

# Manufacturing mandates: Property, race, and the criminalisation of trespass in England and Wales

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**Samuel Burgum** 

Department of Sociology, Birmingham City University, Birmingham, UK

**Helen Jones**

Former CEO of Leeds GATE, Leeds, UK

**Ryan Powell** 

Department of Urban Studies and Planning, University of Sheffield, Sheffield, UK

## Abstract

This paper focuses on a recent public consultation to criminalise trespass in England and Wales. Through an analysis of the consultation discourse and documentary evidence, we argue that the government has used this process to manufacture a mandate for criminalisation. We show how the construction of democratic support has been achieved by: Pre-coding responses in the initial call for evidence; distorting evidence in the response; and utilizing ‘state simplifications’ which foreground hostile and racist sentiments whilst presenting sedentarisation as in the ‘best interests’ of nomadic communities. While the 2018/19 consultation is only the most recent in a long history of civilising offensives against Gypsy-Travellers, as well as other ‘unfixed’ communities, this particular move to criminalise trespass and attack nomadic heritage is also further evidence of the UK government’s steady formalization of property ownership: moving away from considering property ‘use’ on the ground towards an abstracted registration system de-rooted from place. This denies long-standing rights to roam and non-normative modes of inhabitation, thereby pushing property relations in a direction that rarely benefits those on the housing margins. We foreground an alternative to criminalisation, pointing towards a recent pragmatic, bottom-up policy of ‘negotiated stopping’ in Leeds in northern England. This builds upon dialogue and cooperation in avoiding costly and disruptive eviction and criminalisation processes, but also potentially creates spaces and opportunities for more positive urban encounters with difference.

## Keywords

Gypsy-travellers, negotiated stopping, property, public consultation, trespass

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## Corresponding author:

Ryan Powell Department of Urban Studies and Planning, University of Sheffield, Western Bank, Sheffield S10 2TN, UK.  
Email: [r.s.powell@sheffield.ac.uk](mailto:r.s.powell@sheffield.ac.uk)

## Introduction

In April 2018, the UK Conservative party revived a long-term aim to criminalise trespass in England and Wales. Beginning with a public consultation entitled ‘Powers for Dealing with Unauthorised Developments and Encampments’ (Gov, 2018), the Ministry of Housing, Communities and Local Government (MHCLG) sought evidence to support their proposals to strengthen police powers against trespassers and/or to criminalise trespass outright. This was followed by a much-delayed response to the consultation just under a year later (Gov, 2019); a Conservative Party manifesto pledge to ‘make intentional trespass a criminal offence’ (Conservative and Unionist Party, 2019, p. 19); and a further consultation spearheaded by Home Secretary Priti Patel. Yet, with the exception of the ‘Kill the Bill’ campaign (which largely focused on new police powers against public protest), the criminalisation of trespass has not spurred much debate and has been somewhat sidelined in public, media and public discourse – first by Brexit and then the urgencies of the COVID-19 pandemic. At the time of writing, trespass now looks set to be criminalised as the bill enters its final reading before becoming law, with potentially far-reaching and ill-considered consequences for some of the most vulnerable and under-represented parts of society. The argument used by the UK government to strengthen powers against trespass has been made in the name of formalizing property rights, explicitly targeting Gypsy-Travellers<sup>1</sup> and, by extension, other trespassing groups (such as activists, ravers and squatters) (Nowicki, 2020).

This paper presents a critical engagement with the original 2018/19 consultation. We focus on the interdependent relationship between property regimes, anti-Gypsy-Traveller racism, and the ongoing stigmatisation and criminalisation of nomadism, which has given rise to eviction as a continuous process in which property, race, value and displacement are intertwined (Gibbons, 2018). We argue that the government’s proposals represent an example of mobilizing dis-identifications against Gypsy-Travellers for political ends (De Swaan, 1997). This is facilitated via a racialized framework which positions Gypsy-Travellers ‘outside’ an imagined notion of ‘British civility’ underpinned by a normative, sedentary mode of inhabitation (Simone, 2016). We demonstrate how this is deployed as an explicit strategy in the consultation process in order to manufacture a mandate, which ultimately seeks to render nomadic and semi-nomadic Gypsy-Traveller communities more ‘evictable’ and therefore preserve privilege and value by ‘purifying’ public space (Van Baar, 2017).

Across Europe, the history of state intervention into the lives of Gypsy-Traveller and Roma communities is replete with barbaric acts of statecraft. Policies include combinations of assimilation, exploitation, vilification, persecution, banishment, slavery, extermination and cultural genocide, including the forced removal of children and secret sterilisation programmes targeting Roma women (Brooks, 2012; Hancock, 1987). Such persecution is invariably underpinned by racist notions of inferiority, ‘unadaptability’ and ‘ineducability’ (Shmidt and Jaworsky, 2020) directed at Gypsy-Traveller and Roma groups, who are framed as lacking the virtue of (imagined) ‘Europeanness’ and are therefore ‘uncivilised’ (mirroring practices of ‘othering’ inherent in European colonialism and modernity (Bhambra, 2007; Picker, 2017)). This range of ‘civilising offensives’ (Kruithof, 1980; Powell, 2007; 2013) – from Evangelical and assimilationist (Vanderbeck, 2003), to overtly hostile and barbaric – has altered over time, alongside the logics and process of racialisation. But the central tenet and positioning of group inferiority persists across different eras and national contexts. Since 1989, there has been a steep increase in Roma oppression, further compacted to a more recent upsurge in populism (Pulay, 2018). Despite efforts at the EU level, recent years have seen the emergence of what van Baar (2014) has referred to as a ‘reasonable anti-Gypsyism’ as part of a normative and widely-accepted racism.

