (2015 p. 1-2). To develop this way of thinking about space, Dikeç draws on Jacques Rancière, Jean Luc Nancy and Hannah Arendt. In particular, Dikeç (2015) draws on Rancière conceptualisation of police order that assigns roles and places to things and beings within a hierarchical system of distribution that becomes naturalised. This is the partitioning of social ordering, as well the ordering of modes of relating to the world and perceptions that appear possible and sensible (Dikeç, 2015).

Badiou relates to this ordering through the notion of logic. This is central to *Logics of Worlds* (2009a p. 596), in which he relates to logic as "the general theory of appearing, or being-there, that is the theory of worlds, or of what comes to exist (or inexist)". Based on category theory and thus departing from set theory used in *Being and Event*, logic for Badiou is what orders different elements existential intensity in the world, or their degrees of appearing (Hallward, 2008). For Badiou (2003 p. 20), his work on logic attempts to "describe the laws under which appearance can be thought" and make clear that while relatively stable, there is a contingency to appearance, or to being-there in a world (Badiou, 2003). For Badiou, the event deregulates the logic of the world, and produces "a brutal transformation of the regime of intensity" of appearance (Badiou, 2003 p. 22). The event puts out the law's normal effect, and allows the inexistent to appear (Badiou et al, 2009).

What the undoing of the logic of the world demonstrates, therefore, is the contingency of existing order. This is central to understanding the spatiality of the event and what it ruptures: the existing spatial order. In Dikeç's (2015) work, he refers to the event, conceptualised as the manifestation of urban rage, is something that something that eludes

the established formal spaces politics; it is the excess that keeps breaking out or erupting. For Badiou, the event as rupture ruptures the normal spatial order and de-structures logic. It wrests a possible from the impossible and un-does the logical ordering of the world. The riot as rupture is thus one such undoing of the consolidated governing orders, hierarchies and logics (Dikeç and Swyngedouw, 2017).

For Dikeç, Swyngedouw and Badiou, this rupture to the normal order is what constitutes the event as political. Explaining this succinctly, in response to the question, 'What, though, is, in fact, a political event?' Badiou (2013 p. 9-10) says:

> For me, an event is something that brings to light a possibility that was invisible or even unthinkable…it indicates a possibility that exists that has been ignored…A political event today is a local opening up of possibilities.

This discussion of the spatiality of the event here leads to a point on its politics. The rupture to the existing spatial order is what constitutes the political within this work on disruptive politics. A political event is the un-doing or de-structuring of the consolidated spatial order. It thus forces a realisation of the contingency of the established order (Žižek, 2014). As such, focus within disruptive politics centres on the moment of eruption, or its moment of appearance. As Dikeç and Swyngedouw (2017) suggest, this reflects efforts within work on disruptive politics to redefine the parameters of what counts as politics, and consider how to incorporate rupture into political imaginaries. As they also suggest, work in this field is *beginning* to do this: to confront the norm that rupture is dismissed as an aberration, and allow it to count as politics. Dikeç and Swyngedouw (2017 p. 8) caution, however, that the "elevation of insurgency to the 'dignity of the political' is to say the least, premature". Here they highlight the developing state of work on disruptive politics, and point to the need for further work on how rupture unfolds and endures. They relate to this in terms of a politics that is inaugurative, and inaugurates new orders and subjects[3] (Dikeç and Swyngedouw, 2017).

To describe in more detail this tendency towards focusing on the moment of appearance, I turn now to think more specifically about the temporality of evental work, and then how

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[3] In the thesis, I focus on the constitution of the rupture as political, and less on this latter concern with rupture as inaugurative of space and new political subjectivities and orders. Work that focuses on this latter concern, with rupture as inaugurating new political spaces and subjectivities includes work on the endurance of social movement collectives (Temenos, 2016) and (the endurance of) the political subjectivity of the crowd (Wall, 2016; Malabou, 2015), for example.

the thesis proposes a widening of the typical temporal parameters within evental work to better grasp the specificity of the event of riot. This is significant to the thesis as it sets up the historical approach I adopt in my empirical work. The argument that I develop, that extending the temporal scope of evental work helps to understand the constitution of events, informs the questions that I ask within my empirical work.

3.6 Temporality and event: a boundedness to the kairological

Within work on the evental, where the event is understood as a rupture to the normal order, and a possibility wrested form the impossible, there is a temporal tendency towards the kairological. By this I mean a focus on, and foregrounding of, the moment of interruption that the event generates, or the Kairos. This is a concept with biblical origins that depicts a strategic, opportune moment to intervene or cut into time (Dillon, 2008a). In the New Testament, for example, it designates the critical, final time, in terms of death and judgement, and becomes 'the time', or 'o kairós' (Boer, 2013). As Dillon (2008a p. 13) writes, "kairological time is a kind of 'now' time, a suspension of time in expectation of a future always to come".

Underpinning the focus on the kairological is the way events compel a response that stabilises the rupture that they create (Zabala and Mardar, 2014). The event as that which escapes every framework, and where incomprehension is the norm, compels a response that confronts the sense of incomprehension it creates and that offers refuge from it (Grondin, 2014; Zabala and Mardar, 2014). I outlined the tendency towards this in discussion on the event trap, where work becomes bound to thinking about the time-space of the event's moment of eruption, and understanding its causality. Such responses that offer reason for causality offer refuge from shocks of the event's moment of appearance (Zabala and Mardar, 2014; Zabala, 2014).

Relatedly, as an extension to understanding causality, the focus on the kairological also stems from attempts to understand the politics of rupture, or whether rupture is in fact political. Responses to the 2011 riots across England, for example, attempted to determine whether or not the riots counted as political action (Allen et al, 2013). This became part of the rush to judgement that I discuss in relation to the event trap, and was a rush to judge or determine whether the riots were political moments. As Nunes (2013 p.3) describes, this rush to judgement on the political became matter "of asking whether it

passes or fails some stringent criteria of what counts as 'proper' political action", where questions were very much tied to the moment of appearance of the riots.

The absence of a clear target or goal led many to hastily withhold ascribing a political status to the riots (Trott, 2013; Kelner, 2012). Badiou, for example, relates to the 'London' riots, as immediate riots, which he considers, in the best case, as paving the way for political riots (2012). Žižek's often quoted comments from the London Review of Books on the London riots echoes this. Žižek wrote in August 2011 (n.p.) that the riots expressed "impotent rage and despair masked as a display of force…envy masked as triumphant carnival", and were a "zero-degree protest, a violent action demanding nothing".

On the other hand, others who, like Dikeç (2015; 2017; 2018), consider the exposure of grievance in space as political action, challenge these apolitical determinations of the riots. Sokhi-Bulley (2016), for example, argues for a political interpretation of the riots, but makes clear that to do this necessitates a reimagining of what counts as political expression, as I referred to in the previous discussion that contextualised the need to think further about rupture. Sokhi-Bulley (2016) draws on Foucault's notion of counter-conduct to argue that the riot as a physical expression of refusal is political, and not purely criminal, in a way that is clear not to glorify riots and rioting.

Also underpinning the focus on the kairos within evental work is the promissory nature of the kairos, and the appeal that it can inaugurate change. The Kairos is promissory in the sense that it is a moment that promises change or novelty (Dillon, 2008a). The event as rupture, ruptures in a way that invites intervention to change. This novelty can take any form, from new affective sense to new world orders (Lundborg, 2009). This notion of the event as creative and opening onto novelty is central to evental philosophies that share a common concern with the event as the possibility for thinking through radical change (Human, 2015). Evental work focuses on the promise and potential of novelty, and attempts to locate and identify how novelty might unfold. Badiou, for example, thinks through the unfolding of novelty in terms of appearance, as Hallward (2008 p. 10) summarises:

> Roughly speaking, an event triggers a process whereby what once appeared as nothing comes to appear as everything—the process whereby, paradigmatically, the wretched of the earth might come to inherit it.

The promise of change that the event holds here is that the once inexistent, the wretched of the earth, might come to inherit it, and exist in the world. Significantly, the source of this potential change is the moment of the kairos. Beyond Badiou, the promise and realisation of novelty in eventual work takes many forms. The new that the event opens onto can be new ways of seeing, thinking, ordering or being in the world, for example. Overall here, I underline how novelty is a central concern within eventual thought, and its source is the kairos (Lundborg, 2009). Or, as Lundborg (2009) argues, thinking about novelty relies on kairological or event-based philosophy (Lundborg, 2009). Through emphasising the relation between event and novelty, I aim to further contextualise the focus on the kairos within eventual work.

This extends the arguments that I have developed in relation to the event trap; here I discuss how the event trap incorporates a temporal boundedness to the kairological. In discussion on the event trap, I argued that it entails a rush to judgement, here this is a rush to judgment on the political nature of the event and whether it corresponds to expectations and criteria of what counts as political (Nunes, 2013). And, a rush to judge what change the kairos promises, while traces left behind by the event, which retain a capacity to realise change, remain overlooked (Nunes, 2013). In other words, there is a focus on trying to determine what change the event could realise in its immediate aftermath, which overlooks the reality that change may be slow and arise later, in the afterlife of the event.

Overall here, this point on the temporal boundedness to the kairological emphasises how the focus of eventual work is bound to the moment of appearance of the event. Here I thus reaffirm and reach the culmination of the argument around the limitations of the event trap, which is that eventual understanding relies on the moment of appearance of the event, and this is limiting in terms of understanding the constitution of the event. At present, lines of inquiry are tied to the appearance of riots in the world; to causality, and a politics based on a moment of appearance. To further understanding of the constitution of the event, I widen the focus from the moment of appearance. To do this, I follow Shaw's (2012) methodological guidelines for doing eventual work, which foreground the need to probe further than the moment of appearance in order to understand the constitution of the event. Shaw (2012 p. 12) suggests:

> The methodological guideline here then is to probe beneath what is obviously seen, felt, and heard, to discover what objects are marginalized to *enable* the existent world to appear. This is how power must be studied

in an evental geography: as the capacity to police the aesthetic faultline in a world.

The aesthetic faultline is the faultline between what is visible and invisible. The event is a moment of transgression; a moment of appearance when the invisible make themselves visible in space. It is a visual staging, a spectacle, and as Badiou (2012c) suggests, a moment of appearance that cannot be denied. Thinking about the event in relation to the aesthetic faultline, however, allows for interrogation beyond its moment of appearance. It opens onto questions of how this line is drawn, how it is policed, and how it is transgressed, for example (Shaw, 2012). Such questions consider the meta-concern of the regulation of appearance of events that rupture the normal order, including riots.

Shaw's (2010; 2012) suggestion that power in evental geography should be considered in relation to the aesthetic faultline draws on Badiou' work and the significance of appearance within it. For Badiou (2008), the event is a moment of transgression when the inexistent appear in the world. It is the moment when their appearance goes from a minimal to maximum intensity (Shaw, 2010). To develop understanding of this moment of transgression necessitates understanding of what regulates appearance, and thus an extended temporality beyond the time-space of the event, and specifically one that stretches into history. Broadening the temporal focus of evental work enables exploration of the regulation of appearance over time, and how the laws that regulate appearance are created, upheld, weaken, and enable moments of transgression or events. Turning to history helps to develop an understanding of the aesthetic faultline beyond the moment of its transgression. It enables consideration of how and why the appearance of some things are limited, or how and why they emerge as problematic, and then exploration of the work that is done to limit appearance and police this line.

Overall here, what I suggest so far in the chapter is that the event constitutes a moment of transgression of the laws of appearance (Wright, 2008a). The event is the moment when the laws that regulate appearance are weakened and broken, and the inexistent transcend from invisibility to a maximal level of appearance (Wright, 2008a). I outline how much eventual work is bound to the time-space of this moment of appearance, and propose that in order to further understanding of the riot as a moment that transgresses the laws of appearance necessitates thinking further about the laws of appearance, over time, and considering their history.

To do this, I turn to consider the regulation of appearance over time, in relation to the notion of the aesthetic faultline and the governance of riots. The governance of riots in

terms of the aesthetic faultline is what the empirical chapters turn to. By this I mean how the line between order and disorder, or peace and riot, is drawn and becomes actionable. I trace the construction of this line, and how it unfolds. In terms of thinking about the questions this opens onto, thinking about how the aesthetic faultline is drawn involves thinking about how the riot is constructed as an object of governance and questions such as: *why* is its appearance limited? Why is the riot a problematized as an object of governance? Thinking about how the aesthetic faultline is policed, opens onto questions such as: what constitutes a transgression of the faultline? How are transgressions managed and limited? How is the appearance of riots regulated? These questions guide the empirical chapters.

In sum, what I turn my attention to in the empirical chapters is the techniques that control the appearance of resistance as riot in the world. This builds on the notion of the riot as a visual staging, but turns to think more about the configuration of power relations that first problematize the riot as an object of governance, and then act upon this. Through this, I extend understanding of the riot as an event understood as rupture that transgresses the laws of appearance, and consider the longer history of the regulation of its appearance.

3.7 Engaging history and event: a clash of temporalities

My approach seeks to avoid what I relate to as the event trap and the kairological tendency within evental work, in order to develop a more comprehensive understanding of the riot as a moment of rupture and transgression. My approach reaches for reference points beyond the time-space of the event, or its moment of appearance, and more specifically, reaches for reference points in history. By this I mean I adopt a historical approach to develop an intelligibility of riot that draws on historical material. Here I will chart this move to engaging history and event. This necessitates overcoming the sense that evental thought is ahistorical, and builds on recent work that thinks history and event together.

Conducting historical work with events necessitates a careful theoretical mapping of my route into this way of working, as the two concerns, history and event, are difficult to situate together. This is because the notion of the event as a singular, discontinuous irruption that opens onto change, does not sit well with linear, narrative accounts of history as a determinant of change (Human, 2015; Wright, 2008a). Whilst the evental way of thinking through change has popularised evental thought, its distance from thinking about change in terms of linear progress has also generated critique and questioning

(Coombs, 2015). For some, the notion of the event as a singular, aleatory irruption that completely breaks with the past, and which cannot be mediated by the past is too divorced from history (Wright, 2008b). This line of critique contests the primacy of the discontinuous, and suggests that evental philosophy too readily dispenses with continuous, narrative accounts of history as a determinant of change (Human, 2015; Wright, 2008b). Human (2015), for example, takes concern with the kairological tenets of evental work; he questions the neat and total separation between the two phases of a system or state that the event creates. Drawing on complexity theory, he continues to argue that traces of the past, or memories, are critical to a system and its reconfiguration, and also to the understanding or recognition of the event as new or other (Human, 2015).

Badiou's philosophy of the event in particular is often read as being problematically and aggressively ahistorical (Wright, 2008b). This critique of his work is part of a wider, more general critique that challenges the conceptualisation of the event as a singular irruptive force, subtracted from *all* forms of mediation, including historical (Wright, 2008b). In specific relation to history, it is Badiou's conceptualisation of the event as an aleatory rupture that completely breaks with the past, meaning that history cannot be put to use to retrospectively make sense of the event that generates criticism (Wright, 2008b). For Badiou (2012c p.62) the event "emerges from nothing; it has the dictatorial power of a creation *ex nihilo*". In other words, it appears from nowhere; it unsettles and escapes the prevailing power's control and our perceptions of what is possible (Badiou, 2013).

The riot, for Badiou, as one example of an event, does not emerge from an accumulation of contingencies (Wright, 2008b). For Badiou, it is aleatory; it is an apparition of possibility wrested from the impossible (Badiou, 2012c). It does not erupt following the accumulation of grievances or tensions, it just erupts, out of nowhere, from nothing. For some, this level of abstraction is too reductive. Bensaïd, (2004 p. 98), talking on Badiou, for example, says:

> By refusing to venture into the dense thickets of real history, into the social and historical determination of events, Badiou's notion of the political tips over into a wholly imaginary dimension: this is politics made tantamount to an act of levitation. As a result, history and the event become miraculous.

Hallward (2008 p.7) reiterates the same concern:

> Badiou's set-theoretical definition of an event as an anomalous, ephemeral and uncertain sub-set of its situation (a set which momentarily presents both itself and those elements that have nothing in common with the rest of the situation) appeared to privilege an abrupt if not quasi-'miraculous'

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approach to the mechanics of historical change.

The event, including riot, as pure novelty, radically unconditioned, and unsutured from history as a determinant of change is what exposes Badiou's work to criticism which negates the philosophical and political value of it (Wright, 2008b; Elden, 2008; Hallward, 2008). Elden (2008) foregrounds such criticisms in a piece concerned with dialectics and the measure of the world, in which he specifically critiques Badiou's notion of the event as radically unconditioned, and attributable to mathematical ontology, based on set theory. Elden (2008) quotes Badiou to make clear his point, that if "we abstract all presentative predicates little by little, we are left with the multiple, pure and simple ... being-as-being, being as pure multiplicity - can be thought only through mathematics" (Badiou, 2001 p. 127). For Elden (2008 p. 6) this reliance on mathematics:

> Seems to unravel many of the more carefully won victories of a rigorous, theoretically informed geography that does not aspire to be a spatial (or social) science. In particular, Badiou's use of mathematics opens up a number of tensions with thinkers such as Heidegger and Michel Foucault, for instance, who are critical of the ways in which calculation dominates the modern epoch.

Although strong, such criticisms are subject to specific readings and interpretations of Badiou's philosophy, in specific times. As Shaw (2010) suggests, for example, Badiou's ontological and phenomenological axioms are flexible, and his work responds to critique. While in Badiou's early and seminal *Being and Event*, written in 1988 but translated and published in English in 2006, the history/event disjuncture is stark, in what Badiou presents as its sequel, *Logiques des mondes* or *Logics of Worlds*, translated and published in English in 2009, it is less so. As Wright (2008b) notes, it complicates the putative opposition of history and the event in Badiou's philosophy, particularly through incorporating the new concept of evental resurrection. This is a notion that invokes history as an archive that holds traces of past events which can resonate in the present.

More recent work on evental philosophy, such as Coomb's (2015) book *History and Event*, also contests and complicates the binary opposition of history and event associated with evental philosophy. While Coombs (2015) underlines the success of thinking change through an orientation towards contingent singularities in overcoming the limitations of historicist ontology and totalising, linear conceptualisations of historical change, he points to the possibilities of thinking about change as both singular and historical. Coombs (2015) draws on complexity theory to explore this engagement, and proposes the consideration of a complex theory of social change.

Such recent work that engages history and event is significant to my approach that adopts this approach, specifically in relation to Badiou's theorisation of the event. I am following others that set out to complicate the overly distinct binary between history and the irruptive, aleatory event. My contribution is to think about history in relation to the governance of events, understood in relation to the regulation of appearance of events that rupture. I develop the argument that history helps to add depth to the understanding of the event as a moment of transgression, of the aesthetic faultline in the world. First, a historical approach enables me to contextualise the drawing of this line and understand why the appearance of events is limited. Second, a historical approach allows me to understand the work that is done to maintain this line and to limit the appearance of events.

3.8 Conclusion: engaging history and event through a study of the aesthetic faultline in the world

To conclude, I come back to the matter of constitution. The central aim of the thesis is to develop understanding of the constitution of riots. I turn to think of the riot as an event to do this. In this chapter, I have proposed that widening the temporal parameters of evental work, and engaging history, is useful for thinking about the constitution of a riot. More specifically, I have proposed that history can be put to work to further understand the event as a moment that transgresses the laws of appearance. I suggested looking at this in relation to the notion of the aesthetic faultline – a line that regulates what can and cannot appear in the world (Shaw, 2012 p. 12). I have turned to history to think about tracing its drawing, and how it is policed, asking: What is a riot? Why is it problematic? How is the line policed and how are transgressions managed?

Through this focus, and engaging history and event, which seems oxymoronic given that the event is characterised as an exceptional, radical break, I thus turn to the historical dimensions of the world's regime of appearance (Wright, 2008b). I turn to history to make the argument that regimes of, and the regulation of, appearance, have a history (Wright, 2008b). I turn to history to understand the drawing up or establishing of the laws of appearance that delimit what can appear and what cannot. And, to consider the maintenance work behind the regulation of appearance, or upholding of this line that limits some things, here events that rupture, from appearing in the world. I do not turn to history to think though the causal history of events, and to map the course of events through history (Wright, 2008b). As Wright (2008b p. 17) emphasises in his work that

engages history and event which he frames as evental historiography: "evental historiography must subtract itself from every vestige of causal explanation."

I adhere to this in the empirical material that follows. My focus is on the history of the regulation of appearance, which I relate to in empirical terms as the history of the governance of events. This builds on the notion of the aesthetic faultline, the line between the invisible and visible, that the event transgresses. Rather than focussing on the moment of transgression, as much evental work already does, I consider the longer history of this line. I consider how it is drawn and then how it is policed. I am thus turning to history to think about the work done to first establish the riot an event that cannot appear, and then the work done to limit its appearance, which I think about, overall, in terms of governance.

In the next chapter, on methodology, I discuss how I translate this theoretical work into a focus for the empirical work. The methodology chapter thus serves as a bridge between this theorisation of the event in terms of a transgression of the aesthetic faultline, and empirical chapters that present reflection on the drawing of, and upkeep or policing of this line in relation to the governance of riots.

4. Engaging History and Event through the Legal Archive

4.1 Introduction

The previous chapter introduced the rationale and context to work that engages with history and the event. In the chapter, I argued that the event constitutes a moment of transgression of the aesthetic faultline in the world, and that turning to history to understand the drawing and policing of this line contributes to understanding its constitution. In this chapter I set out *how* I conduct the work of understanding the drawing and policing of the aesthetic faultline.

The focus on the drawing and policing of the aesthetic faultline is part of a wider focus on appearance, and specifically the *regulation* of appearance that I introduced in the last chapter. I argued for an understanding of the riot as an event, understood as a rupture that transgresses the laws of appearance. Badiou's description of the event in terms of appearance therefore provides useful contextual detail here. In a piece in which he considers the 'laws of appearing', Badiou (2008 p. 1881) poses the question: "How does an event appear in a determinate world?", and replies:

> Today, and for you, I simplify the matter. I suppose that an event is a sudden change of the rules of appearing; a change of the degrees of existence of a lot of multiplicities which appear in a world. The crucial point is the change of intensity in the existence of something the existence of which was minimal. For example, the political existence of poor workers in a revolutionary event; or the formal existence of abstract figures in a modem artistic event, and so on.

For Badiou, an event thus transgresses the laws that regulate appearance, which are the laws that determine what can and cannot appear. For Badiou (2008 p. 1880):

> The general laws of a world are not laws of the things themselves. They are laws of the relations between things in a determinate world. I name the inscription of a pure multiplicity in the relational framework of a world its "appearing" in this world. So, all laws, physical or biological or psychological, or juridical, are laws of appearing in the context of a singular world.

This statement contributes to Badiou's (2002) argument that existence is a category of appearance (Badiou, 2002). For Badiou, existence is a quality of being, and not a category of being itself (Badiou, 2002). While laws cannot regulate being that has an ontological

status, for Badiou (2008) laws regulate appearance in the world (Badiou, 2002). For Badiou, (all) laws legislate what can and cannot appear (2002). The event as a moment that transgresses the laws of appearance is thus is subtracted from all the conventional and rational laws of the world (Badiou, 2008). It is a transgression that depends on such laws, but is a negation of such laws (Badiou, 2008).

This methodology chapter details my approach to researching the history of, specifically juridical, laws that regulate appearance. I turn to the history of such laws, through the legal archive, to look to their formation and their application, which I consider in relation to governance (Badiou, 2008).

As Wright (2008b) emphasises, conducting this kind of historical evental work is an extremely delicate task. It poses the challenge of engaging history, but not history in the explanatory sense. I do not turn to history to discover *a* history that pieces together a narrative that explains why riots happen, but I turn to history to reveal the formation and application of regimes of appearance that regulate the appearance of riots in the world (Wright, 2008b; Badiou, 2008). In my approach, the historical referents that I turn to do not explain the course of a particular event, but how its appearance and existence in the world is regulated, in terms of governance. I consider the laws that configure what can and cannot appear, and how these are applied to the event of riot (Badiou, 2008; 2009a).

In this methodology chapter, I think through this in relation to *genealogy*, as the overall method that guides the thesis. I first offer a recap of the genealogical work so far, building on the introduction to genealogy in the introduction to the thesis itself, before setting out what I discuss in terms of the practicalities of the empirical work that I did.

In the introduction of the thesis, I discussed the methodological approach of genealogy to contextualise the starting point, or starting problematic, for the thesis: the framing of riots as a violent ephemeral eruption, as typified by artist Stan Douglas' depiction: "it's night, a car or two burn in the near distance and, in the foreground, a young man (preferably brown) wearing a balaclava is in the midst of tossing a projectile" (2017 n.p.). In the introduction I described the emergence of this framing, the emergence of our captivity to it, and then exposed the limits of it through thinking about how this captivity takes effect through the 'event trap' (Brown, 1997 n.p.). To reiterate, work that falls into this trap is work that rushes to respond to events and offer judgment on their causality, and is bound to the time-space of the event's moment of appearance.

Thus far in the genealogy, I have loosened the frame that enframes intelligibility of riots, through theoretical work, and set out a way to think about riots differently. In the last chapter, I reached a particular way of thinking about the riot as rupture, and the notion of the riot as a transgression of the aesthetic faultline in the world, or the line between what is visible and invisible. I also made the case for thinking about the history of this line, and the history of the regulation of appearance that it speaks of. Rather than turning to history to explain the course of event, I am thus turning to history to think about the regulation of the appearance of rioting events. This builds on the argument that appearance is a quality of existence, and laws regulate what can and cannot appear in the world (Badiou, 2002).

I took this sensibility of the riot as a transgression of the laws that regulate appearance in the world into my empirical work. This follows the structure of genealogy that first develops a new sensibility of something, and then puts it to work within empirical investigation (Olson, 2014). In this chapter I detail *how* I take this sensibility of riots that I reach through the theoretical work into the empirical work. More specifically, I set out how I think about this specific conceptualisation of the rupture that constitutes the riot, in terms of evental governance. In chapter two, I set out evental governance as modality of governance that works to know, and then to limit the event. In this methodology chapter, I relate to these stages of knowing and limiting, to the *drawing* and *policing* of the aesthetic faultline in the world. Having set out a specific conceptualisation of the rupture that constitutes the riot, I am thus now turning to think about it in relation to evental governance that is governance ordered by events that rupture.

Reflecting more practically on how I do this, in what follows, I first dwell on my turn to history and specifically the space of the legal archive, to understand the historical drawing of the aesthetic faultline, and instances of where it has become actionable in the past. Following this, I consider the practicalities of my archival research; I expand on its legal focus, where I conducted research, and what it entailed. Finally, I set out how I present the empirical work through archival scenes.

4.2 Why only the archive can save us from the absence of emergency

The previous chapter introduced the rationale for engaging history and event, and specifically of turning to history to think about the history of the aesthetic faultline in the

world. Overall, I put history to use to make sense of this faultline: the line that determines what can appear, the line between order and disorder, non-event and event, or peace and riot, for example. I turn to history to trace how it is drawn and then policed, in order to develop understanding of the constitution of the riot, understood as a transgression of this line.

In Zabala's (2017) book, *Why only art can save us: aesthetics and the absence of emergency,* he makes the case for turning to art to recover and disclose events. What Zabala (2017) understands as the absence of events relates to the way in which events that rupture are submitted to total cognisance or a total explanation, in a way that preserves the status quo. Zabala (2017) discusses how events that shock and shake our current condition are met with responses that offer refuge from such destabilisation, and a return to the normal order. Whatever emerges as different becomes defined as a mistake, or aberration, and framed within dominant paradigms (Zabala, 2017; Haddow, 2015; Closs-Stephens and Vaughan-Williams, 2008). This nullifies the event's potential to open onto change or novelty, creating the condition of absence of emergency.

An example that Zabala (2017 p.3) draws on to make this point is the recently publicly labelled emergency of the 'refugee crisis', which became "framed within our globalised system". It became framed as a problem of security and controlling movement, and of imposing sovereign control (Jones et al, 2017). As Jones et al (2017) point to, it became a problem of building new walls, of more border guards, for example. The result of this framing became that: "nothing new happens, reality is fixed, stable and secured" (Zabala, 2017 p. 5). The framing of the emergency within the dominant paradigm of state sovereignty, marks the absence of emergency (Zabala, 2017). This is not to say it is not an emergency event, but rather the way in which it is framed within dominant paradigms prevents its potential to make change to such paradigms. As Roitman (2013) suggests, in a similar way to Zabala (2017), while the invocation of crisis narratives is ubiquitous, it creates a blind spot for the production of new knowledge, rather than marking a turning point.

This framing, or subsuming to the normal order, is what creates condition of absence of events. It is what conceals events and thus their potential to open onto change. Zabala (2017) turns to art and its capacity to disrupt what he relates to as *the framing powers* that explain away rupture, and reduce emergency events in a way that makes possible the return to the normal order. For Zabala (2017), as a means of countering the return to the normal order, art allows destabilisation, in what he relates to as our current *age* of absent

events and disruption. Zabala (2017) argues that works of art can thrust us into emergency that we are ordinarily compelled to ignore. For Zabala (2017) creators of art thus disclose rather than conceal rupture, and insist upon unsettling and disturbing rather than reassuring.

The examples that Zabala (2017 p. 29) draws on to support his argument are all visual, "simply because they are easier to reproduce in a book." Yet, Zabala (2017) makes clear that other forms of art such as dance, music and cinema have an equivalent capacity to disclose events. While Zabala (2017 p. 26) does not attempt to offer a definition of art as such, to delimit the scope of his argument, he does distinguish the art he discusses and presents as critical art that is different from more traditional 'professional art'. Such critical art, Zabala (2017) argues, has the capacity to disclose events, in order for them to be taken seriously, rather than concealed.

I draw on Zabala's (2017) work here to help explain why I turn to the archive. As Zabala (2017) uses art to seek destabilisation and as a source of events, I focus upon the archive as a space that discloses the riot. I consider the space of the archive as that which discloses how the aesthetic faultline is drawn, and then policed, thus helping to develop an understanding of the event of riot as a moment of transgression of this line. In my research the archive, like art for Zabala, is therefore one space that discloses the event of riot, or allows me to think about the specificity of it in relation to this sensibility of riots that I develop.[1] This is the sensibility of the riot as a transgression of the aesthetic faultline in the world, where this line is historically conditioned. Thinking of the line as historically conditioned necessitates a historical orientation and empirical work in the archive to understand it.

To summarise, the need to turn to the archive in this thesis, in order to find rupture stems from the way that rupture is ordinarily dampened through responses that stabilise and, in turn, nullify events. I focus upon the archive to disclose rupture in more depth, and to develop an understanding of its constitution, which I think about as an object of governance. While this begins with the imperative to understand rupture, my approach

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[1] Other approaches to evental research find different ways to 'express' events, which is the central ethos behind evental work (Patton, 1997). Ingram (forthcoming), for example, follows Zabala in looking at art in the book *Geopolitics and the Event: Rethinking Britain's Iraq War Through*. Haddow (2015) considers theatre as a space that has the capacity to grasp and express events, such as riots. Coombs (2015) and Human (2015) develop a very different approach, and draw on complexity theory as a way to recognise and give expression to events. The ethos behind evental work, to 'express' events, opens onto multiple modes of expression.

involves a distinct effort to broaden the usual, narrow temporal parameters of evental research through engaging history and event.

4.3 Derrida and the duality of arkhē: commencement and commandment

In making the claim that the archive serves as a space to trace the drawing and policing of the aesthetic faultline in the world, I follow Derrida (1996) who considers the archive as a space where order commences, or where power originates, and a place from which order is exercised, or where order is given (Boshoff, 2012). To introduce this duality of the archive, Derrida (1996) considers the archive to be a space of *commencement* and *commandment.* Derrida's (1996) tracing of the etymology of archive through arkhē underpins this duality, as it has an intrinsic double meaning:

> It names simultaneously the order of commencement and the order of commandment. On the one side it indicates an ontological principle, namely there where things begin, but on the other side also a nomological principle, namely there where gods and later men command. (Boshoff, 2012 p. 4)

Derrida emphasises this double meaning to underline that the archive is a space where things commence, but is not a space to simply locate singular origin points. In *Archive Fever* (1996) Derrida cautions against the obsession with, and yearning for, origins, or moments of beginnings in the archive (Boshoff, 2012). Derrida (1996 p. 10) relates his argument to Freud's hypothesis of an "originary and irreducible perversity" that he calls the death or destruction drive. Derrida (1996) resists this way of working that attempts to expose an enigma, and instead considers archival work as "a process of long and often arduous deciphering", not "looking for a sudden discovery, a single moment where the origin presents itself 'directly'" (Boshoff, 2012 p. 6).

Ferguson (2008) relates to this duality of commencement and commandment within Derrida's archive as a reflection of how the archive works on two levels. Although Ferguson (2008) goes on to say that while Derrida establishes this duality, he goes onto blur and complicate it, it is idea of the duality of commencement and commandment that I take forward into my empirical work.[2] In this thesis, I stay with these two notions, that the

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[2] As Ferguson (2008) writes, "Derrida, of course, no sooner establishes this distinction than he blurs it, reminding us "there is always more than one – and more or less than two" (Derrida, 1996 p. 2). I present a simplistic reading here that overlooks the way Derrida relates to commencement and commandment as being ontological and nomological principles respectively. Ferguson (2008)

archive commences and commands, to think about the notion of the aesthetic faultline, and how it is drawn and policed. I consider these two concerns, commencement and commandment, as mapping onto my concerns with the *creation* and *application* of the laws that regulate appearance. I first consider commencement in terms of the creation of such laws, and then their application which works to regulate appearance, specifically the appearance of riots.

I thus turn to the archive as a space that documents how such laws regulate appearance. This involves thinking of the archive as a space that helps to make intelligible the craft of governance. Here I follow Stoler (2008) in thinking about the archive as taking us through governance structures and the different tiers of governance. Stoler (2008 p. 14), for example, describes her work as "a book that asks what we might learn about the nature of imperial rule and the dispositions it engendered from the writerly forms through which it was managed". This statement evidences how Stoler (2008) reflects on archival documents as guiding government strategies, and having political effects, in her work this concerns how they set the terms for new repressions and subsequent violence. I consider the archive as making intelligible governance in two tiers: the drawing of the line that delimits what can and cannot appear, and the policing of this line. I turn to the archive to understand the creation of the laws that regulate appearance, and their application over an extended temporality.

4.4 Taking and translating theory into the archive

To recap, what I have set out so far in the thesis is a new framework for thinking about riots that defamiliarises the riot, and presents a new way of thinking about it as rupture in terms of transgression. In this section I consider what it means to take this framework into the archive and how I did this, which involved a process of translation. Thinking about this in terms of genealogy, this stage of taking the framework into the archive, or putting it into practice reflects how genealogy entails both abstract and practical work. This reflects how genealogy is a critical *practice*, rather than a mode of philosophical reasoning (Olson, 2014). It entails suspending rather than imposing judgement, in order to open up new possibilities for thinking (Koopman, 2013; May; 2014). Emphasising the point that genealogy is a critical practice that entails both abstract and empirical work, Olson argues, in relation to Foucauldian genealogy, "putting interpretive insights into practice is the

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and Boshoff (2012) present further context and deeper readings of these concepts from Derrida's *Archive Fever*.

ultimate proof that genealogy as critique is more than an abstract sketch of philosophical reconciliation" (2014 p. 7).

The theoretical framework that I have created initiates new questions and lines of inquiry about riots that I take into the empirical work, and into the archive. It therefore animates the adventure of research (Dewsbury, 2014). As Brown (2001 p. 95) writes of genealogy, it entails "the crafting of a theoretical frame for a historically conscious critique…that recurs neither to universal norms nor to conviction". It deploys this frame into "a form of artful questioning" that disturbs and upends seemingly self-evident and conventional beliefs (Brown, 2001 p. 96).

Deploying an abstract theoretical framework into empirical work, however, requires negotiation in order to render, or rather reduce, the level of abstraction that theory creates to a level that is workable in empirical spaces. In my work, this means rendering the notion of the riot as an aesthetic faultline workable in archival spaces. As Marcuse (2010 p.1) suggests, this task is tricky:

> The relation between theory and practice is tricky. Sometimes theory seems irrelevant under the pressures of everyday crises; sometimes the problems of practice seem so overwhelming as to leave no room for theory.

To have empirical adequacy, Fraser (1985) suggests, in a piece that asks '*What's Critical about Critical Theory'*, theory needs to have purchase on empirical social reality. In order for the theoretical framework I develop in this thesis to have empirical purchase, I translated it into a more tangible set of questions and line of inquiry. I scaled back the level of abstraction so that it has purchase on empirical reality, and can be deployed to yield empirical insights (Fraser, 1985).

I scale back the abstraction of the notion of the aesthetic faultline to think about it in terms of governance. I thus return to the framing of governance I set out in chapter two, to think of the drawing of the line in terms of the delimitation of an object of governance, or the construction of an object of governance. The policing of the line is then the enacting of practices of that attempt to limit the emergence of the problematic of riot. Thinking about this as a kind of translation, questions of how the aesthetic faultline is drawn and policed become: how is the riot constructed as an object of governance? Why is its appearance limited? And, how is the aesthetic faultline policed becomes how is this object subject to practices of governance that seek to tame and limit it?

To expand on these critical questions that guide the empirical work, what I am first asking is: how is the riot constructed as an object of governance? Why is it problematic? What constitutes the riot as an object of governance? Why is it treated as a problem of governance? And then: *how* is it treated as an object and problem of governance? What practices of governance is it subject to? What constitutes a transgression of the line? How are transgressions managed and limited? How is the appearance of riots regulated? What I set out to interrogate through my archival work is the status of the riot as an object of governance, and how practices of governance unfold in relation to the riot as an object of governance. I am concerned with how the riot is thought of and delineated as a problem of government, and then how practices of governance respond to the riot as a *problem of governance* (Koopman, 2013).

Overall here, having set out a specific way about thinking about the rupture of riot, in chapter three, I return to think about it in relation to evental governance; governance that is ordered by events that rupture, and that works to grasp and know, and then tame and limit events. I frame the governance of riots in specific relation to the rupture of riot that I have conceptualised.

This way of thinking about governance as a two-stage process first involves thinking about governance itself as a process. Governance as a process is what distinguishes governance from government. Government, as Miller and Rose (1992 p.4) articulate, constitutes "the historically constituted matrix within which are articulated all those dreams, schemes, strategies and manoeuvres of authorities that seek to shape the beliefs and conduct of others in desired directions". The examples that Miller and Rose (1992) draw on to develop this claim, welfarism and neo-liberalism, help to clarify what they mean here. These examples, welfarism and neoliberalism, illustrate how government is about the "machinations" of power; the overall plot and strategy that directs power (1992 p. 4). It is the grid that supports, frames and guides the overall direction of power (Miller and Rose, 1992). Governance is the exercise of political power or rule (Miller and Rose, 1992). For Rhodes (1996) it encompasses the activities of government and is about the way in which commands flow or take effect. Governance is thus distinct from government as it is the *activity* government (Miller and Rose, 1992; Rosenau, 1995).

Thinking about governance as a two-stage process entails thinking about this activity or process as a duality, as a mentality that then becomes actionable. This is present in conceptual work on governance that relates to this notion of governance as a two-stage process in different ways. Miller and Rose (1992), for example, relate to governance as

systems of thought and systems of action, framings and responses, and problematizations that are rendered operable. Lentzos and Rose (2009) draw on slightly different terms, and relate to governance as rationalities that are animated by technologies. Common across these accounts is an understanding of governance as a mentality that becomes actionable, or rationality that takes effect. I emphasise this duality and this notion of governance as a two-stage process in order to give structure to the organisation of this genealogical work, rather than to emphasise a conceptualisation of governance that reduces it to a fragmented process of two stages. To reduce governance to a two-stage process would be to counter nuanced conceptual work on governance that considers it as networked or as an assemblage (for example Bulkeley, 2012). I use this distinction of governance as a mentality that becomes actionable to introduce a precision to the organisation of this genealogy of the governance of riots as often use of "the term 'governance' is popular but imprecise" (Rhodes, 1996 p. 1; Brown, 2016). It is used interchangeably with government, for example, or alongside governmentality, without a clear delimitation of its difference to these terms. I emphasise this duality to specifically underline how my focus on governance involves empirical focus on the *practice of* government, or modes of governing (Bevir, 2011). This is different from a focus on governmentality, for example, which involves a focus on the discursive formation of power (Bevir, 2011).

In summary, this idea of governance as a two-stage process underpins the structure of my empirical work. The first empirical chapter stays with the first stage: the imaginary of what a riot is, and chapters six and seven consider the actionability of this.

4.5 Imaginary, actionability and law

Before talking through the practicalities of researching the imaginary of riot and actionability of this, it is necessary for me to outline the grounding of this work *in law*. So far, I have developed a conceptualisation of the riot as a transgression of the aesthetic faultline in the world; a line that regulates appearance and what can and cannot appear. I relate to the laws that regulate appearance in a general way, following Badiou's theorisation of the event as a transgression of "the rational and conventional laws of the world" (2008 p. 2). In my empirical work, I delimit the scope of how I think about the event in this way through turning to think about how *the Law* regulates the appearance of riots in the world. By Law, with a capital L, I mean juridical law, and here think of Law as an institution of determinate meaning (Braverman, 2010; Blomley, 1989; Clark, 2001).

I thus draw upon and interpret Badiou's thinking on the rational, conventional laws of the world in quite a conventional, literal way: I "take 'law' in its strict legal sense" (2008 p. 1881). While Badiou's thinking on the laws of the world are not confined to the legal, his account of the laws of appearing, in the paper titled 'The Three Negations', is published in a legal journal - The Cardozo Law Review. It is part of a special issue on law and event that engages specifically on Badiou's work *Being and Event*, published in English in 2006. There is, therefore, a legal focus within Badiou's work that I draw on in the thesis.

This continuation of a strictly legal focus is first a way to delimit and focus the scope of my research. It also follows from the significance of the legal case that I outlined in the introduction to the thesis, and follow closely in the empirical chapters, that of Mitsui v MOPAC. The centrality of the Mitsui case in the aftermath of 2011 followed from the difficult questions it asked, including: what is a riot? And, who is liable for riot damages, and so the taking place of riots themselves? In asking such questions, about the constitution of riot and responsibility for its taking place, the case directly confronted the questions of riot governance that I address in the thesis.

I look at the legal system as one system of laws within the wider system that Badiou relates to as the "rational and conventional laws of the world" that regulate appearance (2008 p. 1878). Other laws of the world could include class[3] and economy[4], as Badiou gives as examples in The Three Negations, or race.[5] These focuses, class, economy and race, are significant, or at least existent, in riot research already. Law, however, is notably

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[3] Clover's (2016) *Riot. Strike. Riot* historicises the role of class and class struggle in collective action. It offers a review of the laws of class in relation to riots, and also references key contextual work on this such as E.P. Thompson's, The Making of the English Working Class (1963).