This hardening of anti-Gypsy sentiment, or ‘Romaphobia’, is one of the many racisms that have become emboldened by the xenophobic campaign for the UK to leave the European Union, which

has drawn on racisms spanning European borders (Grill, 2018; Lane and Smith, 2019). For successive generations, Gypsy-Travellers have long been the target of normalised and widely accepted prejudices, harassment and institutional racism across Britain (Mayall, 1988; Taylor, 2014; Sibley, 1987). Whilst their marginalised position as ‘perennial outsiders’ (Powell and Lever, 2017) instils a strong sense of group identification, solidarity and activism, it has also created some of the highest levels of health, education and housing deprivation of any single group in the UK. This has been further exacerbated by the sustained impact of ‘austerity urbanism’ (Peck, 2012) and the continued erosion of welfare support for marginalised communities in general off the back of unprecedented welfare cuts since 2010. Despite Romani Gypsies and Irish Travellers being recognised under the Equality Act 2010 (Gov, 2010), hate crimes and discrimination continue to be major social challenges (National Federation of Gypsy Liaison, 2018; The Traveller Movement, 2016; James, 2020). Furthermore, since 2009, the number of Gypsy and Roma children forcibly removed from their families and taken into state care in the UK has increased by a staggering 933%, and over 400% amongst the Irish Traveller population (The Guardian, 2018). Such systematic oppression requires preparatory, dehumanizing political work, often in the form of Government-led discourses which – even if occasionally framed in terms of a humanitarian ethics of care – have repeatedly legitimised a situation in which hostile public opinions and oppressive eviction powers flourish (Persdotter, 2019). Historically, strategies of assimilation have had the same effect by presenting Gypsy-Travellers with an impossible ultimatum: to either stop *being* Gypsy-Travellers and embrace the normative ‘self-scripting, flexible, entrepreneurial and individualised options of selfhood promoted in neoliberal Britain’ (Tyler, 2013, p. 133); or to find themselves relegated to the urban margins, subjected to regulation, control and surveillance (Powell, 2011).

Here, we present a case study of these discourses through an analysis of both documents which made up the 2018/19 UK government consultation (the initial call for evidence and the government response). First, in situating and historicizing our analysis, we argue that the consultation represents the latest episode in a long ‘civilizing offensive’ against Gypsy-Travellers. Despite relatively low numbers of nomadic and semi-nomadic families living in the UK, state-led sentiments and policies continue to encourage sedentarisation (Greenfields and Smith, 2010, 2012). This civilising offensive, as a targeted and moralising project against a group deemed inferior, problematic and in need of corrective treatment (Kruithof, 1980; Powell, 2013), has maintained, perpetuated and updated racist historical connections made between the ‘Gypsy Menace’ (Stewart, 2012) and the threat to property and values posed by nomadic modes of inhabitation. Through comparisons with the Land Registration Act 2002 (Gov, 2002), which introduced greater formalisation into property disputes, and the Trespass (Scotland) Act 1865 (Gov, 1865), we argue that this civilising offensive is part of a wider trend to solidify Euro-Liberal, formalised and rationalised property regimes. This latest move towards criminalisation flies directly in the face of restorative justice and long-standing common laws around property and trespass, including adverse possession and the use of civil law to settle property disputes (O’Mahony, et al., 2014). This raises fundamental questions around the appropriateness and consequences of using criminal law to address trespass, as well as the civilising offensives which underpin such ‘solutions’.

Second, we draw on the work of James Scott (1988) to argue that the 2018/19 consultation represents an example of ‘seeing like a state’ in mobilising state simplifications of target groups. We develop Scott’s arguments alongside recent research into anti-Gypsy racisms in articulating the underlying rationalities and symbolic representations which intersect in proposals to criminalise trespass. Focusing on the initial ‘Call for Evidence’ (Gov, 2018), we demonstrate how the government frames nomadism *itself* as an ahistorical social ‘problem’. The state simplifications evident in the document’s discourse draw on long-standing and deep-seated stereotypes and prejudices that perform racializing work by homogenising, essentializing and stigmatising Gypsy-Travellers, thereby denying the heterogeneity and vitality of nomadic culture (Brooks, 2012). In this sense,

the consultation becomes a strategic tool in subtly codifying the consultation response in advance (whatever the actual evidence presented by the consultation might be). In deploying these simplifications, the state exposes its innate incapacity for accommodating difference, alongside a wilful ignorance of Gypsy-Traveller culture, customs, history, racism, and oppression. Through the ‘strategic politicisation of language’ (Nowicki, 2020, p.2) the consultation constructs an implicitly racialized evidence base, which de-historicizes and invisibilizes anti-Gypsy racisms (Powell and Van Baar, 2019).

Third, the article analyses the government’s ‘Response to the Consultation’ which carefully frames the evidence gathered in order to manufacture a mandate for criminalisation (Gov, 2019). The response selectively foregrounds hostile and racist sentiments from the public consultation, whilst largely ignoring informed responses from police, activist and community groups, as well as alternative responses to unauthorised encampments centred on multi-lateral communication and compromise. In exposing this selective framing of evidence and its function in underpinning the government’s ‘civilising’ agenda, we challenge the conclusion that the consultation represents a clear mandate for criminalising trespass. Rather, the proposals demonstrate the continuities in racialized logics and rationalities which have historically underpinned state intervention into the lives of Gypsy-Travellers.

Drawing on examples from Leeds in northern England, the final section spotlights pragmatic and progressive alternatives to criminalisation, built upon dialogue, cooperation, and accommodation, rather than criminalisation and eviction. We show how the policy of ‘negotiated stopping’ – an agreement between municipal authorities, local communities and Gypsy-Traveller families living either temporarily or long-term in the city of Leeds – is just one alternative ignored by the consultation. This collaborative approach echoes historic forms of property negotiation which emphasise property *use* over *value*, and has produced encouraging results at limited expense. Negotiated stopping also offers the potential for more positive urban encounters beyond racialised state simplifications.<sup>2</sup>

### *The criminalisation of trespass as civilising offensive*

This section situates the most recent moves to criminalise trespass within a wider historical perspective. Trespass provides a window into how ‘property is always unstable... property regimes have to be constantly enacted and negotiated to be maintained; they are the result of social struggle’ (Bruun, et al., 2017, p. xi). The steady criminalisation of trespassers can therefore be understood as a history of the state attempting to consolidate and formalise private property, in a direction that rarely (if ever) benefits those on the urban margins. By framing trespass as a direct threat to the foundations of European-Liberal formulations of property, criminalisation also continues a violent and barbaric legacy of ‘civilising offensives’ (van Krieken, 1999). For example, the colonial appropriation of property and violent enclosures of land on behalf of European states – which had the effect of retroactively turning indigenous peoples into illegal trespassers on their own land – was itself premised upon Lockean property theories that saw the appropriation of ‘un-used’ land as morally and economically justified (Bhandar, 2018; Blomley, 2003; Porter, 2010). Elsewhere, the early criminalisation of trespass in Scotland under the Trespass (Scotland) Act 1865 (Gov, 1865) was itself a direct response to the mass displacement of communities after the land enclosures of the Highland Clearances. Here, criminalising trespass was an effort ‘on the part of public authorities and landowners to manage and contain the resultant transient populations, such as migrant workers or displaced persons seeking to return to their former homes’ (Holligan, 2014, p. 68). Despite being over 150 years old, and in the face of more recent laws which have legalised ‘free camping’ in Scotland, the 1865 Act remains pertinent as the most common charge brought against Scottish nomadic Gypsy-Travellers, leaving these communities in an impossible situation given that ‘there is

no ownerless land in Scotland... taken literally the Act criminalises existence without a legal right to occupy *somewhere* (or even a temporary dwelling somewhere other than a place one does have a right to)' (Holligan, 2014, p. 71).<sup>3</sup>

In contrast to Scotland, trespass in England and Wales has historically been a civil offence. Yet the 2018/19 consultation – as well as the subsequent consultation led by the confrontational Home Secretary Patel – represents the most recent attempt to introduce new criminal offences, with the aim of ending trespass once and for all. Criminalisation has been a gradual, long-term process which has involved a steady squeeze on trespass in England and Wales, including a series of Acts explicitly directed at Gypsy-Travellers (as well as other 'unfixed' groups), coupled with demonising media campaigns and the targeted vilification of nomadic populations. This includes<sup>4</sup>:

- Caravan Sites and Control of Development Act 1960 (Gov, 1960), which prevented Gypsy-Travellers from camping on private farmland, even with permission from the farmers who they traditionally undertook seasonal work for (see Sibley, 1987; 1990).
- Criminal Law Act 1977 (Gov, 1977), which responded to widespread urban squatting throughout the 1970s by criminalising squatting in certain circumstances, but stopped short of an all-out ban.
- Criminal Justice and Public Order Act 1994 (Gov, 1994), which took aim at Gypsy-Travellers, squatters, ravers, free festivals and protestors, and left a large proportion of families on the Government's own Travelling Communities Census without any legal stopping places (Halfacree, 1996; Sibley, 1997).
- Land Registration Act 2002 (Gov, 2002), which made claims for adverse possession near-impossible and undermined common law approaches to property disputes (see below).
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Gov, 2012), which entertained the idea of criminalising trespass, but instead criminalised squatting only in residential buildings in England and Wales.

It is the often-overlooked Land Registration Act (LRA, 2002) which most clearly demonstrates how criminalising trespass is part of a trend to consolidate and formalise property regimes. Before the Act, the legal tradition of 'adverse possession' – where property titles could be transferred from a legally recognised owner to a squatter after continuous use of 12 years – had been justified along moral and economic lines. Morally, the argument was that this legal mechanism disincentivised 'stale owners' (who were not making use of their land) from withholding it indefinitely from other users. Economically, the principle was that this process allowed unused property to return to the market more efficiently – either by putting pressure on stale owners to put their assets to use, or by transfer of title to the actual material users of the property. Far from a loophole in the law, adverse possession was in fact an example of informality which was legally justified along the same Lockean (Euro-Liberal) terms which dispossessed indigenous peoples around the world, by arguing that unused property should be put to 'higher use'.

Since the LRA 2002, however, the Land Registry is now legally required to give 'stale owners' advance notice of a claim for adverse possession, and therefore an opportunity to formally prevent a transfer of title. This completely undermines the principles of adverse possession and, in their analysis, Cobb and Fox (2007) point out that the Law Commission - who forced through the change in law - simply failed to consider the underlying moral and economic principles behind adverse possession, instead resorting to a 'common sense' approach that 'revolved around the key importance of the Land Register in ensuring certainty of title in a system of registered land' (2007, p. 239). In other words, The LRA 2002 was an attempt to further solidify and formalise abstract property bureaucracies in England and Wales,

‘transforming the fundamental basis of entitlement to land in English law, from the *possession* of land as a good root of title, to *registration* as the source of title... a shift in the focus of the law’s attention to the information on the register, rather than the situation “on the ground”’ (Cobb and Fox, 2007, p. 241).

This shift towards a more formalized property regime represents a wider undermining of claims to property entitlement which are based on the *use* of property on the ground.<sup>5</sup> As such, these changes in the law amount to a move away from the material considerations of the circumstances of property use, towards a calculative and indifferent land registration system that emphasises property title in the the abstract - an efficiency-driven, marketised model of property de-rooted from the local. This state simplification then has the subsequent effect of rendering property a more liquid and transferrable financial asset, one which can be sold and traded in title, regardless of the moral and economic use (or misuse) of that property in reality (Madden and Marcuse, 2016).