[4] An example of work that considers the law of economy in relation to riot is Feigenbaum's (2017) work on the history of tear gas as a riot control agent considers how the gas is marketed and sold, and is profitable to the riot control industry, which ultimately profits from social upheaval. Feigenbaum's (2017) work draws on research from trade shows within the security sector following the tumultuous year of 2011 to exemplify how the riot control industry is growing, and also details the relation between the riot control industry and arms industry.

[5] Following the trend of riot research swelling in waves after particular rioting events, much of the most recent work on race and riots *in England* follows from the 2001 riots, which were labelled as race riots (Dikeç, 2007). The 2011 riots were labelled consumer riots, and thus, as Allen et al (2012 p. 4) highlight: "Race and ethnicity featured far less as a clear contributing factor to the 2011 riots than it did in previous decades (Solomos 2011), with public and political debate instead favouring 'a lens that has emphasised criminality and looting'". Examples of work on race and riots from 2001 include Alam (2006), Alexander (2004; 2009) who draws on Stuart Hall's work on race and how race is lived (Hall and Back, 2009). While race is less of a focus in research on the 2011 riots, as starting reference points, work that does foreground race includes Clover (2016), who looks in particular at the interrelation of race and class, and Gilroy (2013) who considers how the 2011 riots resurfaced unresolved questions and matters bound to postcolonial politics of race in the UK.

absent. There is limited research on law and riots in human geography, particularly within legal geography. The starting point for work that does adopt a legal angle is typically sentencing (Bell et al, 2014; Lightowlers and Quirk, 2015; Roberts and Hough, 2013). Yet, work that focuses on sentencing does not consider law in relation to the wider governance of riots, or a longer history of the significance of law to riot governance.

The pervasive understanding of riots as *lawless* contributes to this absence of legal work on riots, in human geography in particular. The way that the 2011 riots in England were dismissed as acts of lawlessness by politicians typifies this tendency to think of riots as lawless acts of violence (Ray, 2014). Riot and law are held in opposition, and the riot becomes simply a break with the law. This is therefore related to, and leads to, the focus on *violence* in riot research, and the equivocation of riot and violence (Clover, 2016). As Clover (2016 p. 38, 39) suggests, the idea of the riot as lawless and an attack against the law "gives violence pride of place" in analytical frameworks, which "has been an essential tool in the political reduction of the riot".

My argument here that the understanding of the riot as lawless, and a break with the law, contributes to the limited engagement with law and riot follows from arguments of the same nature in relation to law and war. As Jones (2016) describes, for example, geographic accounts of war have generally taken little consideration of how law shapes the conduct of war. Jones (2016 p. 1) considers how typically law and war are held in separate, oppositional spheres where "war represents chaos and violence, and law represents order and peace". This binary way of thinking upholds the oppositional separation between war and law. Jones (2016) argues for a critical legal geographic engagement with lawfare, understood as the use of law as a weapon of law, to counter this separation of law and war. Jones (2016) makes the case for thinking law and war together, through lawfare, in order to attend to the violence of lawfare, in material, discursive and performative forms. Or, drawing on Delaney's (2010) concept, to think about how lawfare is *worlded,* meaning how it manifests in the world, or is spatialized. Here Jones (2016) emphasises how a focus on law encourages us to think about the *conduct* of war; the legal basis that underpins legal action, and operational conduct on the ground, for example.

I adopt a legal focus to think about how law shapes the conduct of riot governance. This first entails thinking about the legal construction of the riot as object of governance, followed by the application of riot legislation, and how law underpins action in relation to riot governance.

Initially, I thus turn to law as a diagnostic tool that sets out what a riot is, and what makes it a problem of governance. This involves thinking about law as a system that codifies power (Rose and Valverde, 1998). By this I mean a system that codifies what is permitted and what is not, and establishes consequences when breaches of this codification take place. As Holder and Harrison (2005) describe, this involves engaging with law as an organising apparatus. Building on the argument I developed around appearance, this refers to a system that organises or delimits what can and cannot appear. To put this more concretely, the things that it codifies as illegal, such as riots for example, are the things that cannot appear. To think about how this becomes actionable, I then outline how this takes effect, and how riot legislation is applied. In the following two sections I turn to focus on practical questions of how I researched the legal history of riot and the history of its application.

4.6 The legal history of riot

To begin my inquiry into the legal construction of the riot as an object of governance, I consulted the UK Parliamentary Archives and riot legislation, specifically the 1714 Riot Act and 1886 Riot (Damages) Act. I began with these two texts as when I started the research, they were at the centre of the then ongoing legal case into the 2011 riots: The Mayor's Office for Policing and Crime ("MOPAC") v Mitsui Sumitomo Insurance Co ("MOPAC") (2016). This case worked through how to apply the 1886 Riot (Damages) Act to the 2011 rioting events. In 2011, and until 2016, the 1886 Riot (Damages) Act was current and therefore still applicable. It was this uncertainty of how to apply an 1886 Act, to a 21st century riot that was at the heart of these legal proceedings. In this case, the 1714 Riot Act, the predecessor to the 1886 Act, was drawn on heavily to try and establish the original intentions of the 1886 statute.

I began here, then, because of the significance of these Acts in the response to the 2011 riots. The first preliminary question that the MOPAC v Mitsui (2013) case asked was: did a riot take place? The case then embarked on an excursion into legal history to determine what a riot is. The legal historical work was therefore fundamental to the case. As Knight and Cross (2017 p. 29) said of the case, for example:

> In this era of Westlaw and Lexis and Bailii[6], with more judgments every
> month than one could hope to keep track of, legal research of the positively

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[6] These are legal databases that provide access to legislation, law reports, legal journals and commentary pieces.

archaeological variety is rarely required. MOPAC shows that in the right case, it can nonetheless be determinative.

My research followed the case's exploration of legal history to determine what a riot is. I began with the two texts, and then went further into the legal archives, following the case's pursuit of 'positively archaeological research', to look more in-depth at the legal construction of the riot as an object of governance. To relate back to the notion of the aesthetic faultline, this archival work considers the history of the drawing of the aesthetic faultline in the world; the line that delimits what can and cannot appear, here the line that delimits what is peaceful good order, and what is riot.

In the legal archival work, I followed Rose and Valverde (1998) who suggest starting with problematizations when looking at the role of law in governance, as there is no such thing as *The Law,* which they consider a fictional construction. Looking at law in terms of problematization means looking to law as something that problematizes, rather than determines. I followed this suggestion by consulting the legal archives to examine the legal history of the problematization of the riot. By this I mean that legal history that explains the problematic nature of the riot, and how it becomes a problem that warrants attention. In more practical terms, in this stage of the empirical work I asked: what is a riot? How does law problematize the collective of a riot? What are its characteristics that make it problematic?

I first consulted the two riot Acts in their multiple forms. Parliamentary archives hold copies of legislation in statute books that list all the public Acts established each year, and in individual draft forms. Looking at Acts within statute books provided useful contextual historical insight; in the same year that the 1714 Riot Act was established, for example, so was the 'Act to empower His Majesty to Secure and Detain such Persons as His Majesty shall suspect are conspiring against his Person and Government'.[7] This particular detail and the content of this Act, as an example, was useful for thinking about the problem of disaffection to government that I expand on in the first empirical chapter.

Looking at draft versions of legislation was also useful for tracing their journey through Parliamentary stages, until they reach Royal Ascent and become applicable. I was able to see amendments to the 1886 Riot (Damages) Act, for example, and a notable title change to include the word damages - a specific kind of loss that I consider in chapter seven

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[7] PA: HL/PO/PU/1/1714/1G1s2n7

(figure 4).[8] These drafts that displayed dated amendments also led me to Hansard and historical Hansard[9] (1803-2005) to follow up on the context of their amendments. Hansard's verbatim record of debates on drafts in Parliament provided further detail on the amendments that I encountered as written notes in the archive; on why the 1886 Riot (Damages) Act took this title rather than Losses by Riot Compensation, for instance. This reflects how my engagement with the legal archive involved looking beyond *The Law*, or simply the text of the Acts, and as Lorimer and Philo (2009 p. 4) advise, questioning their apparent order and completeness:

> Possibly the researcher needs to be suspicious of the apparent order, and instead to seek out 'cracks' in the façade: for misunderstandings, for other questions needing to be asked that the sources, in their neatness and completeness, arguably evade.

Lorimer and Philo's (2009) suggestion that is part of a wider discussion on order and disorder in the archive is pertinent for describing the work that I did with legal archives. The legal archive, here within Parliamentary Archives, on the surface, has a register of order and the entire process of visiting is very ordered: you book a place in the search room in advance of you visit, you send advance notice of the records you wish to view in advance, go through Parliamentary security clearance on arrival, and are then escorted through the Houses of Parliament to the search and reading room in The Victoria Tower. In the archive itself, statues are listed and printed in statue books, written in sequential sections, in a way that presents the law as a coherent system of meaning accessible through this language (Philippopoulos-Mihalopoulos, 2016). My legal archival work involved looking beyond this register of order, to the more disorderly; the debates on drafts, re-drafts, the tumultuous context that the statutes arose out of, for example.

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[8] PA: HL/PO/JO/10/9/1200
[9] Hansard is verbatim reporting of proceedings from the House of Commons and the House of Lords.
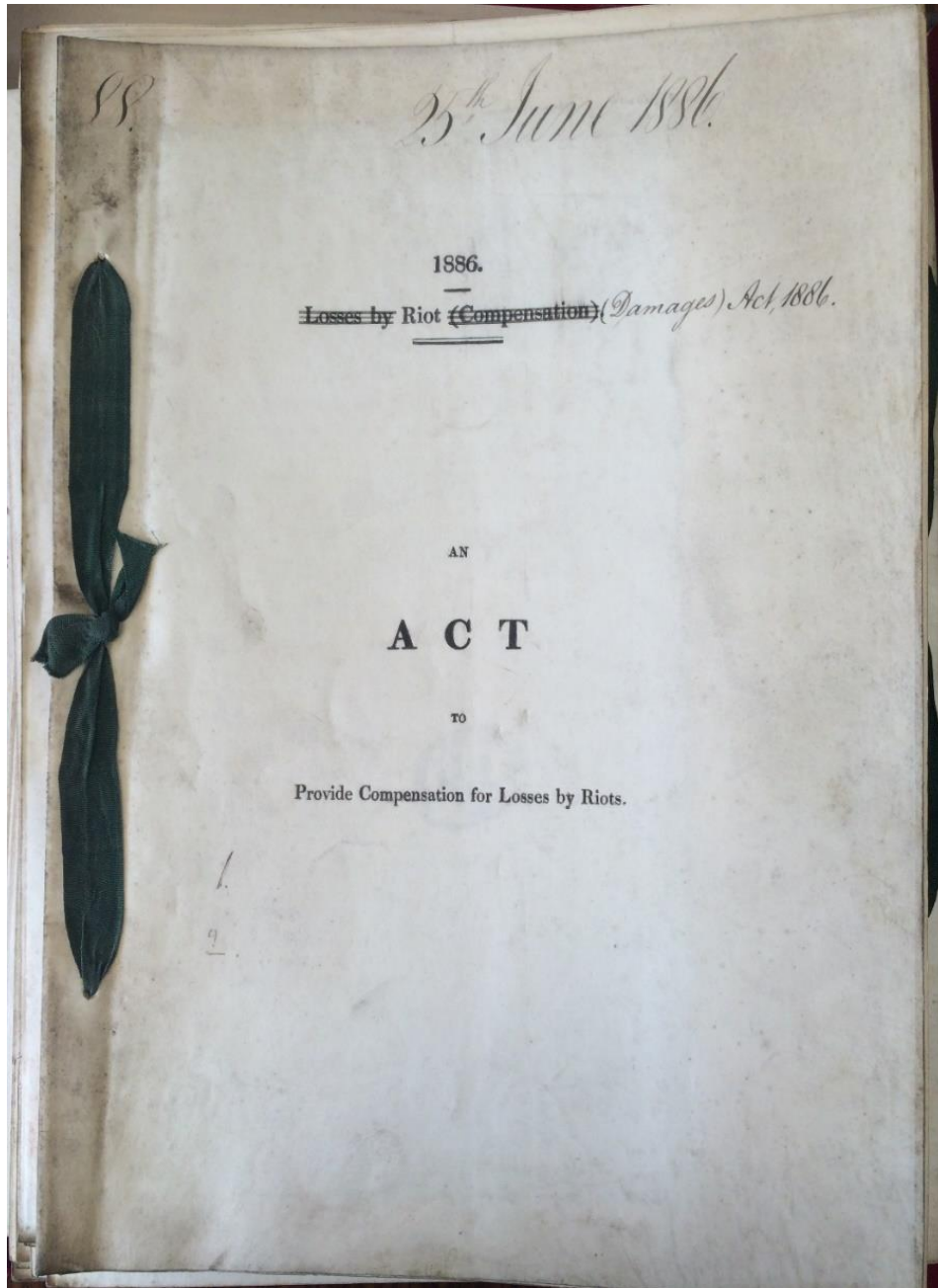
Figure 4: Amendment to Riot (Damages) Act 1886 from Parliamentary archives.
(PA: HL/PO/JO/10/9/1200)

Looking to the context in which the Acts arose gave insight into the nature of unrest that they were written in response to. While the Acts themselves gave insight into the legal codification of riot, wider material gave further insight into the problem of riot that they responded to. I consulted further contextual material that helped me to understand why

riot legislation was established; what was taking place that necessitated law to legislate against it, and to limit its appearance in the world.

This points to the cumulate nature of archival work (Stoler, 2008). Although initially consulting riot legislation in Parliamentary Archives, I gathered other Acts from the statue books that helped me to contextualise them; to understand the worlds that they were written in, in 1714 and 1886, for example, when the two key riot Acts were written. I also consulted the Archives' wider collection on the history of UK riots that included: letters of application for an order to supress riots, letters ordering the suppression of riots, reporting on readings of the Riot Act, warrants to collect compensation for riot damages, and receipts to say payment had been received, for example. Reflecting on this more concretely, the material I gathered from the three visits to Parliamentary Archives, comprised 10 folders, of 695 files, or 1.31 GB of material.

The cumulative nature of archival work makes it difficult to delimit the boundaries of research. As Ferguson (2008 n.p.) writes, "Archives may have relatively clear centers – a person, an event, a problem - but no clear boundaries; instead, they offer innumerable connections". Derrida (1996 p. 7) placed this tension at the heart of archives: "But where does the outside commence? This question is the question of the archive". Managing this tension, and the amount of material consulted, first involved delimitation of the archives that I consulted. In order to do this, I drew on the connections, or rather questions that my initial work in the Parliamentary Archives created.

The second archive I consulted, for example, was the London Metropolitan Archives (LMA). Parliamentary Archives led me here following my first major difficulty in the process of archival work: reading. Despite all the material being written, and sometimes printed, in my first, and only, language, I struggled to read some of it. This problem led me to the London Metropolitan Archive's workshops on 'reading old handwriting', at three levels: beginner, intermediate, and advanced. In these workshops, I was able to take specific documents to work through with archivists, as well as doing more general introductory palaeography training, which supplemented online training available through the National Archives. I include figure 5 to show an example of the kind of script that took time and training to adjust to.

The process of reading and deciphering old scripts involved transcription; much like transcribing interviews, I went through the process of transcribing archival material. In addition to the material in old handwriting that I transcribed, limits on copying or

photographing material meant that I had to transcribe material that I could not take out of the archives either as a copy, or photograph. Each archive had different rules on copying and photography: Parliamentary archives allowed photography without flash at a cost of £7.50 per day, LMA restricted photography of materials considered too fragile, and the National Police Library archives had a limit to the amount of material that could be copied in one visit. This limit was largely in place to limit the cost of copying as photography of material was not permitted.
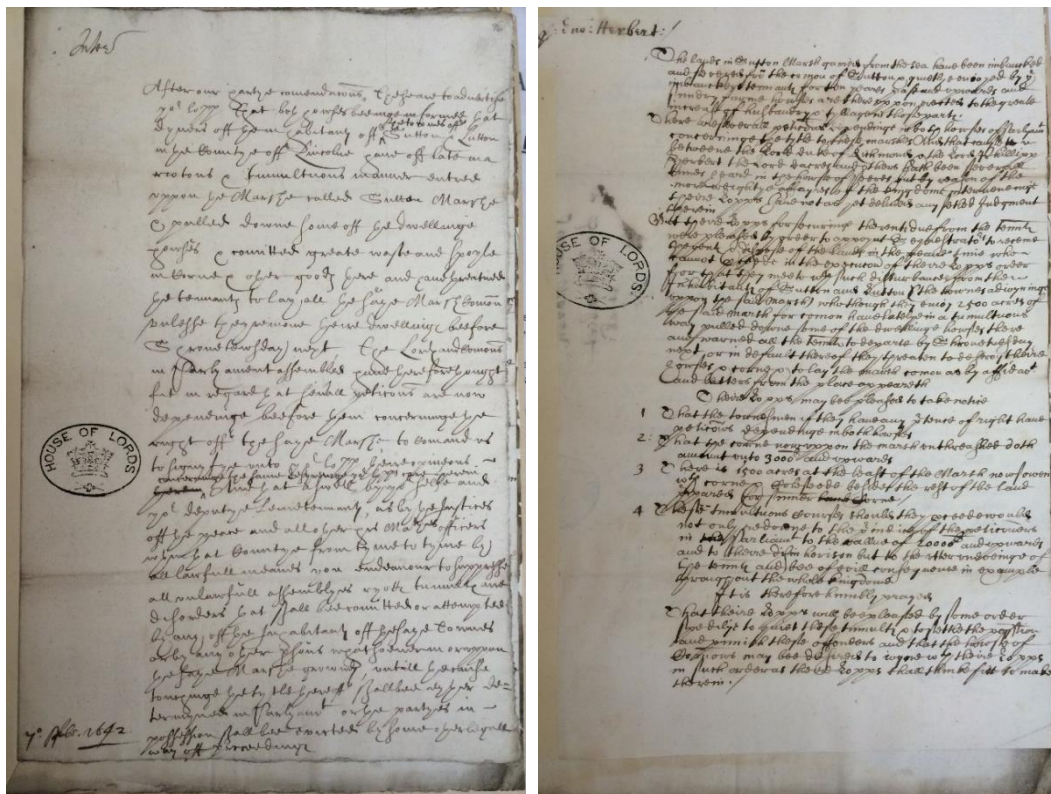
Figure 5: Letter (1643) from Parliament to Lord Willoughby, Lord Lieutenant of Lincolnshire, requesting that he supress the riots in Sutton Marsh (PA: HL/PO/JO/10/1/143)

As well as providing the training I needed, the LMA also held a specific collection on the 1886 Riot (Damages) Act. This collection included material from its application in 1886, to the 1960s. Again, this collection contained material useful for thinking further about the problem of riot, and the nature of events that the 1886 Riot (Damages) Act was written in response to. A significant section of the early part of this collection was records of Special

Sessions of the Justices of the Peace, Middlesex, from 1886.[10] These records detailed special meetings of the Justices of the Peace, local officials appointed to keep the peace, following riots. They detailed the context for calling a special session, and thus kinds of events that warranted a special meeting. The below description offers an example:

> "the methods which have lately been pursued by evil-disposed Persons, to disturb the Peace and Good Order of the Kingdom, to introduce Anarchy and Confusion among us, to Alienate the Minds of the People from a due regard to the Laws and our Happy Constitution, are of so alarming a nature as to call upon all good Men, upon all who have Property, to defend."[11]

These mundane administrative records offered in depth detail on the nature of rioting events, and an outline of the problems they posed (Osborne, 1999). As Osborne (1999 p. 3) suggests, in archival work, often the "true field of explanation lies with the realm of the mundane". Osborne (1999 p. 3) suggests:

> Do not begin with great transhistorical laws and do not begin with the acts and pronouncements of the powerful themselves – or at least look at these as things to be explained, not as principles of explanation – but look behind the scenes of power at its everyday workings and machinations, wherever you may find them.

Working through the mundane, such as these records of the justices of the peace, or the accounts of the Clerks of the Peace that listed claims for riot damages alongside the cost office stationary, for example, gave insight in to the characteristics of riot. The accounts, for instance, gave detail on the extent of damage caused by riot, and the scale of riot damage. Working through this collection also led me to begin to think about the riot through its opposite of peace, as peace was so prominent in all material. Through reading records of sessions and special sessions of the Clerks of the peace, I was able to understand the threat that the riot posed to the condition of peace, the significance of this condition of peace, and the work done to limit riots and maintain the peace by justices, clerks and other officers of the peace.

For more depth on the nature of the problem of the riot, I then consulted the British Library's newspaper archive, accessible in the library's reading rooms, and also through subscription which I used during the research process in order to be able to consult the collection outside of the reading rooms in London. I used the newspaper archives to look at reporting on readings of the Riot Act, or proclamations of the Riot Act, around the

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[10] LMA: MC/X/001
[11] LMA: MC/X/001

year 1714 when the Riot Act was established. The 1714 Act was a speech Act meaning that a passage from it had to be read to enforce it. The passage commanded the dispersal of any people gathered within one hour of the reading of the Act. I delimited my focus to these specific reports in order to limit the volume of material; the British Library newspaper archives has records from the early 18th century to the 1950s, and 20millon pages of searchable material. Reports on readings and proclamations of the Riot Act offered vivid descriptions of rioting incidents that made clear what is problematic about the riot. For example (see also Figure 6)

> Mr. Read's windows were broke, and the People in the House, bruised and cut with Sticks and Stones thrown in at the Windows. That Mr. Read himself gave them sufficient Notice to disperse and the Proclamation was read: That Vaughn was at the Head of the Mob with a Club in his Hand, advancing towards the Read's house…After the Proclamation was read, the Mob still encreas'd and seem'd resolute in putting their Cry in Execution, which they did after the man was shot, and broke down the Windows, gutted the House.[12]

These reports thus gave an insight into why the Riot Act was read, and clearly describe the problematic nature of rioting events that contextualises the legal construction of riot as object of governance. They add depth to thinking about the formation of the riot as an object of governance, and the law that delimits is appearance.

In sum, my legal archival work gathered material that helped me to respond to the questions: what is a riot? How and why is it problematic? What does the law codify as riot and construct as an object of governance? While the statutes codify what a riot is in law, the wider contextual material helps to add depth to understanding the problematic nature of rioting events, and thus the construction of riot as an object of governance. It helped to think about the problematization of riot, or what makes it problematic, rather than simply thinking about what the law *determines* is a riot. Through this work, I gathered material to understand the historical formation of the regulation of the appearance of the riot. The material offers a history of the line drawn, the law, which through codifying as illegal delimits the appearance of riots.

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[12] 1716, Stamford Mercury, 13 September.

(151)

but at the fame, and got off, viz. Mr. Bethuine of Ballfour, Son-in-Law to General Hamilton, a Gentleman of a good Eftate; Mr. Menzies of Pittfodels, and Mr. Hutchen, Provoft of Aberbrothick. Others were prevented by a timely Difcovery of the Defign. This Day the Marquis of Huntly went down to Leith, to take Leave of his Father the Duke of Gordon.

London, Sept. 8.

Yefterday Seven-night the Coroner's Inqueft fate again on the Murder of Daniel Vaughan, kill'd in Salisbury-Court, and brought in their Verdict wilful Murder; whereupon a Bill was prefer'd a-gainft Mr. Read, the Mafter of the Mug Houfe Houfe on Thurf-day laft, but the Grand Jury found the fame Ignoramus.

And Yefterday came on at the Old Baily, the Tryal of Mr. Read upon the Coroner's Inqueft for the Murther of Daniel Vaughan, one of the Rioters in Salisbury Court. A great many Witneffes were examined on both Sides, and upon a full hearing it appear'd, That Mr. Read's Windows were broke, and the People in the Houfe, bruifed and cut with Sticks and Stones thrown in at the Windows. That Mr. Read himfelf gave them 'fufficient Notice to difperfe, and the Proclamation was read: That Vaughan was at the Head of the Mob with a Club in his Hand, advancing towards Read's Houfe, and crying *High-Church and O-mond, No K. George, No Ha-noverian, Down with the Mug-houfe,* adding that *the Du'e of O-mond,* fome cry'd, *the Duke of Berwick, was landed in the Weft with 20000 Men.* This was the Cry of the whole Mob, by which Mr. Read was put under a Neceffity of defending himfelf and Houfe. After the Proclamation was read, the Mob ftill encreas'd, and feem'd re-folute in putting their Cry in Execution, which they did after the man was fhot, and broke down the Windows, gutted the Houfe, and the People therein narrowly efcap'd with their Lives; by which the Court and Jury were thorowly convinced, that Mr. Read might be juftify'd by Law in what he did in his own Defence, and there-fore acquitted him.

Figure 6: Proclamation of the Riot Act reported in 1716, Stamford Mercury,13 September.

4.7 The application of riot legislation: legal ethnography and riot

The next stage of the research involved looking at the taking effect, or application of riot law. In this section I detail the part of my research that focused upon the policing of the aesthetic faultline, or work done to regulate the appearance of riots through the

application of riot law. Here I depart somewhat from describing solely archival work, and articulate my work in terms of a legal ethnographic approach. Here I follow Stoler (2002) in attempting to approach archival work in a more ethnographic, and less extractive way. Rather than mining content, and thinking about archives as sites of storage, Stoler (2002) argues for a more sustained engagement with archives, and a shift in thinking about the archive-as-source to the archive-as-subject.

Braverman (2014) sets out legal ethnography as a method of exploring the intricacies of administrative, bureaucratic structures, and their *material manifestations*. It is a style of ethnography that entails the researching of legal documents, and then their application in order to trace and follow what Braverman (2014) relates to as webs of power. Braverman (2014) frames this approach as ethnographic, and articulates it as legal ethnography, to foreground the way it focuses on how law is exercised and deployed, or *worlded* to use a legal geographic term (Delaney, 2010). Braverman (2014) posits that legal ethnography is multi-sited, going beyond the archive of texts and documents, to include qualitative research such as interviews and observations, for example, to understand legal power structures and their manifestations. Braverman (2014 p. 127) suggests:

> The recent attention by ethnographers to multi-sited anthropology fits well with critical legal geography's influence by the neo-Marxist and deconstructionist critical legal studies (CLS) scholarship, which has been concerned with exposing power relations and exploring their manifestations through various temporalities and in multiple spaces.

Both what Braverman (2010) describe, and the legal ethnography approach I followed, constitute what Coutin and Fortin (2015) refer to as ethnography-as-account, as opposed to ethnography-as-method. Coutin and Fortin (2015) make this distinction to reflect on how an ethnographic approach can be more than, or other than, participant observations and interviews. Ethnography-as-account entails a mode of explication that draws on a range of sources; archival, documents, observations, and interviews, for example (Coutin and Fortin, 2015). Cumulatively, these sources create an account of the norms and understanding within a particular group, or within a particular set of practices. It is a method of "finding the unlooked for", and explicating this (Coutin and Fortin, 2015 p. 75).

The unlooked for that I turn to focus on is how riot law is deployed, or worlded. As Philippoulos-Mihalopoulos (2016 p. 16) writes: "Law's greatest trick is to make us believe in its supposed abstract, universal, immaterial, merely semiotic nature", but "life is thick with law". My approach to legal ethnography follows this notion of law, and entails thinking about how it materialises. It involves tracing the law in context and how it takes

effect, which has the effect of destabilising the objectivity of law (Holder and Harrison, 2005). In this work, I focused in particular on how the governance of riots is "thick with law" (Philippoulos-Mihalopoulos 2016 p. 16).

As previously mentioned, I began this part of the research by thinking about the governance of the 2011 riots. I looked to the legal response to the 2011 riots, starting with the Mitsui v MOPAC case that was ongoing when I began research in 2016. I began here as this case was attempting to apply the historical Acts, the 1714 Riot Act and 1886 Riot (Damages) Act to what happened in 2011, in specific relation to insurance claims for riot damages. Through this, I was thus looking at how the legal construction of riot was being deployed, or how it took effect, in relation to the 2011 riots. The case investigated who should pay out for claims, and the scope of how much should be paid out. The main point of contestation was whether business interruption costs should be covered. These are the costs businesses incur when their property sustains damage that limits their operation beyond the date of the incident.

To understand how riot legislation was being applied in the case, I consulted individuals who were working on the case, initially in the legal profession. During the course of the case, there was a lot of online industry commentary on its progression through the courts. The initial ruling was controversial and unpopular within the insurance industry,[13] which generated a lot of online commentary, from insurance and legal firms, and court blogs, for example. I drew on this commentary to identify companies and individuals who working on the case, and was then able to contact them, knowing they had some stake in the ruling of the case.

In initial email exchanges I introduced my research and interest in the legal case, and asked about the potential to discuss their work in relation to the case, and thus riots, further. Many emails went unanswered, however, I am thankful to all those who responded with information, new sources of material, and offers to help. One very valuable initial response, for example, was an email from a lawyer with all the case reports from the Mitsui v MOPAC case, the Yarl's Wood v Bedfordshire Police (2008) case following rioting at Yarl's Wood Immigration Detention Centre in 2002,[14] and a 1967[15] case that

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[13] It ruled that insurers would have to pay for business interruption costs, adding significantly to the cost of claims from riot damages.
[14] Bedfordshire Police Authority v David Constable [2008] EWHC 1375 (Comm); Yarl's Wood Immigration Ltd and others v Bedfordshire Police Authority [2008] EWHC 2207 (Comm); Yarl's Wood Immigration Ltd and others v Bedfordshire Police Authority [2009] EWCA Civ 1110.
[15] J. W. Dwyer Ltd. v Metropolitan Police District Reviewer [1967] 2 Q.B. 970.

claimed to be a riot that these two more recent cases drew on heavily. Prior to this research I had not accessed or consulted a legal database to find case reports or judgments, and so this one email gave me an invaluable starting point and introduction on how to navigate this new, and vast, world of material. I am thankful to that lawyer in particular who went back through their own personal work archives to find and share this material.

Following these initial exchanges, I spent time reading and processing this unfamiliar genre of research material. Drawing on more familiar research methods training, I then read again and coded case reports and judgements thematically. This process generated much of the structure for the interviews that followed. It was after this reading and coding of case reports, that I had the confidence to organise and conduct interviews. As is inherent to ethnographic research, the process of immersing yourself in the unfamiliar, everyday (working) spaces of others is difficult, and necessitates time for familiarisation. For me, this was time to familiarise myself with the progress of the Mitsui v MOPAC case, the basis of appeals that had taken place, and other relevant cases, for example, in order to be able to develop questions and the confidence to ask them.

The initial interviews that I conducted were with lawyers working on the case; I interviewed five lawyers working on claims associated with case, one of whom had been involved in the government consultation on re-drafting riot legislation following the riots in 2011, led by the Department of Justice. The telephone interviews were semi-structured and I framed my questions around five areas: historical riot law and their knowledge and experience of it; knowledge and experience of other public order law; the significance of the Mitsui v MOPAC case; the frequency of riot cases, and communication between police, lawyers and insurers in relation to naming an event a riot and thus activating a riot case.

These interviews led me to the insurance industry, and insurers and loss adjusters who the lawyers I spoke with were working for or alongside, in relation to riot claims. I was able to meet and recruit further interviewees through a, very well-timed, industry workshop on the application of riot legislation in relation to insurance claims from the 2011 riots, in May 2016.[16] This event, organised by an insurance institute and led by a

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[16] The workshop took place in a northern city; to preserve the anonymity of the institution and speaker, I do not name the location.

partner of a law firm, was attended by 32 people that included insurers, underwriters, loss-adjusters and other lawyers.

Attending the workshop was very valuable for my research as I had informal discussions with those working, in different professional practices, on the case. It enabled me to familiarise myself with the norms within the different but interrelated professional practices of law, insurance and loss adjusting. The workshop was also useful for meeting and recruiting further interviewees from insurance and loss adjusting companies. From the workshop I interviewed four loss adjusters and four insurers working on cases from the 2011 riots. In these interviews, I asked similar questions to the interviews with lawyers, on experience of riot cases, while extending questions on the specificity of the claims process, including the working relation between insurers and police, for example.

In addition, through conducting these interviews, this time in person, and in the insurers and loss adjustor's offices, I was able to develop further relations with an insurance and loss adjusting company. As part of their dissemination practices, for example, I wrote a guest blog for the institute and contributed to the podcast that followed from the workshop. Two companies also offered me the opportunity to visit and consult their company archives on riot cases. Ordinarily, as per information governance law, companies have to destroy data on cases within five years. Yet, as the Mitsui v MOPAC case was still ongoing and active, companies had retained material from 2011, such as photographs of riot damage, riot damages claims forms, email communications from professional bodies such as the Association of British Insurance, Chartered Insurance Institute (CII), and also police forces in August 2011.

During my time in this phase of the legal ethnographic research, multiple lawyers, insurers and loss adjusters made reference to past events, in the 1980s, sometimes prompted by my questions, but also in comparative ways when talking about the riots in 2011, as prior to 2011, this was the last time they had worked on riot cases and had to apply riot legislation. To follow up on this, and to look to past instances of the application of riot law, I looked back to riot cases from the 1980s.

I conducted this archival work on past application of riot law in two stages. First, I consulted the National Archives PREM collection, Prime Minister's Office Files, from 1981 to explore rioting events in Brixton and then Toxteth. The PREM files relating to these instances of disorder constitute 242 pages, and material such as letters between the Prime Minister and private secretaries, the cabinet, and other members of parliament, transcripts

of speeches read to the House of Parliament, notes on the background to, and anticipation of, the Scarman report into the riots, and police requests for riot equipment. Of particular significance to my research, was material relating to potential, and potentially temporary, revision to riot legislation, in a way that would not be portrayed as a sign of panic, but would afford police greater powers to disperse crowds (Figure 7).
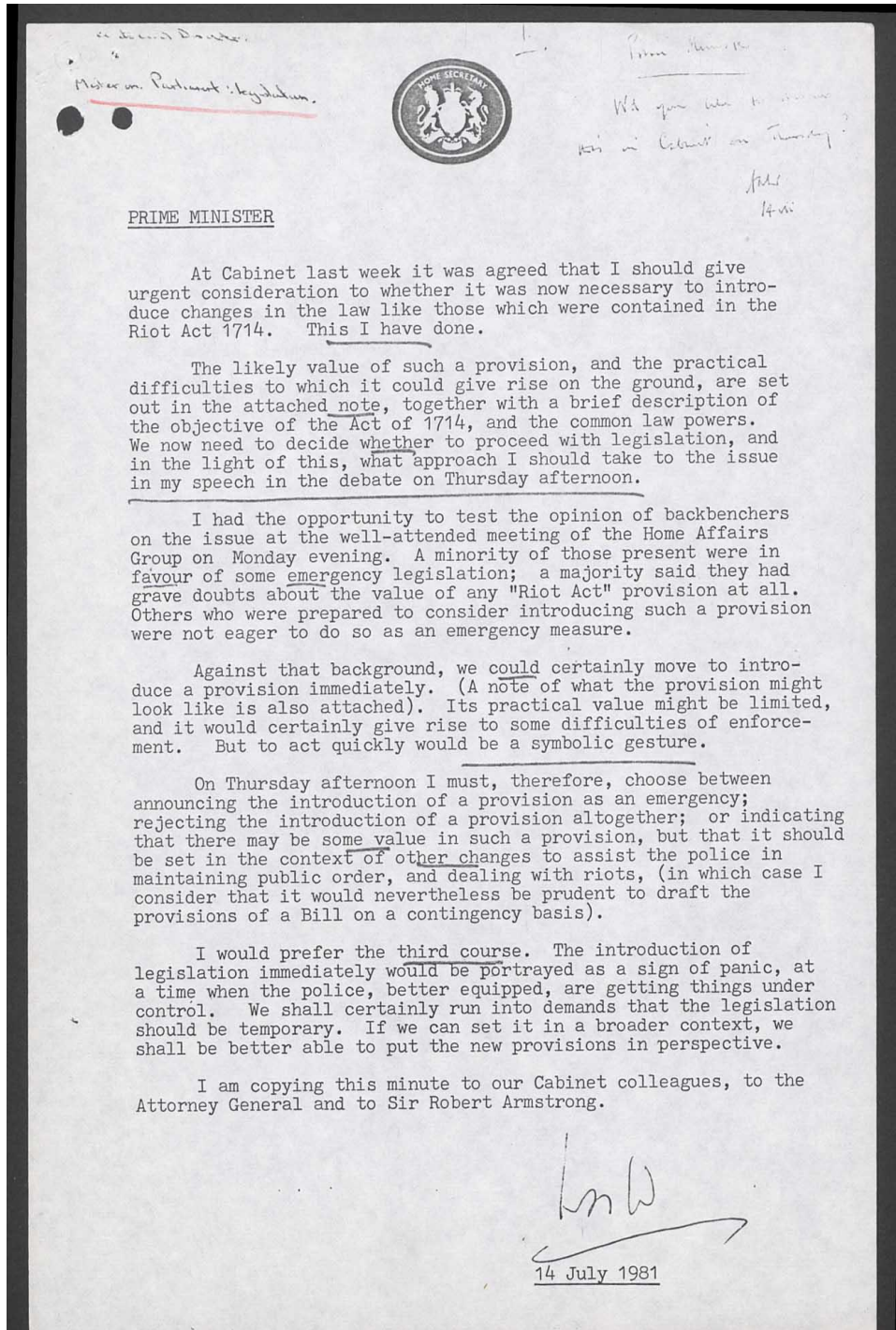
Figure 7: Page 1 of letter from Home Secretary to Prime Minister, Margaret Thatcher, setting out options for proposed revisions to riot legislation, 1981. TNA PREM/19/484

In addition, owing to the still ongoing complexity of the legal case, I consulted the Sheffield Archives, Shoreham Street, and their collection relating to events at Orgreave, 1984-1985. In this collection I consulted police reports, witness testimonies, audio history reflections on the riot trials from lawyers, those convicted of riot, their families, and support groups such as the South Yorkshire Defence Campaign. Given the complexity and sensitivity of the case, which I discuss further in the second empirical chapter, this was the only collection I had difficulties accessing. Interview transcripts, statements and further police reports, constituting over 65 boxes of material, were withheld and listed as either missing, or with the Independent Police Complaints Commission (IPCC).

In an attempt to find further material on the context of the Orgreave case, I also consulted the National Police Library archives in Sunningdale. While I was not able to access the police reports that were restricted access, I did consult material relating to the trial, from a policing perspective. This included reporting on the trial in 'internal' police documents such as newsletters, for example. In this archive I was also able to access material relating to the application of riot law in the context of policing and law enforcement. This included historic public order training manuals, public order legislation guides for police, public order training seminar plans including community disorder simulation, for example.

Finally, to bring the research back to the contemporary status of riot law, I attended the Event Production Show, at London Olympia, in March 2016. This was a two day event attended by event professionals who exhibited their products, such as event security and event insurance. I attending following the recommendation of an insurer, and following discussion of the Yarl's Wood riot case that I consider in the third empirical chapter. This case considers whether the private security company that ran Yarl's Wood Immigration Detention, or police should have taken control of the riot event. I attended primarily to consider the role of private security in relation to public order events.

While many of the exhibits at the conference were irrelevant, event catering for example, visiting the show was valuable for helping me to understanding contemporary event security and its role in public order. I attended primarily to observe and conduct ethnographic observation, and also conducted informal interviews with six event security professionals. These interviews were informal, and I felt I had limited opportunity to develop connections from this event as it was an industry event where companies were there to sell their products. The exhibitors I spoke to in particular, were selling event insurance, private security for events, or event security training such as The Cabinet

Office's Emergency Planning College, EPC, who, with Serco, provide training courses for event and public safety. At the event, they marketed themselves as experts in risk management, crisis management, security and safety, public safety, evacuation modelling and planning. As I was not purchasing any of these products, the potential for further communication felt limited. Yet, the conversations were valuable for my research as it allowed me to gain insight into another professional body, event professionals, and their role in securing against public order events.

4.8 The presentation of genealogy: infrastructures of sense and archival scenes

As praxis, genealogy entails searching to locate contingent moments that have shaped the constitution of our present. It is about meticulously and laboriously searching for moments of discontinuity and transgression that have made the present what it is (Bonditti et al, 2015). It then entails working to cultivate these pieces of history to present an account of our contingently formed present. Foucault does not prescribe the form, scale or characteristics that these moments of discontinuity should take in order to compose a good or correct genealogy. His writing on methodology deters from setting out this kind of prescriptive detail. Others have developed his methodological reflections from lectures, writings and interviews, however, and offer clarification as to what these moments are.

Elbe (2001), for example, frames these moments of transgression that genealogy searches for as episodes. Elbe (2001) considers these as moments of decisive importance for understanding a phenomenon in the present. As Elbe (2001) suggests, a genealogy is therefore usually episodical. This emphasises how it is not epochal and does not attempt to recount an entire history, but rather presents a series of episodes that are significant to making sense of a present phenomenon (Elbe, 2001). As de Goede (2005) sets out, genealogy thus defies linear retrospective readings of the present as inevitable, and rather presents a story of its unsteady emergence.

I move from thinking about moments of transgression as episodes, to presenting them as scenes, and more specifically, archival scenes. I take notion of scene from Rancière's *Aisthesis: Scenes from the Aesthetic Regime of Art* (2013). In this, Rancière explores transformations in ways of perceiving art, and presents this as a history of what is felt and thought as art. The scope of this work is vast, Rancière is asking: what is art? Through time, what is seeable, sayable, thought of, as art? Rancière is not thinking about categories

of art, but what we perceive, identify and relate to as art. Rancière orders this work through a series of fourteen scenes. In outlining his rationale for this, Rancière states:

> I used "scenes" to discuss turning points in art, but this approach is just as useful in understanding turning points of, say, workers' intellectual emancipation. The method, borrowed from Jean Jacotot, a thinker of emancipation, is that you can see the whole in a very small fragment. A universal vantage point is not a prerequisite for detailed examination. (2015 n.p)

Rancière uses these scenes to build what he relates to as a new regime of intelligibility of art. The notion of a regime of intelligibility simply relates to the ordering of how things become intelligible, and what intelligibility is built around. Rancière builds a new infrastructure of sense through scenes. The scenes are the infrastructure of intelligibility that give art meaning.

In my empirical chapters, I present a new regime of intelligibility of riots that is built around scenes created from archival material. I follow Rancière in presenting my empirical work through scenes that build a new infrastructure of sense, in my work, of riots. Through articulating it in this way, as building a new intelligibility of riots, I emphasise what is novel about my approach. I present scenes from the archive that draw on *historical* material that is absent from riot research currently.

4.9 Conclusion

In summary, this chapter has worked to bridge the theoretical work that precedes it and the empirical chapters that follow. It first expanded on the rationale for engaging history and event and doing historical eventality work. Specifically, I argued that historical work was necessary in order to understand the riot as a transgression of the laws of the world. I demonstrated how a historical approach is needed to *trace* the drawing of such law, specifically the *juridical law* that determines what can and cannot appear, and also how it is *applied*.

I then discussed *how* I take my theoretical framework into my empirical work, and detail the process of translation required to allow this framework to be put to work in the empirical work. This first entails thinking about the framework in relation to governance, specifically how the riot is constructed as an object of governance, and then how it becomes tamed and limited. I set out how I specifically think about this framework in relation to law, and to how the riot is constructed as an object of governance in law, and

then to how riot law is applied and takes effect. As such, I have developed an argument to suggest that that law is significant to the taking place of riot governance.

Overall, the chapter has worked through a process of delimiting, of shedding abstraction, in order to make clear the process of taking my theoretical framework into the empirical research. I conclude with an indication of how the empirical chapters are structured; around scenes from the archive that present new ways of thinking about riots, and together build a new regime of intelligibility of riots.

I have pointed to how my empirical work first investigates the legal construction of riot as an object of governance. My first archival scene follows from this and introduces my first empirical focus that is the legal construction of the riot as an object of governance.

5. Persons Riotously and Tumultuously Assembled: On Whether a Riot Took Place

Archival scene: The Mayor's Office For Policing And Crime ("MOPAC") v Mitsui Sumitomo Insurance Co (Europe) Ltd & Others ("Mitsui") [2016] UKSC 18.

> On 8 August 2011 a group of 20-25 youths gathered and moved towards a distribution warehouse situated in a business park in a London suburb. They broke the glass entrance door and ran into the building. They ran down the warehouse aisles and looted items. Two of the group threw petrol bombs before the group left the building. The attack lasted some three minutes. The ensuing fire resulted in the total destruction of the plant, equipment and stock. The insurers of the warehouse occupier, the insurers of the warehouse owner, and the owners of certain stock held in the warehouse brought separate actions for compensation against the statutory body responsible for the oversight of the Metropolitan Police under the Riot (Damages) Act 1886. Section 2(1)a of the 1886 Act provided compensation to be paid out of the fund of the police area where 'a house, shop, or building in a police area has been injured or destroyed, or the property therein has been injured, stolen, or destroyed, by any persons riotously and tumultuously assembled together...'. The trial of preliminary issues was ordered, including (i) whether the losses claimed arose out of the injury to or destruction of a house, shop or building, or injury to, theft or the destruction of any property therein, by persons riotously and tumultuously assembled together within the meaning of s2(1) of the 1886 Act; and, (ii) whether consequential losses, including loss of profit and loss of rent, were in principle recoverable. (Mitsui v MOPAC, 2013 p.1).

5.1 Introduction

This extract recounts the starting point of the landmark legal case following the 2011 riots in England that took place between 06 and 10 August. The riots began in Tottenham, north London, on 06 August. They spread from this area within the London borough of Haringey to a further 22 London boroughs over four days and nights (HMIC, 2011). The riots became the most extensive in the capital's history since the Gordon riots of 1780 (Dikeç, 2018; Bridges, 2011; Figure 8). Beyond London, rioting took place in Nottingham, Birmingham, Liverpool, Leicester and Manchester (Morell et al, 2011; HMIC, 2011; Finchett-Maddock, 2012). The legal case from these riots was actioned by Mitsui

Sumitomo who were the insurers for Sony, the majority occupier of the warehouse that was destroyed by fire in the London suburb as described above.
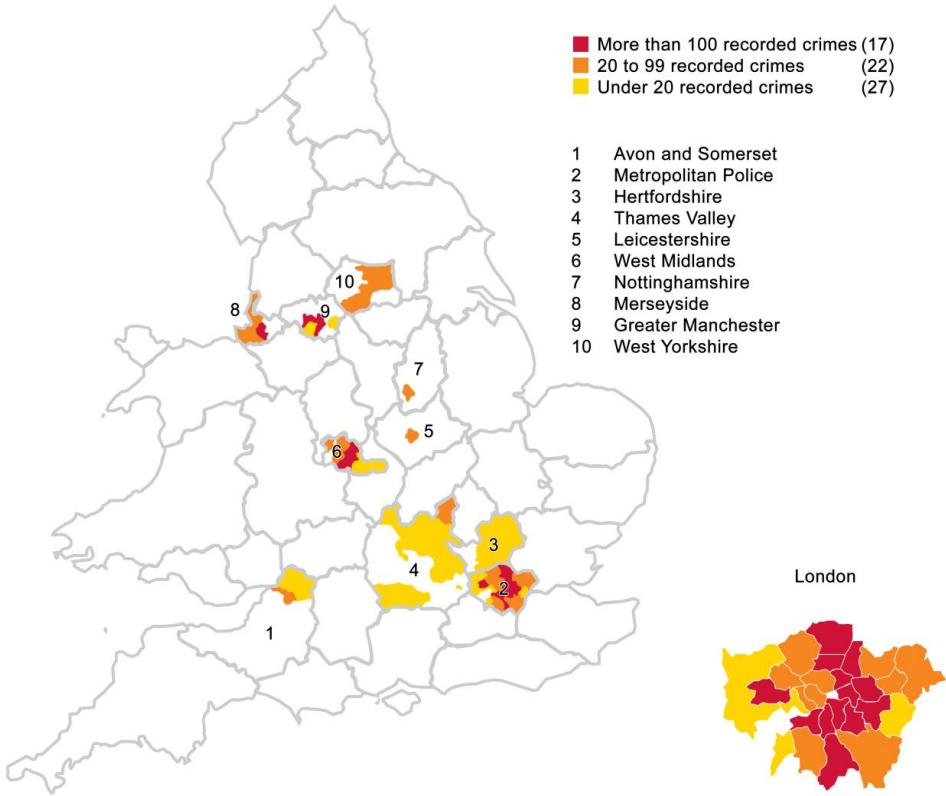
Figure 8: Map to show extent of events in 2011, in relation to recorded crimes during August (HMIC, 2011).

In this chapter I take as my starting point the first preliminary question posed by this case. This question was whether the damage at the warehouse in Enfield was caused '*by persons riotously and tumultuously assembled together within the meaning of s2(1) of the 1886 Act*'. Or whether, in terms set out in the 1886 Riot (Damages) Act, a riot took place in 2011. I consider this question of whether a riot took place to speak of a larger problematic: the riot as an unidentifiable object in 2013 when the Matsui legal case began. By unidentifiable, I refer to the specific condition of the riot as unidentifiable *in law*. I consider why the question of whether a riot took place was being asked in court when prior to the case and in real-time as the events unfolded in August 2011, they were identified as riots. Media headlines from the 7 of August, for example, directly labelled what took place as riots

(Prodger, 2011). One week after the events, on the 15 August, the then Prime Minister David Cameron (2011) delivered a speech titled 'the fightback after the riots', repeatedly addressing what took place as the 'the riots'. Participants of the events interviewed as part of the Reading the Riots project also used the terminology of the riot (Newburn, 2015; Lewis et al, 2011). Yet, when this case began, its first preliminary question queried whether these events were riots, as per the legislative framework on rioting in place in 2011. Over three years, this question ascended through the courts to the UK Supreme Court (UKSC), where in 2016 a final decision was reached as to whether what took place were riots, according to English law.

What I will address first here is, if in 2011 what took place was referred to as a riot or riots, why in 2013 was this called into question in court? How and why did this question of whether a riot took place reach court and travel to the UKSC? I consider this long legal process of working out whether a riot took place to signal indeterminacy in the understanding of riot in law. The chapter first considers how this indeterminacy surfaces in the Mitsui case. It focuses here on outlining the context of the case; why it was actioned, by who, and what they hoped to achieve through its settlement. It then turns to consider the legal case more generally, the relation between law and indeterminacy and law as a source of indeterminacy. I then turn to consider how the law works through this indeterminacy, in relation to the Mitsui v MOPAC case. I detail how the case works through what a riot is, and here offer a response to the simple question that guides this chapter: what is a riot?

The concept of governance, understood in relation to the aesthetic faultline in the world that I set out in the previous chapter, frames the focus and discussion in the chapter. In the chapter, I consider the construction of the riot as an object of governance in law, in terms of the legal drawing of the aesthetic faultline. By demonstrating the indeterminacy around the imaginary of riot, of what a riot is in law, I foreground the indeterminacy around the aesthetic faultline in the world – the line that regulates what can and cannot appear. In law, it is the line that organises and codifies what is legal and illegal. Through the initial discussion of indeterminacy and law, I foreground how the aesthetic faultline is not embedded in the law as text. The indeterminacy of the law as text is what led the Mitsui case to ask: *did a riot take place?* The chapter traces how the drawing of the aesthetic faultline in law, takes place through the unfolding of the case. In other words, the chapter traces how what a riot is becomes intelligible through the unfolding of the case.

5.2 Context to the case

Mitsui Sumitomo (Mitsui) actioned the case against the Mayor's Office for Policing and Crime (MOPAC) after their claim for compensation under the 1886 Riot (Damages) Act was refused.[1] The 1886 Act states that police must compensate those who sustain losses from riots that take place in the district in which they are responsible for upholding law and order. Mitsui put the claim to the MOPAC as it is the statutory body responsible for the oversight of the Metropolitan Police in London, which includes the area of Enfield where the warehouse was situated.

Mitsui put in a claim to the MOPAC totalling £49.5million. Part of this was for 'pure' losses and part was for 'consequential' losses that arose from business interruption and the inability to trade due to the destruction of both their premises and stock. Police had compensated for pure losses from physical damage to property following riots before[2], and were expected to do so again if the case determined that what took place in August 2011 was a riot. The latter part of the claim for consequential losses was controversial. Consequential losses were not ordinarily paid out under the 1886 Riot (Damages) Act. The 1995 Brixton riots were a rare exception to this.[3]

For Mitsui and the MOPAC, the recovery of consequential losses was thus the central, most costly, issue at stake in the case.[4] Mitsui were pressing for a 21st century rereading and reassessment of the 1886 Act in the hope that they could argue that what it covered could be stretched to include consequential losses. To reach a decision on this, the case first had to determine whether a riot took place. Provided that what took place in August 2011 was a riot, the losses fell "within the scope of the loss compensation scheme under sections 2 and 3 of the 1886 Riot (Damages) Act" (ABI, 2011). So, provided that a riot took place, the compensation scheme became available as an option for Mitsui to recover

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[1] The Mitsui claim was grouped with two others of the same nature. One was from the insurer Royal Sun Alliance and the other from the company Lace International Ltd who held stock in the warehouse. The preliminary issues in all three cases were tried together in the Commercial Court. Lace International's case was transferred to the Commercial Court to enable this. Of the three claimants, Mitsui were seeking compensation for the largest amount, £49.5m, which is why the case takes their name. Royal Sun Alliance Insurance sought £9.35m and Lace International Ltd £3.96m (Mitsui v MOPAC, 2013).

[2] Kinghan's (2013 p. 5) review of that Act found that "The largest payouts before 2011 were in the early 1980s, in Liverpool, Brixton and a small number of other places, with a total cost to the Exchequer of £6.2m". More recent payouts included £565,000 from the Metropolitan police in 2010 for the student riot in Milbank, and £37,000 form Greater Manchester Police following riots in Oldham in 2001 (Kinghan, 2013).

[3] Smaller scale consequential losses were paid in Brixton, 1995 (Interview, Lawyer, 29/07/2016).

[4] Insurers had already paid out under policy, that covered damage to contents and also business interruption losses (Mitsui v MOPAC, 2014)

their losses from. What unfolded was that the compensation scheme became exposed to Mitsui's re-reading of it to argue that it did cover consequential losses, and for the MOPAC to argue the opposite. In short, as a case contesting the payment of consequential losses, I propose that Mitsui vs. MOPAC supplies a lens on the problem of how a riot comes to take place in the world. Understood in this way, it is not simply that law regulates or determines the riot, but that law enframes and generates what a riot can be.

The case began in 2013, two years after the riots. This time lag in part simply reflects the time it takes to assemble a case, but also, as one loss adjuster suggested[5], insurers were hesitant to be *that* company that pursued a case that set out to recover costs from police. The loss adjuster suggested that well known insurers were mindful of their reputation and were hesitant to pursue a case of this nature, which ultimately handed the bill for damages from the riots to the government in a time when public spending was severely restrained and police forces were forced to become 'leaner' as a result of significantly reduced government funding (Smith, 2016).

Mitsui thus made a bold, unexpected move by pursuing this case. The decision to pursue the case was an attempt to share the large and unexpected financial hit that the riots brought upon them. [6] The riots had an acute impact on Mitsui because of the extent of the fire at the warehouse in Enfield, now considered to be the largest arson attack to have ever taken place in Europe (Mitsui v MOPAC, 2013). Their loss from this, of £60million, made up a significant part of the estimated overall cost of damages from the riots, which was £200million, £100millon of which was from damages in London[7] (Mitsui v MOPAC, 2013). The scale of Mitsui's loss owing to the scale of the fire in Enfield thus prompted their hopeful move to action the legal case and attempt to use the 1886 Riot (Damages) Act to recover as much as possible from police.

The Mitsui v MOPAC case became the landmark legal case from the 2011 riots as it set the precedent for how losses from the riots should be recovered. Many claims from the riots, from across England, were put on hold until the case reached its conclusion and

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[5] Interview, Loss adjuster, 19/05/2016.
[6] Interview, Lawyer, 22/07/2016.
[7] These are estimates from the insurance industry (Mitsui v MOPAC, 2013). However, many claims did not incorporate consequential losses as they had never been covered by the 1886 Act before. Losses from the uninsured are not included.

clarified how they should be settled.[8] Insurers who had not paid out for claims waited to
see whether they or the police needed to settle them. Insurers who had already paid out
awaited the conclusion of the case to clarify whether they could seek reimbursement from
the police. The Riot (Damages) Act also compensates those without insurance and so the
uninsured also awaited the outcome of the case for the same reasons; to clarify whether
they could begin the process of recovering costs from the police, or seek reimbursement
for costs already paid out. A sense of doubt in the insurance industry about Mitsui's
potential to win the case and recover consequential losses from police enforced this delay
in settling claims. Apart from Brixton 1995, police had not compensated for consequential
losses after riots before, and insurers doubted that Mitsui could reverse this precedent
and successfully argue that the scope of the 1886 compensation scheme could be
extended.[9]

The case was first heard in the UK Commercial Court which is part of the Business and
Property Court of the High Court of Justice. This court hears complex and costly business
disputes including disagreements over insurance. Its hearing here reflects the nature of the
disagreement it involves, over insurance, and the amount of money at stake, an estimate of
£200million (Mitsui v MOPAC, 2013). Its escalation to the UKSC, however, repeats this
sense of hesitance around recovery from the police that insurers had. The deferral of the
decision, over 4 years, to the highest appeal court in the UK reflects the hesitance to pass
the cost for riot damages to central government, which funds the police through central
government grants. In part this stems from obscurity of strict liability for riot damages and
the rarity of recovering from police. As one lawyer described to me in an interview, this
arrangement is unusual:

> It's also giving a remedy to insurers to basically recover money from a
> public authority without having to, by just you know just being able to prove

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[8] Claims under the 1886 Act had to be submitted to police within 42 days of the rioting event. This
was extended from 14 days in 2011. Claims were therefore with police, but on hold and pending
until the case was finalised. "Claims that ended up being left after three years because they were all
waiting the outcome of the Sony decision and they didn't want to sign their material damage
element off" (Interview, Lawyer, 29/07/2016).

[9] "to be honest it was quite a surprise that solicitors were suggesting that consequential loss should
be pursued… when the appeal court turned round and said that consequential loss is recoverable
we issued a note to the sub members saying you know this seems like a very odd decision why
don't we just hold our fire because it's almost certain the appeal court itself is going to be appealed
and of course it was appealed and then last month we had the Supreme Court decision which
basically restates what we'd always understood to be the case" (Interview, Loss Adjuster,
22/05/16).

that they have paid out, and that is quite a novel thing particularly when the police's resources are stretched.[10]

Further, the riots case was one of the many that deferred this kind of decision, of resource allocation, to the Supreme Court post the 2008 financial crash[11] (Karemba, 2016, 2018). Since its establishment in 2009, the UKSC has increasingly heard cases concerning resource allocation that are ordinarily considered to be non-justiciable, or not suitable to be determined by the courts because of their political nature (Karemba, 2016). The category of non-justiciable issues[12] can encompass resource allocation cases as they have the potential to push the judiciary to exceed their role of determining how the law should take effect, and to enter into scrutiny of the allocation of budgets, constituting 'judicial overreach' (Karemba, 2016).

This problematic of non-justiciable resource allocation cases reaching the UKSC is in part due to the timing of the court's establishment. The UKSC became operational on the 1st October 2009, soon after the declaration of a UK financial crisis in 2008. It was therefore born into a time of severe budget cuts that were contested and in some cases legally challenged. A 2015 report[13] on the early life of the court, for example, noted that the new arrangements had "been stress-tested by the financial crisis." (Gee et al, 2015 n.p.).

Additionally, the formalisation of the court happened relatively suddenly, meaning that its position and role within the British constitutional system was undefined, as well as inevitably untested. Although 142 years after Walter Bagehot wrote about the idea of a Supreme Court in 1867[14], the 2008 formalisation of the court happened just three years after the Constitutional Reform Act 2005 set out a rationale for it[15] (Masterson and

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[10] Interview, Lawyer, 11/08/2016.
[11] Karemba (2016a, 2916b) looks at cases that consider 'non-justiciables' that complicate the role of the court. UKSC resource allocation cases include student loan availability for student with limited leave to remain (LLR): R (Tigere) v Secretary of State for Business, Skills and Innovation [2015] UKSC 57, and child tax credit: Humphrey's v The Commissioners for Her Majesty's Revenue and Customs [2012] UKSC 18.
[12] King (2007; 2008) discusses the complexity and relevance of this term in detail. In particular, how some courts have eschewed the doctrine, particularly following the Human Rights Act 1998.
[13] AHRC report from the Conference: The Paradox of Judicial Independence, held at the Institute of Government. The conference involved current and retired judges, civil servants, journalists and was conducted under Chatham House Rule, where identity and affiliation of participants is protected.
[14] Bagehot first suggested the idea of a supreme court 1867 in *The English Constitution*. However, "by an Act of 1876, the House of Lords was reinstated as the final court of appeal for the whole of the United Kingdom" (Carnworth, 2004 p. 1; Bagehot, 1867)
[15] Masterson and Murkens (2013) emphasise how this sudden creation of the UKSC was an un-British move. Malleson (2011 p. 756) quotes then Master of the Rolls Lord Neuberger's reception of the court: "To change the Law Lords into the Supreme Court as a result of what appears to have been a last-minute decision over a glass of whisky seems to me to verge on the frivolous…the

Murkens, 2013). Primarily, this rationale was to formally separate the legislature and the judiciary, and to physically take the appellate jurisdiction out of the House of Lords (Masterson and Murkens, 2013; Malleson, 2011). In 2013 when the Mitsui case was heard, this new, independent status of the UKSC was, and still is, uncertain and evolving.[16]The combination of the UKSC's own relatively sudden emergence, and its emergence into the financial crisis thus compounded the ambiguity around its role and how far it could extend its reach into the matter of resource allocation (Gee et al, 2015).

The UKSC's relation to non-justiciable issues also continues a longer trend that began in the Supreme Court's predecessor, the Appellate Committee of the House of Lords. Writing on the Appellate Committee, Malleson (2011 p. 758) notes how from 1968-2008, "the court shifted quite radically over that 40 year period from a body which dealt largely with private law cases often involving highly technical legal questions to one which tended to focus on public law cases some of which were highly controversial and many of which had an impact on an increasingly wide range of social and political issues." While Malleson (2011) emphasises that the role of the UKSC is still evolving as it is in its early life, she suggests that the justices of the UKSC have inherited direction of travel from the Appellate Committee.

In sum, the escalation of the case to the UKSC, coupled with hesitancy on the court's capacity to determine the allocation of public resources, emerges from uncertainty that largely stems from ambiguity within the structure of the British constitution. This is what leads the Mitsui case itself to summarise: "The rationale for this reluctance on the part of the courts is by no means certain" (Mitsui v MOPAC, 2014 at 11), here referring to the reluctance to order the police compensate for consequential losses in addition to pure losses. Whether the court could, would or should compel the police authorities to take on the burden of consequential losses is entangled in this constitutional issue of the role of the courts and the new UKSC. While going further into debate on the role of the UKSC and judicial independence is beyond the scope of this thesis, I include this consideration of justiciability and the role of the court here to emphasise that the matter of resource allocation contributed to the complexity, hesitance and uncertainty within the case, and in part why it reached the UKSC in the first place.

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danger is that you muck around with a constitution at your peril, because you don't know what the consequences of any change will be".

[16] One lawyer interviewed, for example, still in 2016 blurred the two: "Flaux…he basically said he didn't think it was and the court of appeal disagreed with him, and now the house of lords or supreme court has agreed with Flaux" (Interview, Lawyer, 11/08/2016).

At its conclusion, the UKSC case determined that consequential losses would not be compensated by police. After appeals, in 2016 The UKSC ruled that the 1886 Riot (Damages) Act did not cover consequential losses and police were spared this cost. For insurers, loss adjusters and lawyers working on claims, this verdict was expected. A review of the case from a loss adjuster summarises this sentiment on the verdict:

> What happened in the first court case decided consequential losses were not recoverable and that was, you know, no surprise at all, we just viewed that as confirmation of what everybody had always understood. When the appeal court turned round and said that consequential loss is recoverable we issued a note to the sub-members saying you know this seems like a very odd decision, why don't we just hold our fire because it's almost certain the appeal court itself is going to be appealed and of course it was appealed, and then last month we had the supreme court decision which basically restates what we'd always understood to be the case.[17]

While the conclusion regarding consequential losses was what insurers, the uninsured and all those who sustained loss from the riots were awaiting, this chapter unpacks the work that went before it. It unpacks all of the cumulative work that led up to the final judgement on whether the police would pay out for consequential losses. This is the work that deliberates whether a riot took place, and therefore whether compensation through the Riot (Damages) Act became available to those who had sustained losses.

This introduction to the case and court sets out how indeterminacy surfaces around what a riot is in this case. The Mitsui case confronts this indeterminacy for pragmatic reasons and to determine who should pay for riot damages. I draw on this confrontation to open up the matter of what constitutes a riot in law, and how it is constructed as an object of governance. Before turning to the constitution of riot, I turn now to look at this surfacing of indeterminacy more closely, and to consider law as the source of this indeterminacy.

5.3 Cases as scenes of inquiry in legal geography

> In our view, legal geography comes into its own (and can contribute most to practice, policy and socio-legal scholarship) where it embraces the detail and actuality of law, alongside an attentiveness to spatiality. Thus, the "legal" part of "legal geography" must not just be a superficial gloss upon a substantive geographic analysis. The detail of the law, and of the ways in which (and reasons for) its differential effects across varied built environment circumstances must be accounted for through a thorough analysis of how law is being applied to a situation, place or issue in question. (Bennett and Layard, 2015a n.p.)

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[17] Interview, Loss Adjuster, 17/06/2016

My study of the specificities of the Mitsui v MOPAC case takes note of this advice on the detail and actuality of law, from Bennett and Layard. I carefully work through the actuality of the 'legal part' of the case first. I unpack how I relate to and understand the case as an entity of law. I then turn to consider what the analysis of the case reveals, which is law as a source of indeterminacy.

To begin with a specific case is to follow Bennett and Layard's (2015b) more specific framework on the methodological approaches of the cross-disciplinary endeavour of legal geography. In their discussion of the methods legal geographers should employ, Bennett and Layard suggest: "One obvious starting point in the analysis of particular legal cases, but rarely will that analysis be confined to doctrinal analysis of the legal reasoning set out in the text of the case's law report or judgement" (2015b p. 7). They continue to position the case as the first scene of inquiry for the legal geographer. They relate to it as a source or repository of law; a text to turn to first as a base to work from. For Bennett and Layard, the legal geographer always inevitably extends the scope of analysis beyond the case because of the way that they focus investigation on the co-constitution of law and space.

For Bennett and Layard (2015b), what takes legal geographers beyond the scene of the case is the way that they trace both the presence and absence of law's manifestation in space. Or, put differently, the way that legal geographers explore how the law is 'worlded', meaning how it takes place in space or has some kind of spatial referent (Braverman et al, 2014). For Bennett and Layard (2015b) this approach is what constitutes a legal geography infused doctrinal method; a method that starts with doctrinal analysis, the case or Act, and then moves into the empirical, to trace the presences and absences of law's taking place in space.

Moreover, the case is also useful as a starting point for the legal geographer because of the way it sets the scene. As Antonia Layard (2015) points out, the way that judges incorporate the mechanism of scene setting is significant to geographers because it introduces a spatiality to the case. Understood in this way, the case is a profoundly spatial mechanism that arranges the scene in particular ways. The mechanism of scene setting introduces the place where the offence or event took place. In this case, this is a warehouse in Enfield, north London as outlined in the opening of the chapter. For Layard (2015) this mechanism contests notions of the spatial blindness of law. It introduces and foregrounds spatiality as significant to the unfolding and applicability of law (Layard, 2015).

In this case for example, it was significant that the event took place in the suburb of Enfield. This became important as the case attempted to delineate the geography of the 'August 2011 riots' – how Mr Justice Flaux in the Commercial Court refers to the events that took place across England in the summer of 2011. The case questions whether what took place in Enfield was or could be part of these, whether it was a separate riot in itself, or not a riot at all but an intrusion and arson attack at a property in Enfield.

The judgement from the High Court of Appeal has clear response to this question, it states:

> Merely seeking to place this incident in the wider context of civil disorder across London (or indeed the country as a whole) in the period 6–10 August 2011 does not advance the claimants' case…The fact that other property elsewhere in London, or even elsewhere in Enfield, was destroyed or damaged by rioters (and that the owners of such other property might have a perfectly valid claim under the 1886 Act) does not, without more, mean that the requirements of the section are satisfied in relation to the Warehouse. (Mitsui v MOPAC, 2014 p.29)

In other words, although this incident took place "during the widespread civil disorder and rioting" in London and elsewhere in the country, it could not simply be counted as a riot because it was part of this (Mitsui v MOPAC, 2013 p.5). Its proximity to other incidents was irrelevant. The determination of whether a riot took place was space and time specific.

Claims for riot damages necessitate evidence of specific, corresponding damage to the "house, shop, or building in a police area [that] has been injured or destroyed" by rioting, as section 2 of the 1886 Riot (Damages) Act dictates. Each day or night of rioting also required distinct evidence. This necessity became apparent in the aftermath of the riots when the claims process began. One loss adjuster recalled:

> there was an issue within the industry as to whether it was one wave of rioting in the UK or whether rioting in each city is a separate thing because the rioters would come out at night and then go have a lie down, have a bit of a rest during the day, and then come out at night again, so you then say, well, is each event a riot?[18]

As the case confirms, rioting in each site was a separate thing. What happened in Enfield was not considered part of the 'wave of rioting' in Enfield, London or the 'August 2011

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[18] Interview, Loss Adjuster, 10/08/2016.

riots' taking place in England. It was a separate, site specific rioting event. Each claim was examined individually, and no riot zones were established whereby all damage in that area could be attributed to rioting (Home Office, 2014a).

Taking this further, beyond introducing a spatiality, the mechanism of scene setting used by judges also introduces a re-enactment of the event in question. In this sense, the setting of the legal scene is also a matter of retroactive enactment of the event. In the Mitsui v MOPAC case (2013p. 5), following on from the excerpt given at the start of the chapter, the judge goes into more detail about the night of August 8th 2011, he states:

> This case concerns the destruction by fire and the looting of the Sony distribution warehouse…Enfield, Middlesex at about 23.40 hrs on the night of Monday…25 youths…had come across the field from Enfield Island Village…smashed into the warehouse using a variety of makeshift weapons and ran through the building looting it of a certain amount of the stock held there.

More than introducing that the event took place in Enfield, the judge re-tells what unfolded at the warehouse in Enfield.

Re-enactment of the event and the creativity of law

The mechanism of scene setting therefore also creates what Beatrice de Graaf (2011; 2016) conceptualises as a mimetic re-enactment of the event. It incorporates a re-creation and re-presentation of the event. In this case, this is the event or non-event of the riot. De Graaf (2011) draws on this notion of mimetic re-enactment in work on performativity within terrorism trials. De Graaf (2011) considers how the court functions as a performative space where the trial becomes the show. For de Graaf: "within the narrow confinements of this stage, injustices are addressed, retribution is demanded and justice is carried out – at least in theory" (2011 p. 6). She considers the court as a unique space where "all parties involved in the drama are brought together", and have the opportunity to communicate their version of events (2011 p. 6). De Graaf (2011) suggests that actors in the drama use performativity as a strategy to communicate their narrative of (in)justice and construct their particular version of social reality. Performativity therefore works to make dominant their narrative of justice and social reality to the audience, both in court and in the wider public sphere (de Graaf, 2011). How successful they are in this, and the relative strength of narratives contributes to the outcome of trial (de Graaf, 2015).

For de Graaf (2011 p. 6) it is the coming together of narratives as performance that produces mimesis, which she considers as "a re-enactment of the offence, in the hope of uncovering what actually happened." Here de Graaf (2011) is emphasising that performance is an act, and how rather than uncovering a truth, performance imitates an event and builds a version of reality (Haddow, 2012). To emphasise that performance creates a version of reality, de Graaf (2011) also considers the re-enactment to incorporate poiesis (the making) and kinesis (the movement) of what happened. De Graaf (2011) draws on these two terms, poiesis and kinesis, to emphasise that the trial does not uncover a true re-enactment of what took place, but a version of what happened is made in court. It is made from narratives that are created, debated, cross-examined, contested and re-made in the drama of the trial (de Graaf, 2011; 2015). This version is thus fluid and evolves as the trial progresses (de Graaf, 2011; 2015). In the end, rather than a truth being uncovered, a final version of what happened emerges and a verdict is reached based on this.

In the Mitsui v MOPAC case, a civil case, things unfold slightly differently. Much of the making of the mimetic re-enactment takes place pre-trial, during its progress to trial. Unlike the criminal trial, where all parties involved in the drama are brought together, as de Graaf writes, the civil trial brings advocates for all parties together, none of whom were involved in the drama of the event itself. Their aim in the trial is to make dominant their narrative of how the law applies to a version of what happened that is created pre-trial.

This version of what happened is created through the analysis of material submitted to the court in its progress to trial. In the Commercial Court where this case was first heard, this includes materials such as the claim form from the claimant that briefly and concisely outlines what has happened, a response to this from the defendant, and then the exchange of evidence, statements and arguments from both sides (Commercial Court Guide, 2017). The judge(s) creates a narrative of what took place through the synthesis of this material. This is where and when the poiesis and kinesis noted by de Graaf takes place. Through the process of synthesising, the judge creates a narrative that shifts and moves in pre-trial meetings, conferences and discussions. What the trial uncovers, then, is not a version of what happened, but how the law applies to a version of what happened.

Here I want to highlight the legal work that goes into creating a re-enactment of the event in the space of the court and process of the trial. While this creation of a re-enactment does not inscribe meaning to the event, there is a politics to this creation of a re-

enactment. It rests on the inclusion and exclusion of particular actors and evidence, and a particular arrangement of the narratives that they contribute. Witnesses, claimants, defendants, juries, judges, and all those with a stake in the trial contribute to this arrangement of narratives. In each hearing, what is included and how it is arranged also changes. In the Mitsui case, the judge in each court it is heard in sets the scene slightly differently, and presents a different re-enactment of what took place. A *group* of youths in the Commercial Court becomes a *gang* of youths in the Court of Appeal, for example. Flaux J opens the Commercial Court case with a statement that reads "The behaviour of the group had been agitated and volatile (Mitsui v MOPAC 2013 p.2), and the Appeal Court then opens with "Flaux J decided that the gang were "persons riotously and tumultuously assembled"" (Mitsui v MOPAC, 2014 p.2).

Both kinds of trial, at different stages, create a version of events, an enactment of what happened. The criminal trial works towards uncovering a version of what happened, and civil cases judge how the law applies to a version of what happened that is created pre-trial. This is particularly significant in this case as the re-enactment of what took place, the event or non-event of the riot, becomes the basis of investigation. The central question that it asks - did a riot take place - rests on a particular version of what happened.

To summarise, what I articulate here is how the case can be more than a repository or source of law for legal geographers. This echoes Layard (2015) and the way that she underlines the importance of the mechanism of scene setting within cases for legal geographers, because of the way it introduces spatiality. In addition to introducing space, I suggest the mechanism of scene setting in cases is useful because it also introduces a re-enactment of the offence or event that took place in that space. A geography infused doctrinal analysis thus involves working with a version of an event that is created retroactively in the aftermath of the event, in the space of the court and through the process of the trial.

I emphasise this point on the retroactive engagement of the event in order to develop an argument for doing case work in legal geography. Much work in legal geography, so far, focuses on the spatiality of the courtroom and how law takes effect in that space (Sullivan, 2014). Work on the courtroom largely looks at criminal trials and considers trial spaces through an attention to court architecture and the arrangement of people and things in the space of the court (Jeffrey, 2017; Jeffrey and Jakala, 2014). Rather like aspects of de Graaf's (2011) work, it also looks to the theatrical element of trials such as dramaturgal language and performativity or choreography within these spaces (Jeffrey, 2017; Jeffrey and

Jakala, 2014; Braverman, 2010). Legal geography has had a tendency to develop the notion of the court as a stage, and the stage as a spaces where justice must be seen to be done (Nagy, 2008; Hughes, 2015).

I pay attention to the spatiality of the legal from a different starting point; that of the case. I consider how the mechanism of scene setting within case, here a civil case, introduces a spatiality, and more particularly an evental spatiality meaning that it re-creates a re-enactment of the event that took place in a particular space. I detail how the legal case – as a spatial and temporal device itself - creates and presents a particular determination of the event, which then determines how legal geographers relate to that event.

Through my focus on the re-enactment of an event via the case, I draw attention to the creativity of law; the way that judges and other participants in the case, including the text itself, *create* a particular re-enactment of the event. Here I follow Fleur Johns' call for us to think of the law as a site of creativity, and more than just a set of constraints (2014). Law, for Johns (2014), is not just "an elaborate set of no-statements", but a field of creativity for making and re-making things. For Johns (2013 p. 9), focussing on the creativity within law contradicts what is customary within scholarship in law, that is, a focus on how to 'better' invoke legal codes or norms: "a better way of addressing this or that problem", for example. In short, for Fleur Johns, the legal case is not simply a matter of settling or resolving the problem, but rather it sets the scene for what norms and codes can be invoked in relation to the problem.

The way that Johns takes the focus away from legal norms, statues and conventions, and calls for recognition of the creativity of law, or the legal practices of making things,[19] is part of a wider endeavour in critical legal theory that challenges ideas about the authority of law. In short, the idea that its power comes from statues, laws and norms that are committed to writing and make up so called 'black letter law'. The wider movement in legal scholarship develops Derrida's (1992) deconstructive interventions in legal theory that directs attention away from black letter law or law as text, to that which is beyond it such as the performative force of law. In the 1992 essay 'The Force of Law', Derrida proposes that rather than thinking of law in terms of legal rules, norms and customs that are prescribed, we should turn to consider the enforceability and applicability of law, and

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[19] The focus of Johns (2013) book is on the legal practice of *making* things and specifically *non-legalities.* Johns categorises non-legality into three sub-areas: extra-legality, pre- or post-legality and infra-legality.

the performative nature of its application. In the essay Derrida (1992) sets out how he understands the force of law to derive from its enforceability.

To exemplify his point on the enforceability of the law, Derrida (1992) details the performative act of the judge's interpretation of law. For Derrida (1992 p. 23) the way that the judge applies the law, through interpretation, takes place "as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case". Derrida insists that no exercise of justice can be just unless this is the case; that the judge suspends the law enough to re-invent it in every case (Derrida, 1992). For Derrida (1922) the judge's decision thus conforms to a pre-existing law, is regulated by that law, but is also unregulated at the same time (Derrida, 1992). This is what allows the judge to present a 'fresh judgement' in every case; a judgement that is crafted by the judge who takes on the position or role of a 'calculating machine' (Derrida, 1992). The judge thus follows the rule of law, conforms to its conventions that authorise their ability to reach decision, and yet invents the law in every case (Derrida, 1992). The power that codified law assumes is thus not as forceful as it appears. Rather than settled and pre-existing rules and norms, the force of law thus derives from the calculative creation of the judge (Derrida, 1992).

The purpose of Derrida's intervention is to unsettle the way that law assumes an absolute authority (Derrida, 1992). Davies (2002 p. 213) offers a useful analogy to articulate this problematic that deconstruction challenges; she writes that the "self-entitlement of the law is nothing more than a parental "because I say so"". The intention of Derrida's intervention is to challenge the self-entitlement of law, and that way law compels people to obey it simply because it is law (Derrida, 1992). It challenges the blind worship or adherence to the authority of law (Rosenfeld, 1992).

More concretely, I situate my work among critical legal theory because of the way it challenges mainstream legal theory that understands law as rules, norms and statues. Work informed by Derrida's intervention challenges thinking that considers these as the law itself, and legal performances as subordinate to these (Davies, 2009). As Davies (2009 p. 6) describes:

> This way of thinking about law challenges the way that "mainstream legal thought still assumes that rules and other ideational creations are primary – they are, in fact, the law itself – while legal "performances," such as the signing of a contract, the celebration of a wedding, or the making of a decision in accordance with the law, are merely the exercising of already existent legal powers.

My focus on the Mitsui case adheres to this Derridean informed way of thinking that flips the primacy of the text and subordination of the performance. It points to how I read beyond the text, and read the case as a performance of decision making, as to what constitutes a riot in law, or how the aesthetic faultline is draw in law, in relation to the riot. The aesthetic faultline, the line between order and riot, is not codified in the law as text. To reiterate, the power that codified law assumes is thus not as forceful as it appears; it is what led the Mitsui case to pose the questions: *did a riot take place?*

To summarise at this point, I have established why the question of whether a riot took place in 2011 surfaced in this case. I consider the case as an entity of law that incorporates creativity. This unsettles the notion of law as fixed set of constraints that is merely enforced, and points to the inherent indeterminacy of law. It is its indeterminacy that creates space for creativity to emerge. This next section turns to consider how law works through indeterminacy and responds to it. It works through the question: what is a riot? I turn to the unfolding of the case to trace the drawing of the aesthetic faultline, the line that organises what can and cannot appear, and creates the riot as an object of governance in law.

5.4 What is a riot?

> The square peg of the very 21st century riot starts to get hammered into the
> round hole of the governing act, which dates from 1886.[20]

This is how one lawyer interviewed described the initial unfolding of the Mitsui v MOPAC case. The observation figuratively sets up what this section works through: the case's attempt to work out whether what took place in 2011 was a riot, according to statutes written in 1886 and before.

The case turns to the 1886 statute, the Riot (Damages) Act, in the first instance as this is the Act that obliges police to compensate for damages caused by rioting. Although 125 years old in 2011, the Act was active and applicable, provided that a riot took place. According to the Act, *'persons riotously and tumultuously assembled together'* constitutes a riot. The Act obliges police to compensate for damage caused by an assembly of this kind.

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[20] Interview, Lawyer, 22/07/16.

The indeterminacy of this definition is exemplary of the indeterminacy of text and law that the case addresses. The case is confronting the inherent indeterminacy of law as text, and also text itself. This builds on the deconstructive approach that unsettles the power of law in its conventional forms, in texts such as Acts and codes. As Rosenfeld (1992) makes clear, text does not immediately and transparently reveal its meaning as intended by its author. Rosenfeld (1992) summaries: "the meaning of a text could possibly be anything except that which it presently appears to be" (p.158). Meaning is never fixed, it is intertextual and depends on perpetual past and future reinterpretations (Rosenfeld, 1992). It is thus the case rather than text that revels whether a riot took place, and therefore also the criteria that identify the taking place and constitution of a riot.

Here this inherent indeterminacy, for the claimants, enabled them to argue that what took place at the warehouse in Enfield was a riot, which meant that they were entitled to compensation for damages. For the defendant, the police, the definition was vague enough to do the opposite and to avoid naming the events as riots and therefore avoid paying compensation for damages. Attempts to settle insurance claims like Mitsui's after the riots brought the insufficiency of this 1886 definition to light, and it was disputes over claims that prompted this case to work through the "necessary ingredients of a riot" (Mitsui v MOPAC, 2014 p.22). Parallel to this case, the evaluation and re-drafting of legislation was also working through this same problematic. A 2015 Home Office draft bill, for example, stated that one of its important non-monetary benefits would be to "give improved clarity on key matters affecting claims, for example by providing a clearer legal definition of what constitutes a riot." (Home Office, 2015a p. 29). Efforts to secure the recovery of losses, like Mitsui's, on the basis of a vague, 125 year out-of-date definition of riot, when singular claims were up to £49.5m, were as legal scholar Johnathan Morgan (2014 p.1) suggested, a "complete non-starter". Police were never going to approve such claims without rigorous clarification of what a riot is.

The indeterminacy of the 1886 definition meant that the case quickly had to extend the scope of its inquiry beyond this Act. It looks further back in time to the Act's predecessors and principally to the 1714 Riot Act. In its hearing in the Supreme Court, 2016, Lord Hodge summarises why by saying:

> The resolution of the dispute is to be found in the words of the 1886 Act, interpreted against the backdrop of the prior legislative history. In my view this is a case in which history rather than legal theory casts light, revealing the correct answer. Linguistic analysis of the relevant provisions of the 1886 Act itself does not provide a clear-cut answer. (Mitsui v MOPAC, 2016 p.4)

This proposal from Lord Hodge frames what this section of the chapter works through. It draws on the case's exploration of the legislative history to determine whether a riot took place in 2011, to develop a better sense of the constitution of a riot.

As the Mitsui v MOPAC case moved through UK legal system from the High Court, to Court of Appeal, and the UK Supreme Court, it repeatedly came back to the 1714 Riot Act in order to check and re-check, "the necessary ingredients of a riot" (Mitsui v MOPAC, 2014 p. 22). Throughout the case's escalation through the courts, over almost five years, the delineation of riot that this early modern statute formalises in law was central to discussion and to identifying whether what took place in 2011 was a riot.

This recourse to the 1714 statute also took place within a case that followed an event at Yarl's Wood Immigration Detention Centre in 2002. A 'major disturbance' broke out at Yarl's Wood three months after the centre opened and led to half of the building being destroyed by fire (Feldman, 2010, Shaw, 2004). The case first questioned whether what took place was a riot, in order to determine whether police should pay for damages. The Mitsui v MOPAC case draws heavily on discussion from the Yarl's Wood case as it was the most recent past case addressing the same issue: how to identify a riot, or in the language of the case, how to identify whether "the elements of the statutory offence of riot were satisfied" (Mitsui v MOPAC 2013, p22-3).