Non-sedentary populations, such as nomadic Gypsy-Travellers, have long been used in order to justify such formalisations of property over time, historically framed as masterless, ‘landless vagrants’ whose very transience represents a threat to the ‘civilised’ socio-legal order (Mayall, 1988; 2003). There has been a remarkable consistency in the construction of Gypsy-Travellers as a threat to property, with long-standing and evolving myths persisting, and today’s civilising offensive, whilst more subtle and less overtly hostile than in some previous eras, still goes hand-in-hand with explicit attempts to protect rationalised property regimes (Picker, 2017). By presenting property ownership as an absolute, rather than an outcome of conflict and negotiation, the trend towards criminalisation raises questions around the appropriateness of criminal law for settling disputes. In changing trespass from a civil offence (between the trespasser and the legally recognised owner) to a criminal offence (between the trespasser and the state) the state becomes emboldened to present ‘itself as protecting social order and providing security in the face of uncertainty’ (O’Mahony and O’Mahony, 2014, p. 40). By presenting transient populations as ‘chaotic’, ‘unfixed’, and therefore a threat to ‘civilised’ property, the state claims and maintains exclusive authority and sovereignty to register and protect property, and ultimately sustain the market. In this way, the criminalisation of trespass both ‘disrupts and absorbs political conflict’ (Holligan, 2014, p. 65) by undermining any opportunity for restorative justice.

### *State simplifications: the 2018 call for evidence*

In this section, we focus on the ways in which formalised property regimes intersect with the civilising offensive against Gypsy-Traveller communities, and in particular how ‘state simplifications’ (Scott, 1988) are utilized to flatten-out Gypsy-Traveller culture and heterogeneity, whilst simultaneously constructing nomadism as a direct threat to private ownership and property values. For Scott, there are at least five types of state simplification, which are all relevant to our case:

1. Interested Facts - those which serve the interests of the state, creating political gain by mobilising support against racialised others, and upholding state jurisdiction on property rights;
2. Documentary Facts - for example, the simplified consultation narrative that seeks to affirm and codify the imagined ‘truth’ of the social problem;
3. Static Facts - which de-historicize communities and collective struggle, denying complexity, such as the dynamic relationship between an historical lack of Gypsy-Traveller site provision, demographic changes, and the extent of unauthorised encampments;
4. Aggregate Facts - which fail to acknowledge difference, diversity and vitality across Gypsy-Traveller communities and divergent ways of inhabitation<sup>6</sup>;



5. Standardised Facts - to which we add racialised facts that serve to portray Gypsy-Travellers as inferior ‘outsiders’, equating all groups with the symbolic representation of the ‘minority of the worst’ (Elias and Scotson, 1994; see also Vanderbeck (2003) on the way in which rural crime is constructed as “Traveller crime”)

In order for any legislative intervention to be justified, Scott argues, it needs to avoid such state simplifications, and should instead ask ‘to what degree does it promise to enhance the skills, knowledge and responsibility of those who are part of it?’ and how deeply is the form of intervention ‘marked by the values and experiences of those who compose it?’ (Scott, 1988, p.355) Yet, in the case of strengthening powers against trespass, such questions could not be further from mind, as illustrated by the 2018 public Call for Evidence (Gov, 2018). We argue that this document ‘pre-coded’ the MHCLG’s eventual response in 2019, ultimately allowing the government to manufacture a mandate for criminalisation, regardless of any evidence given against this course of action in the consultation process.

Multiple government consultations appear to have played a similar role recently in defining and shaping the way in which the ‘problem’ of trespass *should* be addressed, whilst demonstrating very little understanding of the way things are on the ground, or how they came to be. For example, we can compare the 2018/19 consultation with the similar exercise that preceded the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO, 2012), and the criminalisation of squatting in residential buildings in England and Wales. In 2011, the proposals to outlaw squatting – which were described by peer Lord Bach as ‘unjust, unnecessary and indeed unaffordable’ (Hansard, 2012) – received an overwhelming response *against* criminalisation (96%), including evidence given by police forces, homeless charities, as well as the SQUASH campaign (Squatters Action for Secure Homes) (SQUASH, 2012). Yet despite this overwhelming response, the original position of the Government did not budge and LASPO 2012 was forced through. The consultation which resulted in LASPO 2012 was entirely performative, insofar as it:

‘clearly identified the roles that would be allocated to the players and in doing so set the tone of the legislative process that would follow...’ the consultation was directed towards ‘anyone who had been the *victim* of squatting... the *harms* associated with squatting were identified as “*distress and misery* that squatters can cause”; and the community of public interest in the issue was signalled by reference to members of the public who have “experienced concern about the *appalling impact* squatting has had on their properties or local neighbourhood” (O’Mahony & O’Mahony, 2014, pp. 46–7).

It seems, then, that the purpose of such consultations is not a democratic exercise to gather wider evidence, informed expertise and on the ground experience around complex issues; but rather an opportunity for the government to pre-frame a problem and, ultimately, construct a mandate for their proposals.

The leading framing of squatting as a problem which required a response in criminal law finds its mirror in our case of criminalising trespass and the 2018 Call for Evidence. Throughout the document, the MHCLG give persistent attention to unauthorised Gypsy - Traveller encampments as a ‘problem’ detached from wider social and spatial context. In the first place, even launching a public consultation entitled ‘*dealing* with unauthorised developments and encampments’ implies a taken-for-granted problem that demands a response. Yet, in reality, the disproportionate focus on unauthorised sites reflects a lop-sided public, political and (sustained) media focus on roadside Gypsy-Traveller encampments, both locally and nationally (Richardson, 2017). By the government’s own data (MHCLG, 2019), in July 2018 there were only 3093 caravans counted on unauthorised sites across England and Wales. Of these, 2149 were actually on land owned by the Gypsy-Travellers themselves (i.e. were classed as ‘unauthorised developments’) whilst only 944

were actually squatting (i.e. on the ‘roadside’ and classed as ‘unauthorised encampments’). Yet the media obsession with unauthorised encampments and the perceived threat of unfixed, nomadic Gypsy-Travellers, frames them as a threat to property and public order, and makes the absolute numbers seem larger than they are.