5.5 Riot Act 1714

Today in figurative speech to read the Riot Act to someone means to scold or chastise them for their actions. The phrase is derived from the 1714 Riot Act that had to be read, or shouted, at rioters to take effect. The figurative phrase thus alludes to the constitution and the logistical taking place of the act; to the fact that it is a directive speech act meaning that part of it had to be spoken, 'in a loud voice', in order for it take effect. The Riot Act did not hold its force as written text, but as proclaimed or enunciated to a collective gathered in public. The Act instructed 'The Justice of the Peace, or other Person Authorised' to 'make the said Proclamation among the said rioters, or as near to them as he can safely come'. The proclamation read as follows:

> Our Sovereign Lord the King chargeth and commandeth all Persons being
> assembled, immediately to disperse themselves, and peaceably to depart to
> their Habitations, or to their lawful Business, upon the Pains contained in the

Act made in the First Year of King George, for preventing Tumults and

Riotous Assemblies.   'God Save the King'

Up until 1967, this proclamation was read 'to persons riotously and tumultuously assembled together' to direct their dispersal.[21] It was read from section two of the 1714 Riot Act, which had the full title: 'An Act for preventing Tumults and riotous Assembles, and for the more speedy and effectual punishing of the Rioters'. Along with the directive to disperse, a reading of the Riot Act was thus also declaration that a riot was taking place. The proclamation was enacted to announce the taking place of a riot, and as a directive to bring that said riot to an end. Those assembled had one hour to respond to the proclamation read by 'The Justice of the Peace, or Other Person authorised by this Act to make the said Proclamation'. This gave the Justice time to summon help from inhabitants in the area to disperse the riotous assembly: the 'Sheriff, under-sheriff, Mayor, Bayliff, Head Officer, High or Petty-Constable or other peace officer'. The enforceability of the Riot Act is thus brought into effect through its reading.

Any riotous people present after one hour were at risk of being 'adjudged Felons' and suffering 'Death as in case of Felony Without benefit of Clergy'. Having benefit of clergy was a way of escaping the death penalty through proving membership of the clergy, usually by reciting the first two verses of Psalm 51 (Mitsui v MOPAC, 2014). The exclusion of benefit of clergy from the Act emphasises the severity of failing to disperse after one hour through expressly making rioting a felony punishable by death.[22]

Subjecting rioters to the threat of death without benefit of clergy was the Act's headline and hard-line response to recent unrest. It is what the Act introduced to fulfil its aim of ensuring 'the more speedy and effectual punishing of rioters'.[23] Further reinforcing this hard-line response to the recent unrest was the indemnification of the Justices of peace who had the responsibility of dispersing the rioters. The Act states that:

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[21] The proclamation was last read in 1919 but the Act endured until repealed by the Criminal Justice Act 1967 (Vogler, 1991). In 1967, there was debate as to whether the Act should be read as a tactic to assist in quelling the Roberts-Arundel dispute in Stockport which began in contestation the company's employment of women (Vogler, 1991; Hansard, 1967)

[22] The exclusion of benefit of clergy from the statute was also down to layperson not clergy learning how to recite the two verses (Mitsui v MOPAC, 2014).

[23] Although frequently read and the severity of the threat, Hitchcock (2015) argues that the Act's impact was 'limited', thinking of impact in terms of prosecutions. Hitchcock finds that "few people were prosecuted under its authority: only thirty-six defendants were tried at the Old Bailey between 1715 and 1731 (almost half in 1715 and 1716). In part this is because crowds, having made their point, learned to leave the scene within the hour as instructed" (p. 77). In terms of dispersing crowds, it was thus very effective.

> Every such Justice of Peace…shall be free, discharged and indemnified, as well against the Kings Majesty, His Heirs and successors, as against all and every other persons, of, for or concerning the killing, maiming or hurting any such person or persons so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed maimed or hurt as aforesaid.

This emphasises the Act's imperative to quell riots, by any means, with severe consequences for rioters, but without consequences for the justices of peace.

Following the dispersal of rioters, and the potential taking place of this 'effectual punishment', the 1714 Act introduces the arrangement where those with responsibility for keeping the peace in the area where the riot takes place are liable for the damages caused by the riot. In 1714, this was the inhabitants of the hundred. The hundred was a sub-division of a county used for administrative purposes (National Archives, 2018).

This Act provides the recourse for the legal cases and framing for this chapter because of the way it proclaims the taking place of a riot. Although the scripted proclamation is a proclamation to disperse, the precursor to its reading is a riot; an assembly considered riotous and in need of dispersal. It is therefore the preamble to this proclamation to disperse that the chapter specifically turns to. The preamble, or main body of the Act, details what makes an assembly riotous and so what warrants this proclamation in an attempt to bring it to an end. Rather than asking, what a riot is, the question I am asking here is what leads to the reading of the Riot Act? And, following the insights of Johns, how does the reading of the Riot Act itself frame the parameters of what a riot can be in the world? In what follows, I draw out from the Act what makes an assembly riotous and what is it that is dispersed to bring the riotous assembly, the riot, to an end.

I consider how the case draws on this 1714 Act as its referent to determine how it identifies what Lord Justice Flaux refers to as the "essential ingredients" of a riot, or "the elements of the statutory offence of riot" (Mitsui v MOPAC, 2013, p8). These ingredients correspond to things that need to be satisfied for the event to be counted as a riot, and the Riot Damages Act to become applicable. These ingredients thus denote the form of interruption that constitutes a riot in law.

Disturbance of the publick peace

> 'Whereas of late many Rebellious Riots and Tumults have been in divers parts of this Kingdom, to the Disturbance of the publick Peace…'

First, the Act problematizes riots as a disturbance to the 'publick Peace'. This is the first characteristic of riot that the Act introduces and it broadly characterises the form of discontinuity that constitutes the riot. It frames the riot as something that interrupts the peace, where the peace is the normal order or state of things. This state, peace, is the state that the Act sets out to preserve and protect. The Act thus constructs peace as a static state, corresponding to what Galtung (1996) conceptualises as negative peace. Negative peace is peace constructed in negative terms and known through the absence of something, typically conflict or violence (Williams, 2013). Here it is constructed as the absence of riots and tumults.

The monarchical state established the Act to protect this state of public peace. The opening lines of the Act refer to the 'many rebellious riots' of late, and 'frequent and dangerous Tumults in divers' parts of this Kingdom' as the rationale for its introduction. These followed George I's accession to the throne as the first Hanoverian King, but were also exacerbated by difficult economic times[24] (Hitchcock, 2015). The 1714 Riot Act was one of the first Acts introduced by the Hanoverian regime in an attempt to quell the rise in contestation that the regime change prompted.[25] As Hitchcock (2015 p. 70) writes, "The new Hanoverian monarchy and whig government were not slow to respond to the pressures, not least with legislation including the Riot Act". It passed through parliament in just three weeks in July 1715 (Hitchcock, 2015). The Act states that the laws in being before its introduction were 'not adequate for such heinous offences'. The swift passing of the Act reflects its deployment by the new Hanoverian monarchy as a response to the series of cumulative disruptions to the state of public peace, and their attempt to quell these and preserve this state.

Beyond the Act, newspaper reporting on proclamations of the Act reinforce this this idea of the riot as something that interrupts the peace, where the peace is a static state, empty of violence, that the Act, or government, aims to protect. In June 1715, for example, the Stamford Mercury reports from London:

> Orders given to Troops of Lord Cobham's Dragoons to march in order to supress the riot there. Some of the Earl of Stair's Regiment which are in the town, not being sufficient. 'Tis said they increase by Day and Night, the

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[24] "Bad harvests leading to high bread prices had led to a fall in real wages of one-third between 1708 and 1711. Just as real wages started to recover came demobilisation, followed by the severe frosts of the winter of 1715–16 and the disruptions to trade caused by the Jacobite rebellion and cattle plague, such that 'the early years of the Hanoverian accession were hard ones for many London trades'. (Hitchcock, 2015 p. 71).

[25] Second session of Fourth Parliament (PA: HL/PO/PU/1/1714/1G1s2n7).

accomplices therein sometimes appearing in a body of 5000, sometimes in greater numbers, to the great disturbance of the Peace, and the Affright of the inhabitants thereabouts, from whom they raise contributions. Disorders of the same nature have likewise been committed at Leeds in Yorkshire, and other Place; but such care has been taken by the government for the security of the publick peace, as to make his Majesty's Loyal Subjects to be in no Pain from such unasvise'd attempts.[26]

The reiteration of peace here underlines this characterisation of the riot as something that disturbs the peace, where peace is a state that the government aims to protect.

In later sections, the Act moves beyond this framing of peace as negative peace. The Act emphasises how peace is a state that requires work and maintenance to preserve. As much as the Act is a directive for rioters to disperse, it is a directive for justices of the peace to assemble, summon help and fulfil their duty to disperse the rioters and quell the riot. The Act places the responsibility for the preservation of the peace primarily onto the justices of the peace who must summon help from other 'officers' and all 'subjects of ability and age'. On notice or knowledge of a riot taking place, it empowers and requires them to read the proclamation, and to disperse the rioters, and after one hour to seize and apprehended those continuing their assembly. In full, the Act states:

> Every such Justice and Justices of the Peace, Sheriff, Under-Sheriff, Mayor, Bayliff, and other head Officer aforesaid, within the Limits of their respective Jurisdictions, are hereby Authorised, Impowered, and Required, on Notice or knowledge of any such Unlawful, Riotous, and Tumultuous Assembly, to resort to the Place where such Unlawful, Riotous, and Tumultuous Assembly shall be…any such Justice of the Peace, Sheriff, or Under-Sherriff, Mayor, Bayliff, or other Officer aforesaid (who are hereby Authorised and Impowered to Command all His Majesties Subjects of Age and Ability to be Assisting to them wherein) to seize and Apprehend, and they are hereby Required to Seize and Apprehend such persons Unlawfuly, Riotously, and Tumultuously continuing together after Proclamation made.

Again, beyond the Act, this requirement of justices of the peace, and other officers and inhabitants of the hundred, is reiterated within newspaper reporting. This duty to keep the peace is impressed upon all citizens. In 1716 for example, in a letter printed in the Stamford Mercury, King George writes to the 'Gentlemen of the House of Commons' to ask "that during this Recess, you will all use your best Endeavours to preserve the Peace of the Kingdom, and to Discourage and Supress all manner of Disorders."[27]

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[26] BL: 1715, Stamford Mercury, 25 June.
[27] BL: 1720, Newcastle Courant, 18 March.

In 1715, in another letter in the Stamford mercury, the Lord Bishop of London writes to his clergy to ask that, in the context *of* "the frequent, disorderly and dangerous Tumults that have lately happen'd", they must "recommend by our Example, promote in our Conversation, and press in our more solemn Discourses, the Duties of Peace and Quietness".[28]

And a final newspaper report, this time in the Newcastle Courant, extends this request wider, to all citizens. It states:

> Sir William Thompson, in his speech last Thursday at Guildhall, antecedent to the Election of a Sheriff, put the Citizens in Mind of the Importance of that Office, particularly that it was incumbent on them to supress all Tumults and Riots in the City, and to preserve the Peace and Tranquillity thereof.[29]

These calls to members of the House of Commons, the clergy, and all citizens, evidence the distribution of the work to keep the peace. It evidences the way the justice-led system of local governance that was characteristic of the 1690s and 1700s worked in this time (Hitchcock, 2015). Pre-police, justices of the peace were the leading personnel of prevention, as Williams (1967) writes in his work of the history keeping the peace. They were responsible for directing the coordination of citizens, clergy and troops, to assist in the task of keeping and maintaining the peace (Williams, 1967). Peace here is thus much more than the absence of something. It is a state that requires coordinated work to preserve and maintain.

The summoning of the public into this work is in part therefore pragmatic. The Act was established before the 1829 formation of a professional police force (Williams, 1967). Calling upon ordinary citizens to assist in the suppression of riots was therefore a necessary, even if "desperate method" (Williams, 1967 p. 36). At the same time, in this period the public nature of the offence of rioting meant that the public had a duty to assist in its suppression.

In a 1967 case concerning a raid on a jeweller's shop in East London where the owner attempted, and failed, to argue that the raid was a riot and therefore claim damages under the 1886 Riot (Damages) Act, Lyell J expands on this and sets out this rationale more clearly:

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[28] BL: 1715, Stamford Mercury, 16 June.
[29] BL: 1724, Newcastle Courant, 14 March.

> If a crowd of people collect in angry and threatening fashion this should become obvious to the local forces of order, and it would then become their duty to prevent the crowd from becoming a riot. This is a duty which has been recognised for centuries, and which until the nineteenth century was put on the local administrative area, the hundred or wapentake, or whatever name it might be called. (Dwyer Ltd v Metropolitan Police, 1967 p. 6)

In an earlier case, from 1776, Lord Mansfield offers further contextualisation and expressly notes that inhabitants, the public, have a duty to be active in the suppression of riots:

> To encourage people to resist persons thus riotously assembled, and to reward those, who, by doing their duty, shall have incurred their resentment, the same law has thus made a further provision, that as the trespassers are to be hanged, the country shall pay the damages; and this, by way of inducement to the inhabitants to be active in suppression such riots, which it is their duty to do; and which being made their interest too, they are more likely to execute. This is the great principle of the law, that the inhabitants shall be in the nature sureties for one another. (Ratcliffe v Eden, 1776 p. 489)

Overall, this initial framing around peace offers a general, introductory characterisation of the riot and what it does. Thinking in terms of the riot's evental constitution, and specifically the event as something that interrupts the normal order, this framing characterises the riot as something that interrupts the state of peace. The Act frames the riot as something that introduces discontinuity to this static state of peace that it sets out to protect. This also characterises how the evental interruption constitutes a transgression, from one state to another, from order to disorder, or from the normal to abnormal (Koopman, 2010b). Here the riot as an event constitutes the transgression of a threshold between peace and rioting. It also characterises the riots as an interruption of the peace, where the peace is a state that requires work to maintain. This work becomes responsibility of the public, who by witnessing the taking place of a riot, have a duty to respond to it, and be active in its suppression. Owing to its *public* nature, the riot is thus an offence that the *public* have a duty to respond to. Keeping the public peace here becomes the duty of the public. Understood in this way, the Reading of the Riot Act is not only addressed to those who might be tumultuously assembled, but also to a public whose responsibility it is to restore the peace.

Disaffection and disaffected rebels

Following this general characterisation of the riot, the Act introduces and problematizes the figure of the rioter. It writes that the rioter is a disaffected individual, who poses a danger to 'His Majesty's Person and Government':

> Whereas of late many Rebellious Riots and Tumults have been in divers parts of the Kingdom…the same are yet continued and fomented by persons disaffected to his Majesty, presuming so to do, for that the punishment provided by the laws now in being are not adequate to such heinous offences; and by such Rioters His Majesty, and his Administration have been most maliciously and falsely traduced, with an intent to raise Divisions and to alienate the affections of the people from his Majesty.

There are three parts to this: the Act characterises the figure of the rioter as the disaffected individual, who is disaffected to his Majesty King George, and who has the potential to spread this disaffection. This section will work through this to discuss the way the Act characterises the figure of the rioter. It will outline what makes this particular figure problematic, criminal, and how and why this figure becomes the object and target of the Act.

This passage is taken from the opening of the Act where the Act introduces a characterisation of the rioter. In this section, it frames the riotous subject(s) as the force behind the continuation of unrest that it is responding to. It is the riotous individuals who have continued to foment rebellious riots and tumults, and extend the unrest of late that has led to the occasioning of the Act, and the deployment of law as an attempt to quell the unrest. This sets up what this section discusses; the way that the Act introduces and frames the disaffected individual as the problem, the reason for the unrest, and the reason this Act was needed.

The characterisation of the riotous subject that the Act introduces in this section, section I, is built around the notion of disaffection. The Act frames the riotous subject as a person who is disaffected to his Majesty, King George. Other parts of the passage elucidate what this means, though inferences of how the disaffected person relates to the King. First, the Act states that the disaffected individual is an individual who *foments* rebellious riots and tumults, where foments means to stir up or instigate. The Act also includes the term rebellious here, emphasising the level of the opposition the disaffected individual has towards the King and ruling power. The disaffected individual is an individual who instigates rebellion against the King. This builds on or includes their false and malicious traducing of the King, meaning to speak ill of or slander the King. Again, this latter phrase

emphasises the level of opposition the disaffected individual has towards the King and ruling power.

A 1780 court case from the Gordon riots between Langdale and Kennett regarding compensation for damage to Langdale's house in Holborn, reiterates this characterisation of the rioter as a disaffected individual. It also relates to the rioter as rebellious, and part of a rebellious mob. A case report titled *'Observations upon the Riot Act'* written by the defendant, the Lord Mayor of London Brackley Kennett, introduces the 1714 Act to the case by describing its object as the rebellious, disaffected individual. Kennett states:

> It is well known that the object of that Act was…the preventing and punishing of such a species of crime as therein described, namely, the Commission of mischief done by Rebellious mobs committed by persons so disaffected to His Majesty's person and Government.[30]

Here the report emphasises how the disaffected rioter is disaffected to the King and Government. That the disaffection extends beyond the sovereign to the ruling order and power is something that the Act implies in this section through referring to the His Majesty and His Administration, but this report clarifies.

Later in the report, Kennett amends the characterisation of the rioter he uses to better relate to the riots that the case responds to, rather than what the Act itself takes as its object. Kennett writes:

> Whereas the late mobs and Tumults unquestionably originated in some degree at least from a different cause, namely, from either a real or profound regard for Protestantism and the established religion of this Country and consequently persons rather jealously affected (not disaffected) both to the Person and Government of his Present Majesty.

Here Kennett frames the riotous subject as jealously affected, not disaffected. More than being discontent, jealous affection points to the way rioters perceived the King, George III at this time, and his government as threatening, in this case to the established religious order. While different to disaffection, common to both jealous affection and disaffection is the sense of unease and opposition that it infers the riotous subject holds towards the King and ruling order.

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[30] LMA: CLA/047/LC/03/009. One of the earliest uses of the Riot Act for a compensation claim that became a court case. It was settled 'In the King's Bench' rather than in Sessions held by the Justices of the Peace.

Reporting on proclamations of the Riot Act reinforce this characterisation of the disaffected rioter as having an oppositional relation to the King and ruling power, from a different perspective. It evidences attempts to reverse their opposition and encourage loyalty to the King. In a letter from the Lord Bishop of Durham to the Dean of Durham Cathedral in 1715, for example, the Lord Bishop asks the Dean to enjoin his Clergy to *"Preach up loyalty to King George"*, alongside their prayers against Tumults in Northumberland and notably Berwick and Newcastle.[31]

These points build a characterisation of the rioter. Taking the Act as a starting point, this characterisation is built around disaffection, and infers that the riotous subject has an oppositional relation to the King and his government. The Act takes this disaffected subject as its object, and writes into law the criminality of the disaffected individual enacting their rebellious relation to the Hanoverian monarchical state. Thinking about disaffection in terms of a relationality to the King and ruling power loosely draws on work on affect and particular the notion of affect as something that effects relational potential (Bissell, 2010). I draw on this to signal how disaffection here is about a problematic relation to the King, the monarchical State, or system of power more generally.[32]

The Act problematizes this relationality because of its potential and likelihood to become resistance. The figure of the disaffected individual is problematic to the state because of their potential and likelihood to enact resistance to the King, and more generally the established power. As Gilbert (2015 p. 33) writes, the disaffected subject is "by definition a potentially potent subject". The characterisation of the disaffected person as a rebel underlines this; the term rebel infers a very active oppositional relation to power, which in itself is a kind of power (Foucault, 1971). Foucault discusses this in his writing on the 1639-1640 *Nu-Pieds* revolts in Normandy. He analyses these revolts in relation to struggle and power (Elden, 2017). In this work, part of the 1971-1972 lecture series *Thèories et institutions pènales,* he considers the *Nu-Pieds* revolts as a struggle against the King, and in this period the nascent state of France (Elden, 2017). He considers their struggle as power against the repressive monarchical power. This is what leads Elden (2017) to consider this work as a corrective to criticisms of Foucault that suggest he does not consider how

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[31] BL: 1716, Newcastle Courant, 21 June.
[32] Work that looks more concretely at disaffection also incorporates this notion of it, as a relation to the normal order. Newburn and Shiner's (2005) work on youth disaffection, for example, considers it as non-engagement and non-participation in civil society.

resistance takes place or is possible. For Foucault, in this case, revolt is an exercise of power and resistance.

Foucault's interest in resistance then turns to responses to resistance and the apparatus deployed by the repressive monarchical state to resistance (Elden, 2017). He considers the response of the state as a sequence of manifestations of power, from the very visible and ceremonial, to the less visible. He looks at how "The armed suppression operates first, with the legal system following later", as Elden summarises (2017 p. 53). This 1714 Act is an example of one of the lesser visible manifestations of power, law, being deployed by the state to supress resistance. As the Act says, it was established in response to recent unrest and because existing law was found to be unfit for the 'heinous' nature of it.

In sum here, the target of the law, this particular apparatus of suppression, is the disaffected individual who foments rebellious riots and tumults. This law is thus an example of law being deployed as an apparatus that fixes the criminal at a certain level, at the level of the individual (Foucault, 2015). Through this apparatus of law, the criminal appears as an enemy of the state, as an individual opposed to the whole structure of power, "as an individual opposed to the whole of society as such" (Foucault, 2015 p. 43). This is something Foucault (2015) discusses in The Punitive Society lecture series. This looks at the "procedures by which power reacts to what challenges it" (Foucault, 2015 p. 10). Or, responses to infractions that call power into question (Foucault, 2015). Law is one procedure within a framework of responses to such infractions or interruptions. In this work, Foucault discusses the death penalty within this framework, referring to it is a form of punishment that "is definitive closure, absolute security" (Foucault, 2015 p. 11). The taking of life grants this absolute security from the disaffected individual. This is something the Act incorporates through introducing the threat of 'Death as in case of Felony Without benefit of Clergy' for rioters.

This fixing of the criminal at the level of the individual codifies the still pervasive pathological framework for understanding unrest that Dikeç contests in the 2018 book *Urban Rage.* By this, I mean the way that the Act attributes the problem to the individual and their defective human nature. Dikeç (2018) introduces this fixing of the problem at the level of the as the starting point that his work departs from. He frames his work as moving from the pathological to a political framework.

Dikeç (2018) identifies the pathological framework for understanding unrest as originating in 18th and 19th century sociology, and particularly early sociological work on the anatomy

of the crowd.[33] Examples include the work of Le Bon who considers the crowd as releasing "the violent passions that lie in every man's soul…as a mechanism for releasing the 'savagery' within humanity" (Wall 2016 p. 400). Another is Charles Mackey's *Extraordinary Delusions and the Madness of Crowds* (2002; completed 1852; Borch, 2007). In this book Mackay writes of the mania, delusion and wrongheadedness of the crazed individuals that constitute the crowd (Mackey, 1932). As Wall (2016) writes, these theorists and ways of thinking about crowds emphasise a determinate human nature, and the crowd as composed by the defective human, or primordially violent human.

In 2011, as Dikeç (2018 p. 6) writes, this pathological framework came "back with a vengeance". Dikeç (2018) suggests that then Prime Minister David Cameron's (2011) comments on the English riots were the 'best' example of this.[34] Many of these were made in Cameron's (2011 n.p.) 'fightback' speech following the riots in England, where he emphasised that the riots were not about government cuts or poverty but behaviour and "people with a twisted moral code, people with a complete absence of self-restraint".

The pathological framework, as Dikeç writes, attributes unrest to flawed individuals and their defective human nature (2018). It considers riots as symptomatic of human pathology, therefore denying or evading any relation to social or political practices, and critically, denying unrest of any political significance (Dikeç, 2018). For Dikeç (2018) the framework thus has the effect of confining and reducing the problem of unrest to particular human attributes. These tend to be attributes such as the lack of moral sense, irrationality and uncontrolled violent emotions, which as Dikeç (2018) highlights, are rooted in this centuries-old sociology. The 1714 Act characterises the defective attribute as disaffection.

The codification of the pathological framework in law in 1714 is exemplary of how law was constructed and the role it had in this period. Analysis of law and law making from this time helps to say more about where the pathological framework comes from and

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[33] Borch (2007; 2009; 2012) discusses the work on the crowd at length. Borch (2007) signals Gabriel Tarde, Scipio Sighele and Gustave Le Bon as the key (20th century) crowd theorists, but also goes further back to work such as Charles Mackay's 'Extraordinary Popular Delusions and the Madness of Crowds' (2002; completed 1852). Borch's work has the aim of 'revitalizing' work on crowds, after it became a 'sub-sub-field' of analysis and so collates this history of the concept.

[34] "David Cameron "offered perhaps the best example of pathological framework in his so-called 'fight back' speech as a response to the 2011 uprising. 'These riots were not about race,' he said. 'These riots were not about government cuts…And these riots were not about poverty…No, this was about behaviour, people showing indifference to right and wrong, people with a twisted moral code, people with a complete absence of self-restraint.'" (Dikeç, 2018 p. 85; Cameron, 2011).

what it does. This is something that Foucault discusses in *Abnormal* (2003; presented 1974-1975). One of Foucault's central concerns in Abnormal is the emergence of the framing of crime as pathological, or as a problem of the *abnormal* individual. As the introduction to Abnormal outlines, one of the general aims of the lecture series is to "mark out the displacement of the legal subject by a set of "juridically indiscernible" personalities, such as the delinquent, the dangerous individual, the abnormal" (Davidson, 2003 p. xix). It details how the legal subject, or the legally responsible subject is displaced by the flawed, abnormal individual (Foucault, 2003). As a result, as Foucault summarises, crime becomes nothing more than the individual's conduct. What becomes punishable is therefore the conduct rather than the action of the individual (Foucault, 2003).

Foucault traces the emergence of pathological criminality to 18th century penal law, in this work in the French context. He considers this as foundational to the understanding of crime as the deficiency of the individual. Foucault situates crime in what he calls an "infracriminal and parapathological series" (2003 p.21). These two terms are helpful to clarify the notion of pathological criminality that he presents. Infracriminal speaks of the idea that crime is not about the action of the individual, but below this and at the level of their behaviour and conduct. Expanding on this, Foucault (2003 p. 15) writes that the offence becomes "a whole series of other things that are not the offence itself but a series of forms of conduct, as ways of being that are...the motivation, and starting point of the offence." The notion of the parapathological refers to the way that crime arises alongside pathology, or the deficiency of the individual. Foucault writes: "The subject's desire is closely connected with transgression of the law: His desire is fundamentally bad" (2003 p. 21).[35] In this instance, 1714 Act targets disaffection and rebelliousness. These characteristics and forms of conduct make the individual bad and dangerous. The Act frames these characteristics as what instigates riots and tumults and so targets them, rather than actions of rioters.

The 1714 Act legalises or writes into law this understanding of pathological criminality. It is an therefore an example of the codification of the sociological fallacy of the pathological framework that Dikeç (2018) presents and contests through exposing the logical and ethical dead ends that it leads to. Foucault's work on the emergence of pathological criminality helps to say more about the emergence of this framework. In addition to being rooted in the centuries-old sociology that Dikeç (2018) points to, it is underpinned by law,

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[35] Footnote from translation: "The manuscript says: "The logic of desire is fundamentally connected to a transgression of the law".

and law as an apparatus deployed to supress resistance and protect the King. Foucault's work makes clear the connection between law and the suppression of revolt in this period, as a means to protect the monarchical state in particular. He emphasises that law in this period was fundamental to the development of monarchical states. He makes the clear point that Western monarchies "were constructed as systems of law…law was the monarchic system's mode of manifestation" (Foucault, 1976 p. 87).

Overall, what is significant here is the way that the Act reduces the riot to a problem of the individual, and the offence becomes nothing more than the problem of individual conduct (Foucault, 2003). The Act is an example of the way that law in this time fixed the criminal at a certain level, of the individual. As Foucault (2003 p. 34) summarises, "The institutional system is aimed at the dangerous individual who is not exactly ill and who is not strictly speaking criminal" (2003 p. 34). And, that law in particular, as one part of the institutional system, is targeted not at the subject, but an object to be corrected: the dangerous individual (Foucault, 2003).

Secondary to the danger of the disaffected individual, in the last line of the extract I begin this section with, the Act outlines the danger of the disaffected individual who has the capacity to *raise divisions* and alienate the affections of others. Here the Act makes a clear connection between disaffection and the collective. It is saying that the individual is dangerous because they are disaffected, *and* the disaffected individual has the capacity *and intention* to 'raise divisions'. The secondary danger here is the danger is that this disaffection has the potential to spread. While relating to the collective, this also affirms the pathological framing, as again the danger comes from the individual and their intention to raise divisions. The Act is clear that their rebelliousness and resistance that it attempts to supress through law is intentional. The Act therefore targets resistance that starts at the level of the individual, but has the potential to become a collective disaffection.

The disaffected collective, calculation and number

This section further considers collective disaffection. I first consider number as another necessary ingredient of the riot, using again Lord Justice Flaux's notion of necessary ingredients required for riot. I then turn to think about what number does in this legislation. I consider how number renders the riot measureable and therefore subject to intervention and control (Elden, 2006).

Introducing a further ingredient of riot, the 1714 Act classifies a riot as a tumultuous assembly of 12 or more:

> 'Persons to the number of Twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the Disturbance of the Publick Peace, at any Time after the last day of July in the year of our Lord one thousand seven hundred and fifteen'

The Act introduces the number of twelve as the number of people that 'being unlawfully, riotously, and tumultuously assembled together, to the Disturbance of the Publick Peace' constitutes a riot. The quantification of twelve as the threshold of assembly is still central to the determination of a riot. Current public order legislation, The Public Order Act 1986, retains this quantification of a riot. The 1986 Act sets out a series of public order offences, riot being the first and listed as section one of the Act, and uses number as one way of grading the severity of offences.

The measure of twelve seems quite insignificant, or easy to satisfy. One lawyer joked, for example, that on this basis, a rowdy office Christmas party could constitute a riot.[36] The number, however, is part of a series of interconnected measures that must be met for a particular assembly to be a riot. The assembly has to have twelve people, who are riotously and tumultuously assembled together. Riotousness and tumultuousness also become measurable entities. In the Mitsui case, the matter of number, there being twelve or more people, therefore quickly opens onto broader, more complex discussion of measure and what counts as a riot.

Starting with the matter of number, the Mitsui case turns in particular to two cases concerning jewellery raids. First, a 1967 case that analyses this requisite of number in depth. This case, Dwyer Ltd v Metropolitan Police, involves a jewellery raid in East London where the shop owner attempted to claim £468 15s 10d in compensation for jewellery that was stolen under the 1886 Riot (Damages) Act. The incident involved four hooded men armed with iron bars. They entered the shop, threatened the staff and customer inside with the iron bars, took what they could from displays and the open safe, and left in an awaiting van (Dwyer Ltd v Metropolitan Police, 1967 p. 3). The second case is a jewellery raid in 1984 in Brighton. This incident involved three or four men armed with sledgehammers and "an industrial nail gun, to give the impression it was a real fire arm" (Mitsui v MOPAC, 2013 p.9). They smashed the window of the shop and took a

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[36] Interview, Lawyer, 22/07/2016.

large quantity of jewellery. Again the owner attempted to claim compensation for this under the Riot (Damages) Act. In discussion, the 2013 Mitsui case states:

> The statutory offence of riot under the Public Order Act 1986 requires twelve or more persons to be gathered together. It follows that if the facts of either case occurred today, there would not be enough persons involved to constitute a riot, so that the 1886 Act would have no application. (Mitsui v MOPAC, 2013 p.8)[37]

This extract form the case gives the impression that number, the 12 or more, is a requisite that stands-alone. However, the jewellery raid cases opens up and makes more complex this requisite of number and the quantification of the riot. The 1967 Dwyer case concludes: "While the law says that the robbers might constitute a riot[38], they cannot constitute a tumult because the concept of size was not adequately established, their movements were not agitated, and there was no excitement or disorder" (Dwyer Ltd v Metropolitan Police, 1967 p. 2). Here the case concludes that although the assembly involved enough people, the concept of *size* was not adequately established. What Dwyer sets out here is that as well as number, other measurable requisites are attached to this numeric requisite of twelve people. More specifically, the assembly of 12 or more must be riotously *and tumultuously* assembled; "both must be satisfied to render the Act applicable" (Dwyer Ltd v Metropolitan Police, 1967 p.1). Lyell J's interpretation of this concludes that these two attributes, riotously and tumultuously, must be considered cumulatively. An assembly that is either riotous or tumultuous cannot be determined as a riot.

The number, twelve people, satisfies the first half and constitutes a riotous assembly. The assembly of twelve has to have other qualities to be tumultuous. As Kerr LJ reveals in the 1988 jewellery robbery case, etymologically tumult is unconnected with multitude or number. It comes from tumulus meaning mound or swelling, and the etymological dictionary defines it as excitement, uproar, agitation (DH Edmonds Ltd v East Sussex Police Authority, 1988 p. 5). An agreed measure of tumultuousness that comes out of this discussion is noise. The Mitsui case summarises this by stating: "The argument on the first point was that tumultuously added some requirement of noise" (Mitsui v MOPAC, 2014 at 50). The twelve or more persons riotously assembled together should be the source of

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[37] For both cases, when they took place, the common law offence of riot required only three or more people to be assembled together to constitute a riot. The 1967 and 1984 case draw on the common law specification to determine whether their cases concern riots. The cases are still relevant and used in the 2013-2016 Mitsui case because they turn to this matter of 'size' more generally. The common law quantification of three was repealed by the 1986 Public Order Act.

[38] In common law at the time.

the noise, not bystanders of the assembly (Mitsui v MOPAC, 2014). In the 1984 jewellery robbery case, for example, the main noise came from the "terrified spectators", while the armed men acted "stealthily" in their approach and in the main part (Mitsui v MOPAC 2013 p.10). Drawing on Lyell J's (1967 p. 6) summary that "There is nothing secret or furtive about a crowd of people who are acting riotously and tumultuously", the assembly was not considered riotous or tumultuous, and the claimant did not claim compensation for riot damages.

These measures, 12 or more noisy people makes the riot identifiable and obvious to those in the area. The size of the assembly, in terms of number and noise, is a cue for those in the area to intervene. The 1714 Riot Act places a responsibility to intervene onto the inhabitants of the hundred. It codifies this as a duty to intervene and *prevent* the crowd becoming a riot. It is an example of the then common practice of placing a statutory duty on the community to prevent crime (Morgan, 2014). This practice is now very uncommon, but it persists in English riot legislation, with the police now standing in as the community, but not in any other English law (Morgan, 2014).[39]

Lyell J explains this logic in the 1967 jewellery raid case, he states:

> the word 'tumultuously' was added to cases where the rioters were in such numbers and in such states of agitated commotion, and were generally so acting, that the forces of law and order should have been well aware of the threat which existed, and, if they had done their duty, should have taken steps to prevent the rioters from causing damage. (Dywer Ltd v Metropolitan Police, 1967 p. 6)

Lyell J draws on this logic and the way the 1714 Act imposes a statutory duty on the police to prevent riots, to dismiss the jewellery shop owner's attempt to claim compensation for losses through the Riot (Damages) Act, by claiming what took place in the jewellery raid was a riot. The assembly in the shop was not large enough, and not loud and agitated enough to make itself obvious to the forces of law and order.

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[39] The police (previously the hundred, the community) are not strictly liable for any other crime. Morgan details more on the obscurity of it in English law: "To call for strict liability of public authorities sits ill with the current state of English law…whereas liability without fault flourishes in French administrative law, in England there is judicial reluctance to allow actions based on negligence, let alone strict liability (2014 p. 7).

Lyell J explains:

> That there was a commotion, a bustle and a certain amount of talking –
> not, I think, probably above the average tone of voice – is undoubted. But
> the whole incident appears to have happened without attracting the
> attention of anybody outside the premises. I have no evidence of anybody
> having noticed anything untoward going on in the shop or immediately
> outside it. The propitiator of the next-door shop heard no unusual noises.
> That may have been due to the fact that there was a substantial brick wall
> between the two sets of premises. But if there had been a great uproar, I
> think it probable that he might well have noticed it. (Dwyer Ltd v
> Metropolitan Police, 1967 p. 4)

The case concludes that if the assembly was not sizable enough to alert the neighbours to
its taking place, it was not sizable enough to become obvious to the forces of law and
order. The forces of law and order therefore had no duty to prevent it, and were not
liable for damages.

The Mitsui case refers to this logic to consider when the police's obligation to pay
compensation arises. In its first hearing in the Commercial Court, it summarises:

> The obligation of the police authorities to compensate victims of riots
> under the 1886 Act only arises where it can be said that the notional
> responsibility of the police to protect the public against rioters is engaged,
> in other words where the 'riotous and tumultuous assembly' manifests
> itself in such a way that the police ought notionally to have been aware of
> it and prevented it. (MOPAC v Metropolitan Police, 2013 p. 11)

Lyell J's discussion and decision on this, that an assembly had to be both riotous and
tumultuous to constitute a riot, is used at length in the Mitsui and Yarl's Wood cases.[40] In
summary, it affirms that riotousness relates to number, and tumultuousness is measure of
noise. Both of these ingredients, number and noise, are necessary ingredients of a riot.
The riotous collective of twelve or more has to be noisy enough to become obvious to
the forces of law and order and therefore signal a need for their intervention.

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[40] Bedfordshire Police Authority v Constable, 2009; Yarl's Wood Immigration Ltd v Bedfordshire
Police Authority, 2009.

Number, compensation, damages

A failure to respond to these signals, number and noise, and therefore a failure to intervene and prevent a crowd becoming a riot, is what leads to liability for damages. The 1714 Act passes liability for damages to the inhabitants of the hundred:

> 'Any building demolished or pulled down in part, the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly or in part, and such damages shall and may be recovered by action to be brought in any of his Majesty's counts of record at Westminster raised and levied on the inhabitants of such hundred.'

The significant point here is that number renders the collective measurable, and number also facilitates intervention into the collective. Twelve of more people, nosily gathered, calls for intervention from the hundred. Here the collective is subject to a process of quantification that works to reduce it into a legal-calculable form, that makes it graspable and therefore controllable (Elden, 2006). Number determines when the collective becomes recognisably problematic, and thus when it calls for intervention from the community, which is the hundred in this case. The way law is operating here in this reductive way reflects how making something measurable, or knowable through number, enables action and intervention. As Elden (2017) summarises, drawing on Foucault, measure is a way to establish knowledge *and* exercise power (Elden, 2017). It is a function of order; it is a matrix of knowledge *and* a means of establishing or restoring order (Elden, 2017).

The way that law incorporates number in this 1714 Act is an example of how measure was used to support the knowledge-gathering practices of the state. This knowledge gathering was central to legitimating their power. As Elden (2006) suggests, for example, calculation and understanding the world as measurable were key to the constitution of the modern state, around the start of the seventeenth century (Foucault, 2007).

Foucault writes that the state did not simply impose itself "as if by a spontaneous, automatic mechanism" (Foucault, 2007 p. 277). For Foucault (2007) the emergence of the state was inseparable from knowledge practices that enabled the state to have sufficient knowledge to know and govern its population. Foucault suggests: "The state is a practice. The state is inseparable from the set of practices by which the state actually became a way of governing" (2007 p.277). This set of practices he relates to here are practices of learning and knowledge production, such as measure. A more specific example is statistics,

which is etymologically the knowledge of the state. The development of these practices were the "processes by which the state effectively entered into the reflective practice of people" (p. 276). The two were emerging in parallel. The state needed these ways of knowing to legitimate itself and actions.

Developing the example of statistics, for Foucault, knowledge gathering through statistics enabled the state to develop an understanding of the reality of the state itself. For Foucault (2007) this knowledge, of the reality of the state, was necessary for the institution of the state itself to crystallise. Foucault writes: "someone who governs must know the elements that enable the state to be preserved in its strength…so that it is not dominated by others or loses its existence by losing its strength or relative strength" (2007 p. 274). The state needs a measure of reality, in order to know how and when to intervene. The intervention of smallpox vaccination, for example, was made possible through statistical knowledge of the population, its quantity, mortality and the distribution of the probability of infection (Foucault, 2007; Hannah, 2015).

Law here draws on number in a similar way; it understands the collective as measurable, and reduces it to a legal-calculable form. It here draws on number to delimit a point of intervention, a way in to restore order. Measure works as both a way to know the collective, and to know when to intervene to restore order. Law in this case thus works to render the noisy collective of twelve or more people as problematic and to warrant the intervention from the public to prevent the collective becoming a riotous and tumultuous assembly: a riot. A failure to grasp the event and intervene to restore order leads to liability for damages.

This arrangement rests on the logic that the riot is a public interruption to the public peace that the public should have been aware of, and therefore attempted to supress and prevent. The Act delimits twelve or more people noisily assembled as the point of intervention. If the hundred does not intervene, or does not intervene successfully and limit the collective becoming a riot and restore order, they become liable. The Act thus puts in place the arrangement whereby if the public fail to intervene and prevent a riotous crowd becoming a riotous and tumultuous riot, then they became liable for the damages. As the Mitsui case summarises, passing liability to hundred "was an inducement to them to perform their duty of preventing or supressing riots" (Mitsui v MOPAC, 2016 p. 5).

A narrow interpretation of this logic infers that this arrangement and passing of liability to the hundred is penal; that it punishes the inhabitants of the hundred for failing in their duty

to supress and prevent riots. Some early, 18th century, cases draw on this narrow interpretation of the Act and consider the Act to be penal against both the rioter and the hundred (Mitsui v MOPAC, 2016 p. 5).[41]

This Mitsui case considers how this penal interpretation is analogous with suretyship. Lord Mansfield, in the 1776 Ratcliffe v Eden case, following a riot by sailors in Liverpool, offers a summary of what this means and encompasses:

> This is the great principle of the law, that inhabitants shall be in the nature of sureties for one another. It is a very ancient principle; as old as the institution of the decennaries by Alfred, whereby the whole neighbourhood or tithing or freeman were mutual pledges for each other's good behaviour. The same principle obtains in the Statutes of Hue and Cry. It is the principle here. (1776 p. 488)

Being sureties for one another means to stand in the shoes of the other. In this case, the inhabitants stand in the shoes of the rioter, "those who are liable to compensate are also regarded by the law as standing in the shoes of the wrongdoers themselves…in part because their obligation, their strict obligation, is to prevent what has happened happening" (Yarl's Wood v Bedfordshire, 2009 at 54).

More commonly, however, and in later cases, the logic is interpreted more broadly and as remedial, meaning it is a way to remedy the loss, misfortune or injury caused by riots. Under this reading, imposing liability on the hundred is a means to share the burden of misfortune of riots, rather than punish inhabitants for their (in)actions (Mitsui v MOPAC, 2016).

This takes the matter of fault out of the arrangement. The inhabitants become answerable for the wrongdoing, but not because of a breach of duty or obligation (Mitsui v MOPAC, 2014 at 59). The Mitsui case relates back to the 1967 jewellery case to clarify this, and emphasises how in this case Lyell J uses the "language of fault ("if they had done their duty"), not that of notional fault" (Mitsui v MOPAC, 2014 at 43). In sum, not actually existing fault.

Under this reading, the imperative becomes to share the burden of misfortune with the whole community. There is also a practical reason behind this arrangement. The 1714 Act changes the nature of the offence of riot. Before this Act, rioters were adjudged

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[41] Hyde v Cogan (1781). This is a case from the Gordon riots concerning whether compensation for furniture inside a property could be claimed by Lord Mansfield.

trespassers and they were liable for damages that they caused. The Act makes rioter's felons and rioting punishable by death without benefit of the clergy. The UKSC ruling on the Mitsui v MOPAC thus makes the pragmatic point that:

> It may have been the intention of Parliament that the 1714 Act made riot a felony punishable by death, with the result that the offender would not be around to pay compensation and as, like other felons, his assets would be forfeited to the Crown, the injured party should have a right of compensation against the hundred in substitution for his action of trespass. (Mitsui v MOPAC 2016 p. 7)

Archives of compensation claims help to visualise this principle taking effect (figure 9). It demonstrates how in the aftermath of the event, as liability passes to the inhabitants of the hundred, the riot is translated into a sum of compensation claims. Number here works to translate the event of the riot into a sum of damages. It visualises the riot, in its aftermath, very much as a measurable entity.

Figure 9: Claims forms from a "Special Petty Session of all the Justices of the Peace for the County of Middlesex acting for the Hundred", for example, lists claimants, their damaged property, and sum of the claim, 1873. LMA: MC X 001.

5.6 Conclusion

In summary, through my discussion of the Mitsui v MOPAC case's place in the legal history of riot, I have evidenced how the unfolding of the case determines what a riot is, and that it is not codified in the law as text. I have evidenced that the power of law is not embedded within legal text, but emerges in the unfolding of the case. By power of law, here I mean the power of law to draw the aesthetic faultline in the world – the line that regulates appearance, by constructing something as an object of governance in law. Through constructing the riot as an object of governance in law, the law subjects the appearance of the riot to intervention.

I set out what makes the riot an object of governance in law in relation to the necessary ingredients of riot: first, the riot as an interruption to the state of peace, which is a state that the state itself works to preserve and maintain. Second, the riot as a performance of resistance by the disaffected individual who instigates rebellion, and who has the potential to spread disaffection. And third, number, and the riot as a collective that manifests as the disaffected collective.

Through arguing that the power of law, specifically in relation to the drawing of the aesthetic faultline, emerges from the case I have made the case for doing case work in legal geography. I have argued that what a riot is, in law, is not set out in statute. The case and the way that it creates a re-enactment of the event is the means through which the aesthetic faultline is drawn, by which I mean it becomes clear what a riot is, in terms of an object of governance in law. I have concluded the chapter by thinking about how law renders the riot into a legal-calculable form that makes it graspable and therefore controllable. The presence of these ingredients of riot that I have set out is what warrants intervention, and subjects the riot to control. Here I have thus outlined how law as an apparatus works to supress the riot in a particular way: through rendering it measurable, as a set of ingredients, and therefore controllable (Elden, 2017).

In the next chapter, I transition from thinking about how the riot is characterised, in terms of necessary ingredients, to think about how this imaginary of the riot becomes actionable. I thus transition to begin thinking about the second stage of governance – the policing of the aesthetic faultline in the world. I consider, if these ingredients are present, how is riot law applied?

6. Present at the Scene: On How a Riot did Not Take Place

Archival Scene: Charges of Riot and Unlawful Assembly, Orgreave, 1984-85

The dispute lasted in total from 9 March 1984 to 5 March 1985, and during that time a total of 1701 persons were arrested for various offences arising directly out of the dispute…The charges preferred were generally for assault, obstruction, criminal damage, and disorderly behaviour, these being the offences commonly charged when public order disturbances occur. Violent picketing occurred on 30 May…It was at this stage that the senior officers at the scene expressed the view that the nature of these events had reached riot proportions and required that consideration be given to offences of riot and unlawful assembly…

The first trial arising out of incidents at Orgreave commenced at Sheffield Crown Court on 21 January 1985 when 10 persons were inducted for unlawful assembly following their arrest on 31 May 1984…The Jury returned a verdict of 'not guilty' against eight defendants but were unable to reach a verdict on two of the persons charged…

The second trial, resulting from Orgreave on 1 June 1984, commenced on 15 April 1985 and lasted four days. The case had been set down for trial but representatives of the 19 defendants approached the prosecution and made the suggestion that all 19 men be bound over to keep the peace. This was agreed to and on 18 April all the men were bound over for a period of one year in the sum of £200 to keep the peace…

The fourth trial, and again concerning men arrested at the Orgreave Coking Plant, started on May 1985…After the 48th day of the trial however, and although the prosecution had not completed the presentation of the whole of its case, it was becoming evident that convictions were unlikely to be obtained…

To conclude it should be realised that in none of the 'Orgreave cases' did the defence ever submit at the comital stage that the evidence did not support the charges of either riot of unlawful assembly. Furthermore, at the trials themselves it was never suggested by the defence that riot or unlawful assemblies had not occurred.[1]

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[1] SYJA/2/4/11: Wright, P. (1985) *Charges of Riot and Unlawful Assembly, Report by the Chief Constable to Police Committee, 25 September*. South Yorkshire: South Yorkshire County Council.

6.1 Introduction

This scene introduces the problem of how charges of riot were made at Orgreave, but yet the charges did not lead to any convictions through trial at Sheffield Crown Court. Despite riot charges becoming preferred and then used, no one was convicted for riot following what took place from May 22-30 1984, and went to trial in 1985. The above excerpt summarises how criminal trials from Orgreave unfolded, and how charges for riot did not materialise into convictions. It is taken from a report of the Chief Constable at Orgreave to the police committee after the events.

The events at Orgreave, a coking plant on the outskirts of Sheffield, involved violent confrontations between miners and police. Prior to Orgreave, in the first stage of the 1984-85 miners' strike from March to early May, picket lines had been less confrontational. Police presence was smaller, and their approach more cautious and less aggressive (Schwarz, 1985).

While events at Orgreave started out as a straightforward, peaceable picket, they rapidly escalated into violent clashes.[2] Police deployed support units from across the country to Orgreave, determined to match and outnumber the pickets who had also travelled to join the national picket at Orgreave. The President of ACPO, the Association of Chief Police Officers, reported police to picket ratios reaching 8:1 (McIlroy, 1985). The police's approach, of flooding the picket with not only police, but police dogs, horses, riot equipment, and ambulances, drastically changed the atmosphere at the picket (McIlroy, 1985). Mass military-style policing aimed at stopping, rather than regulating, picketing resulted in retaliation, and the intensification of violence.

Owing to the level of violence, the media depicted events at Orgreave as 'The Battle of Orgreave'. Such language, evocative of war, foregrounded both the level of violence, and also reinforced the construction of the two opposing sides in the strike: The National Union of Mine Workers representing the miners, and Margaret Thatcher's government pushing a programme of coal pit closures (Hart, 2017).

Strike action in 1984-85 followed announcements of extensive pit closures across the country. The government's plan was to scale down and close 'uneconomic pits', in terms

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[2] SY685/8 Rom 23: Interviews with miners

SYJA/2/4/11: Wright, P. (1985) *Charges of Riot and Unlawful Assembly, Report by the Chief Constable to Police Committee, 25 September*. South Yorkshire: South Yorkshire County Council.

of rates of extraction, productivity, and profitability, in order to reduce dependency on both coal, and coal workers (Sweet, 1985).

At the start of the strike in 1984, miners taking action were acting in response to the *reported* threat of 20 pit closures and the loss of 20,000 jobs, but the National Union of Miners was aware of more extensive plans to close around 70 pits, leading to the loss of 70, 000 jobs (Winterton, 1993). At stake, however, was much more than jobs, in 1984-85 miners took action to defend futures, places and communities. As Kelliher (2017 p. 596) writes, for example, "the dispute can be understood as fundamentally a defence of place", as resistance to pit closures and job losses is intimately connected to the protection of mining communities.

This chapter considers the punitive response to what took place at Orgreave in the period, 22-30 May 1984, to begin to think through the actionability of the imaginary of riot that the previous chapter details; the riot as a disruption to the public peace, instigated by disaffected individuals, and subject to intervention when the crowd becomes a noisy collective of twelve or more. By punitive response, I specifically relate to *charging*, as one part of the penal process. The use of riot charges indicates that these ingredients of riot were present at the scene. In theory, their presence in combination is what prompted the crossing of a threshold, the aesthetic faultline, in law; the decision that what was taking necessitated the "the full rigour of the law being applied to offenders", which equated to the use of riot charges (Wright, 1985 p. 2). Or, more simply, the *application* of riot law.

Yet, following the trials, where the outcome was not to convict, what is recorded as taking place is not rioting. All those charged were found not guilty of riot. No criminal record of rioting thus exists from Orgreave. The questions that I consider in relation to this are: how does the imaginary of riot that I set out in the last chapter become actionable? How is riot law applied? I draw on what took place at Orgreave, the failure of the imaginary of riot to become fully actionable, to begin to explore the notion of actionability. I look at how at Orgreave, the imaginary became actionable and riot charges were used, but in the aftermath of the events, no record of riot remains. The imaginary thus failed, at some stage, to become fully actionable and materialise into riot convictions.

The conclusion of the report is useful to repeat here, it states:

> To conclude it should be realised that in none of the 'Orgreave cases' did the defence ever submit at the comital stage that the evidence did not support the charges of either riot of unlawful assembly. Furthermore, at

the trials themselves it was never suggested by the defence that riot or unlawful assemblies had not occurred (Wright, 1985 p. 4).[3]

This plea that rioting did take place alludes to the ambiguity around the taking place of riots that I consider in this chapter. The report concludes with the plea that there is no doubt a riot took place, despite the rest of the report admitting that trials for riot were futile and that "the appropriate course of action would be to dispense with the outstanding proceedings as quickly and expeditiously as possible" (Wright, 1985 p. 4).[4] It is this contradiction that I take as a starting point in this chapter.

Again the question of whether a riot took place arises here, as it did in the Mitsui case that the previous chapter followed. I consider the emergence, *again*, of the question of whether a riot took place as rationale for initially engaging with the Orgreave case. While the Mitsui case asks whether a riot took place, and then looks to law to find out what a riot is, in the Orgreave case the question of whether a riot took place leads to investigation of what counts as a riot, in the criminal sphere. While the previous chapter focuses on ambiguity around how the aesthetic line is drawn, this chapter looks at the ambiguity as to what constitutes a transgression of this line. In this chapter I consider the policing of the aesthetic faultline and ask: how is it policed? What constitutes a transgression of the line? How are transgressions managed and limited? How is the appearance of riots regulated?

Through looking at the punitive response at Orgreave, I focus my attention on punitive techniques (Foucault, 2015). By this I mean state responses to crime.[5] This is drawing on Foucault's (2015) framing of punitive tactics as expressions of power in response to crime. In this case, I particularly focus on arrests and police use of charging, and then how the charges at Orgreave transcended into trials at Sheffield Crown Court. I look at this temporally specific part of the punitive aftermath at Orgreave, charges from 22-20 May 1984 and trails from January to September 1985, while recognising that the punitive aftermath from Orgreave endures still (Lamble, 2015).[6]

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[3] SYJA/2/4/11: Wright, P. (1985) Charges of Riot and Unlawful Assembly, Report to the Chief Constable to Police Committee, 25 September. South Yorkshire: South Yorkshire County Council.
[4] Cost was also a significant factor here; the estimated cost of the trials in 1985 was £0.25mil (SY685/3; Audio Histories)
[5] Foucault discusses the multiplicity of punitive forms in 'Punitive Society'; he distinguished four types of punitive tactic: exclusion, compensation, marking and confinement (Foucault, 2015; Carney, 2015).
[6] After the National Coal Board's 1981 plans for the 'accelerated closure' of 23 collieries, colliery closures continued up until 2015 when Kellingley Colliery, North Yorkshire became the last to

My focus on the punitive aftermath involves thinking about the riot in terms of the nature and substance of what is punishable, or the riot as an object of punishment (Foucault, 1991). I look at *when* an event becomes riot as object of punishment, and then to *how* it becomes an object of punishment. This is opposed to looking at the moral rationale and justification behind the right to punish, for example (Foucault, 1991). I withdraw from making judgement on charges, and focus rather on charging as a technique of punishment. That is to say, I do not engage in discussion on the truth or falsity of charges, which in the case of Orgreave is contested and complexly related to the matter of evidence (Williams, 2017). In part bypassing this matter of evidence this is also due to the availability of material on evidence from Orgreave. A freedom of information request I sent to South Yorkshire Police to access archival material relating to Orgreave that was not publically available was rejected.[7] The 'Balancing Test' in the rejection response cited The Independent Police Complaints Commission (IPPC) investigation into the Hillsborough disaster as the reason for this, and the necessity that this investigation must take place without prejudice.[8]

While I do leave the matter of the truth or falsity of charges aside, the centrality and significance of evidence to the campaign for a full inquiry into Orgreave necessitates some contextual detail. It is important to introduce to contextualise the punitive aftermath that I discuss. In brief, the campaign seeks a full investigation of both evidence gathering practice at Orgreave and the presentation of evidence in Sheffield Crown Court. It seeks to expose the incoherence and falsity of evidence collated and given in court, and through this address matters of police accountability at Orgreave.[9]

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close (Allsop et al, 2017). The reduction of industry, which Lavery (2017 p. 20) calls "wanton industrial vandalism", and associated reduction in pay, casualisation and job losses reflects a kind of exclusionary punishment, from employment. This draws on Foucault's categorisations of punitive tactics and *exclusionary punishment* as one form of punitive response (Foucault, 2015).

[7] To reflect the amount of unavailable material, the files I requested included collections: SY691/V1/1, SY691/V1/1, SYP-MD accession number (2008/128). And, items per box number: 1: 1,7; 2; 3: 49, 51-59, 59-60, 61-62, 63-65; 4: 30, 39, 40, 41, 42, 44; 5: 17-18, 21, 22.

[8] The rejection also cites an IPPC statement on this: "in June 2015 the IPCC published a redacted report of its review together with its rationale for deciding that it will not be commencing an investigation into the policing of the Orgreave Miners' Strike at this time. The IPCC has recently indicated that it is considering whether an unredacted version of the report can now be published taking into account any constraints on further publication arising from the links with Hillsborough. The information that has been published has contributed to public understanding of the concerns surrounding this incident and it is anticipated that this will be enhanced by the publication of further information at the appropriate time." (South Yorkshire Police, 2016 n.p.).

[9] OTJC (2018) *Letter to Sajid Javid, 1st November*. [Online] Available from: https://otjc.org.uk/letter-to-sajid-javid/ [Accessed: 01/12/2018].

To go back to 1984, evidence gathering at Orgreave was disjointed because of the number of different police forces involved. The scale of Orgreave, Wright (1985) estimates 5000 pickets, necessitated police officers from other forces being brought into Orgreave each day. These uniformed officers, as well as those in the higher ranks[10], were working long shifts, through the night, and often after little sleep. Wright's report notes that on the June 18, for example, "many of those officers had at most two hours sleep during the whole of that night" (1985 p. 3). His report repeatedly emphasises the exhaustion of all officers.

In addition to their exhaustion, officers concerned with arrest could not leave South Yorkshire and return to their base or home, until statements of evidence supporting arrests were completed. "It was stressed upon all concerned that the completion and presentation of prosecution files would be a matter requiring great urgency" (Wright, 1985 p. 2). Arresting officers were therefore under pressure "to make their statements expeditiously" (Wright, 1985 p. 3). Wright (1985) is clear, that this time pressure, and the exhaustion of officers, "resulted in total in a degree of superficiality in the written evidence, which eventually was to prejudice the prosecution" and, that "the quality and quantity of the evidence thus obtained was ultimately found to be insufficient to sustain convictions" (p. 3).

Miners charged with riot and subsequently acquitted reflect on what Wright refers to as the 'superficiality' of evidence differently. In reflections from audio history accounts, one miner states:

> Prior to the strike I had a lifetime of suspicion to police, but my attitude
> was beginning to mellow. After my experience at the coal house and how
> the police have lied and fabricated from start to end with the sole objective
> of seeing men going to jail…the police force is corrupt from top to
> bottom.[11]

Another miner also charged with riot and acquitted, echoed this emphasis on the falsity of evidence, he states:

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[10] "The evidence gathering team comprised one detective inspector, one detective sergeant, and four detective constables. All those officers were operation detective already involved in investigations of serious crime and this new task was addition to their on-going responsibilities. These officers commenced duty at 0145 hours on Monday 18 June…many arrests were made and the officers were fully engaged on those duties until 0900 hours after which, having effectively completed one tour of duty, they started their prisoner reception and evidence gathering duties at Orgreave." (Wright, 1985 p, 2). SYJA/2/4/11.

[11] SY685/8 Rom 23: Interviews with miners

I hope someday I will regain my trust in the British police but it will be a long time before I do. In this particular case for instance, only two people in the world know he was lying – himself and I knew he was lying. Saying I'd used violence and abusive language against him.[12]

A member of the South Yorkshire Defence Campaign contextualises these reflections in an audio account of the court proceedings. They describe how:

Evidence police had gathered was contradictory. A good deal was untrue. It was clear in court that the police had got together with each other to put evidence together. A good deal of policemen's statements were dictated…It also became clear in court that certain police men who were giving evidence were in fact those themselves who might be found guilty at a later date of acts of assault on pickets. That sowed seeds of doubt to the jury.[13]

The preceding section offers a brief overview of why the investigation of evidence from Orgreave is central to the campaign for a full public inquiry. I include this contextual detail as it is significant in contextualising the punitive response to the riots. It points to the nature of events, and relation between police and miners at Orgreave. I leave aside complexity of this, however, to instead focus on the practice of charging as the becoming actionable of the imaginary of riot set out in the last chapter. I look particularly to *when* and *how* it becomes actionable, or when and how riot law is applied.

Following from this opening scene from Orgreave, I turn to introduce fully the notion of actionability. This is the becoming actionable of the imaginary of riot that the last chapter details. I return here to the notion of the aesthetic faultline and think about this line, between the visible and invisible, and ask: what constitutes a transgression of the line, and when does a transgression of the line take place? How are transgressions managed and limited? How is the appearance of riots regulated?

I then narrow my focus to think about actionability in specific relation to naming. Here I think about naming as an act, and as a first instance of actionability. This draws on Badiou's work that frames naming as an act. After introducing naming as an act, I detail how naming as an act unfolds in the case of Orgreave. I detail how at Orgreave, riot charges were used and so what was taking place was named as rioting, but this name was dropped over the process of trial. In the criminal sphere, the name of riot thus became separated from events at Orgreave. I work through this drawing on further on archival material from the

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[12] SY685/3 Rom 23: Interviews with miners
[13] SY685/8 Rom 25

Sheffield Archives to describe in more detail what took place at from 22-30 May 1984 and the trials that arose from this period. To extend this discussion on the act of naming, I also turn to draw on examples from the 2011 riots, and describe how the act of naming unfolded here. Similarly to Orgreave, what was taking place, for the most part, was not named as rioting.

What I draw out from these discussions of Orgreave and rioting in 2011, is the tendency of anti-naming, meaning this act of naming does not, fully, take place. With this idea, I want to highlight how the name riot becomes detached from events. Or, more simply, how events are rarely called riots. I consider this anti-naming as leading to a specific type of absence of riots, here arguing that riots take place but are not named and counted as such. To think through the significance of this, I draw on Lloyds's work the politics of naming. I draw on this but invert its concern to think about the politics of anti-naming in relation to riots. Here I argue that the act of anti-naming is part of a longer history of an indifference to rioting.

6.2 Actionability: naming and charging

As I argued in chapter four, I consider actionability as the becoming actionable of the imaginary of riot. This follows from thinking about governance in two stages; in terms of an imaginary that then becomes actionable. The imaginary of riot that I set out in the last chapter constituted the riot as a disturbance to the public peace, and a disaffected collective of twelve or more people. In the last chapter I set out the making of this imaginary of riot, or the making riot into an object of governance, in law. I considered how it was through the unfolding of the Mitsui case that the necessary ingredients become known. I thus worked through how, in the legal space of the case, the riot is reduced to these characteristics and thus reduced into a legal-calculable form, which makes it graspable and therefore controllable (Elden, 2006). Now turning to think about actionability, I turn to *how* it becomes graspable, and subject to techniques of control.

Thinking about this in relation to the aesthetic faultline in the world, the becoming actionable of the imaginary of riot that I set out in the last chapter takes place when this line is transgressed (Shaw, 2102). Actionability takes place when an event becomes visible as riot; when the presence of the ingredients of riot that I detail in the last chapter become visible, and action is taken because of this. At Orgreave, I consider the use of riot charges as evidence of this transgression. I consider the use of riot charges as an act naming; the naming of what is taking place as riot.

Naming is the act, the becoming actionable of the imaginary of riot, that I turn to focus on. Thinking of naming as an act, or as an instance of actionability draws on Badiou's thinking on how we respond to what he refers to as the proposition of an event. I thus first expand on what Badiou means by this in the next section, and to develop the argument that naming is a particular, first, instance of actionability that enables the possibilities the event creates to have consequences.

Badiou and Naming

For Badiou:

> An event is not by itself the creation of a reality; it is the creation of a possibility; it opens up a possibility. It indicates to us that a possibility exists that has been ignored. The event is, in a certain way, merely a proposition. It proposes something to us. Everything will depend on the way in which the possibility proposed by the event is grasped, elaborated, incorporated and set out in the world (2013 p. 9-10).

Naming is one, preliminary, way to grasp the possibilities proposed by the event. Calcagno (2007), for example, writes of naming as a way to intervene in order to think through the event. Calcagno (2007 n.p.) contextualises this point with discussion of what politics means to Badiou, and writes that for Badiou:

> Politics is the thinking though of political events. By decisively intervening at a given point, we transform the everyday happenings of nature and history (situation) into an event (l'événement). In naming these events, they become thinkable, especially in terms of their continued, infinite political relevance.

Wright (2008b) writes about Badiou's theory of naming in a similar way. Similar to how Calcagno (2007) sees naming as a way to allow the event to become thinkable and to have political relevance, Wright (2008b) understands Badiou's theory of naming as part of a procedure that enables the event to exist, and then to have consequences. Wright (2008b) suggests that the event first relies on naming to enable the imagination of its existence. When the event arrives, shrouded in uncertainty, the name becomes a powerful resource to confront and resist this uncertainty and to hold onto the event (Wright, 2008b). Without a name, Wright (2008b n.p) suggests, the event "threatens to evaporate in the passing enigma of its evanescence". Without the name, the uncertainty overwhelms and allows the event to dissipate, pass by, and become just an ephemeral interruption. Without the name, it thus dissipates without having consequences. Through elaborating on what naming does, these two thinkers help to support how I am framing

naming as an act. Calcagno (2007) and Wright (2008b) write of how naming first allows the event to exist, then to have consequences. To go back to naming as a way of grasping events, as I open this section with, these two thinkers help to say more about what this means.

An understanding of naming as a way to enable the event to exist, and as a preliminary step within a process of allowing the event to have consequences, oppose critiques that consider Badiou's theory of naming as advocating a dangerous decisionism, or as a signal of an absolutist dimension in Badiou's work (Hallward, 2003; Wright, 2008b). The view of naming as advocating a dangerous decisionism considers the naming of an event as analogous with the way that the sovereign names and declares the exception within Schmitt's state of exception (Wright, 2008b). For Hallward (2003) this proximity to Schmitt's logic of the exception stems from the way the decision self-legitimises the sovereign for Schmitt, and subject for Badiou. In other words, the individual becomes subject through the act of nomination, as the sovereign does through the declaration of exception.

Hallward's (2003) critique arises from a perceived absence in Badiou's work.[14] Hallward (2003) argues that Badiou's work lacks a clear articulation of the human, particularly the process through which individuals actually become subjects. Hallward (2003 p. 284) writes that Badiou defines the human in terms of our "exceptional capacity for thought" but does not elaborate on what this capacity is. This is what leads Hallward to the act of nomination, or the act of naming an event. Hallward (2003) finds this the nearest articulation of how the individual becomes a subject. Hallward (2003 p. 285) argues "Badiou effectively reduces this process to an inaccessible moment of decision", he continues to cite Badiou where he says: "The evental nomination has always already taken place…, and this 'already' is our only guarantee. The rest is a matter of faith…" (Badiou, 1991 n.p.).

I reference this critique be clear on what kind of act I consider naming to be. I do not follow Hallward (2003) and here do not want to pursue this way of thinking about naming

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[14] Perceived at the time of writing and notably before translations, and engagement with Badiou's work in social sciences. Dewsbury's (2007 p.1) paper, Unthinking subjects: Alain Badiou and the event of thought in thinking politics, for example, claims that it "introduces Alain Badiou's philosophy as a powerful resource for social science in rethinking the link between philosophy and politics". I quote this to point to how in 2007 Badiou's work was still just being *introduced* to the social sciences.

as enabling an individual to become a subject, or self-legitimising the subject.[15] Rather, I follow Calcagno (2007) and Wright (2008b) in thinking about naming as an act that allows the event to matter – to first exist, and then to have consequences.

Distancing his work from Hallward's critique, Wright (2008b) foregrounds, drawing directly from Badiou, "there is no hero of the event"; the event is not coterminous with its declaration by the individual, as the exception is with its declaration by the sovereign (Badiou, 2006 p. 207). While for Schmitt, there is no exception unless the sovereign declares it so, for Badiou, the nomination of the event is an intervention that follows the evental rupture. When the event is named, as part of a fidelity to that event, the event is deemed to have happened (Dewsbury, 2007). It is the name that allows the event to first exist. The name is thus fully detached from the event itself, but is the direct implication of the event (Hallward, 2003). Naming is part of a slow, laborious process of pursuing the implications of an evental rupture (Wright, 2008b). This slow procedure sits in contrast to the instantaneous, lightening bolt, temporality of the declaration of exception (Wright, 2008b). Following Wright (2008b), I thus extricate the event and exception, and here understand naming as a bridging device, as a way of working towards allowing the event to first exist and then to matter, or to have political consequences as Wright (2008b) writes.

This notion of bridging helps to frame more specifically how naming allows the event to have consequences. Wright (2008b) develops the notion of naming as a bridging device to suggest that the name bridges the old and the radically new that the event has the potential to introduce. To draw on Badiou's terminology, it thus bridges the distance between the event and situation, and prevents the consequences of the event "being simply ineffable, from inducing, at best, dumb and useless piety" (Wright, 2008b n.p.). In the space of the radically new that the event creates, the name thus helps to make some kind of sense of the radically new (Bassett, 2016). This necessity stems in part from Badiou's insistence[16] that the event introduces a radical break from the past, rather than involving a negation of the past (Bassett, 2016).

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[15] Turning to think about the subject in Badiou's work is beyond the scope of this thesis. Hallward's (2003) 'Badiou: A subject to Truth' presents detailed discussion on subjectivation in Badiou's work, as does Badiou's (1982) most explicit work on this: Théorie du sujet, translated into English in 2009 (Badiou, 2009b). Persijn's (2017) work traces Badiou's theorisation of the subject from 1982 and throughout his later publications.

[16] Badiou's thoughts on the punctual nature of the event, as a radical break from the old, rather than a negation of the old has evolved and is still evolving in his work. Bassett (2008), for example, writes that Logiques des mondes (subtitled 'Being and Event II', published in 2006), acknowledges that

Developing the point that naming allows the event to have consequences further, Wright (2008b) also considers the name as a catalyst that has transformative powers and forms part of the process that permits the advent of something new in Being, following the rupture of the event (Livingstone, 2012). Naming is thus a way to intervene into the uncertainty that the event generates through its break with everything that is knowable. It is a way to transition and distinguish the event from a merely abstract abstraction, to a more effectively concrete abstraction (Hallward, 2003). Again, this stems from the idea of the event as radical break and unconditional rupture, not conditioned by anything, such as history, and subtracted from all rationality (Hallward, 2003). Naming is therefore an intervention into the uncertainty of the event that defies codification. Again, it is transitive, and part of a process of defying the indiscernibility of the rupture and allowing the event to have consequences (Wright, 2008b). Wright (2008b n.p.) suggests that "one might imagine this process as expanding outwards from a site such as the epicentre of an earthquake, albeit in a slower, more haphazard way."

By consequences, then, I refer to the advent of the new and change. If the event is an opening up of political possibilities, which were not calculable in advance, naming the event inaugurates the process of pursuing these possibilities, and enabling them to lead to something new, and invoke change (Badiou, 2013). It is a way of seizing the possibilities an event opens up, in a way that allows these possibilities to become real (Badiou, 2013). This is central to theories of the event which cohere around the idea of the event as something which ruptures and opens onto the advent of something new. In his more recent works, Badiou introduces specificity to the different modalities of change (Bassett, 2016). Within his general theory of change, Badiou relates to these in terms of ascending intensity, from modifications to actual events (Badiou, 2003).

To summarise here, what is important is that naming is part of a process of declaring the existence of and upholding a fidelity to the consequences of an event (Hallward, 2003). The individual begins this process through their subjective intervention. This intervention is both critical to the event existing and having consequences, and their becoming subject. Both evolve from the intervention of naming. The subject is not "simply decided into existence" (Hallward, 2003 p. 145), but rather, "the subject evolves out of the moment of decision" (Dewsbury, 2007 p. 7). Parallel to this, the event evolves and has consequences.

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the appearance of the radically new must coincide with the disappearance or destruction of something 'old'.

Through this intervention and process of fidelity, subjects and the event come to exist (Bassett, 2016).

Overall, naming is thus part of a process that allows the event to exist and have consequences, rather than its possibilities dissolving into the order that it ruptures. As Badiou puts this: "The event is only there as a source of possibilities...little by little they peter out but they are present." (2013, p.12). Naming is a way to begin the process of resisting the petering out of possibilities and allowing them to become real (Badiou, 2013). In inaugurating this process, naming is critical in determining the nature of this process of resisting the non-existence of the event, and thus the modality of change that the event creates (Bassett, 2016). I draw on Badiou's understanding of naming as a way to underpin thinking about naming as a specific, first instance of actionability. Badiou's theorisation of naming outlines what naming does, or what it actions: first, the possibility for events to exist, and second, for the event to have consequences, meaning that the possibilities it creates become real (Badiou, 2013).

I now relate this to what happened at Orgreave. Taking forward this way of thinking about events, I consider how naming was used and what it did at Orgreave. I consider how what was taking place was initially named as rioting, as riot charges were used, but then the name riot was dropped over the course of the Orgreave trials in court. What naming did at Orgreave, then, was initially to enable the riot to exist, but then when dropped, it limited the potential of the event to have consequences. I then go on to argue that this creates a particular type of absence whereby riots take place but, to draw on Badiou's language, are not *counted* or *indexed* in the world.

6.3 Charging at Orgreave

Having elaborated on my specific understanding of the role of naming in actionability, I now detail what happened in relation to naming at Orgreave, drawing further on the 1985 report by the Chief Constable to the Police Committee, and the archival collection it is part of in the Sheffield Archives. The report was submitted by Chief Constable, Peter Wright, to the Police Committee at the conclusion of the Orgreave trials. It reports the offences and "developments arising out of the trials of riot and unlawful assembly connected with the mining dispute" (Wright, 1985 p.1).

The report reviews the charges used during what it refers to as the 'dispute'[17] at Orgreave. It focuses in particular on the period of 22-30 May 1984 from the dispute that "lasted in total from 9 March 1984 to 5 March 1985" (Wright, 1985 p. 1). It focuses in on this period as this was when the shift in charging preferences at Orgreave took place. There was a shift from using "assault, obstruction, criminal damage, and disorderly behaviour, these being the offences commonly charged when public disturbances occur", to using the charge of riot (Wright, 1985 p.1).

The report notes that assault, obstruction, criminal damage and disorderly behaviour were "the charges preferred" up until 29 May. On this date, the report indicates a marked change; there was an increase in the number of pickets to an estimated 5000, and their behaviour "was violent and missile throwing continued for a long period during the day…Injuries to police officers totalled 104" (Wright, 1985 p1). At this point, charging preferences changed. Senior officers at the scene "requested that consideration be given to offences of riot and unlawful assembly", and that this course of action be "preferred should such extreme disorder continue" (Wright, 1985 p1-2). This consideration became enacted and riot charges were used. There were 78 charges for riot at Orgreave over the period 6 June 1984 to 18 June 1984 (Wright, 1985 appendix). Near to Orgreave, at the Coal House and in Rossington, Doncaster, a further 25 men were charged with riot, from 26 June 1984 to 12 November 1984 (Wright, 1965 appendix). These are all detailed in the same report as it concerns charging in the region of South Yorkshire (Figure 10).

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[17] Dispute is the language of the 1985 report. I repeat this here to quote it as evidence, however, I am very mindful of the ongoing contestation, led by the Orgreave Truth and Justice Campaign (OTJC), around reporting, information disclosure and inquiry into Orgreave, where what events are called, and how this implicates those involved is of central concern. I recognise that words used to describe what happened have real significance, as Irving (2013) describes, for example, "words are animated and become meaningful not only through their semantic meaning or pragmatic use but in the way language is grounded in people's bodies and nervous systems" (Irving, 2013 p. 309). Drawing on Heidegger, Irving (2013) emphasises how words are not simply tools of communication, but have a proximity to Being and specifically disclose a particular relation of a people to Being (Irving, 2013 p. 309). What I find pertinent in Irving is how he articulates how words resonate in peoples bodies and invoke senses of being (Irving, 2013). These words will resonate with and invoke bodily responses for those whose lived experience has a relation to Orgreave. I cannot do justice to the campaign in the scope of this work, but I highlight this issue to signal my awareness of the resonances words have that this discussion of naming and the act of naming does not cover.

CASES OF RIOT OR UNLAWFUL ASSEMBLY DEALT WITH AT SHEFFIELD CROWN COURT

(N.B. Some defendants also faced other charges for which they were dealt with)

Date of hearing	Location and date of incident	No. of defendants	Charge	Duration of case (in court days)	Result
21. 1.85	Orgreave – 31.5.84	10	Unlawful Assembly	14	8 not guilty 2 jury unable to reach verdict *
15. 4.85	Orgreave – 1.6.84	19	Unlawful Assembly	4	All not guilty but bound over in sum of £200 for one year
16. 5.85	Coal House – 26.6.84 (Doncaster)	15	Riot and Unlawful Assembly	43	All not guilty
17. 5.85	Orgreave – 18. 6.84	15	Riot	48	All not guilty Note: A further 80 men were charged with riot (40) or unlawful assembly (40) arising out of events on that date but no evidence was offered by the prosecution and all were found not guilty (on 5.8.85)
22 and 25.7.85	Rossington – 9.7.84	13	Unlawful Assembly	2 (separate days)	All cases left to lie on file but eight bound over in sum of £100 for one year
7.8.85	Brodsworth – 12 and 19.10.84	17	Unlawful Assembly	1	All cases to lie on file. All bound over in sum of £50 for six months
6.9.85	Armthorpe – 22.8.84	20	Unlawful assembly	1	All cases to lie on file, but all bound over in sum of £100 for one year

– 2 –

Date of hearing	Location and date of incident	No. of defendants	Charge	Duration of case (in court days)	Result
6.9.85	Rossington – 12.11.84	10	Riot	1	All cases to lie on file but three bound over in sum of £100 for one year
20.9.85	Orgreave – 6.6.84	23	Riot and Unlawful Assembly	1	All not guilty *On 20 September 1985 no evidence was offered in the cases against these two men. Verdicts of 'not guilty' were recorded against both.

Figure 10: Appendix detailing charges and trials for riot and unlawful assembly, South Yorkshire 1984-1985 (Wright, 1985).

Here the report marks the moment that the event becomes a riot. It evidences the moment when the imaginary becomes actionable. Thinking about it in terms of the aesthetic faultline, it is a moment of transgression when the event became visible as riot. It indicates the visible presence of ingredients of riot: a disturbance to the public peace, by a disaffected collective of 12 or more. In this case, Wright (1985) estimates a collective of 5000 people were present. While the number is not disputed, evidence of the presence of these ingredients in terms of the characterisation of the collective is. In his report, Chief Constable Peter Wright makes a clear case for the presence of these ingredients. His

report describes missile throwing, the violent behaviour of the crowd, and resulting injuries to police (Wright, 1985).

An audio account of one of the days that riot arrests took place, from a miner from Silverwood Colliery, South Yorkshire, however, suggests:

> Charges were so severe for what happened. I were at Orgreave that day and been arrested. I've seen worser football matches and they only get charged with breach of peace simply cos we were miners. Simply cos we were miners. There's no way of getting out of it. They were political charges, the government were totally against us. They went in too deep.[18]

While the nature of what took place is contested, what happened instigated the becoming actionable of the imaginary of riot. What was taking place became subject to intervention as riot, and this took effect as the punitive response of riot charges being used. The use of charges thus reflect the moment of transgression when the event became an object of punishment as riot (Foucault, 2015). The requested consideration of the use of riot charges that Wright (1985) notes, quickly materialised into the actual use of charges. Riot charges were then used extensively. As recorded in audio history material in the Orgreave archives, speaking in 1985, solicitor Paul Hetherington said: "never in history of charge of riot had there been so many charges in one year. It was unprecedented in the history of charges." [19]

To summarise here, in this section I describe *when* the imaginary of riot became actionable; when what was taking placed was named as rioting through the use of riot charges. In relation to naming, then, what I want to suggest is that what was taking place at Orgreave instigated the act of naming the events as riots. What was taking place was named as rioting, as riot charges were used. This acknowledges the existence of rioting. This is the first things that the act of naming does – allows the event to exist. By exist, I refer to the way a name gives meaning to what has happened in the midst of uncertainty. As Wright (2008b n.p.) suggests, for example, "Without the support of a powerful intervention in the form of a nomination, the exception, just as much as the event, threatens to evaporate in the passing enigma of its evanescence."

I now turn to think further about *how* the imaginary of riot became actionable, and detail the punitive aftermath of charging that continued into Sheffield Crown Court. Here I

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[18] SY685/V/2/1 Audio History, Rom 23.
[19] SY685/V/2/1 Audio History, Rom 23.

consider how the name of riot was dropped, and suggest this prevents the event being able to have consequences, here meaning the possibilities it creates cannot become real. Without the name as an intervention to seize the event, it is not counted or indexed in the world.

6.4 Trial and acquittal at Orgreave

The first trial arising out of Orgreave began on 21 January 1985, and involved 10 persons charged for unlawful assembly. The trial lasted 14 days and the jury returned a verdict of not guilty against eight of the defendants and were unable to reach a verdict for two of the persons charged. The prosecution decided not to pursue a second trail against those two people. The second Orgreave trial began on 15 April 1985 and lasted for four court days. The case had been set to go to trial, but representatives of the defendants approached the prosecution to make the suggestion that all 19 men charged be bound over to keep the peace. This was agreed and all 19 men were bound over for a period of one year in the sum of £200 to keep the peace (Wright, 1985 p. 3).

On 17 May 1985, a third Orgreave trial began that lasted longer than the four day duration of the previous one. After the 48th day, "it was becoming evident that convictions were unlikely to be obtained" (Wright, 1985 p. 4). The Chief Constable decided that in view of this and the previous jury verdicts that no further evidence should be offered against the men. All men were thus acquitted and found not guilty of riot. Following these three trials, five further trials for people arrested at Orgreave were yet to take place (Wright, 1985). Given what had happened at the previous trials, Chief Constable Peter Wright reported, however, that pursing the trials was "neither the public interest nor in the interests of justice" (Wright, 1985 p. 4). Proceedings were thus dispensed "as quickly and expeditiously as possible (Wright, 1985 p. 4).

Following the trails at Sheffield Crown Court from 15 May 1985 to 20 September 1985, and the proceedings that were dispensed, all those prosecuted for riot at the Coal House, Rossington and Orgreave were either found not guilty, or bound over to keep the peace.[20] The becoming actionable of the imaginary of riot thus failed to become fully actionable. Charges failed to become convictions at trial, if they made it to trial at all.

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[20] Correct in 1985, as per the 1985 report. The OTJC campaign for a full public inquiry is ongoing; contestation of charging is a significant part of this (Williams, 2017).

Rather than being convicted of riot, the majority of defendants were bound over to keep the peace.[21] In theory, binding over is a consensual order and requires a person's consent (Feldman, 1988). If a person does not consent, "the court may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order" (Magistrates' Courts Act 1980 at 115). During the Orgreave trials, and others in South Yorkshire at this time, those prosecuted refused the orders and took the risk of sentencing instead, as accepting the order would equate to accepting guilt (Conn, 2017).

Binding over orders require a person to enter into a voluntary agreement to keep the peace for a set period of time or pay a set amount of money to the court (Wainwright et al, 2012). People are ordered to enter into what is called recognisance, with or without sureties which are people who will formally agree to forfeit a certain sum of money should the person fail to keep the peace (Williams, 1967). The order is made by a criminal court, usually a magistrates' court (Williams, 1967). Feldman (1988) articulates this as a power to take sureties of the peace; it is a kind of guarantee of peace (Feldman, 1988). The first statutory mention of this power is in the 1361 Justices of the Peace Act (Feldman, 1988; Marston and Tain, 2001). This Act gave the Keepers and later Justices of the Peace, the newly established peacekeeping institutions, statutory powers to enact the order (Feldman, 1988).

Similar to the breach of the peace doctrine that empowers police to make an arrest without warrant when a breach of the peace is *reasonably anticipated*, binding over powers are preventative in nature (Channing, 2011; Marston and Tain, 2001). No proof of a specific offence is needed for it to be exercised (Wade, 1957). It is not dependent upon a finding that a breach of the peace has actually occurred (Marston and Tain, 2001). As Wade (1967 p. 12) writes, binding over "is resorted to not because there has been a breach of law but because it is apprehended that there may otherwise be a breach in the future". This is what leads Marston and Tain (2001) to describe it as neither a conviction nor a punishment. It is preventative rather than punitive, and is a way of mitigating, rather than inflicting the law (Feldman, 1988).

Binding over orders can also be used after acquittal, as was the case at Orgreave (Wade, 1957; Wainwright et al, 2012). This use is again preventative, and the orders are used to prevent any potential future breach of the peace. There are two rationales for binding

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[21] The report lists 67, however, many resisted binding over orders so as to resist the admission of guilt.

over after acquittal for preventative means. First, if a person is acquitted on a technicality. Wainwright et al (2012) explain this through the case of R v Middlesex Crown Court (1997). This case contests a binding over order given to a man acquitted for assault occasioning actual bodily harm. The case raises the idea that a judge might subject an acquitted defendant to a binding over order if the they were acquitted on a technicality, and thus the judge believed the subject to have committed an offence and, because of the nature of that offence, pose a potential risk to the public. It emphasises that this necessitates that the judge is satisfied beyond a reasonable doubt that the acquitted person is a threat to other persons. In this case, the acquitted defendant's defence was self-defence, and he was not acquitted on a technicality. The case concludes: "it is exceedingly rare that it would be appropriate to bind over the defendant who had been acquitted, and this was not a case where it was appropriate" (R v Middlesex Crown Court, 1997 n.p.).

Another instance where binding over after acquittal takes place is when there is insufficient evidence for the trial of a particular offence (Williams, 1967). Williams (1967) notes that this is used only in *exceptional* situations. What happened with the Orgreave trials was thus exceptional; binding over orders were given after acquittal, following the critical examination of the evidence gathering practice of arresting police officers, and the subsequent dropping of proceedings (Wright, 1985).