The discourse used in the Call for Evidence subsequently calls upon state simplifications which flatten out and de-historicize Gypsy-Traveller culture through such a portrayal of unauthorised encampments. Overwhelmingly, the document simplifies the ‘issue’, by ostensibly aiming to defend ‘locals’ from the ‘potential interferences with the peaceful enjoyment of neighbouring properties’ (Gov, 2018, p. 19). For example, in the Ministerial Foreword, Dominic Raab sets the tone of the rest of the document by setting up a simplistic and divisive binary between ‘settled’ and ‘nomadic’ populations, whilst simultaneously arguing that the Government’s vision is to build ‘strong, integrated communities’ (Gov, 2018, p. 5). This essentialisation of nomadic culture continues throughout the document, with constant and disproportionate emphasis placed on ‘protecting settled communities,’ drawing connections between unauthorised encampments and long-standing tropes of criminality and urban incivility, such as camps on ‘playing fields and children’s playgrounds, damage to property, extensive litter and waste... [the] cost of cleaning or protecting unauthorised sites, noise and antisocial behaviour... [and] development without planning permission’ (Gov, 2018, p. 6).

Furthermore, the document demonstrates a wilful ignorance of any underlying motivations behind pulling up on a roadside camp. The histories and contexts behind unauthorised encampments – such as employment, traditional stopping places, family gatherings, fairs, seasonal work, religious events or as a last resort in the absence of adequate site provision – are simply not considered or recognised. Instead, the authors maintain the sedentary-nomadic (fixed/unfixed, established/outsider and civil/uncivil) dichotomy, calling for public answers to leading questions, such as: ‘what *issues* does [an unauthorised encampment] raise for the *local* community?’ (Gov, 2018, p. 7) In the few places where the Call for Evidence does actually consider the often marginalised position of Gypsy-Traveller groups who use unauthorised encampments, they are always framed in terms of cost to the taxpayer, police force resources,<sup>7</sup> public annoyance and threats to ‘local’ communities. This is despite the fact that many unauthorised encampments are a direct result of the complex legacy of inadequate site provision in England and Wales, the erosion of traditional stopping places, population growth and planning discrimination against Gypsy-Traveller sites (La Bas, 2018).

Throughout the call for evidence, any (legally mandated) human rights duties or concern towards Gypsy-Travellers themselves are always treated as add-ons to this main message. A ‘humanitarian’ afterthought which never drives the call for evidence. Instead, Raab actually warns ‘against gold-plating’ human rights, reminding ‘local authorities and police forces [who are actually strongly anti-criminalisation] of the strong powers they have to deal with unauthorised encampments’, whilst re-emphasising that ‘police and councils can and should... consider the negative consequences of unauthorised sites [for ‘settled’ communities]’ (Gov, 2018, p. 19). Therefore, despite the consultation acknowledging that ‘Gypsy, Roma and Traveller communities are amongst the most disadvantaged in British society, suffer from multiple forms of discrimination’ (2018, p.21), and that the state has a responsibility towards protecting ‘the traditional and nomadic way of life of travellers [sic]’ (2018, p.20), this acknowledgement is then decentred by re-asserting the need to respect ‘the interests of the settled community’ (2018, p.20).

Insofar as all ‘policy-making begins from the identification of problems requiring a solution, the nature and form of the solution are determined by the narrative that constructs the social problem’ (O’Mahony & O’Mahony, 2014, p. 47). The Government consultation shows little interest in understanding nuanced evidence or describing complex social realities, as ‘their abstractions and simplifications are disciplined by a small number of objectives’ (Scott, 1988, p. 23). It represents



part of the attempt to assimilate divergent orientations toward dwelling ‘into an administrative grid... transformed or reduced to a convenient, if partly fictional, shorthand’ (1988, p.24). Here, the role of the Call for Evidence is to set the terms and co-ordinates of the debate, while the proscribed *pro forma* seeks to shape public responses and preclude certain issues. ‘Evidence’ therefore retains the appearance of legitimate democratic will, whilst manufacturing a mandate for polarising objectives.

The call for evidence hinges on the presupposition that stronger legal powers are needed, a position that is summed up by the highly normative and unqualified statement that ‘if unauthorised encampments could be moved on more quickly or deterred from occupying unauthorised sites in the first place, this would have tangible benefits for... community cohesion’ (Gov, 2018, p. 8). Such groundless statements ignore long - term state failures to accommodate difference and protect centuries of nomadic heritage. The issue, as presented to the public, is how to ‘deal with’ non-sedentary and non-normative modes of inhabitation: how to eradicate such ambivalences from urban space (Scott, 1988; Simone, 2016). For the government, the only ‘solutions’ offered in the Call for Evidence are a change in the law (i.e. criminalisation) or a better use of existing law (i.e. injunctions controlling mobility), and/or better communication between authorities (i.e. surveillance, control and swifter enforcement). The discourse used throughout demonstrates how the criminalisation of trespass represents a *racialized state simplification*, not only for ‘dealing with’ unauthorised encampments, but for targeting presumed group incivilities and recalcitrance, eradicating the cultural practice of nomadism, and constructing a base of political support in the process.

### *Manufacturing a mandate: The 2019 response*

Published in February 2019, the (much delayed) consultation response further demonstrates the way in which the initial Call for Evidence pre-coded and framed the way in which the ‘evidence’ would ultimately be interpreted. The government’s response ignored the more informed evidence given to the consultation in favour of an anonymous majority, thereby foregrounding potentially prejudiced and racist individual responses as evidence for criminalisation. Throughout, the authors continuously quantify anonymous individuals in favour of criminalisation as a ‘clear majority of respondents’ who represent ‘concerns from a wide range of groups’. Yet the consultation only finds this ‘clear majority’ in: 48% of respondents who felt current police powers were ineffective; 51% who thought new powers would make it easier for police to evict; and 52% who support criminalising encampments. Of the 2189 responses to the 2018/19 consultation, 88% were categorised as either ‘personal views’ (996), ‘anonymous’ (878) or ‘other’ (560) leaving wide open the possibility of individual racist views being vastly overrepresented in the consultation.