This account of the trials, from a member of the South Yorkshire defence campaign, gives a sense of how and why the process of acquittal took place:

> The evidence police had gathered was contradictory. A good deal was untrue. It was clear in court police had got together with each other to put evidence together, a good deal of policemen's statements were dictated. It also became clear during the trial that certain police men did not know what they were up to. One officer confessed in court did not know what unlawful assembly was yet he had arrested someone on the picket line who was now being charged with that offence. It also became clear in court that certain police men who were giving evidence were in fact those themselves who might be found guilty at a later date of acts of assault on pickets. That sowed seeds of doubt to the jury. They had a part to play in the picket line. People were plucked out of the crowd when the order to make arrests was given. It was extremely messy, they have made quite a fool of themselves.[22]

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[22] SY685/8, Rom 25: Acquittal of miners at Orgreave picketing trials.

In sum, following trial the punitive measure of binding over orders stood in the place of rioting convictions. In the punitive aftermath of Orgreave, the name riot is dropped. The initial, unprecedented use of riot charges dissipated into a series of not-guilty convictions. In emphasising this, I resist offering judgement on whether this was right or wrong, and whether the confrontation on the ground involved riotous conduct.[23] The focus that I want to explore is the emergence, again, of the question: did a riot take place? To go back to Wright's report and its insistence that the taking place of rioting at Orgreave was never in question, what unfolded in the punitive aftermath of Orgreave does not evidence this. It evidences ambiguity as to whether a riot, thought of as the imaginary of riot I set out in the previous chapter, took place.

I underline this failure of the imaginary of riot to become fully actionable to emphasise the way that the riot becomes an unrecorded entity in the criminal sphere. To go back to naming, I outline that it first allows the event to exist, and then to have consequences, and to resist the petering out of possibilities that the event creates. At Orgreave, the name riot was initially used to charge. This allowed the event to exist. At trial, however the name riot was dropped, charges failed to materialise and instead defendants were bound over to keep the peace. What I want to suggest is that this limits the event having consequences, in terms of the possibilities of resistance that it created. To name what took place as a riot, for example, would be to name the breakdown of law and order, or the state's loss of control of possibilities.

By this, I do not want to make the argument that the charges should have become convictions. Instead, I want to highlight how the dropping of the name riot allows the event to go unrecorded, and uncounted, literally in the criminal sphere, but more broadly, too. Thinking of the riot as an event that proposes possibilities, without the act of naming being fully realised, those possibilities peter out. At Orgreave, this is the petering out of the recognition of resistance, or a shutting down of the future potential political action.

To summarise here, what I suggest is that the name being dropped had literal consequences in the criminal sphere, in the way of the absence of riot convictions. Yet, this had wider consequences in terms of the rioting event itself having consequences. The

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[23] By this I mean I resist making a judgement as to whether what took place was a riot, in a way that infers those involved *should* have been sentenced. In short, I am conscious of making a case that infers people should have served sentences owing to the gravity of the impact this would have on their lives and the inability of my research to be sensitive to that. I focus on the logistics of the case and punitive response in a general way, and not the lives of the subjects involved as my empirical work does incorporate a focus on this.

possibilities that the event created, of resistance, were able to diminish. The name as something that grasps the event, to stop its possibilities petering did not become fully actionable, limiting its potential to open onto change.

6.5 Anti-naming in 2011

The complexity and contestation associated with the trial process at Orgreave, combined with what happened in relation to naming at Orgreave, exemplifies a very specific instance of how the name riot becomes detached from the rioting event. To extend this argument around naming, I turn now to think about the act of naming in relation to rioting in 2011. I argue that in 2011, a more pronounced *anti-naming* of riots took place, which I want to suggest had the same effect as that of the events of Orgreave: without being named as riot, the possibilities that the event created dissipate and ebb away. Thinking about the event as a creation of possibilities, anti-naming limits the holding onto the possibility of resistance that the riot creates.

Here I will detail instances of anti-naming in 2011, and then go on to elaborate on this notion of anti-naming that I introduce here. In this section, by anti-naming, I refer to how the name riot is not used in responses to rioting events - in charging, sentencing and also outside the criminal sphere. Or, more simply, a situation where events are not named as riots.

In 2011, in the criminal sphere, many people involved in the events were charged for crimes referred to as riot related offences, RROs, such as burglary (Finchett-Maddock, 2012). RROs are distinct from public order offences. In 2011 they were used as they carried the risk of higher sentencing than public order offences listed in the Public Oder Act 1986 that includes riot, and The Criminal Justice and Public Order Act 1994 which includes powers to remove people from gatherings of a certain number within a defined space (Finchett-Maddock, 2012). Burglary of a dwelling[24], for example, carries a maximum sentence of fourteen years imprisonment, and aggravated burglary[25] carries a maximum sentence of life imprisonment (CPS, 2017). The public order offences of riot and violent

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[24]On the term dwelling, the Crown Prosecution Service (CPS) guidelines state: "There is no statutory definition of a dwelling within the Theft Act 1968 and no entirely definitive case law" (n.p.). It notes Section 8 of the 1986 Public Order Act as outlining a clear but not definitive definition as: "any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others), but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel to other temporary or movable structure". (CPS, 2017).
[25] Where the person who commits burglary has a weapon of offence (CPS, 2017).

disorder carry the risk of lesser sentences; a maximum of ten years for rioting, and five for violent disorder (Lightowlers and Quirk, 2015).

The category of RROs was created in 2011 in specific response to the rioting (Finchett-Maddock, 2012). Finchett-Maddock (2016) considers RROs as the work of the state in response to the problematic of number that it faced in 2011. Like the Criminal Justice and Public Order Act 1994, which includes powers to remove people from gatherings of a certain number of people, such as a rave in the open air or a gathering of 20 or more people who are trespassing land, RROs were another iteration of the state's reactive response to the problem of the multiple (Finchett-Maddock, 2016). As Finchett-Maddock (2016 p. 16) summarises, the use of RROs in 2011 exemplifies the "unaccommodating nature of law for any disturbances affected in numbers".

The creation of RROS was thus reactive. RROs were created in response to the unprecedented scale of rioting in 2011. As Lightowlers and Quirk (2011 p. 5) highlight , "The Chief Crown Prosecutor for London made the remarkable admission that there had been no contingency planning for an event such as the disorder". In August 2011, The Crown Prosecution Service (CPS) who prosecute criminal cases handed over from the police thus had to take decisions and issue guidance on charging very quickly. The CPS was recruited into COBRA meetings, the government's emergence response committee, that took place during the riots and immediately after during August 2011, and a CPS unit was established to manage the criminal justice processing of the riots (Lightowlers and Quirk, 2015). CPS guidelines were issued to police to use the charge of burglary for people involved in the disorder who broke into property intending to cause criminal damage or to steal (Lightowlers and Quirk, 2015). This was in addition to any public order offence (Lightowelers and Quirk, 2015). Burglary was also recommended rather than theft, for those who were on the periphery of disorder, and not shown to be taking part; the CPS guidelines stated:

> an offender who cannot be shown to have taken part in the disorder, yet is seen to enter property so as to steal (even if this only involves, for example, leaning through a broken shop window in order to remove items), he/she should be charged with burglary rather than theft, to reflect the unwarranted invasion of another's property and the serious context of the offence (CPS, 2011 n.p.).

These CPS guidelines led to offences being charged as burglary over theft at a ratio of 3: 1 (Lightowlers and Quirk, 2015). Burglary carries a maximum sentence of ten years, while for theft it is seven (Lightowlers and Quirk, 2015). The use of burglary over theft, and

over public order offences evidences the uplift in sentencing deployed in response to the riots (Roberts and Hough, 2013). By this I refer to the charge, and also the sentence given for the charge. Burglary was used as it carried a higher sentence, and uplifted, meaning longer-than-normal, sentences for this were given. The average custodial sentence for those tried in relation to the riots was 17.1 months, compared to 3.7 months for similar cases, such as burglary, in the previous year, for example (2010) (Lightowlers and Quirk, 2015; MoJ 2012).

These increased sentences were justified as a deterrent (Ashworth, 2012). Appeals against uplifted sentences were rejected on this basis (Ashworth, 2012; R v Blackshaw & Others, 2011). Examples include cases where:

> An offender in Manchester walked into a patisserie after finding the door open, disliked the taste of an ice cream he had made, so handed it to a passer-by. He was convicted of burglary and sentenced to 16 months imprisonment. (Lightowlers and Quirk, 2015 p. 7).

And, where "Two appellants had made entries on a social networking site to encourage riots. They received sentences of four years' imprisonment each" (R v Blackshaw and others, 2011 at 54). These exemplify what Lightowlers and Quirk (2015) call the 'prosecutorial zeal' in response to the 2011 riots. This relates to the uplift at all stages of the criminal justice process, including uplifted charging and sentencing, as well as the restriction of bail and bail time not being counted as part of a sentence as it normally would be (Bawdon and Bowcott, 2012; Lightowlers and Quirk, 2015).

What I want to draw out from this is that the name riot is absent from the criminal justice response to riots in 2011. The use of *other*, uplifted, charges, as Lightowlers and Quirk (2015 p. 7) summarise:

> provides a curious situation in which the labelling of offending is downplayed in relation to the associated punishment. To a lay person, the public order offences may sound more serious than property offences but the actual punishment is greater, as riot carries a maximum sentence of ten years imprisonment and violent disorder five years; both lesser sentences than for burglary.

While CPS (2011 n.p.) guidelines did affirm that "the extreme nature and effect of the outbreaks of violence and lawlessness that have characterised the August 2011 events are such that the offence of Riot merits serious consideration", riot charges were not widely used. Although the charge of riot was apparently appropriate, it was substituted, mainly, for the charge of burglary, because this carried the more serious sentence. Overall,

Ministry of Justice figures show that 56% of those prosecuted in the riots faced burglary or attempted burglary charges (Lightowlers and Quirk, 2015). Lightowlers and Quirk (2015) analysis of the Ministry of Justice reporting found only 16 reported convictions for riot from the 3103 prosecutions.

From this, I want to foreground the contradiction that the 2011 CPS guidelines affirm the seriousness of events, and that the most serious offence of riot should be considered, but then the labelling of offending was downplayed to burglary (Lightowlers and Quirk, 2015). And, that burglary was used because it carries the most serious sentence. The seriousness of what was taking place was not in question, but how to respond to the riots in the most serious way – with charges that carry the highest sentences, and are therefore serving as the most effective deterrents.

The harsh nature of this response is typical of how the criminal justice system responds to collectives. It exemplifies the defensive response of law against the collective (Finchett-Maddock, 2011). In 2011, guidelines were abandoned in place of charges that carried higher sentences in order to "punish accordingly" and to deter (Ashworth, 2012 n.p.; Roberts and Hough, 2013). The creation of RROs and uplifted sentences reflects the mirroring of the carnivalesque atmosphere of the riots in the criminal justice system (Lightowlers and Quirk's, 2015; Bawdon and Bowcott, 2012). Lawyers interviewed as part of the Reading the Riots project, for example, spoke of this carnival atmosphere and electric mood in courts, and lawyers going slightly delirious after being there almost 24 hours (Bawdon and Bowcott, 2012). Courts were sitting through the night and on Sundays in order to process the number of people charged from the riots coming though the criminal justice system, who were often refused bail and therefore needing almost immediate sentencing (Lightowlers and Quirk, 2015).

Thus far, I suggest that events were not called riots, and specifically people were not charged with riot, because other charges carried the risk of higher sentences. Riot was thus substituted for a more serious charge, in terms of sentence, to punish the rioters accordingly and to deter others. Unpacking the CPS guidelines in more detail, however, opens onto a more complex rationale for this.

In relation to the charge of riot, the CPS guidelines in 2011 (n.p) stated that:

> Riot contrary to section 1 of the Public Order Act 1986 should be reserved
> for the most serious cases, particularly those involving very serious injury
> to people or substantial damage to property (particularly where fire is

involved). The main obstacle to prosecuting Riot is the need for the prosecution to prove that 12 or more persons used or threatened violence **for a common purpose**. It is not necessary however for twelve or more to be prosecuted.… Whether or not a common purpose can be established will very much depend on the facts and circumstances of any given case. Such purpose may not be present where, for example, there are seemingly spontaneous outbreaks of violence (even of a large-scale nature) with different motivations coming into play amongst different individuals. Where however, there is evidence of pre-planning and/or a concerted effort by a large group to collectively cause violence, damage, fear and mayhem, there may well be sufficient evidence to make out this element of the offence of Riot [emphasis in original].

Significant here is how the CPS identifies charging with a common purpose as the obstacle to using the charge of riot. The CPS guidelines quickly write off the possibility of being able to evidence this. Mitchell (2011 n.p.) unpacks the evidentiary issues around punishing riot offenders in a way that takes into account the wider context of riots, and the collective nature of the offence. To apply collective offending, where a defendants punishment is aggravated or uplifted because of the collective nature of the offence, necessitates evidence that the individual appellant had knowledge of the wider context, and the harm it was doing to the wider community (Mitchell, 2011). In the case of the riots in 2011, this would necessitate investigating each defendant's awareness of the scale of criminality taking place across England and the harm it was doing to communities at the time of their offending (Mitchell, 2011). In the Blackshaw and Others case, The Lord Chief Justice refers to appellants having seen or heard media coverage of the riots as evidence of this (Mitchell, 2011). Mitchell (2011) contests that this could be sufficient to apply collective offending, and also questions the extent to which the court assessed this detail and awareness in detail, particularly in the short time frame between charging and sentencing in 2011 (Lightowlers and Quirk, 2015).

Despite this, as Mitchell (2011 n.p.) writes:

> The Court clearly treated the defendants as participants in a common criminal enterprise-*implicitly* encouraging and/or supporting one another-and offences committed by groups of individuals merit tougher sentences. The context of the riots and the collective nature of the offences was used as an aggravating factor, to uplift punishment.

Mitchell (2011) draws on the Blackshaw and Others appeal cases as evidence of this. The Blackshaw and Others case appealed convictions for taking part in the riots. They were heard in the Court of Appeal (Criminal Division) in October 2011 (Finchett-Maddock, 2015). One of the appeals included was on behalf of five appellants convicted for the

commercial burglary of goods totalling a value of less than £2000 (Mitchell, 2011). For such cases, guidelines from the Sentencing Guidelines Council specify a range of sentences from a fine to 26 weeks custody (Mitchell, 2011). The appellants in the Blackshaw and others case were sentenced to between 12 and 28 months in custody (Mitchell, 2011). Their appeal was rejected. The aggravating effect of the riots had a significant role in this initial conviction, and the rejection of their appeal.

In the case, the Lord Chief Justice's judgment emphasises that the defendants should not be considered as acting in isolation, he advised:

> [t]he reality is that the offenders were deriving support and comfort and encouragement from being together with other offenders, and offering comfort support and encouragement to the offenders around them. Perhaps, too, the sheer numbers involved may have led some of the offenders to believe that they were untouchable and would escape detection." (Blackshaw and others, 2011 para. 8)

This details a further contradiction in the way the criminal justice system responded to the riots. The CPS guidelines cited the difficulty of evidencing common purpose as a barrier to using the charge of riot. In court, however, collective offending was applied, and punishment accounted for defendants having acted in common, as a collective. In court, the collective nature of the riots became an aggravating factor. Those involved were convicted for offences they committed as individuals, but sentenced as part of a collective.

Overall, here I want to foreground the law's contradictory response to the riot. What happened in 2011 is evidence of the challenges that numbers, of people, the multiple, in general pose to law (Finchett-Maddock, 2015). In this case, what happened was that the collective initially became overlooked, and individuals were charged for burglary, negating the fact that they were part of a collective event. In sentencing, however, their place within a collective was used as an aggravating factor to uplift punishment (Mitchell, 2011). While the possibility of the collective having a common purpose, or resisting as a collective, was thus initially overlooked, to some extent this was acknowledged in sentencing.

These contradictions evidence the indirect relation between the law, specifically the criminal justice system, and the riot. It evidences the way that the law hesitates to fully confront rioting. While the previous chapter outlines how law reduces riot into a legal-calculable form, rendering it controllable, this chapter evidences the falling short of this imaginary, or failure of it to become fully actionable. The way that the collective became

an aggravating factor in 2011 typifies this. An aggravating factor is something that makes an existing action or event more serious. It is a contributing factor, but secondary and separate from the original action or event. In 2011, the collective of riot was thus framed as something that aggravated burglary. The riots thus became an incidence of aggravated burglary.

For Finchett-Maddock (2015 p. 16) this response of the sentencing judges and how the riot became an aggravating factor to burglary was evidence of the primacy of private property in law and its capitalist structure. In her investigation of this, Finchett-Maddock considers:

> Why such an inflamed response from the sentencing judges and what does this tell us about law's understanding of resistance in numbers? When the rioters crossed the divisions of private property, committing acts of petty crime, there was a lucid display of biopolitical behaviour: a theatre of the commodity fetish. This was a spectacle of capitalism with impressive choreography from the realms of both legitimacy and illegitimacy. (2015 p. 2)

By legitimate and illegitimate, Finchett-Maddock (2015) here refers to the legitimate punitive response to rioting, but the illegitimate uplifting of punishment, which was enabled by using riot as an aggravating factor. What Finchett-Maddock (2015) underlines, however, is that the riot became a problem of property damage.

Beyond the criminal sphere, this was very evident in the way that police forces handled declaring riot zones, or simply whether a riot took place in the area that they were responsible for policing. If police forces declared a riot zone, they became liable for riot damages. There was and is still a huge conflict of interest here; the police are responsible for making the decision as to whether the activity is a 'riot', and therefore declaring a riot, and this declaration then enforces their own strict liability. Declaring a riot can thus be very costly for police. In 2011, whether events were named as riots, and thus whether claims for compensation for property damage could be put to police, varied both within and across cities.

The Metropolitan Police declared riot zones by postcode. They had a series of postcodes that were affected in their terms as riot.[26] If a claim wasn't within those postcode boundaries that the metropolitan police had declared that the riot existed, then claimants

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[26] Interview, Lawyer, 29/07/16.

fell outside the definition of a riot, and the claim could not be processed under the riot damages act. As one lawyer interviewed explained:

> If you were an insurer, you were asked to present your loss adjusters investigation report which said the date, time, and date of the loss and the vicinity. So it was basically the Metropolitan Police, who I dealt with mostly for that particular riot, they had a series of postcodes that were affected in their terms as riot, and therefore if you, you loss adjuster presented the case if you were insured, if you were uninsured you wrote in and said this is my address, and this is my postcode, and here's my claim submission for a riot claim. If you weren't within those postcode boundaries that the metropolitan police had declared that the riot existed, then you fell outside the definition of a riot…I can guarantee that the deciding officer won't have even been outside but don't get me started.[27]

Manchester Police, however, took a distinctly different approach. They bypassed declaring events as riots but had a pragmatic approach to recovery. In an attempt to quell concern from disenfranchised people who didn't have insurance and people with pending insurance claims, they dealt with the claims they could, which were relatively small, here referring to Sony's from the Mitsui case as a benchmark, as quickly as possible, regardless of whether they actually had a riot or not.[28]

To return to my focus on naming here, what happened with the declaration of riot zones evidences the avoidance of naming events as riots that I describe with the idea or of anti-naming. It is another instance of anti-naming that took place in response to the riots. Thus far, I consider this tendency of anti-naming in 2011 as pointing to the indirect relation between law and criminal justice system, and riots. Anti-naming leads to the situation where the law does not really confront riots as resistance, but instead confronts the riot as a problem understood as property damage.

For Ophir (2005) damage is a loss that is assessed in terms of a depreciation in an exchange system. Damage can be suffered by anyone whose loss counts or is expressible in such an exchange system (Ophir, 2005). Recognising loss as damage thus necessitates a system which enables loss to be expressible as depreciation (Ophir, 2005). The loss has to be a losable thing, and its loss must have assessable, testifiable terms within a value system that determines its loss in terms of depreciation. In a capitalist system, where property has a clear value, loss in terms of property damage causes clear, evident depreciation. To draw on Ophir's (2005) language, property damage has a very *expressible depreciation*. In

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[27] Interview, Lawyer, 29/07/2016
[28] Interview, Lawyer, 29/07/2016

other words, it is a very tangible loss that can be quantified within an exchange system. In 2011, loss adjusters acting on behalf of insurers were initially responsible for this quantification. Loss adjusters were required to calculate the quantum of loss from property damage and report this to insurers who made the claim for recovery through compensation.[29] Calculating the quantum of loss is the second of the three core things that loss adjusters do: assess liability, assess quantum and find options for recovery.[30]

When a loss is rendered damage, and expressible as a quantum, compensation can be made to substitute what was lost (Ophir, 2005). This process of loss being rendered damage, and damage leading to recovery through compensation was what took place in 2011. This reiterates the primacy of private property in the court's response to the riots, which is how the riots became a problem of damage to private property.

Articulating this in more concrete and practical terms, a former public-order trained police officer and now Security Service Provider described this situation, where the riot becomes a problem of property damage, as something that leads to:

> The farcical situation where an event is a riot and no one calls it a riot because of the compensation situation…riots in a legal sense happen every night and also on the ground in public order situations when there's petrol bombs on the ground, there's a sense on the ground that it is a riot, but it's not called one.[31]

This returns directly to the idea of anti-naming that this section discusses. This point reflects the culmination of what I have worked through in this section. I describe how responses to the 2011 involved failed to fully confront them, and have an indirect relation to them; by responding to them as aggravated burglary, and primarily as a problem of property damage that can be compensated.

As was the case at Orgreave, the result of this is that the name riot becomes detached from the event. In 2011, this had real consequences on individuals involved in the riots and the sentences they faced, and whether claims for riot damage compensation could be put to the police. Overall, the point I want to emphasise is that there is an anti-naming tendency within responses to riots, where these events are not named as riots. This term anti-naming relates to naming as the act, which I consider part of a process that enables the event to exist and to have consequences. Naming as an act is a way to grasp onto the

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[29] Interview, Loss Adjuster, 17/06/2016
[30] Interview Loss Adjuster, 17/06/2016
[31] Interview, Event Security Professional, 26/02/2017.

indeterminacy of the event, and the possibilities that it creates. In these cases, without naming, in literal terms, this leads to situation where the riot becomes an unrecorded entity. This leads to the situation where the possibilities for change that the event creates peter out (Badiou, 2013). More specifically, the potential of the event to communicate resistance, peter out.

6.6 Anti-naming and the absence of emergency

In the 2013 book *Anti-Crisis*, Janet Roitman describes the omnipresence of crisis and crisis narratives in contemporary discourse. Roitman (2013) describes the oxymoronic normalcy of declaring events as crisis events, to the extent that the epoch that we are in is a time of permanent, enduring crisis, where crisis is everywhere and is a condition of life. Roitman (2013) argues that this pervasiveness inhibits the usefulness of the concept of crisis. Rather than working to engender decisive action, Roitman (2013) suggests that the declaration of crisis events leads to epistemological impasses, is empty of meaning and reinforces the normal order. This leads Roitman (2013) to argue that we should have less faith in crisis, and instead advocate anti-crisis; the anti-naming and anti-proclaiming of events as crisis events.

In the case of riots, what Roitman describes is inverted: rarely are events named as riots. The anti-naming of events as riots already takes place. While Roitman (2013) advocates anti-crisis, and the anti-naming of events as crisis, I want to suggest that in the case of riots, the anti-naming of events as riots limits their potential to have consequences. By this, I mean it limits their potential to introduce something new, specifically resistance, into being or into our current condition. The anti-naming of events as riots leads to an absence of recognising the resistance that riots communicate.

Here I echo Zabala's (2014; 2017) argument that in this epoch of 'crisis', where the rhetoric and declaration of exception, crisis, and emergency is widely deployed by governments, the only emergency is the lack of events. Zabala (2014; 2017) draws on Heidegger's contention that "only emergency is the absence of emergency" as a basis for this argument. Zabala (2014; 2017) is arguing that the way events are subsumed into our dominant paradigms, and framed within our globalised system means that they becomes absent, or go missing. The way that they are framed in a way that maintains the status quo, he argues, leads to the real emergency and absence of events (Zabala, 2014).

Expanding on this, Zabala (2017) argues that although emergency has become an axiomatic term deployed by governments, and the media is filled with crisis and emergency events, "the dominant impression of citizens in industrialized countries, whether at their centers or in their postcolonial slums, is that nothing new happens: reality is fixed, stable and secured" (Zabala, 2017 p. 4-5). As an example, Zabala (2017 p. 3) refers to the 'refugee crisis in Europe' and how it is framed within our globalised system, as a continuation and "consequence of decades of Western military constraints in the Middle East". The way that it is framed in a way that maintains the status quo means that its potential to actually shake our being, our current condition, and transform it is constrained (Zabala, 2014). The potential the event has to shake our being is concealed by the way it is subsumed into existing orders (Zabala, 2017). What the example of the 'refugee crisis in Europe', really shows is that the real emergency was the way this crisis did not lead to any change. The real emergency is how this event became a non-event: something that could not shake being, and not create the advent of something new.

In the case of riots, the way that the event is framed, in 2011 as a problem of property damage where recovery is possible through compensation, leads to the same outcome: that nothing new happens. Riots become non-events that cannot shake our being, or current condition (Zabala, 2014). The potential that they give rise to peters out. By potential, I mean potential future political claims that could have been made; the potentiality of a movement, resistance, a countering of the state, for example. It is the potential of future claims that is eviscerated. I now turn to think about this absence in more detail, and then the politics of naming, here to argue that this is part of a longer indifference to resistance.

6.7 Anti-Naming and the absence of riots: 'reflections on why riots don't happen'

I borrow this title from Tim Newburn's 2015 piece that reflects on the absence of rioting in England. Newburn (2015) draws on the flashpoints model of disorder to diagnose the absence of rioting. This is a model developed by David Waddington and colleagues in the late 1980s that attempts to theorise factors that are critical to determining order and disorder (Newburn, 2015; King and Waddington, 2005; Waddington et al, 1989). The model incorporates six levels of analysis: structural, political/ideological, cultural,

contextual, situational and interactional,[32] which can be used to explain why some 'flashpoints', sparks or incidents, ignite disorder while others do not (King and Waddington, 2005).

The model has primarily been used to understand the emergence of disorder, but Newburn (2015) uses it to think through the absence of disorder in Leeds and Bristol in 2011. Newburn (2015) emphasises how features within the interactional level in particular deescalated the potential emergence of disorder in these two cities in August 2011, as disorder was spreading through cities across England. Within the interactional level, Newburn (2015) isolates the interaction between crowds of 'protestors' and police as significant to mitigating disorder. Newburn (2015) suggests the establishment of effective communication and dialogue between the two groups was central to the de-escalation of tension. Newburn (2015) also notes the significance of support from community leaders in the area, and their capacity to act as mediators and peacemakers.

Beyond Newburn's work, the absence of disorder was also a central focus in the Riots Communities and Victims Panel that was established in 2011, by then Prime Minister, Deputy Prime Minister and Leader of the Official Opposition (Singh et al, 2012). The panel was established to investigate what motivated people to take part in riots, why riots happened in some locations and not others, how to make communities more socially and economically resilient, and what could have been done to prevent or better manage the riots[33] (Singh et al, 2012). The panel were particularly interested in the absence of riots in particular places and cities, such as Newcastle. Newcastle's submission of evidence to the panel emphasised the city's strengths in managing community tensions at the pre-conflict level, as well as an ability to quickly identify and respond to crisis when it happens, specifically through structures developed within the Community Tensions Contingency Plan (Safe Newcastle, 2011). As one practitioner who contributed to the submission summarised: "If you have the day-to-day right, crisis is easy".[34] As evidence of this, he recalled what unfolded in Newcastle Tuesday 9th August 2011:

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[32] See Waddington and King (2005) for a review of the model in 2005, following empirical work at the 2001 Summit of Americas in Quebec City and the 2002 G8 protests in Ottawa.
[33] There was no public inquiry into the 2011 riots. This panel tasked with investigating the riots in lieu of a public inquiry. Multiple alternative forms of inquiry emerged in the space of the absence of government led inquiry, such as the North London Citizens Inquiry into the Tottenham Riots (2011), the Reading the Riots Project (Lewis et al, 2011), and verbatim theatre such as The Riots (Slovo, 2011a) and Little Revolution (Blythe, 2014).
[34] Interview (ARCH) Practitioner 14/06/16.

> On the day had I had a call from a peer leader, people identified with leadership skills who were perhaps not using them productively. They called to say you might want to go down to Northumberland Street at 6pm. So I went down and about 50-60 young people were there trying to act inconspicuously outside the sports shop. I talked to them, together we decided there probably better things to do, go to The Gate or something, and we diffused the crowd.[35]

Like Newburn and the panel, I am looking at this condition of absence. Unlike Newburn and the panel, however, I consider the absence to exist at the level of riots being counted the world. Both Newburn and the panel consider the absence of rioting to relate to the actual taking place of rioting events. Newburn (2015p. 7) is interested in why riots did not break out in Leeds and Bristol in August 2011, as both cities "display some of the structural features—poverty, inequality and social deprivation—often associated with outbreaks of social disorder". The Riots Communities and Victims panel focused on why riots did not break out in some cities, and in its conclusion attributes this absence to the level of the individual. It suggests that those who did not riot "showed an awareness of shared values. They had the resilience to take the knocks and felt able to create opportunities for themselves" and "they didn't participate because they had something to lose – a job, the respect of their family, their education" (Singh et al, 2013 p. 25, p. 115). What I discuss is the absence of events that are named as riots. My argument is that riots take place but are not named or counted as such.

I frame this absence of recognition as the absence of events being named or counted as riots. This delimitation to thinking about recognition in terms of naming, nomination and counting stems from Badiou's emphasis on the necessity of naming events in order for them to come to exist, be transformative and have consequences in the world (Wright, 2008b; Bassett, 2016; Badiou, 2013).

For Badiou (2013) events necessitate the intervention of naming to first exist. Without the powerful intervention of nomination, the event threatens to "evaporate in the passing enigma of its evanescence" (Wright, 2008b n.p.). The name thus has a performative element; it is an intervention that allows the event to unfold. It allows the possibilities that the event wrests from the impossible to unfold and become real (Badiou, 2013).

In this way, it is part of the process of developing a fidelity to the event. Developing a fidelity to the event is a central idea within Badiou's theorisation of the event, and refers

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[35] Interview (ARCH) Practitioner 21/06/2016.

to a process of being more than faithful to the rupture of the event; it is about holding onto its indeterminacy and persevering with the possibilities that it proposes (Badiou, 2013). Without the name to inaugurate this process, this cannot get underway. The name is thus a catalyst for this process of developing and maintaining a fidelity to the event (Wright, 2008b). For Badiou (2013) this process is integral to the event if it is to continue to have meaning.

Without nomination, the event thus cannot continue to have meaning, and is not counted, or indexed in the world. Relating to this in terms of counting draws on Badiou's notion of the count, which relates to the way the state orders normality, in a similar way to Rancière's conception of the distribution of the sensible, which Badiou claims credit for (Hannah, 2015). Both relate to the way that the state, or for Rancière the police, order what appears in the world (Shaw, 2010). For Badiou, the law of the count orders what appears in the world, and what intensity or degree of appearance things have (Shaw, 2010).

The event, for Badiou, (2012b) is thus a breakdown of the count. What any event reveals, for Badiou, "is that there was something which had its own identity beyond the count, which was not taken account of" (2012b p. 135). The event is an evental appearance of something which was not previously counted (Badiou, 2012c; 2012b). This comes to appear as needing to be counted (Badiou, 2012c). This speaks of Badiou's core conceptualisation of event as the restitution of the inexistent: when people present in the world but absent from its meaning, start to exist and rise up (Badiou, 2012a; 2012c). Their aim of being counted, however, necessitates a fidelity to their appearing, and naming is integral to this (Hannah, 2015). Without the intervention of naming, they cannot be counted.[36] This is the form of absence that I want to reflect on.

The politics of naming

To think about the significance of this, here I ask: Why are events not named as riots? Why is naming a risk? If I go back to Badiou's discussion of naming, the anti-naming of riots within the punitive response to them makes sense. Badiou is very clear that the state has no role in the nomination of events. He states: "The state does not count any event"

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[36] While for Badiou, to be counted within the existing law of the count would not constitute meaningful political change, and he laments movement with the aim of inclusion, Hannah (2015) argues for the political significance of the 'event of inclusion'. This is the event of being counted by states, within the existing count (Hannah, 2015).

(2006 p. 181; Wright, 2008b). For Badiou, the event proposes a possibility that escapes the prevailing power's control over the possible: "all of a sudden people, sometimes masses of people, start to think there is another possibility" (2013 p. 11). The event transforms what has been declared impossible, into a possibility (Badiou, 2013). It thus ruptures the state's claim to have a monopoly over what is possible (Badiou, 2013). The event therefore cannot be thought in state terms, and the state does not count it (Badiou, 2006).

This is why naming becomes a political act, against the state and specifically the state's count. Naming disrupts the normative order that delimits what is possible. It is a form of political disruption in that it challenges the state's control of possibilities (Badiou, 2013). To expand on this positioning of naming as a political act, I turn to Lloyd's work that conceptualises naming as a political act, in relation to naming the dead. This act of naming emerges in response to the reporting of deaths in numbers, and as nameless statistics (Lloyd, 2016). The examples that Lloyd (2016; 2018) relates to are Gaza in the summer of 2014, and naming the dead of the genocide in Rwanda, 1994.

Lloyd's work (2016; 2018), drawing on Butler's (2004; 2009) work on grievability, specifically conceptualises efforts to name the dead by the 'ungrievable' as an act of political dissent. This is opposed to attempts at nomination by privileged or protected others on behalf of the 'ungrievable' population (Lloyd, 2016). Lloyd (2016 p.4) argues that while laudable aspirations might drive efforts of nomination by the geopolitically privileged and already-human, these efforts "treat humanity as a status conferred on one party by another". For Lloyd (2016) humanity becomes almost a gift bestowed on and received by the not fully or not-yet-human.

Lloyd (2016) frames this act as a performative politics where the ungrievable enact their grievability and, at the same time, humanity for themselves. The act is thus a performative assertion of their *own humanity* (Lloyd, 2016). The example that Lloyd (2016) draws on is Humanize Palestine; a community initiative that was set up in response to the killing, of Mohammad Abu Khedir, a Palestinian teenager, by three Israelis in July 2014. Humanize Palestine was set up as an online memorial that publishes names, pictures and stories to honour the lives of the dead in Palestine. Lloyd (2016) asserts how the initiative functions to "claim grievability for subaltern populations, to make their lives matter in contexts where they appear not to" (Lloyd, 2016 p. 9). This effort counters the dehumanization through de-nomination that emerged as the norm in mainstream Western media, where deaths were reported en masse, numerically, and anonymously (Lloyd, 2016).

This is why, drawing on Rancière, names "function litigiously. They contest police logic" (2018 p.3). For Rancière, the police is the established order of governance, and it sits in opposition to politics that disrupts such orders (Dikeç, 2015). Drawing on Rancière's understanding, Lloyd articulates the police as "a system of distribution that (amongst other things) establishes hierarchical relations between persons, a specific way of organizing the social order" (2018 p. 9). Dikeç (2015) supplements this through emphasising the spatiality of the police order and how it establishes hierarchical relations between both people and *places*. Dikeç (2015) writes of how the police ensures everything has as assigned role and place within a hierarchical system of distribution, and how this becomes naturalised, assumes a fixity and is perceived as given (Dikeç, 2015). Dikeç (2015 p. 92) summarises that from the viewpoint of the police "society consists of groups dedicated to specific modes of actions in places where these occupations are exercised, in modes of being corresponding to these occupations and these places".

Naming as a political act disrupts this ordering. It disrupts the seemingly consolidated, natural order of things where everything and everyone assumes their 'proper place' (Dikeç, 2005). Rancière writes about the politics of naming in relation to the Rwandan genocide and Alfredo Jaar's conceptual artwork, the Rwandan Project, 1994-2000. In this, Jaar names people, both dead and living, as well as places, specifically the sites associated with genocide in Rwanda. In doing this, Jaar disrupts the police order that hierarchically orders and assigns differential value to particular lives and places, in ways such that "Rwandan lives (and life-events) are constituted as less important, less valuable than those of other populations" (Lloyd, 2018 p. 14). Rancière writes:

> where mass crime is concerned, there is a hierarchy: a hierarchy of names. Everyone knows the name Auschwitz, even those who deny what happened there. Conversely, nobody has thought of denying the Rwandan genocide, but we nonetheless resist giving a meaning to those names that another installation by Alfredo Jaar, Signs of Light, forces us to look at … Butare, Amahoro, Cyanhinda, Cyangugu (2007, p. 75).

Naming here is not about memorialising and humanising the dead, but rethinking how we perceive and interpret the events in Rwanda (Lloyd, 2018). This is why for Rancière, naming is not an issue of humanism, but of politics (Lloyd, 2018). Jaar's project disrupts the police ordering that makes invisible Rwanda, its people and the event of genocide in (Western) public discourse (Lloyd, 2018). Rancière writes of how Jaar's project contests the silence of 'our' Western media, and how they left aside what was taking place as "things that did not directly concern us" (2007 p. 72). Rancière again emphasises that the

possibility of these crimes taking place without affecting us, is because "In the West, even before the genocide, living, breathing, sentient Rwandans, in fact Africans in general, were already disavowed as 'people who do not have a name'"(Rancière, 2007 p. 75). In the Western news media already, they were already treated as nameless (Lloyd, 2018).

Significantly, Lloyd (2018) highlights that the indifference to death follows a lifetime of indifference to particular lives; a failure to apprehend particular lives as lives in the first place (Butler, 2004). As Rancière writes, in regard to Rwandan genocide which Lloyd considers in her 2018 article:

> If it is possible for these crimes to be carried out without affecting us, it is because they related to living beings who already did not affect us, individuals whose names were meaningless to us (p. 75).

There is a significant temporal point to this: naming as a political act disrupts a consolidated, naturalised order that has an extended temporality. The political act of naming, in the example of the Rwandan genocide and Humanize Palestine, contests the consolidation of anonymization and invisibility of particular lives, as lived in particular places, that takes place at the time of death, but that has a long history. The anonymity of people and places at the time of death follows a lifelong anonymity, invisibility, or not-counting. Lloyd (2016; 2018) foregrounds this through thinking about the intrinsic connection between grievability and liveability. Lloyd (2018) foregrounds how life is lived in relation to power, and continuing the use of Rancière, the police order that delimits who might be thought of as 'meaningfully human', that is, who has a life worthy of supporting and securing, politically, socially and materially.

In sum here, naming as a political act disrupts the apparent fixity of this inegalitarian, hierarchical ordering, that renders particular lives as lived in particular places as invisible, and thus, as disruption, is political. The essence of politics, for Rancière, is the disruption of the consolidated but not saturated police order (Dikeç, 2015).

In the case of riots, anti-naming makes sense, as naming an event a riot would announce the state's loss of control of possibilities. The state is always opposed to the event and the possibilities it proposes, that are not part of the count. Also, in the same way that Lloyd, drawing on Rancière and Butler, considers the act of naming as an extension of a longer indifference to certain lives, I consider the act of anti-naming to operate in the same way. This act of anti-naming is an extension of a longer indifference to resistance through riots, and efforts to consign resistance to a place within the normal order that is invisible. In this

chapter I evidence this through repeated instances of anti-naming. The act of anti-naming is not isolated or singular, but repeatedly enacted to limit the process of developing a fidelity to the event of riot getting under way. This is the process through which the possibilities that the event creates are grasped, held onto and become real.

6.8 Conclusion

In conclusion, this chapter has elaborated on the becoming actionable of the riot imaginary that the last chapter details. I have argued that this imaginary does not become fully actionable, and the riot is *not* subject to control in ways that might be expected, for example riotous subjects being convicted for rioting.

The riot is subject to control through the act of anti-naming, where events are not called riots. I have argued that this leads to a particular kind of *absence* of riots, where they take place but are not counted as such. Relating to this in terms the riot as a transgression of the aesthetic faultline, I have evidenced how a transgression of the aesthetic faultline takes place, but is not named as taking place. By a transgression taking place, I mean that the ingredients of riot are present, and a rupture to the normal order takes place, in a way that is seen and cannot be denied (Badiou, 2012c). Yet, what I have pointed, is that it is not named as such.

What I have drawn attention to, therefore, is an ambiguity around what constitutes a transgression of the aesthetic faultline in the world. While the laws of the world, here riot law, sets out the ingredients of riot, which I understand in relation to the drawing of the aesthetic faultline in the world, what constitutes a transgression of this line is contingent. At both Orgreave and in 2011, this contingency arose within charging practices, which I consider as part of the punitive response to riots.

At stake, in making this point around the contingency of a transgression of the aesthetic faultline, is the taking place of a riot. Whilst at both Orgreave and in 2011, a rupture to the normal order took place, in a way that was seen, and could not be denied, this transgression was not named as taking place. What I have addressed, therefore, is the way that transgressions of the aesthetic faultline are managed and supressed, through anti-naming, which I have argued limited the political potential of the rupture that the riot creates. I have drawn attention to a specific kind of the regulation of appearance of riots that takes place. I have argued that the act of anti-naming is significant because it diminishes the power of riot. What I mean by this, is that the political power of the riot is

diminished. Potential movements, resistance, or political claims that could be made, in a way that counters the normal order, are occluded by the reduction of the riot through anti-naming.

To draw again on Badiou, he suggests:

> The event is, in a certain way, merely a proposition. It proposes something to us. Everything will depend on the way in which the possibility proposed by the event is grasped, elaborated, incorporated and set out in the world. (2013 p. 9-10)

Here, what I have evidenced through discussion of the way transgressions of the aesthetic faultline are limited and managed, then, are ways in which the possibilities, and political possibilities of riot, to communicate resistance and a refusal of the normal order are not grasped or elaborated on, but closed down. This closing down of possibilities is what is at stake here.

7. The Contemporary Legal Responsibility For Riot: Could a Riot Take Place?

Archival Scene: Riot Compensation Act 2016

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TO

Repeal the Riot (Damages) Act 1886 and make provision about types of claims, procedures, decision-making and limits on awards payable in relation to a new compensation scheme for property damaged, destroyed or stolen in the course of riots.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Claims for compensation

1   **Claims for compensation for riot damage etc**

  (1)   Where—
      (a)   a person's property has been damaged, destroyed or stolen in the course of a riot,   5
      (b)   the property is property in respect of which a claim may be made under this subsection (see section 2(1)), and
      (c)   the property was not insured, or was not adequately insured, for the damage, destruction or theft,
      the person may claim compensation from the appropriate local policing body.   10

The principle of police accountability is a long held and important one, dating back centuries in English law. The first statute that we are aware of which made specific provision concerning liability for damage caused in the course of a riot is the Riot Act 1553, over 450 years ago.

The 1886 Act itself was passed in the immediate aftermath of the Trafalgar Square riots which broke out in London on 8 February 1886. Due to a breakdown in communication, the police failed properly to anticipate the intentions of the rioters, marching to defend Buckingham Palace and the Mall, while the rioters rampaged unimpeded down Pall Mall.

The consultation also states that "police action is intrinsically linked to preventing or quelling such disturbances", a view that the Association of British Insurers (ABI) strongly agrees with. The principle that the police should be liable for damage resulting from a riot, as their actions are intrinsically linked to the damage that is caused by such disturbances, has underpinned riot legislation for over a hundred years. This intrinsic link between the police and riot damage means that those individuals or businesses affected by riots, through no fault of their own, should be entitled to compensation from the police. (Association of British Insurers, 2014 n.p.)

7.1 Introduction

This chapter looks at the applicability of riot law in the context of our contemporary present, and in specific relation to the structuring of responsibility for riots. It asks: how might the imaginary of riot become actionable now, in the present? In the twenty-first century context, what techniques of control is the disaffected collective of 12 or more subject to? And who is responsible for acting upon the potential riot?

In the chapter, I first demonstrate the contradiction that in contemporary law police bear all responsibility for maintaining public order, in a neoliberal time where it is the norm that the state outsources responsibility for such duties to private companies. I first question this contradiction, by asking why the legal review of riot legislation retained police strict liability for riots. In response, I turn to the role and status of the police, and specifically the relation between police, the state, and *order*. I reflect on the fundamental mandate of the police force to retain good order, as its necessity for the strength and stability of the state. Here I draw on Neocleous' (2000; 2015) conceptualisation of police, as more than a police force, but a power that works to promote the condition of good order, in order to strengthen the power and splendour of the state (Wall, 2015).

I then turn to unpack the contemporary legal arrangement that obliges police to prevent riots, and detail its own contradictory unfolding. I set out that while in theory the law obliges police to prevent riots, in practice, keeping the peace and public order *is* outsourced to private security companies, thus complicating the supposed retention of the state's fundamental mandate to secure good order in the 2016 Riot Compensation Act. By questioning the legal structuring of responsibility for good order, I foreground the complex legality of the fragmented nature of responsibility for state services.

Before this, to recap the empirical work so far, the first empirical chapter describes an imaginary of riot. In that chapter, I detail what constitutes a riot and how in the legal space the riot is reduced into a legal-calculable form, which makes it graspable and therefore controllable (Elden, 2006). Turning to think about how riot law becomes applied, in the second empirical chapter, I consider how the imaginary of riot becomes actionable in the criminal sphere, in the punitive response to riots. I argue that it does not become fully actionable in the criminal sphere, and argue that an anti-naming of riots takes place, meaning events take place but are not called riots. I argue that anti-naming leads to a certain absence of riots, where they take place but are not named as such, and not

counted in the world. They are therefore subject to a kind of indirect control that does not limit their actual unfolding, but their potential to have political significance.

In this chapter, I turn to look at the contemporary applicability of riot law, which I think of in terms of the contemporary policing of the aesthetic faultline. As the opening scene alludes to, I take a legal focus, and narrow this question to think about how the legal structure of responsibility that this 2016 Act upholds, unfolds in relation to a potential riot in the present. While the previous chapter focuses on instances where a transgression of the aesthetic faultline has taken place, in this chapter I think about potential actionability, and whether a transgression could take place. While the previous chapters poses the question *did* a riot take place? In this chapter I consider *could* a riot take place?

My starting point is the 2016 Riot Compensation Act. This 2016 Act was the result of the legal review of riot legislation following the 2011 riots when it became clear that the 1886 Riot (Damages) Act was outdated and not functional. The fact that it did not cover cars because they were not around in 1886 is exemplary of this out datedness, dysfunction and why it was reviewed and redrafted.[1] The review included Neil Kinghan's Independent Review of the Riot (Damages) Act 1886 for the Home Office that was published in 2013, a public consultation led by the Home Office from June to August 2014 with a report published in 2015 (Home Office, 2015b), and the Home Office Impact Assessment of proposed legislative changes to riot (2014b). The collective result of these reviews was the 2016 Riot Compensation Act that received royal ascent in March 2016 and fully came into force in April 2017 following a commencement order.[2]

Significantly, and the very starting point of this chapter, the legal review and subsequent re-drafting endorsed the general principle for compensation that the Act provides (Edmonds, 2014). While there is no comparable statutory provision in the event of natural disasters, such as weather events, or liability on the police in the event of any other outbreak of crime where it might be argued police intervention and conduct might have reduced their occurrence, the review of the Act maintained strict police liability for riots (Edmonds, 2014). As Neil Kinghan's (2013 p. 18) review of the Act outlines, the 2016 Act maintained:

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[1] Interview, Lawyer, 19/05/2016.
[2] The Riot Compensation Act 2016 (Commencement) Regulations 2017 put into force all sections of the act, in April 2017, just over a year from the Act's royal ascent.

> The implied contract between the public and the police requires that the public respect the leadership of the police when required and that the police maintain law and order. If they fail to do so, they should be accountable for that failure and compensation paid to those affected.

My aim in this chapter is to unpack the unusual arrangement of responsibility that the 2016 Act makes statutory. I work through this legal structuring of responsibility in relation to riots that the 2016 Act codifies and retains from previous riot legislation, the Riot (Damages) Act of 1886, and consider this as underpinning contemporary actionability of riot governance. Specifically, what I work though is how it upholds the statutory provision of compensation for riot damages, which rests upon the assumption that the police force, the state, has a duty to prevent these events. If they do not, they must compensate for the event and specifically damage caused by it. To reiterate, drawing on Kinghan's (2013) overview, I focus on how the 2016 Act incorporates a police duty to maintain law and order, and places an imperative on police to compensate if they breach this duty. I take this as the starting point because of this unusual relation: no other statutory provision incorporates police strict liability for a crime (Morgan, 2014). The police force does not have a duty to prevent any other crime, nor compensate for any other crime that takes place (Morgan, 2014).

Through this focus on responsibility, I turn to think about questions of state and risk, and what role the state plays in securing against the potential riot. My starting point is really therefore how the retention of police strict liability for riot damages in 2016 contradicts contemporary ideas about the neoliberal contraction of the state. This has been theorised in many ways across many fields, but by this I mean the general idea that neoliberalism involves the contraction of state, and proliferation of the outsourcing and privatisation of public goods and services[3] (Brown, 2015). I put it in these terms and draw on this word contraction, used by Connolly (2013) in his work that conceptualises the fragility of neoliberalism, to point to the way it involves the centrally imposed sub*contracting* or *contracting* out of state services. Very briefly, the state contracts by subcontracting out its responsibilities to provide services and goods. As MacLeod (2018) describes in relation to the UK state, and in specific relation to the Grenfell Tower atrocity, this fragmentary process leads to a dismembering of the state, in a way that subcontracts responsibilities

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[3] This is a simplified characterisation and not to say that state sovereignty is ceded to private authority but rather the two increasingly infiltrate each other, and work or resonate together (Amoore, 2013).

for people and places, and thus instils "bewilderment over who or which organisation might actually be responsible for what and where" (2018 p. 17).

Strict liability then, and now?

The legal arrangement of responsibility that the 2016 Act codified, where the state retains full responsibly for riots, contradicts the becoming normal of the fragmented and sub-contracted nature of responsibility for state services. The 2016 Act codifies a legal arrangement of responsibility where the state bears all responsibility for the public good of public order. It retains this structuring of responsibility from its predecessor, the Riot (Damages) Act of 1886, which also takes elements from its predecessor the Riot Act of 1553 that established a right to compensation.[4]

In 1886 when the Riot (Damages) Act was drafted, policing and insurance was very different, and thus this structuring of responsibility made more sense. First, in relation to policing, in this time professional police forces were increasing and public order was their principle function (Mather, 1959; Townsend, 1993). Public spaces were becoming policed, for example.[5] They were becoming a more sterile territory where the public had the right of passage but nothing else (Townsend, 1993). They became patrolled by the police force that consisted of watchmen who were part of watch committees who kept a nightly guard over property (Thompson, 1963; Townsend, 1993). This presence and patrolling made it possible for police to intervene into a disorderly crowd and enact their duty to supress riots (Mather, 1959; Williams, 1967).[6] In sum, the central objective of policing at this time

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[4] "The riot damages act so it came in after the Trafalgar square riots but actually the right to claim damages or compensation goes way back to I think the earliest act is 1553 or something like that, it also goes back to medieval times but there of course there wasn't a police force, so either the rioters were paying damages or after 1714 when rioters were sent to be hanged you had the inhabitants the hundred and then that transferred to the police who should be keeping the area safe, supposedly." Interview, Lawyer, 11/08/2016.

[5] The idea and development of professional police is closely connection to the process of urbanisation which Townsend (1993) touches on. Townsend (1993) details how the emergence of professional police in the later nineteenth century followed the early nineteenth crisis of order that is considered by historians as a crisis of the old regime; the administration of order that was built around agricultural villages and commercial towns. The idea and development of a professional police force, following hostility and resistance to it because of connotations of 'social control', was established to keep order in urbanising places. Urban historian Christian Liddy (2015; 2017) offers more depth on the constitution of the urban, urban politics and urban riots in this period.

[6] A lawyer relates to this in an interview, in particular relation to police presence enabling evidence gathering: "In 1886 when you had you know a lot of police presence on the streets, I suspect it was pretty easy to call a riot if 12 people banded together and started breaking and entering into various people's houses because there would have been an efficiency of visual and contemporaneous evidence that the riot had occurred." Interview, Lawyer, 29/07/2016.

was to keep good order, and involved keeping watch and patrolling cities in order to be able to intervene and quell disorder (Townsend, 1993).

The compensation process was also more straightforward. Following the Gordon Riots in 1780, for example, before the 1886 Act but in a period where police strict liability was applied, letters from a collection in the London Metropolitan Archives on riot compensation exemplify the more simple execution of recovering the cost of riot damages from police. Following the riots, warrants for the sum of compensation required for damages were sent to the police Constables within the hundred where the riot had taken place. There was one Constable for each parish within the hundred and they had the responsibility of collecting damages from the inhabitants in their parish.

For the Gordon riots, this process was agreed in a general meeting of the Justices of the Peace for the County of Middlesex, held at the Guildhall Westminster, where it was resolved that notice should be given to each principle Officer within the hundred where the riot had taken place that a warrant will be issued.[7] This initial letter of notification requests that the principle Officer returns the name of the Constable of each parish who the warrant should be directed to. The Constable was then commanded to levy upon the inhabitants and dwellers within their said parish the sum which is required "for and towards defraying the Damages recovered against the inhabitants of the hundred, by several suffers in the late Riots".[8] The below letters (figure 11) evidence responses to this request and offer the names of constables to which warrants should be directed to: John Haines, John Warren, John Hinde, and Harry Sondon.[9]

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[7] LMA: MJ/SP/D/012
[8] LMA: MJ/SP/D/012
[9] LMA: MJ/SP/D/012

Figure 11: Letters identifying the constables of each parish who will take responsibility for collecting the sum of damages from inhabitants following the Gordon riots. LMA: MJ/SP/D/012

The simplicity of recovering from police, where one constable had the responsibility and ability to collect damages from the inhabitants of his parish, is also telling of the very different insurance landscape in 1886. I include reference to this exchange of letters to evidence the simplicity of this recovery: once the Constable was identified, warrants were sent to the Constable of the parish, and they had the responsibility of recovering its sum. The 1856 County and Borough Police Act granted this level of authority to constables as a way of enforcing their independence from the military, who were previously incorporated

into efforts to quell unrest (Townsend, 1993). Significantly, insurers were not part of this recovery process. The police authority acted as the insurer and paid out compensation. In 2011, as indeed also today, compensation works differently. Many more people have insurance and therefore an already existing means to recover for riot damages, as part of property insurance. It is thus the insurers, and uninsured, who retain the possibility of recovering from police, as one lawyer described to me in an interview:

> The difference between 1886 and 2011 is that basically a lot, lot more of the businesses and individuals whose property was damaged in the 2011 riots, many more of them and in fact the majority of them would have had some form of insurance. Not all of them but that's a big difference and of course that's what's driven, you can see from the Kinghan report and you know what's come out of all the commentaries, that's what's driven the urge to reform the act, because not only was the act thought to be unworkable and archaic in its language which of course it is being 125 years old, but it's also giving a remedy to insurers to basically recover money from a public authority without having to, by just you know just being able to prove that they have paid out and that is quite a novel thing particularly when the police's resources are stretched.[10]

The scope of claims is also wider now, as one lawyer relates to with the example of business interruption that the Mitsui case that I discuss in the first empirical chapter attempted to claim:

> The environment that business is undertaken within to use an insurance term is completely different to the 1800s…In the 1800s for example the concept of business interruption wasn't in anybody's concentration. Society as it was set up at that time, they didn't particularly think that they needed to worry about claiming for business interruption from their insurance because their business had never been interrupted as employees were expendable and employment laws or what they were, were very limited…so that's the landscape that act was drafted in and that landscape does not exist now.[11]

In sum, the landscape in which this arrangement of responsibility was drafted was very different. Public order was a central concern of the expanding professional police force, and the structure of policing made recovering from police straightforward. Each parish had one constable who was responsible for recovering the sum of riot damages. Additionally, recovery from police was more direct and did not involve insurers.

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[10] Interview, Lawyer, 11/08/2016.
[11] Interview, Lawyer, 29/07/2016.

In what follows, I first elaborate on the retention of this structuring of responsibility in the 2016 Riot Compensation Act despite difficulties applying in throughout its history through the 1886 Riot (Damages) Act. I then turn to think about the actionability of this arrangement, and here question its functionality. I consider how, despite its retention, this legal structuring of responsibility that creates the imperative for police to prevent riots, unfolds in a way that does not involve the police. I argue that the imperative for police to prevent riots has become detached from police. What I argue, therefore, is that this legal structuring of responsibility is somewhat redundant.

This outlines the contradiction that the chapter works through: this legal structuring of responsibility for riots places all responsibility for them on the police, but the unfolding of this structure extends the responsibility for riots beyond police, to security services and insurers. While initially the imperative for police to bear all responsibly and assume this unusual responsibly to prevent riots seems to contradict contemporary ideas of neoliberal state contraction, what I unpack is how the unfolding of this legal structuring exemplifies how the neoliberal 'contraction' of the state manifests as the fracturing and dissipation of responsibility (Bhandar, 2018). The supposed contraction of the state in reality creates the flourishing of agencies that are carefully and actively engineered by the state (Connolly, 2013).

7.2 The endurance of police strict liability: the statutory provision of insurance for riot damages

To understand the retention of the principle of police strict liability for riot damages in the 2016 Riot Compensation Act, I first turn to where it was retained from: The Riot (Damages) Act 1886. In this section I consider the endurance of this Act from 1886 to 2016. Through this, I begin to unpack the rationale behind why the 2016 Act holds onto the principle of police strict liability. By this, I refer to the retention of statutory provision for compensation, where the police take on the role of the insurer, and compensate the cost of riot damages. To reiterate, this structuring of responsibility, where police bear this responsibility to compensate, is because riots are considered a public breakdown of law and order that the police should be alert to and able to intervene into and prevent. If they do not, they must compensate for this failure of duty to prevent.

The Riot (Damages) Act was established in the 49th year of Queen Victoria's rule, in 1886. It endured until its revision prompted by the 2011 riots, which led to its redrafting in

2016.[12] While English law contains many archaic statutes, and law by nature is drafted to endure rather than be reactive, this Act's 130 year lifetime is unusually long (Kirby, 2006; Mead, 2010). The Act evaded review from Law Commission, for example, which is a permanent institution that was established in 1965 to keep English law under constant review, and facilitate its consolidation through removing unnecessary, obsolete and unjust legislation (Kirby, 2006). [13]

The complexity of the Mitsui case, as I elaborated in the first of my empirical chapters, evidences the difficulties encountered when trying to apply 1886 Riot (Damages) Act to a 21st century riot. It highlights the obscurity of the Act, and the difficulties encountered in trying to enact it, most significantly around the principle of strict liability and the viability and extent of recovering riot damages from the police. This section thus builds on and draws on this contextual detail of the Mitsui case, and adds to its demonstration of the obscurity of the legal structuring of responsibility for riots within riot legislation.

Throughout its life, the Riot (Damages) Act's 1886 has been repeatedly called into question. In different archive collections, questions surface regarding its status, existence and functionality. For example, within a collection in the London Metropolitan Archives on the 1886 Riot (Damages) Act, there is an exchange from 1956 that questions its existence. It is an exchange between a town clerk who writes to the North British and Mercantile Insurance Company with the assurance that "these regulations are still in existence and have not been superseded by other regulations under the Act in regard to claims for compensation" (Figure 12).[14] This is in response to the company inquiring as to whether the 1886 Act was still in existence, in 1956. In 1956, this correspondence querying the existence of the Act thus alludes to its already antiquated status.

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[12] PA: HL/PO/JO/10/9/1179.
[13] The Law Commission was established through the 1965 Law Commissions Act.
[14] LMA: 4243/A/10/014

DW.

Ref: P.   16th May, 1956.

Dear Sir,

        Referring to your call at this office
yesterday afternoon, I now enclose as requested a
copy of the regulations made by the Home Secretary
in 1921 under the Riot (Damages) Act, 1886.

        These regulations are still in existence
and have not been superseded by any other regulations
under the Act in regard to claims for compensation.

                        Yours faithfully,

                        Town Clerk.

W.J. Farrow, Esq.,
    North British and Mercantile Insurance Co.Ltd.,
        61, Threadneedle Street,
            E.C.2.

TELEPHONE: LONDON WALL 2320.   ESTABLISHED 1809   TELEGRAMS "NORBRIT, STOCK-LONDON"
PLEASE QUOTE REFERENCE BELOW.

NORTH BRITISH & MERCANTILE
INSURANCE COMPANY LIMITED

ALL LETTERS TO BE ADDRESSED
"THE GENERAL MANAGER."   61, Threadneedle Street,

WHEN REPLYING
PLEASE REFER TO   London, E.C.2.   18th May, 1956

Loss F/D

Your Ref. P.

The Town Clerk,
    Corporation of London,
        55-61 Moorgate,
            London, E.C.2.

For the Attention of Mr. Martin

Dear Sir,

        We acknowledge receipt of your letter of 16th inst. and would
thank you for the copy of the Regulations made by the Home Secretary
in 1921 under the Riot (Damages) Act, 1886.   We have had this
photographed and now return same herewith.

        We have pleasure in enclosing a photostat copy of the Act
itself.

        Please accept our thanks for your very kind assistance.

                        Yours faithfully,

                        R. Harman
                        General Manager.

(TOWN CLERK'S RECEIVED 19 MAY 1956 OFFICE)

Figure 12: Riot (Damages) Act query, 1956. LMA: 4243/A/10/014

A little after 1956, in The National Archives Prime Minister's Office files (TNA PREM) collection from 1981, multiple correspondences question the applicability of the Act following riots in Brixton. These correspondences go further than querying the existence of the Act, and interrogate if and how it should be applied. The concern that underpins these correspondences is the cost to local authorities, and how to deal with local authority expenditure arising from riots. They emphasise the problems of additional police costs to local authorities arising from applications of the 1886 Riot (Damages) Act, here underlining the difficulties of applying and paying out under the Act following riots.

On July 2 1981, for example, Home Secretary William Whitelaw writes to the Chancellor of the Exchequer, Geoffrey Howe, expressing his concern about the cost of claims under the 1886 Riot (Damages) Act, and particularly how to distribute covering the costs. He is concerned about the burden on local budgets and what intervention central government should make. He writes that "under present legislation, the cost of compensation falls entirely on the local police fund and does not attract grant of any kind."[15] And, that the only thing the government could do under the Act, was "to exhort local authorities to speed up and offer such help".[16] Whitelaw writes of his concern that an absence of central government intervention "may damage the Government's position severely".[17] This is the context of increasing pressure from local authorities for central assistance, and also prompt assistance in order to minimise delays in claims processing.

Further letters detail that the government agreed to help local authorities through providing additional grants. If the authority did qualify for a grant, the level of the grant would be 60%, meaning the government would support the local authority at this rate, and cover 60% of the cost.[18] This was agreed in response to local authorities arranging to raise their own local rates to cover the cost of increased expenditure, on the grounds that the government was unwilling to help.[19] Merseyside County Council, for example, had meetings planned for the purpose of making these kinds of arrangements.[20] The government saw this as a risk, that different authorities would handle claims differently, and so introduced the grant scheme to ensure all local authorities received equitable aid.[21]

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[15] TNA PREM/19/484 p. 72
[16] TNA PREM/19/484 p. 72
[17] TNA PREM/19/484 p. 72
[18] TNA PREM/19/484 p. 31
[19] TNA PREM/19/484 p. 33
[20] TNA PREM/19/484 p. 37
[21] TNA PREM/19/484 p. 37

The level of assistance, agreed at 60%, was subject to debate. A letter from the Chief Secretary to the Treasury to John Halliday, private secretary of Home Secretary William Whitelaw, raises caution about the generosity of aid, and that this level of generosity might make the "government's intention to reduce local spending" appear uncertain.[22] 60% was agreed as a way to maintain the principle of local responsibility for the expenditure, and on the clear understanding that this was a one-off. The letter emphasises the exceptional nature of the grants, and that "[i]t should also be understood that this decision sets no precedent for any future riot, or riot damage legislation".[23] A further letter from the Home Office on August 6 1981 that reports the specificities of the grant reiterates this and says:

> In putting these proposals to the local authority associations we would stress their exceptional nature, which should not be seen as a precedent for future assistance towards the cost of emergencies.[24]

These correspondences first point to the problem of how to distribute expenditure under the 1886 Act, in the 1980s. The 1886 Act imposes a duty upon the local authority to compensate for damage caused following the breakdown of law and order in that area. The obligation to compensate is local. In the 1980s, this arrangement over-burdened some local authorities who faced substantial claims constituting a significant part of the overall sum of riot damages in 1981 of £45m.[25] This points to the changing scales and structure of policing in England. While the local character of the police force has been maintained, overall control and budgets are more centralised, and independent of Local Authority involvement (Brown, 1998).[26] In 1981, the majority of the cost of damages, the 60% funded through central government grants, was raised from a centralised Contingency Reserve.[27]

The correspondences also emphasise the insistence on the exceptional nature of this funding. Letters emphasise that this central government intervention should not set a precedent for other riots, or other emergency events. This demonstrates an overall reluctance to apply the Act. Although it existed as a statutory regime for compensation,

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[22] TNA PREM/19/484 p. 35
[23] TNA PREM/19/484 p. 35
[24] The sum at stake in 1981 was £45m, which was charged to the Contingency Reserve. TNA PREM/19/484 p. 38.
[25] TNA PREM/19/484 p 31.
[26] As Brown (1998 p.7) notes, "policing has always been a local responsibility in England, as shown by the Statute of Westminster 1285". Brown's (1998) work on police governance offers more detail on the history of its structure since 1285.
[27] TNA PREM/19/484 p 36.

overall, PREM archival material on the 1981 Brixton riots demonstrates how in the 1980s its application was difficult.

Difficulties applying the 1886 Act also arose in 2011. Many of these were practical. The claims forms that insures had to submit for damages claims, for example, were from 1921. They could not be sent by email, only post, and initially within 14 days of the incident although this was extended to 42 days in 2011. As one loss adjuster described:

> There was a panic really to get our letters to the police authority for various you know damage that had occurred. We were instructed by a lot of insurance companies with some quite large organisations that had suffered damage in multiple locations and the whole firm were tasked with filling forms in and getting them to police authority within the time scale. There was a real panic to make sure that we complied with the time scales.[28]

Expanding on this, a lawyer speaks more specifically about how this affected claims processing with the London Mayor's Office for Poling and Crime:

> It was a nightmare because we were in the front line, we were getting in grief from the Mayor's Office for Policing and Crime, saying well why these claims aren't settled and we're going back to them and saying because you are not giving us the correct environment to settle these claims in…They had to have a form which had to be written, it could not be electronically communicated…you could email it but they would not accept that as your claim form... Now I said to them - that might be what you need to do for the Metropolitan Police, that's not what any insurer does. That is how you are seen within the context of these claims. You are seen as an insurer, and you should behave like one…They had an insufficiency of resource in the Mayor's Office for Policing and Crime, which meant that they rather the stuff came in the post because they could do it at their leisure. They wouldn't give out their phone numbers.[29]

The same lawyer concluded:

> If I'm honest, if you reviewed the Mayor's Office for Policing and Crime as an insurer, they would have failed on all the normal tests on treating customers fairly, because of the amount of time and life cycle, it was just as I said to you, 1921. We're talking like pre-first world war really. Nobody but nobody apart from possibly a reinsurer in Bermuda who may have a very, very small line on something, asks for things to be sent on paper, hard copy now.[30]

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[28] Interview, Loss adjuster, 10/08/2016.
[29] Interview, lawyer 29/07/2016.
[30] Interview, lawyer 29/07/2016.

In 2011, the difficulties in applying the Act, on the surface, stem from the antiquity of the Act and the process of claiming through a 1921 claims form. They evidence the inevitable problems of applying an 1886 statute to a 21st century riot.[31] As this final quote also suggests, however, these difficulties reflect the wider issue of the police's resistance to and failure to act as an insurer for riot damages. As this lawyer summarises, in particular relation to The Mayor's Office for Policing and Crime, the police's application of the Act was slow, and fell short of what was expected by insurance customers, insurance providers, and their legal advisors. Insurance customers and providers were unhappy with delays to settling claims, and insurers and their lawyers were unhappy with the claims process that was causing these delays.

Overall, it evidences the dysfunctionality of the 1886 Act in 2011. The structuring of responsibility that the 1886 Act codifies unfolds in a conflictual way, with police and insurers debating, and subsequently legally challenging, how compensation should be paid. This reflects the hesitance and resistance from police to apply the self-contained statutory regime to provide compensation for property damage and its contents that the Act codifies. It is self-contained in the sense that police do not bear all liabilities, such as the cost of business interruption or personal injury, but liability for property damage and its contents.[32]

In summary, in this section, I draw on three examples, from 1956, 1981 and 2011, which question and query the existence of the act, financing its application, and then the more fundamental question of its applicability. At each of these moments, in terms of my genealogy of the riot, there is a sense that things could be otherwise, that there might be an alternative pathway. All of the moments question the structuring of responsibility that it codified, and each evidences the hesitance and resistance to enact it. What this leads to is the question of how this structuring of responsible for riots endured, and then why it was retained in 2016.

Kinghan's (2013) independent review of the 1886 Act suggests that the 1886 Act and its structuring of responsibility for riots endured from 1886 to 2016 simply because it was rarely used. While Kinghan (2013) suggests that its infrequent application was because of a lack of awareness that it existed, I would argue that it is also in part due to the tendency of anti-naming events as riot which I discussed in the previous empirical chapter. In the

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[31] Interview, Lawyer, 19/05/2016.
[32] Interview, Lawyer, 16/05/2016.

previous chapter I argued that the anti-naming of riots takes place meaning that events that legally constitute riots happen more often than they are named as such, in the particular context of criminal cases.

Here Kinghan (2013) thus relates to how the 1886 Act existed and endured as a dormant piece of legislation that came into action very rarely. To think of the Act as a dormant piece of legislation entails thinking about how law is all about the crossing of thresholds, or the aesthetic faultline that delimits what can appear and what cannot. The Riot Damages Act, for example, exists as a permanent but dormant statute that is called into action when certain situations arise, or certain lines are crossed; namely, when a riot is declared. The complexity around when that line is crossed, and also evidencing such a crossing, demonstrates how the law is more indeterminate than we first imagine (Johns, 2014). While law presents itself as black and white, as rule based, transgression is unpredictable. Rather than being rule based, it involves non-linear relationships between cause and effect, evidenced by the case of Orgreave the anti-naming of riots in 2011 that I discuss in the previous chapter (Webb, 2005; 2014). In both cases, while what took place was in terms of the law a riot, it was not enough to transgress the line that enables it to count as a riot.

This way of thinking about law and the legal system helps to add depth to Kinghan's (2013) explanation as to how the 1886 Riot (Damages) endured so long, which he says is because it was rarely used. Thinking specifically about the event as the transgression of the aesthetic faultline in the world, this idea that it was rarely used points to how, the line between order and disorder, or order and riot, is rarely crossed. Such absences of transgression stall change to the system, here in terms of revision to the 1886 Act (Ruhl, 2008).

Turning to think beyond the endurance of this structuring of responsibility for riots, I now consider the question of *why* the legal structuring of responsibility for riots was retained in the 2016 Act. While the arrangement works well for insurers as it offers a source of recovery, the retention of police strict liability was met with surprise in the industry. In a 2016 industry workshop on the impact of the new 2016 Riot Compensation Act, an insurer working on outstanding claims from 2011 admitted that they "genuinely thought this would be scrapped altogether." [33] Insurers at the workshop mainly raised concern about the potential for the 2016 to encourage underinsurance. They questioned, why - if

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[33] Interview, Lawyer, 16/05/2016

the option of recovering from the police is available, and police have to compensate those who are not insured, would people insure?

Uncertainty around the matter of insurance also underlines Kinghan's overall rationale for the retention of police strict liability for riot damage, following his review of the 1886 Riot (Damages) Act. Kinghan (2013 p. 20) summarises:

> I have listened carefully to these arguments and counter-arguments during my review. It appears to be the case that the United Kingdom is unique in the statutory protection it offers to both the uninsured and to insurance companies in the event of a riot. It is impossible to know for sure what would happen if protection were withdrawn from insurers but I agree with those who fear that there is a significant risk that complete withdrawal of protection from insurers in a new version of the Riot (Damages) Act would make it harder for small businesses in the most affected areas to secure insurance at rates they could afford. That would put their future at risk, and the overall economic viability of their areas.

The risk that Kinghan (2013) foregrounds here is the potential of increased and unaffordable insurance premiums and insurance excess in places that have been affected by riots in the in past, or have relatively high levels of crime generally (Kinghan, 2013). Kinghan (2013) warns of the risk that individuals and businesses in these areas may be unable to obtain cover at all. In this section of his review, Kinghan (2013) relates to other scenarios where this might be the case, such as in places with a history and high risk of flooding where it is very difficult to access affordable insurance. Kinghan (2013 p.13) recognises that those who have suffered flood damage "may be less sympathetic to the proposition that the uninsured and under-insured victims of riots are entitled to compensation which they do not have", but continues to set out his, more sympathetic, case for the retention of compensation for riot damages. He summarises:

> It is no part of my role to offer comments on the relative claims of those who have suffered from natural disasters. My subject is the Riot (Damages) Act and the point was made to me very strongly during the visits that I made to the riot-affected areas, both by the victims and by those supporting them that, whatever the causes of the riots and whatever responsibility might fairly be assigned to the police or Government more generally, they were innocent victims, who could not have anticipated the riots nor the effects on them. They had done nothing to bring the riots on themselves, nor the damage to their property or their livelihood, nor the emotional and psychological damage they had suffered" (Kinghan, 2013 p.13).

Here Kinghan (2013) therefore summaries how, despite its unusually sympathetic nature, the retention of police strict liability for riot damages aims to offer protection to individuals and businesses from the effects and damages of rioting. Kinghan (2013 p.4)

maintains that, overall, "it is right that the police and the Government are held to account under the Riot (Damages) Act."

This principle was supported within the insurance industry, as one insurer summarised:

> In many areas of insurance we can see that private capital (insurers) are only willing to accept risk up to a certain point, and that there are certain aspects where it becomes necessary for the Government to 'underwrite' some of the risk themselves. Good examples would be the creation of Pool Re in the aftermath of the IRA bombings of the mainland in the 1990. Also the inception of Flood Re this year and the preservation of insurance cover for those located in the most flood prone areas of the UK. Without these collaborations and Government commitments insurance cover for specific risk may disappear creating too high a degree of uncertainty, undermining economic prosperity. The insurance sector often feel very aggrieved at the Governments for what they perceive as a lack of discharging their responsibility and duty on national matters. The recent economic woes has seen the Government put pressure on the private sector to take on risk that traditionally might be seen as the preserve of Government. I would hazard a guess that the Riot Act was a foreshadow of these. An early attempt to create a contract between the State and Private Sector.[34]

This summary points to how for insurers the option of recovering the sum of riot damages from police following a riot, is preferable to making marketable specific riot insurance.[35] For insurers, this structuring of responsibility, at the time of the introduction of the 2016 Riot Compensation Act[36], is preferable to making and marketing new insurance policies for riot, separate from already existing individual and commercial insurance products. This foregrounds how the retention of the principle of police strict liability for riot damages endeavours to retain the risk of riot as a problematic of police and government. While there is no comparable statutory provision for compensation in the event of other events that police action or policy may impact their occurrence (Kinghan, 2013).

7.3 Police and (good)order

> The first proposition is that the principle on which the Act is based remains valid today as it was in 1886. It is the central duty of the police to maintain

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[34] Interview, Insurer, 15/06/2016.
[35] Interview, Lawyer, 16/05/2016.
[36] The impact of the 2016 Riot Compensation act on the insurance industry, at the time of research, was still uncertain, and will likely remain so until the Act is applied and the £1m cap on claims that it introduces is also applied (Interview, Lawyer,19/05/2016). During the review, the Association of British Insurers stated their strong objection to the application of a cap to claims, suggesting that it would significantly undermine the principle that police should be liable for riot damages if it only extended to protecting certain kinds of business, these being smaller businesses with smaller turnovers who would thus make smaller claims.

> law and order. If they fail, and there is a riot, they should be held to account
> and they should meet the costs of compensating those affected. In some
> riots, it may be said that action, or inaction, by the police was wholly or
> partly responsible for the riot. This was said of the Brixton riots in the
> 1980s and of the outbreak of rioting in Tottenham in August 2011, though
> not of all the riots which followed. (Kinghan 2013 p. 11)

So far in the chapter, I stay close to the empirical logistics of the retention of police strict liability for riot damages and the idea that police have a duty to uphold law and order and prevent riots, as this quote from Kinghan's review summarises. I relate to the unusual nature of this arrangement, how it was met with surprise in the insurance industry, and how there is an absence of comparable statutory provisions for state compensation in the aftermath of other disruptive events.

To understand why this structuring of responsibility was retained in 2016, in a very different legal and insurantial landscape to when it was established, I turn to Neocleous' work on the relation between police and (good)order. This seemingly unusual structuring of responsibility for the event of a riot makes sense when considered through Neocleous' expanded conceptualisation of police, and its relation to order. Neocleous' work (2000; 2014) emphasises the centrality of good order, and so the absence of disorder, to the strength of the state. He argues that it is police power that works to maintain this good order, and is thus critical to the preservation and power of the state.

Neocleous work (2000; 2014; 2015) argues against the way in which police has been confined to police studies and the discipline of criminology. He argues that its confinement to these areas has led to a proliferation of empirical and policy focussed work on policing, but little that conceptualises the concept of police itself. Neocleous' work aims to recover police from what he relates to as its relegated position in police studies and criminology, and to develop an expanded conceptualisation of police, as distinct from the police force.

To do this, Neocleous (2000) turns to the history of policing and particularly its formation following the collapse of feudal order (Wall, 2015). Neocleous (2000; 2015) considers how police emerged in the aftermath of the collapse of feudal order, when a new regime of accumulation was being enforced. The enemy of this new regime was the figure of the vagrant: the lawless, masterless wandering vagrant (Neocleous, 2015; Wall, 2015). Policing emerged in response to the problem of the vagrant, and thus became about a war on 'waste' - those without work, who hindered maximum production, and were anti-productive (Neocleous, 2015; Aradau, 2015). These people had the potential to damage the good order (Neocleous, 2000). Police thus emerges as correctional, and to civilise

lawless, wandering vagabonds (Aradau, 2015). For Neocleous (2000; 2014), at the heart of police is therefore the problem of work (Neocleous, 2015).

Neocleous (2000; 2014) draws on this history to make the point that police is about more than crime, and police power emerged as a way of ordering of social relations around a particular regime of accumulation. Understood in this way, the mandate of police is not controlling criminal activity, but securing the lawful obedience to a particular regime of accumulation. Its ultimate concern is the abolition of disorder and rebellion to such a regime (Neocleous, 2000). This is what leads Neocleous (2000; 2014) to conceptualise police as a political-economic ordering of the social fabric. Rather than being an institution, he thus thinks of police an activity and process of achieving order (Neocleous, 2000). Instead of the word institution, he considers the police as an entity, in order to emphasise how police involves an expansive set of institutions that fabricate social order (Neocleous, 2000).

Neocleous (2014) draws these ideas together through the notion of police power; a power that works to promote the condition of good order, in order to strengthen the power of the state (Wall, 2015). The strength comes from the maintenance of good order, and maintenance of the *image* of a well ordered state (Neocleous, 2014). For Wall (2015) this is what makes police power all about an aesthetic ordering of the social order, where its object is the visibility of good order (Wall, 2015). Wall (2015) develops this aesthetic sense of police power by drawing on Foucault's conceptualisation of police that he articulates as "the art of the state's splendour as visible order and manifest force" (Foucault, 2007 p. 314). For Foucault, the police thus takes concern with everything that gives splendour to the state, where splendour is the visibility of the beauty of good order (Foucault, 2007; Wall, 2015).

Through incorporating Foucault's notion of splendour into Neocleous' conceptualisation of police power, Wall (2015) emphasises the significance of the visibility to police, and through this, draws parallels to Rancière's distribution of the sensible. Wall (2015 p. 5) contends that the police is an aesthetic oriented process of social ordering: "the pacifying order in which the manner of appearing is determined, generating the manner in which events and actors are visible, audible and even knowable." For Wall (2015) it is possible to rupture this police-order, but this happens rarely, when something new emerges through an event. For Wall (2015) police power is thus an aesthetic ordering that makes political rupture difficult (Wall, 2015).

To summarise here, I discuss this expanded conceptualisation of police to underline the relation between police and order, or police-order as Wall (2015) writes. This work foregrounds the centrality and necessity of good order to the state. The state draws strength from good order, which is maintained through police power. Good order, and the absence of disorder such as riot, is not simply the mandate of the police force, but the mandate of this wider conceptualisation of police, and police power. The retention of police strict liability for riot damages and this structuring of responsibility for riots, thus reflects more than the police force maintaining responsibility for the prevention of riots. It reflects the state more widely upholding this central mandate to maintain visible good order, and thus retain its splendour.

7.4 The legality of strict liability

Having worked through the retention of this legal structuring of responsibility for riots, I now turn to think through how it unfolds and dictates actionability. I first consider the legality of this legal structure more closely and then turn to think more about its relation to actionability.

To briefly recap; strict liability is strict in the sense that it is not based on fault or breach of duty; the whole point of it is that you do not have to prove fault.[37] As Lord Justice Rix summarises, in the 2009 Yarl's Wood case, it imposes the arrangement whereby the police's "obligation, their strict obligation, is to prevent what has happened happening" (Yarl's Wood v Bedfordshire Police, 2009at 54).

This infers liability with no relation to action, fault or duty. It requires no causal connection between the party held liable, police, and the damaging event (England, 1996). Whether it for penal or remedial purposes, that is either to punish police or to provide remedy for loss, strict liability imposes an imperative to prevent riots. The legal case from the 2011 riots draws heavily on the Yarl's Wood case to evidence this point. This case first states:

> I can see no useful distinction for present purposes whether the 1886 Act is described as providing for no-fault compensation or as providing liability premised on the notional responsibility of the police to maintain law and order. The police undoubtedly have a real and not merely notional

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[37] "The whole point of that of course strict liability from a legal perspective, I'm sure you've seen this, is that you don't have to prove fault" (Interview, lawyer, 11/08/2016).

responsibility for upholding law and order…and there is no need for the 1886 to acknowledge that…it is for the sake of the party whose property has been damaged, it is to encourage the inhabitants (now the police force) of the locality, but including the party injured himself, all to assist in the preservation of the peace, it is to share the burden of both keeping the peace and of the misfortune of loss or injury. (Yarl's Wood v Bedfordshire Police, 2009 at 54)

Here the case underplays the significance of the rationale for the inclusion of strict liability in riot legislation, which the Mitsui case also maintains. Both cases avoid attempting to isolate a singular reason for its inclusion, but reach the conclusion that multiple reasons underpin its inclusion. Both cases focus on what effects the incorporation of strict liability has, and underline how, regardless of rationale, through imposing a responsibility for failing to quell riots, strict liability imposes a duty to prevent riots (Morgan, 2014). The Yarl's Wood case states: "it gives those potentially liable a strong incentive to do what they can to prevent the relevant circumstances from arising" (Yarl's Wood V Bedfordshire 2009 p. 11).

I take these statements that focus on the imperative to prevent as the starting point for thinking through actionability. To explain why I take this as a starting point, I turn now to offer more depth on the principle of strict liability and its obscurity in law.

Acts that provide a remedy for damages without proof of fault are uncommon given the advances in the law of negligence, where proof of negligence, understood as a breach of duty or breach of some kind, is required in order to make a claim for compensation (Waite, 2006). Second to riot damages, the most well-known inclusion of strict liability comes from an 1868 case: Rylands v Fletcher. This case established strict liability for "escaping things" (Fairgrieve, 2003 p.156). It relates to things escaping from land, and it makes a land owner strictly liable for damages that occur from noxious substances that are released from their land.[38] In 1868, the case ruled:

> a person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape… he should at his peril keep it there…or answer for the natural and anticipated consequences.[39] (Waite, 2006 n.p.)

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[38] Rylands v Fletcher "is when something noxious escapes from your land, that's another strict liability example which gives you a right to make claim for damages but you don't need to prove fault, but it is quite circumscribed" (Interview, lawyer, 11/08/2016).
[39] Rylands v Fletcher [1868] L.R. 3 H.L. 330

I note this here to emphasise the obscurity of strict liability; its inclusion in legislation is rare, and when present, as one lawyer interviewed said, its application is "quite circumscribed."[40] To bring about a successful claim under the Rylands and Fletcher principle, for example, a case has to meet very specific criteria; one is that the land in question must have been put to an unusual, 'non-natural use', for which there is no objective test (Fairgrieve, 2003). Another is that the harm must be foreseeable to the owner or occupier of the land (Wilde, 2018). Cases that have successfully invoked the Rylands v Fletcher principle are thus rare. And, as Wilde (2018) writes, the scope of Rylands v Fletcher is ever-tightening. A 2012 case concerning fire that started from a stock of tyres, narrowed the scope of the principle by narrowing what counts as non-natural land use; it states that the thing brought onto the land must be "exceptionally dangerous or mischievous" and the use of land must also be "extraordinary and unusual" (Stannard v Gore, 2012 p. 3)

Claimants attempting to bring a claim based on Rylands v Fletcher against a *public body* face extra difficulty (Fairgrieve, 2003). There are very specific conditions for bringing claims upon a public body in English law[41] (Fairgrieve, 2003). Fairgrieve (2003), for example, writes of how rules around statutory duty and authority have afforded significant protection to public bodies in England. Where a public body has a statutory duty for example, it "will not be liable for anything which it is expressly obliged to do under statute or which is reasonably incidental to that requirement, as long as it is done without negligence" (Fairgrieve, 2003 p. 156). Putting this succinctly, if a public body is obliged to act and as a result causes loss, then liability should not arise, provided there is no negligence (Fairgrieve, 2003). Developments in fault based liability that became the tort of negligence underpin the emergence and development of this restrictive approach[42] (Wilde, 2018; Fairgrieve, 2003).