Furthermore, when we compare the ‘majority’ invoked here to the consultation which preceded the criminalisation of residential squatting in 2012, there is a clear double standard at play. As mentioned above, 96% of responses to the 2011 consultation which preceded LASPO were *against* the criminalisation of squatting (including police, lawyers, charities and campaigners). Yet in the Government’s response to LASPO, *this* particular majority was dealt with on ‘a qualitative rather than quantitative’ basis, as many were ‘individual responses’ organised by the SQUASH campaign (Gov, 2011, p. 7). In both cases, the inconsistent, contradictory use and quantification of consultation responses allowed MHCLG to carefully foreground and emphasise responses which supported their original position.

To take another example, whilst 51% of respondents to the trespass consultation were reported as arguing *for* new or revised powers on the grounds of making it easier for police to deal with unauthorised encampments, this mandate was immediately contradicted by the national police response to the consultation, which argued that:

‘the impact new or amended powers may have... is likely to be reduced due to a lack of viable alternative options where Travellers can relocate... no new criminal trespass offence is required... the introduction of such legislation could have a significant impact on police resources’ (Gov, 2019, p. 22).

Here, the ‘frontline’ experience-based response from the national police is dismissed in favour of anonymous individual opinions which are presented as clear evidence for greater criminal powers against trespass. This police response echoes experiences elsewhere, such as a 2019 High Court ruling against the use of injunctions to evict unauthorised encampments, arguing that ‘simply pushing families out of one area into another is not a solution’ (The Guardian, 2019). Yet the government ignores such precedent and the experience of Gypsy-Traveller communities, activists, support groups, academics, and those engaged with the community on a day-to-day basis, in favour of an anonymous and slim majority who back their *original* framing of ‘the problem’ and the appropriate ‘solutions’.

Despite a carefully worded recognition of potential bias in the evidence gathered – suggesting that the consultation might ‘disproportionately generate responses from those who have been negatively affected’ (Gov, 2019, p. 16) – the response continues to lean on subjective and abstract assertions, using vague language to summarise the evidence, for example citing ‘a strong sense that Travellers were treated less harshly for offences than the settled population’ (2019, p. 18)<sup>8</sup>. This forms part of the ‘compelling evidence...that stronger powers are needed’ (2019, p.7). Far from undermining a mandate, the response further mobilises this bias and racist language towards Gypsy-Traveller communities. The Government response notes, for instance, ‘the sense of unease and intimidation residents feel when an unauthorised encampment occurs’ (2019, p. 6) which is treated as legitimate ‘evidence’ in support of criminalisation, as opposed to explicit racism and fear of an imagined, racialized other. This is in addition to entertaining open speculation where some respondents ‘did not set out clear evidence, but state that the majority of unauthorised encampments...resulted in cleaning costs...and were occasionally accompanied by a rise in crime and anti-social behaviour’ (2019, p.17).

There is a clear continuation of a civilising offensive in the consultation response, selectively presenting ‘evidence’ to support the idea that criminalisation could be ‘positive in the long term’ by dissuading people from ‘choosing a travelling lifestyle, to the benefit of children’ (Gov, 2019, p. 37). This demonstrates a profound ignorance towards the role and importance of nomadism (or semi-nomadism) within Gypsy-Traveller communities (Greenfields and Smith, 2010), as well as educational preferences. Against this push to sedentarize, we would strongly agree with the government’s original observation in the initial Call for Evidence, that ‘accommodation security is an issue with far-reaching impacts, including on educational attainment, social inclusion and on both physical and mental health’ (Gov, 2018, p. 21). Research has long demonstrated that security in site provision is central to socio-economic opportunities and well-being, including access to employment, education, social care and higher health standards (Jordan, 2001; Parry et al., 2007; Sibley, 1981). Therefore, any policies which might further exacerbate insecurity (such as strengthening eviction powers) will surely directly *undermine* any target to support these communities. Instead, as activists and Gypsy-Travellers have long argued, an approach which extends land and service provision, as well as policies which work in collaboration with Gypsy-Traveller communities to identify suitable sites and facilities, will likely be much more successful.

As the consultation itself acknowledges, the recent criminalisation of unauthorised sites in Ireland has *not* seen them reduce in number, and has instead resulted in widespread homelessness and dangerous overcrowding on authorised sites (Gov, 2019, p. 23). This suggests that ‘a punitive response is unlikely to provide a satisfactory long-term solution, as where a person has no alternative options criminal penalties are unlikely to act as a deterrent’ (Holligan 2014, p. 80). There exists no empirical evidence we are aware of to support the government’s claim that ‘if unauthorised

encampments could be moved on more quickly, or deterred from occupying unauthorised sites in the first place, this could have tangible benefits for local authority budgets and for community cohesion' (Gov, 2018, p. 8). Instead, we would strongly refute this claim with existing evidence to the contrary that not only are evictions expensive, but they also cause homelessness, create conditions of anxiety, insecurity, conflict, lead to division within communities and potentially preclude opportunities for more meaningful and convivial everyday urban encounters.

### *Alternatives to criminalisation*

If trespass is criminalised, not only will this reinforce long-standing, mythical and symbolic representations of Gypsy-Travellers as deviant 'outsiders', but it will also have deleterious consequences for the material, social and environmental positioning of these communities. There was very little recognition in either part of the consultation that criminalising unauthorised encampments would make nomadic Gypsy-Traveller families even more insecure. Despite repeatedly referring to legal responsibilities under human rights and equalities legislation, there is no connection made between greater criminalisation and greater precarity or marginalisation. Yet as recognised by a recent House of Commons research briefing:

'Gypsies and Travellers experience some of the worst outcomes of any group, across a wide range of social indicators. The Equality and Human Rights Commission (EHRC) has published a number of reports highlighting the multiple inequalities experienced by Gypsies and Travellers. An EHRC review in 2015 concluded that the life chances of Gypsies and Travellers had declined since the Commission's previous review in 2010. The contributory factors are complex and often inter-related, but may include deprivation, social exclusion and discrimination' (House of Commons, 2019).