These points, that the inclusion of strict liability in legislation is rare, that claims that invoke it must meet very specific criteria, and claiming against a public body adds an extra layer of difficulty, further contextualise the obscurity of strict liability for riot damages. That liability is placed on the public body of the police places this kind of claim in the

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[40] Interview, lawyer, 11/08/2016.
[41] Fairgrieve (2003) adopts a comparative approach that looks at English and French law. The difference in approach in French administrative law is "striking"; the considerable protection afforded to public bodies in England and the difficulty in bringing claims against public bodies is lesser in France (Fairgrieve, 2003 p. 157).
[42] Fairgrieve (2003) in 'State Liability in Tort: A Comparative Law Study' again provides relevant contextual work on the development of the tort of negligence in relation to strict liability.

additionally difficult claim category. There are thus other claims within this category and so while such strict liability for public authorities is not unique, it is a very unusual legal arrangement (Morgan, 2014).

Following Morgan (2014 p. 3) who endeavours to resume strict liability from "tort textbook footnotes", and to consider it as more than a historical curiosity, I consider its role in the actionability of the imaginary of riots. I build on Morgan's (2014) legal review of the Riot (Damages) Act 1886, and respond to his prompts for further empirical research into the Act and its impacts. This also follows Morgan's (2014) critique of Kinghan's review and its lack of empirical research into the impact of the act and liability. In his summary, Morgan states: "the Kinghan Report on the 1886 Act continues the inglorious tradition of failing to undertake serious empirical research into the effects of the legislation" (2014 p. 15). In the next section I thus take this statement of absence as a prompt to consider the contemporary actionability of riot legislation.

7.5 The unfolding of the duty to prevent: liability and activity level

> In dealing with non-negligent accidents, tort regimes have traditionally adopted all-or-nothing approaches, whereby losses from accidents are assigned either entirely to the tortfeasor or entirely to the victim, with no possibility of division. (Carbonara et al, 2016 p.175)

Strict liability for riot damages follows this tradition: police bear all liability and take on the full burden of the cost of damages (Carbonara et al, 2016). While unusual, this arrangement does follow conventional all-or-nothing liability rules (Carbonara et al, 2016). Through strict liability, police bear all legal incentive to mitigate risk. Strict liability imposes that the one party, here police, are fully and wholly incentivised to limit the risk of injury or accident happening. The court will not conduct any cost-benefit analysis of their activity as they would in cases of negligence. It thus becomes entirely a police matter as to what constitutes appropriate, efficient precautions (Morgan, 2014).

As Carbonara et al (2016 p. 177) note, this apportioning of liability thus dictates what police do, their actionability, in relation to riots, as "the allocation of non-negligent losses (residual liability) affects the activity-level choices of the parties" (Carbonara et al 2016 p. 177). I turn to consider strict liability in relation to actionability based on this premise. I consider the effects that the apportioning of liability for riot damages has on the activity level of police.

A liability regime is optimal when it creates incentives to maximize the value of risky activities net of accident and precaution costs. (Carbonara et al, 2016 p. 1).

Following this logic, in the case of riots, the liability regime is optimal when it incentivises the police to maximise the value of riots, minus the cost of their taking place and precaution. Placing the cost of injury, riot damages, onto the police – a party with some control over the incidence of rioting – incentivises the police to take precautionary measures to limit the injury taking place (Morgan, 2014). The implementation of precautionary measures depends on the balance between investment and return; of reducing occurrence, and ensuring this investment brings return in the form of reduced liability (Morgan, 2014). Implementing precautionary measures to attempt to reduce the incidence of rioting to zero, for example, is not likely to be the most cost effective approach. Precautionary spending needs to produce, or at least give rise to, potential liability saving (Morgan, 2014).

For Morgan (2014 p. 9) this balancing and the economic incentive of strict liability is identical to the 'Learned Hand formula', which incentivises defendants to take cost effective precautions against injury. The formula uses the equation:

$$B < P.L$$

In the equation, the probability of the accident is P, the gravity of the injury is L, and the burden of taking adequate precautions is B. Liability is assessed through consideration of whether B is less than P multiplied by L (Morgan, 2014). What the equation determines, is that the defendant is negligent if they fail "to take precautions that were cheaper than the cost of injury that the claimant has sustained multiplied by the *ex ante* probability of that injury happening" (Morgan, 2014 p. 8). Here ex ante refers to a forecasted probability of the injury taking place, and leads to an arrangement that incentivises cost-justified precautions (Morgan, 2014). More simply, it is all about balancing the cost of precaution and the cost of the accident (Carbonara et al, 2016).

While there are parallels to negligence, strict liability incorporates an incentive to curb activity levels, as well as taking more obvious precautions against the injury (Morgan, 2014). The aim of this is to lower the frequency of the risky activity to reduce costs (Carbonara et al, 2016). Morgan (2014) explains this using the example of the activity of driving. To repeat Morgan's example, for driving, "the number of accidents that occurs is proportionate to the level of the activity (the sheer number of miles driven), as well as to the care with which the activity is carried out" (2014 p. 8). Some accidents happen when

drivers are careful, but these could have been avoided if the journey had not taken place at all. Strict liability extends to such accidents, which happen regardless of the conduct of the driver. Strict liability thus includes an incentive to limit activity levels (Morgan, 2014). Negligence liability, conversely, does not include analysis of activity levels. Continuing with the example of driving, in negligence analysis, the principle question is whether the defendant was driving with reasonable care. Analysis does not consider whether the driver was negligent in deciding to take a particular journey in the first place and so the utility of the journey (Morgan, 2014). Morgan (2014 p. 8) quotes a 1965 text, *'Restatement (Second) of Torts',* to evidence this, it states: "the law regards the free use of the highway for travel of sufficient utility to outweigh the risk of carefully conducted traffic, and does not ordinarily concern itself with the good, bad or indifferent purpose of a particular journey".

In sum, negligence analysis does not incorporate analysis of whether a journey was necessary, but whether care was taken on that journey. Morgan summarises: "If the court had to decide on each occasion whether a given journey was of greater utility than the risk of road accidents created by it, data that are difficult to collect in practice would become necessary to resolve the inquiry" (2014 p. 8). Taking this beyond the example of driving and considering negligence more widely, Morgan (2014) concludes that typically, courts do not consider activity levels when considering whether a defendant was negligent. To bring this back to strict liability, as it does not incorporate a measure of activity "negligence under-deters accident-causing behaviour compared to strict liability" (Morgan, 2014 p. 8). What makes strict liability distinct from negligence, therefore, is that it *does* require the *limitation of activity*. I now turn to consider how this unfolds in the present, and who does this work of limiting activity.

7.6 Current status of the principle

While the legal structuring of responsibility for riot apportions injury prevention activity to police, contracting and sub-contracting means that the work of injury prevention, of upholding law and order and limiting riots, is done by parties other than the police, such as private security companies. To exemplify this, I draw on an example where police contracted out their responsibility for security, for law and order, to a private security company, and insisted on the contracted status of their "responsibilities for good order" in a legal case that followed a riot event (Yarl's Wood v Bedfordshire Police Authority, 2009 p. 3). The case relates to a riot at Yarl's Wood Immigration Detention Centre, Bedfordshire, in February 2002. Almost half of the centre was destroyed by fire in the

riot, and the total cost of damages was quantified at £32m (Yarl's Wood v Bedfordshire Police Authority, 2008; 2009).

First, to explain the structure of contracting, Yarl's Wood Immigration Limited (YWIL) had a Project Contract with the Home Office to design and construct the centre, and maintain and operate it. YWIL sub-contracted the operation and maintenance of Yarl's Wood to GSL UK Limited (GSL). The Immigration and Asylum Act 1999 provided that immigration detention centres could either be managed directly by the Secretary of State or contracted out (Yarl's Wood v Bedfordshire Police Authority, 2009). The structuring of contracting out management followed already established contracts in prisons, following the 1991 Criminal Justice Act that empowered the contracting out of the running of prisons.

Day to day, the operator was acting as a public authority, on behalf of the Home Secretary, and had responsibility for maintaining security, good order and discipline at the centre (Yarl's Wood v Bedfordshire Police Authority, 2009). Following the riot at Yarl's Wood, however, the operator disputed their responsibility for securing against a riot. As such, the private operators and their insurers attempted to claim the recovery of the costs of damages, £32m, from Bedfordshire Police Authority (BPA), under the 1886 Riot (Damages) Act. The contractors maintained that they were entitled to compensation, as per the wording of Act that states 'any person' who sustains loss from riots can recover this from police, who have a duty to maintain law and order and prevent riots, as per the 1886 Act.

The private operator and their insurers argued that: "notwithstanding its public duties as representing the Home Secretary, it was not responsible for protecting the public from the risk of riot and disorder in Yarl's Wood" (Yarl's Wood v Bedfordshire Police Authority, 2009 p.5). They argued that first, they had no general responsibility for upholding law and order and had a constrained power in relation to law and order as they had no powers to arrest. Second, they argued that the duty of police to uphold law and order had not been removed in respect of Yarl's Wood and their contract to operate it (Yarl's Wood v Bedfordshire Police Authority, 2009 p. 5).

BPA rejected the claim and argued that the damage was caused was before they were asked to take control of the incident. BPA were thus contesting the contractual detail of the handover of the incident, as per the contingency plan in place for dealing with serious incidents. The contingency plan in place was a Joint Protocol Agreement, JPA, which set

out a formal procedure for the handover of control of the centre, at a cost to the contractor (Yarl's Wood v Bedfordshire Police Authority, 2009). The claimant, the contractor, contested this, arguing that through awaiting a request to take control of the incident, the police failed to act upon their duty to maintain law and order, in an unlawful way (Yarl's Wood v Bedfordshire Police Authority, 2009).

What I want to foreground from this case is the existence of the contracting and subcontracting of the duty to maintain order. And, further, the police's insistence on this contracting out, and a refusal of responsibility for good order and the control of riot in this case. While the Lord Justice Rix considers the dispute to be a "temporal issue", relating to the timing of the handover of control in relation to the JPA, it is significant that the BPA maintained that the centre was outside the scope of its control, and that the JPA altered its statutory duty to maintain law and order, by setting out that the BPA had to await a request to enact this duty (Yarl's Wood v Bedfordshire Police Authority, 2009).

The case also points to the complexity around responsibility for maintaining good order, and injury prevention in relation to riots. The contracting and sub-contracting blurs the structuring of legal duty, which becomes difficult to discern (Bhandar, 2018). Contracting out has a fragmentary effect in relation to state responsibility, and here specifically in relation to statutory powers for security and good order (MacLeod, 2018; BPA v David Constable, 2008). In sum, the Yarl's Wood case foregrounds the ambiguity and complexity of who is responsible for acting upon the potential riot. The case also contributed to making the responsibility more complex as it led to a reduction of police duty to maintain security and good order, in particular spaces. Following this case, the re-drafted Riot Compensation Act, 2016 (s.6), states that police are not responsible for riot in three particular spaces:

> (6) In this Act, "riot" is to be construed in accordance with section 1 of the Public Order Act 1986, but does not include a riot in any of the following places—
> (a) a prison, young offender institution or secure training centre;
> (b) a hospital where persons are detained under Part 2 or 3 of the Mental Health Act 1983;
> (c) a removal centre, a short-term holding facility or pre-departure accommodation (within the meaning given by section 147 of the Immigration and Asylum Act 1999).

If these spaces sit outside the scope of police duty to maintain good order and prevent riots, a riot cannot, legally, take place in these spaces. The transgression of the aesthetic faultline in law will not take place. Private security cannot name the event a riot, or make

arrests for riot, for example. In the previous chapter I considered the ambiguity of the transgression of the aesthetic faultline, arguing that transgressions and so riots take place but are not named as such. Here I make this point, that the transgression of the line cannot take place, to foreground another kind of absence of riots. What I want to foreground here is a type of indifference to riots; a resistance to recognising, naming and counting their taking place. Specifically in relation to the English legal context, this has created a sparse record of rioting, as Kinghan (2013) alludes to in his suggestion that the 1886 Riot (Damages) Act endured for so long, until 2016 because it was sparsely used. The sparse record of riot creates the idea of a long history, endurance and presence of peaceful, good order, and absence of resistance or expressions of grievance.

7.7 Conclusion

In sum, in this chapter I have detailed the contemporary legal structuring of responsibility for riot, or responsibility for the policing of the aesthetic faultline in the world. I first outlined its history, and how it reflects a continuation of the long endurance of police strict liability for riot damages, which imposes a duty on police to act to limit the incidence of riots. I then outlined the obscurity of this, in particular relation to the neoliberal contraction of the state. I then went on to complicate this supposed retention of the fundamental duty of police to maintain good order and limit riots, through detailing the contracting and sub-contracting out of this responsibility to private security companies. I concluded by foregrounding the fragmented nature of contemporary responsibility for riot.

What I have turned my attention to here, in terms of the aesthetic faultline, is the legal structuring that underpins its contemporary *policing*. The material that I have worked through leads me to raise questions around the contemporary potential of a transgression of the aesthetic faultline, and thus the question: could a riot take place? In the previous chapter I set out how transgressions of the aesthetic faultline are managed through anti-naming, such that a transgression of the aesthetic faultline is not named, legally, as taking place. I argued in the previous chapter that this limits the political *potential* of the riot, to communicate political resistance, for example.

In this chapter, through the discussion of the contemporary legal structuring of responsibility for riot, and how it unfolds, I have reached the question: if a transgression took place, would it be *legally* recognised and named as a riot, if police are absent from the scene? I have set out the contradiction of the retention of strict liability in the 2016 Riot

Compensation Act that imposes a duty on police to take action to limit riots, and indeed prevent riots, while the duty to uphold law and order is also being contracted and sub-contracted out to private security. In addition, there has also been a reduction in the scope of police responsibility for riot, through the exemptions made in the 2016 Riot Compensation Act, which states that police are not responsible for riots in particular spaces, including prisons, and removal centres, where the responsibility for keeping good order will likely be contracted to private operators.

The argument that I have made here is bound to the *legal* taking place of a riot. Yet, as I alluded to in the final section of this chapter, what I want to point to from the evidence that I have presented, in the previous chapter and in this chapter, around the legal absence of riots, and future potential of the further legal absence of rioting, is an indifference to rioting events in England. By indifference, I mean the evasion of addressing and confronting their taking place, and specifically their taking place as a rupture that ruptures the normal order of things, which is thus a political rupture.

In sum, through managing or policing transgressions of the aesthetic faultline, or potential transgression of the aesthetic faultline, in a way that creates the legal absence of a riot, through anti-naming as an example, the political potential of the riot that ruptures the normal order is closed down.

8. Conclusion

8.1 What is a riot? An overview

The central aim of this thesis is to respond to the question: what is a riot? The question arose in the aftermath of the 2011 riots in England, in the specific context of a legal case that asked: did a riot take place? While the Mitsui case worked through this question in order to determine how to settle compensation claims for damages caused by the riots, the way that the case traced the legal history of riot had a wider significance, because of the questions it asked of the nature of rioting events, and who was responsible for their *taking place*. These are the questions that I follow from the legal case and foreground in my thesis.

In focusing on the question, what is a riot, I endeavoured to shift the focus in riot research to the constitution of riots, rather than their causation. In the introduction to the thesis, I set out how much of the existing riot research focuses on the underlying reasons for the emergence of rioting, or the breakdown of law and order. I argued that the mainstream research thus foregrounds questions of causality. I explained the tendency of looking to matters of causality by drawing upon and developing Wendy Brown's (1997 n.p.) notion of the event trap, whereby research "becomes trapped by responding to events, by the time space of events."

Throughout the thesis I have argued that research that falls into the event trap tends to attempt to offer stabilisation from the confusion the riot creates, and is captivated by the pervasive understanding of riots of violent ephemeral, eruptions. In the introduction, I elaborated on how this condition of captivity to one perspective functions as a condition of unfreedom because of the way it limits our capacity to see as other (Owen, 2002). I first described the emergence of this condition of unfreedom, arguing that two characteristics of the riot in particular - the riot as excessive and spectacular - contribute to its emergence. I then turned to think about how the captivity to one perspective functions, by arguing that it leads research to be bound to the time-space of one event, in a way that confines research to questions of causality, and to attempt to generate understanding as to why the event emerged.

The tendency to focus on matters of causality has led riot research to have a cyclical pattern. As Dikeç (2007) notes, citing Hall:

> The cycle goes something like this. There is a problem that is followed by a conference; the conference is followed by research; the research reinforces what we already know, but in elegant and scholarly language. Then nothing happens. (1987 p. 45)

I suggested that the tendency of riot research to be bound to one event can risk explaining away their emergence, in a way that then risks the riot becoming dismissed as an aberration (Haddow, 2015). The dismissal of the 2011 riots as an aberration took place in their aftermath in other spheres, in political commentary, for example, as I pointed to in the opening quote of the thesis from then UK Prime Minister, David Cameron. In a speech after the riots, Cameron (2011) expressed a view of the riots as a behavioural aberration, he said:

> No, this was about behaviour……people showing indifference to right and wrong……people with a twisted moral code……people with a complete absence of self-restraint.

I turned my attention to the constitution of the riot, and established my aim as to avoid the event trap, in order to avoid thinking about causality in a way that can lead to the riots becoming dismissible as an aberration. In turning my attention to the constitution of riots, I avoided the event trap, and embarked on a more comprehensive approach to the study of riots. By which I mean I focused on a series of events, rather than one rioting event, in order to develop understanding of their constitution.

To execute the shift in focus to constitution, I turned to theory, and specifically evental theory, where an event is understood as something that ruptures the normal order of things. Drawing on this understanding of events to think about riots provided a means to stay with the rupture of the riot, and so to think through its constitution. My endeavour to stay with the rupture of riot, to reiterate, reflects my concern to avoid the risk of explaining away riots, and also follows work that attempts to stay with trouble, contradictions, and incoherencies. In section 3.2, I related to this in terms of Foucault's approach within his work, which he describes as avoiding the law of coherence. Foucault suggests that the law of coherence is "almost a moral constraint of research…not to be taken in by small differences; not to give too much weight to changes, disavowals, returns to the past, and polemics" (2002 p. 149). Foucault's approach works against the law of coherence, and rather takes phenomena of rupture and discontinuity as its starting point, and works to develop concepts that enable us to conceive discontinuity (2002). I have thus followed Foucault through my endeavour to stay with the rupture of riot, and to develop concepts that allow me to build new intelligibility of riots.

In the first theoretical chapter, Theory and Event: From Causation to Constitution, I began to develop my approach to understanding the riot in terms of its constitution as an event. I drew on existing work in political geography on evental thought, and specifically evental governance, in order to do this. I began within work on evental governance because of its focus on events that rupture, and the significance it attributes to them in relation to governance. It considers events that rupture the normal order as that which *orders* governance. What I developed from this review of work on evental governance was a way to think about the riot as an event that ruptures the normal order. I set out how evental governance works, and its specific modality; to get to know and to grasp events, and then to tame and limit events. I took this way of thinking about governance, in terms of a duality, forward into the rest of the thesis, and drew on it to frame my empirical work.

In the second theoretical chapter, Evental Rupture: The Riot as a Transgression of the Laws of the World, I turn my attention to rupture more specifically, again drawing on evental theory, but in this chapter drawing on work from beyond political geography. I first reviewed work in urban theory and political theory, specifically from Dikeç and Swyngedouw (2017) and Jodi Dean (2016a; 2016b), to contextualise the significance of thinking about events that rupture. Both Dikeç and Swyngedouw (2017) and Dean (2016a; 2016b) articulate a call to think about, or confront rupture, and ruptural politics. Written in response to events in 2011, and particularly the inability to relate to them, such work contextualises why I dwell on the constitution of the riot. Jodi Dean's (2016a; 2016b) work, for example, makes the compelling argument that riotous events in 2011 were difficult to relate because of the ubiquity and intensity of individualism in contemporary life and politics. In sum, Dean (2016a; 2016b) makes clear the call to confront what the collective is, which I respond to in the thesis, in specific relation to the constitution of the riot.

These works also foreground the significance of thinking about events that rupture, by foregrounding the political nature of rupture. Dikeç and Swyngedouw (2017 p. 8), for example, foreground the political nature of riotous events that rupture, alongside a need for "painstaking attention" to think through how to understand, and legitimise their political status. They suggest:

> the evental moments of re-emergence of the political choreographed in performative stagings of egalitarian discontent may signal nascent forms of

> politicization, but require forms of declaration, sustained organization and a horizon that opens up the possibility of the new….This elevation of insurgency to the 'dignity of the political' is, to say the least, premature. (Dikeç and Swyngedouw, 2017 p. 8)

In sum, I spend time describing these calls to think about rupture, and its political status, to establish where my work that stays with the rupture of riot comes from. These calls stress the importance of re-thinking our conceptual material, across urban and political geography, and political theory more generally, that events in 2011 foregrounded.

Following the contextualisation of my focus on rupture, I turned to focus to the specificity of the rupture of riot. I considered its nature and characteristics, drawing on evental thought, and specifically Badiou's evental theory. I drew on Badiou in particular because of the way he interrogates rupture, and stays with rupture. Badiou distances his work from evental work that focuses on the event and novelty production, for example, which takes concern with how events open onto the new, and create change (Human, 2015). Evental work that focuses on novelty production is always following the new, and focuses on what change the event creates. Badiou, instead, stays with the moment of rupture. In his work on the 2011 riots, for example, Badiou did *not* ask questions of the direction of change that would follow the riots, but focussed rather on their status in terms of rupture, which he goes on to conceptualise in terms of the inexistent appearing in space, and the intensification of their appearance in the world (2012c).

I follow Badiou in endeavouring to stay with rupture, through turning specifically to theorise the rupture of riot as an event. In the second theoretical chapter, Evental Rupture: The Riot as a Transgression of the Laws of the World, I turned my attention to think more about the riot as event. I drew on Badiou's work to think about the riot as an event that constitutes the restitution of the inexistent; the moment when the inexistent, the 'nots' of the world, seize a moment to declare their existence (Badiou, 2007; Shaw, 2010; 2012). For Badiou, the 'nots' of the world are those who are ascribed a weak, negligible quantity of existence that leads to their being virtually inexistent in the world (2012c). The event is the moment in which the inexistent find a space to rise up, declare their existence, and be counted (Dewsbury, 2007; Badiou, 2012c). I noted that for Badiou (2012c) the event thus transforms the rules of visibility, and creates a site of presence, where the inexistent exhibit their existence.

Overall, this is what led me to conceptualise the riot as a moment of transgression of the laws of the world, specifically the laws of the world that regulate appearance (Badiou,

2008). Further, I suggested that the event as that which puts out the law's normal effect, and allows the inexistent to appear, thus demonstrates the contingency of the laws of the world (Badiou et al, 2009).

I went on to reflect on the temporal boundedness of work on events that rupture. I suggested that in evental work, there is a temporal tendency towards the kairological. By this I mean a focus on, and foregrounding of, the moment of interruption that the event generates, or the Kairos. I suggested that my contribution to this field thus stems from what I see as a limitation with the temporal scope of evental work. I suggested that to understand the moment of rupture, in this thesis the riot as a transgression of the laws of the world, necessitates a *historical* approach. This suggestion follows from Shaw's (2012 p. 12) guidance on methodology within evental work, and specifically, the suggestion that power in evental geography should be studied in relation to the "capacity to police the aesthetic faultline in a world". Drawing on this framing, and thinking specifically about the *drawing* and *policing* of this line, I suggested to further understanding of the riot as a moment that transgresses such a line, necessitates thinking further about its constitution, and policing, through history. In sum, I argued that a historical approach is needed to trace the drawing of this line, and to understand how it is policed, through looking to past instances of its policing.

To further contextualise my historical approach, I noted the challenges of conducting historical work with events. I explained that this challenge stems from the notion of the event as a singular, discontinuous irruption that opens onto change, which means that much evental work is read as being, sometimes problematically, ahistorical (Human, 2015; Wright, 2008). I detailed how I worked through this pairing, of history and event, and how I aim to contribute to emerging work that is engaging history and event (Coombs, 2015).

The methodology chapter, Engaging History and Event through the Legal Archive, reflected further on conducting historical inquiry in relation to events, and specifically conducting archival work on events. I detailed how I structured my empirical work in relation to aesthetic faultline, and around questions that considered its *drawing* and *policing*. I also explained further the legal context of the empirical work, which comes from thinking about the event as a transgression of the *laws* of the world, and particularly legal laws (Badiou, 2008). I reflected upon how I interpret Badiou's theorisation of the event as a transgression of the laws of the world, in a conventional, literal way and "take 'law' in its strict legal sense" (Badiou, 2008 p. 1881). While Badiou's thinking on the laws of the world are not confined to the legal, I reflected on how I took direct influence from the

paper that the theorisation of the event as a transgression of the laws of the world was written in, which is within a legal journal. I also drew parallels, in section 4.5, between my approach and Jones's (2016) work on lawfare, that foregrounds the role of law in the taking place of and conduct of war. I foreground the role of law in the taking place and conduct of *governance*, and particularly riot governance. I also returned to the Mitsui case, and noted how my legal focus follows from the significance of this case that I introduced at the start of the thesis.

In the methodology chapter, I also returned to governance, in order to set how both the empirical work was structured, and how the empirical chapters are organised. Having set out a specific way of understanding the riot as an event that ruptures, I returned to thinking about it in relation to evental governance, which is ordered by events that rupture. Having set out evental governance as governance that works to know and limit events that rupture, in chapter two, I set out how I turned to consider what it entails in relation to the riot as a specific kind of rupture – a transgression of the aesthetic faultline. I outlined how I think about its governance in relation to the *drawing* and *policing* of the aesthetic faultline. I set out how I think about the drawing of the line in relation to the construction of the riot as an object of governance. Then, the policing of the line in relation to how it is rendered actionable, and so what practices of control and limitation the riot is subject to.

I reiterated the questions that I took into my empirical work, which followed from this way of thinking about the aesthetic faultline in relation governance. I set out the questions I ask in relation to the drawing of the aesthetic faultline as: how is the riot constructed as an object of governance? Why is it problematic? What constitutes the riot as an object of governance? Why is it treated as a problem of governance? And then, questions around the poling of the line as: *how* is it treated as an object and problem of governance? What practices of governance is it subject to? What constitutes a transgression of the line? How are transgressions managed and limited? How is the appearance of riots regulated? I foregrounded how these questions guided the empirical work and structure the empirical chapters.

Did a riot take place? Drawing the aesthetic faultline

In the first empirical chapter, I traced the construction of the aesthetic faultline line, which I understood as the construction of the riot as an object of governance in law. I followed the Mitsui case that asked, in the context of 2013, whether a riot took place in 2011. I first

set out the context of the case, and why it was asking this question. I then followed the way the case responded to the question of whether a riot took place, by asking: what is a riot? I followed the way the case set out what it called the 'necessary ingredients of riot', through an engagement with the legal history of riot. The necessary ingredients of riot that the case sets out are: a disturbance to the public peace, by a disaffected collective, of twelve or more persons. I argued that it is through the re-enactment of the event through the *case*, that a riot comes to take place in the world. What I thus evidenced here, through my focus on case work, was that the power of law is not embedded in the text, in statutes, but emerges through the unfolding of the case. By power of law, here I refer specifically to the power of law to draw the aesthetic faultline in the world - the line that regulates appearance, by constructing something as an object of governance in law.

On why a riot did not take place: transgressions of the aesthetic faultline

The second empirical chapter looked to instances where the riot has been subject to control, which I described as *transgressions* of the aesthetic faultline. It looked to instances where the ingredients of riot were present, in order to consider what constitutes a transgression of the aesthetic faultline, and when a transgression takes place. What I emphasised through this focus was an ambiguity around what constitutes a transgression of the aesthetic faultline in the world. While riot legislation sets out the ingredients of riot, which I understand in relation to the drawing of the aesthetic faultline in the world, what constitutes a transgression of this line is contingent. At both Orgreave and in 2011, I evidenced how this contingency arose within charging practices, which I consider as part of the punitive response to riots.

I turned my attention to how transgressions are controlled, through the act of anti-naming, where events take place but are not named as such. I suggested that this creates a kind of absence of riots, a legal absence, where they take place but are not recorded, or counted as taking place. I discussed the politics of naming, primarily through Lloyd's (2106; 2018) work, to think through the significance of the act of anti-naming. I argued that through anti-naming, riots are subject to a kind of indirect control that does not limit their taking place, but limits their potential to have political significance. By political significance I mean their political potential, to become a political claim, or movement, for example. I drew again on Badiou (2013) to elaborate this point. For Badiou:

> The event is, in a certain way, merely a proposition. It proposes something
> to us. Everything will depend on the way in which the possibility proposed
> by the event is grasped, elaborated, incorporated and set out in the world.
> (2013 p. 9-10)

What I emphasised through my discussion of anti-naming, was that the political possibilities that the event proposes cannot be grasped or elaborated on, because the practice of anti-naming closes them down. This closing down of possibilities is what is at stake through the act of anti-naming. It limits the *legal* taking place of a riot.

Could a riot take place? Policing the aesthetic faultline

The third empirical chapter turned to look at the contemporary policing of the aesthetic faultline, in order to ask the question: could a riot take place? I set out the unusual retention of police strict liability for riot damages in the most recent piece of English riot legislation, the Riot Compensation Act 2016, which imposes a duty on police to prevent the taking place of riots. I emphasised the obscurity of the retention of police strict liability for riots, in particular relation to the neoliberal contraction of the state, which has normalised the sub-contracting of state responsibilities, such as keeping the peace, or maintaining law and order. I then went on to complicate this supposed retention of the fundamental duty of police to maintain good order and limit riots, through evidencing that the contracting and sub-contracting out of this responsibility to private security companies is taking place. I concluded by foregrounding the fragmented nature of contemporary responsibility for riot, and how it contradicts what the newly re-drafted riot legislation sets out in terms of responsibility for governing riots.

The material that I worked through in this chapter led me to raise questions around the contemporary potential of a transgression of the aesthetic faultline, and thus the question: could a riot take place? By this I referred to the legal taking place of a riot, and whether a transgression would *legally* be recognised and named as a riot, if police are absent from the scene. My discussion here was bound to the legal taking place of a riot, and I argued that the evidence I presented points to a legal indifference, or legal evasion of riots, by which I mean the refusal to address and confront their taking place.

In raising questions around the legal taking place of riots, however, I have aimed to raise questions regarding the broader conditions of possibility for the taking place of a riot, and thus its subsequent potential to have political power, in terms of the possibilities that it creates being recognised, grasped, and elaborated upon (Badiou, 2013). From my legal archival work, the arguments that I have made are limited to the legal taking place of riots,

but at stake from these arguments, are questions of the conditions of possibility for a riot to take place, and to rupture the normal order of things in a way that is political, and proposes political possibilities (Badiou, 2013).

8.2 Genealogy and thinking otherwise about riots

In this thesis I have drawn on Foucauldian genealogy as the principle, guiding methodological approach. Following Foucault, I understand genealogy as a mode of inquiry that works towards thinking otherwise to that which appears as obvious and self-evident (Foucault, 1984; Tiisala, 2017). Understood in this way, a genealogical account of riot is distinct from a history of riot because it does not seek out origins and causes but rather the conditions of things being otherwise. I drew on genealogy, therefore, as a way to frame my endeavour to think otherwise about riots, to that which seems obvious, given and self-evident: the riot as a violent, ephemeral, eruption.

I first spent time detailing the emergence of the perspective of riots as violent, ephemeral eruptions, that I suggested was typified by Douglas' (2017 n.p.) description: "it's night, a car or two burn in the near distance and, in the foreground, a young man (preferably brown) wearing a balaclava is in the midst of tossing a projectile". The most recent iteration of this way of thinking about riots, in England specifically, followed the 2011 riots, and thus I began with those events, and the iconography of riot in their aftermath, to detail the framing of riots that I work to break from, and think otherwise to.

Evental theory gave me the means to shift thinking about riots in a new direction, and to think about their constitution. The second phase of the genealogy was my theoretical work, and the development of a conceptualisation of the riot as an event that ruptures the normal order of things. The specific conceptualisation of the riot as a transgression of the laws of the world that regulate appearance that I developed, became the sensibility of riots that I then took forward into my empirical work. This way of working, of developing a conceptualisation and taking it into empirical work follows the structure of genealogy that first develops new sense of something, and then puts this new sense to work within empirical investigation (Olson, 2014).

I put the conceptualisation of riot that I developed to work in the empirical chapters, particularly through asking questions of the governance of riots. The final stage of my genealogical approach, in the empirical chapters, followed from Foucault's own description of genealogical work as questioning "over and over again what is postulated as self-

evident" (1988, p. 265). Each empirical chapter questioned over again what constitutes a riot, and what constitutes the taking place of a riot. They considered in particular, therefore, the conditions of possibility for a riot to take place, in specific relation to their legal taking place.

Through drawing on evental thought, I have thus endeavoured to take an angle of encounter with the event of the riot that is illuminative, and that enables critical thinking, rather than position taking (Brown, 1997; 2001). For Brown (2001 p. 106) "the measure of genealogy's success is its disruption of conventional accounts". It is through my evental theorisation of the riot, and putting this to work in my empirical work, that I have worked to disturb popular perspectives of riots, and to defamiliarise and deconstruct what seems obvious about them. Through presenting work on their legal constitution as events, as objects of governance, I have questioned their constitution, how they are rendered problematic, are governed, and the conditions of possibility for their taking place.

8.3 Key contributions and future work

The constitution of a riot

Riots as a research focus, both theoretical and empirical, is limited in human geography. Despite extensive research agendas on urban inequalities, political transformations, and social resistances, there is an absence of work on riots, and a specific neglect of the legal geographical question of the riot. To date, existing work tends to stay within the frame of riots as violent, ephemeral eruptions, and to trace their causality, as I outlined and reviewed in the introduction to the thesis. The principle contribution of the thesis is thus to extend work on riots in human geography. I have extended work on riots in a specific way, which focuses on their constitution, in response to the central question that guides the thesis: what is a riot?

My contribution to thinking further and anew about riots endeavoured to follow and adhere to the ethos behind philosophical work on the event – work that seeks to become worthy of the event. Paul Patton's (1997 n.p.) reflections in the inaugural Theory and Event outline what this means. For Patton:

> A practice of philosophy which would be 'worthy' of the event does not simply respond to social events as they appear: it creates new concepts in the attempt to give expression to the underlying problems or pure events.

Patton (1997 n.p.) extends this to say:

> Like experimental results, events require interpretation and it is impossible to disentangle their meaning if not their very nature as events of a certain kind from the theories which inform their description. This points to a different response, according to which theory engages with events at the level of their identification and specification: what kinds of events are there? What kind of event is this?

Patton's comments help to underline how the ethos of evental work guided my work in terms of avoiding matters of causation, and turning to the specificity of the event of riot, asking: what is a riot? And what kind of event is this? My aim was not to offer reason or judgment, but to engage with riots at the level of their identification and specification. Drawing on evental thought gave me a way to think about riots at the level of their identification and specification. First I thought about the riot as an event that ruptures, and then developed this to think more about its nature as a specific kind of rupture to the normal order of things. I drew on evental governance to frame my thinking, which enabled me to generate new empirical material on how riots emerge as a problem and are governed.

In pursuing a distinct focus on the *governance of riots*, I do not allow space to foreground a focus on the resistive status or potential of the riot. I do not focus on the riotous bodies, their subjectivity and the subjectivity of the crowd, for example. I make reference to the way that governance works in a way that limits the event of the riot, and limits its political potential to communicate resistance, which could be further developed in future work, through a focus on resistive subjectivity, for example.

The empirical focus of my thesis is limited geographically by its focus on riots in England. My work is situated in an English context and specifically English law. I have discussed how a riot comes to take place, in England, in relation to English law. While situated in an English context, my concern with how a riot comes to take place, has resonance beyond England. My understanding of how riots are problematized and rendered actionable, could be explored in other contexts, to think about the conditions of possibility for a riot to take place, in other places.

Such places, might include France, for example, following recent events, although not rushing to respond to these and running the risk of becoming a "hubristic pundit" and falling into the event trap, as (Brown, 1997 n.p.) warns against, and I have avoided in this thesis. Recent events, specifically the 'gilet jaunes', have again pointed to the need to

develop work on understanding riots. The arguments that I make in section 2.3, on the need to better understand collective events that rupture, specifically through Jodi Dean's work (2016a; 2016b), were pertinent again in the aftermath of recent 'Gilet Jaunes' events. As Graeber writes:

> It strikes me that the profound confusion, even incredulity, displayed by the French commentariat—and even more, the world commentariat—in the face of each successive "Acte" of the Gilets Jaunes drama, now rapidly approaching its insurrectionary climax, is a result of a near total inability to take account of the ways that power, labour, and the movements ranged against power, have changed over the last 50 years, and particularly, since 2008. Intellectuals have for the most part done an extremely poor job understanding these changes. (2018 n.p)

Overall, my concern with the conditions of possibility for a riot to take place, and to have political possibilities, has a wider resonance, and has the potential to guide future work in other contexts.

Event and rupture

Second, the thesis has developed theoretical work on the event in human geography by rethinking its relation to rupture. In section 2.4, I detail the philosophical fundamentals of the event: disruption and change. As a Zabala and Mardar (2014) articulate, to expand on these fundamentals, the event reflects a jolt – something that shakes our being. Such jolts surprise us, they perturb the ways we normally think and act, in a way that creates space for contemplation, the potentiality to think anew, and therefore the potential for change. Novelty, I suggested, is a prominent concern within evental work in human geography. In different ways, evental work in human geography, centres on the event as opening onto the new, it asks: what is the nature of change? What does the new promise? (Adkins, 2012; MacKenzie, 2008; Zabala and Mardar, 2014).

Rather than tracing the production of novelty and the possibility of change, I have stayed with the moment of rupture, in order to follow how rupture emerges and is governed. I do this by theorising rupture as an occasion where the laws that regulate appearance are, momentarily, transgressed. My endeavour to stay with rupture followed calls, particularly in urban theory, for work that takes account of rupture, and specifically its status as political.

Within my empirical work, I have argued that the governance of riots closes down their political potential. By this, I mean the way in which the riot as rupture, that proposes

political possibilities, is limited. To explain this, I drew on Badiou's evental theory, and his understanding of events as moments that unsettle the prevailing power's control of possibilities, and bring to light a possibility that was previously impossible, invisible or even unthinkable (Badiou, 2012a; 2012c). For Badiou:

> An event is not by itself the creation of a reality; it is the creation of a possibility; it opens up a possibility. It indicates to us that a possibility exists that has been ignored. The event is, in a certain way, merely a proposition. It proposes something to us. Everything will depend on the way in which the possibility proposed by the event is grasped, elaborated, incorporated and set out in the world (2013 p. 9-10).

I have argued that what the event proposes is closed down, which limits opportunities to grasp and elaborate upon its political potential. To develop this argument further necessitates further work on what it means to grasp and elaborate upon what the event proposes. Badiou's work on fidelity would be useful to draw on to pursue this. For Badiou, developing a fidelity to an event means to hold true to it, abide by it, and persist in efforts to hold onto the possibilities it raises (2012a; 2012c).

Event and law, event and history

Turning to focus more directly on my engagement with the evental, I have contributed to recent work that reconsiders the relation between history and event. I have set out how, despite the putative opposition of history and event, there is value in work that persists through the tension of thinking the two together, and engaging history and event. I have argued that, specifically in relation to Badiou's work, critique that emphasises the incompatibility of history and event, does not take his more recent work that complicates the binary of history and event (Wright, 2008b).

In the thesis I have specifically argued that history is necessary to understand the riot as a particular kind of transgression, of what Badiou calls the laws of the world (2008). I argued that to understand the riot as such a transgression, necessitates further understanding of such laws, specially a history of how they are drawn, and have been policed. I turn to the legal archive to trace the drawing of such laws, and to instances of their transgression which I specifically relate to in terms of the aesthetic faultline in the world.

Thorough my legal archival focus, I have also contributed to recent work in legal theory that engages eventual thought, and the, at present, small body of legal theory that draws on Badiou's thinking. I trace this work to Badiou's piece 'Three Negations' in the legal journal

– Cardozo Law Review (Badiou, 2008). I have drawn heavily on Badiou's notion of the event as that which transgresses the 'laws of the world' in this piece, in terms of juridical law (2008 p. 1881). As noted in the thesis, this way of thinking about riots, or other events, as a transgression of what Badiou calls 'the laws of the world', could be taken in many directions, to think about other laws of the world that condition the emergence and taking place of riots. For Badiou (2008) other laws of the world include economy and class, I also noted race as significant for thinking about rioting events. While I noted examples of riot research that takes concern with these themes, there is potential to think about them as particular laws of the world, drawing on Badiou, which govern the taking place of riots (Badiou, 2008).

My contribution to legal work that engages evental thought, follows from my contributions to legal geography. In the thesis, I have brought evental thinking, the legal archive and legal geography together to develop a specific conceptualisation of the riot as an object of governance in law, which frames and animates my empirical research (Dewsbury, 2007). The thesis makes the case for doing case work in legal geography, and has emphasised the significance of the creativity and power of law that unfolds through the case. There is potential to develop this further by thinking more precisely about the place of case work in legal geography, particularly in response to recent calls to reflect on what it means to practice legal geography (Braverman, 2014). While the sub-discipline has grown significantly in recent years, particularly since the 1980s, close reflection on its associated methodologies and practice is limited (Braverman, 2014).

Political-Legal Geography

Finally, to foreground where my work is situated in the discipline, my approach and line of inquiry that grew out my interrogation of police strict liability for riot damages that the Mitsui v MOPAC case brought to the fore, puts forward a case for doing case work in legal geography, and more broadly, a case for engaging the sub-disciplines of political and legal geography. Foregrounding *a legal geographic reading* of the Mitsui v MOPAC case has allowed me to ask novel questions of rupture and disorder, and specifically the legal conditions of possibility for, and visibility of, disorder. Such questions have allowed me to think in new ways about the state; a central concept within political geography, where questions of legality, and legal case work, are largely absent.

What I have foregrounded through unpacking the case is how it confronts state practice around resource allocation, which points to the indeterminacy of the state itself. While the case was asking questions of budget and of who could and should pay for riot damages, such questions confronted wider questions of the state and state practice, such as its working relation the courts, and whether law can dictate that the state spends its budget in certain ways. This raises a series of questions around justiciability, and the British constitution, for example, an area of work that is largely absent from political geography.

In addition, by highlighting ways in which the state limits and quells disorder, through anti-naming, and outsourcing responsibility for disorder in particular spaces, namely prisons, to private companies, for example, I demonstrate the state's vulnerability to rupture and disorder. I bring to light responses to disorder, and the complex ways the state works to maintain the *visibility* of good order in order to preserve its stability and strength.

Such focuses, on the remit of the state and justiciabiliy, and the state's relation to order and rupture, offers great potential to develop existing work on the state in political geography. Engaging the two sub-disciplines, of legal and political geography, offers potential to think anew about spaces of rupture that confront the state and its practices, and thus open onto spaces of resistance.

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