The only alternative solution to the outright criminalisation of trespass that the government puts forward is the strengthening of eviction powers through injunctions. This default of spatial banishment and control is symptomatic of a failure to countenance more proactive and collaborative approaches, which are foreclosed by the way in which the consultation is structured from the beginning. Overwhelmingly, the consultation ignores progressive, community-led approaches and ideas for unauthorised encampments, which are situated in context and seek to negotiate use on the ground. Some cases of best practice are selected from South Derbyshire (where the Gypsy Liaison Group plays a key role); Thames Valley Police and Buckinghamshire County Council (who have established systems to quickly report and act on encampments); and Durham County Council (who hold Gypsy, Roma and Traveller forums attended by the police). Yet there are only two 'name-checks' of the policy of negotiated stopping in Leeds which we argue offers a more just, cost-saving, and pragmatic alternative to criminalisation (see Richardson, 2017b; 2019). In contrast to criminalising vulnerable communities, negotiated stopping is instead centred around:

'dialogue and negotiation to enable travelling families to stay, for limited periods of time, on ground where it isn't causing a great inconvenience... the families make an agreement with the authority about acceptable behaviour, use of waste disposal, and how long they will be there for... the negotiations and agreements are carried out by and with the community' (Leeds GATE, 2018).

In many ways, negotiated stopping echoes more historic traditions of property, such as adverse possession, by being situated on the ground, emphasising negotiation and recognising moral and economic justifications behind (some forms of) trespass. There is a recognition here of the need for compromise. The vast majority of public complaints around unauthorised encampments cite untidy and unmanaged sites, whilst municipal authorities commonly argue that Gypsy-Travellers need to

be moved along on environmental and/or public health grounds (Richardson, 2006). Operating within this context, Leeds GATE (Gypsy and Traveller Exchange) persuaded Leeds City Council to pilot negotiated stopping as a more pragmatic response, arguing that – rather than moving people on – this approach would create opportunities to manage and maintain temporary sites, such as sorting out refuse, sewage and fire safety. By arriving at these temporary agreements, the policy also increased the scope for more positive relationships to form between nomadic communities and sedentary communities, as well as local authorities, whilst saving public money on clearing sites and police enforcement of evictions (Richardson, 2017b).

The policy has proved successful as ‘an alternative to the traditional approach to unauthorised encampment management’ which ‘produces social and financial benefits as a result of members of the community, assisted by Leeds GATE, communicating with the local authority and police authority’ (Leeds GATE, 2018). They have found that negotiated stopping reduces reports of anti-social behaviour (by directly addressing individuals responsible rather than evicting the whole group), as well as improving quality of life, security, access to healthcare and education. The traditional approach of eviction and enforcement was costing on average £225,000 per year, with the reduction in the number of unauthorised encampments overall producing an estimated combined saving of £190,640–£238,350 per year for the local authority and police force (Leeds GATE, 2018). In one particular case, Leeds City Council spent £40,000 on clearing and setting up a post-industrial site behind a shopping centre to establish a designated urban space for negotiated stopping – a clear indication of how much money the scheme was saving them. This site has since been granted a 10 year lease, whilst the simple presence of a community in the formerly abandoned area has been connected with a drop in local crime rates, generating even further savings for the public in terms of police time.

Where a site is considered ‘sensitive’ (e.g. school grounds or parks), negotiated stopping might not always be an option. But where a site is *not* sensitive, the agreements involved in negotiated stopping – such as duration of stay and size of encampment – can provide a cost-effective and more democratic approach. This approach provides an opportunity for Gypsy-Travellers, local authorities and local communities to adopt mutual agreements (e.g. in relation to noise and refuse) whilst creating crucial temporary stopping places and access to basic urban services. The majority of unauthorised encampments tend to be seasonal and correspond to the same travel motivations as anyone else – holidays, fairs, festivals, religious gatherings, weddings, funerals, visiting relatives or temporary employment. Many unauthorised sites, therefore, only have a very limited lifespan before people move on (negotiated stopping is usually around 28 days, though varying from a couple of weeks to several months). A wider uptake of negotiated stopping may form part of a pragmatic response to a need for temporary sites (see Richardson et al., 2019; on negotiated stopping in London), whilst simultaneously offering an effective strategy against stigmatisation, by countering some of the basic racist tropes of anti-Gypsy racism: visible symbols of waste and rubbish in depictions of sites. Mess left behind by unauthorised encampments are often cited as part of a wider discourse of public health concern, sometimes cynically framed in humanitarian terms (Persdotter, 2018). Yet this discourse is invariably detached from the reality of families lacking access to basic services, relatively easily rectified through the provision of low-cost sanitation and waste collection services, which are provided to other citizens by default.

Despite ‘the link between providing more sites and addressing the issue of unauthorised encampments’ (Gov, 2019, p. 36) the government continues to advocate criminalisation. A multitude of Gypsy and Traveller Accommodation Assessments (GTAAAs) conducted across the UK since the mid-2000s have made it clear that, in order to meet accommodation needs and address Gypsy-Traveller precarity, municipal authorities desperately need to extend their provision of land for more sites. Yet new provision has not been forthcoming. These GTAAAs have been conducted at great expense to the public, in a way which has been consistent with, or have gone beyond, government guidance, with many conducting innovative and participatory research approaches, establishing

collaborations and collective dialogue from the outset (Brown and Scullion, 2010; Greenfields, 2008; Greenfields and Home, 2006). Yet such evidence-led and pragmatic approaches are absent from the government's consultations and overriding rhetoric on the issue. Rather, the consultation is part of a longer-term trend to try and shut down trespass and formalise property rights in the UK at the expense of marginalised groups. The racialization of Gypsy-Travellers and the mobilisation of state simplifications act as powerful tools in manufacturing a mandate, built on public fears and the homogenisation of an imagined, 'uncivilised' Gypsy-Traveller mass.

## Conclusions

Our analysis of the government's consultation into 'Powers for Dealing with Unauthorised Developments and Encampments' (Gov, 2018) evidences the state's continued lack of will to accommodate difference and acknowledge nomadic ways of inhabiting space. We have argued that these latest attempts to criminalise trespass correspond to the manufacture of a mandate that wilfully ignores alternative, more cost-effective, localised and human-centred approaches to Gypsy-Traveller encampments. The contemporary tool of the public consultation is serving a legitimising function for state simplifications which criminalise everyday life and subtly update and codify racist tropes. This also forms part of a wider longer-term trend to solidify Euro-Liberal, formalised and rationalised property regimes, foregrounding the relationship between property relations, race, and the continued stigmatisation of Gypsy-Travellers. In the process, the government is performing the groundwork needed to more easily evict Gypsy-Traveller communities from public spaces altogether, confining and secluding families to peripheral and inhospitable sites characterised by environmental degradation and isolation. The consultation launders racist logics and simplifications, by suggesting that all Gypsy-Traveller communities constitute a threat to the social order, and that sedentarisation is in 'their' best interests. It is emblematic of the inherent interdependence between anti-Gypsy-Traveller sentiment and punitive state policies: an example of statecraft which is more oriented towards purging illegibility and ambivalence than improving the human condition (Bauman, 1991; Scott, 1988).

Situating our analysis within longer-term civilising offensives, we have shown how the government's consultation de-historicizes Gypsy-Travellers and invisibilizes racism by positioning the cultural practice of nomadism as at odds with normative notions of inhabitation. This overlooks the nuances of cultural heritage by presupposing 'standardised citizens' with 'no gender, no tastes, no history, no values, no opinions or original ideas, no traditions and no distinctive personalities to contribute to the enterprise' (Scott, 1988, p. 346). Such state simplifications are a convenient tactic for building a case for policy action, because they are 'always far more static and schematic than the social phenomena they presume to typify' (1988, p. 46). In this way, the 2018/19 consultation emerges as the latest reframing of a much longer-term civilising offensive against Gypsy-Travellers. Although accommodation issues represent just one stigmatising and marginalising policy field of Gypsy - Traveller relations with the state and society, relative 'evictability' intersects with all aspects of everyday life. Tracing these shifts in policy exposes the continued and simultaneous drive to displace Gypsy-Travellers in maintaining social, physical and psychological distance from the maligned group; and to sedentarise Gypsy-Travellers in a way that denies both the collective history of nomadism and its legitimacy as a contemporary cultural practice. This then has wider ramifications for the members of the community forced into bricks and mortar housing, which are crucial in fully understanding the wide-reaching implications of criminalisation (see Greenfields and Smith, 2010, 2012).

The experience of negotiated stopping in Leeds is just one example which underscores the need to understand the diverse customs, practices, and everyday needs of Gypsy-Travellers communities, demonstrating what can be achieved with open dialogue and negotiation. Such approaches have direct positive impacts, providing necessary material resources (simply toilets, refuse collection and water) and relative stability, whilst tentatively pointing towards the potential of less stigmatised relations between Gypsy-Travellers, their temporary

neighbours and local authorities. These are not radical suggestions. Nor are they costly to implement. They are rather mundane shifts in everyday urban materialities, practices, and encounters, but shifts which can potentially contribute to identifications with Gypsy-Travellers and foster collectives at the neighbourhood level.

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### ORCID iDs

Samuel Burgum  <https://orcid.org/0000-0002-4616-2094>

Ryan Powell  <https://orcid.org/0000-0002-8869-8954>

### Notes

1. We use the term ‘Gypsy-Travellers’ throughout in referring to the collective of heterogeneous groups with a nomadic heritage and/or groups who travel due to economic and cultural reasons. This includes Gypsies of Romani heritage, Irish Travellers, Travelling Showpeople, new travellers and circus people. We capitalize the term Gypsy-Travellers in acknowledging that Romani Gypsies and Irish Travellers are protected under Race Relations legislation.
2. See <https://www.negotiatedstopping.co.uk/> which details the policy, its positive community and social impacts, economic savings and also includes testimonies from Leeds City Council, local residents, the police and Gypsy-Travellers. It also contains resources for areas looking to develop similar pragmatic solutions.
3. The Highland Clearance are of course part of a longer and wider history of land enclosures and the changing intersections of territory, land, property and law (see Blomley, 2007; Elden, 2013; Jeffrey et al., 2011; Millner, 2015; Watts, 2004).
4. See also: <https://www.negotiatedstopping.co.uk/>
5. This is also an approach to property underpinned by ‘grid epistemologies’, emphasising the ‘specification of characteristics, rights and responsibilities’ and depending upon ‘the application of a legal apparatus that specifies individual landholding rights and their scope – a process that not only produces subjects known as ‘landowners’, but also spheres known as ‘public’ and ‘private’ (Dixon and Jones, 1998, p252).
6. Another further example of this is the biannual government caravan count which invisibles the far greater numbers of Gypsy-Travellers in bricks and mortar housing who would like to live on a site.
7. This is despite the fact that criminalisation and police enforcement of trespass is a *much* more expensive option than alternatives which emphasise compromise and communication, such as ‘negotiated stopping’ in Leeds (see final section).



8. A view certainly not supported by available evidence of over-representation of Gypsy-Travellers within the criminal justice system.

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### Author Biographies

**Sam Burgum** is a lecturer in sociology at Birmingham City University. His wider research interests included squatting, property, trespass, housing, urban movements and the politics of archives. Recent publications include 'This City is an Archive' (Journal of Urban History) and 'From Grenfell Tower to the Home Front' (Antipode). Sam can be followed on Twitter (@sjburgum) and further information can be found at: samuelburgum.uk

**Helen Jones** experienced a nomadic 'roadside' life during her twenties and thirties including her marriage into a Romany Gypsy family. She applied her experience and understanding as founding CEO of Leeds Gypsy and Traveller Exchange (GATE), a community led organisation for Gypsy and Traveller people in West Yorkshire for 18 years until she stepped down in 2021. Leeds GATE has been at the forefront of work to preserve cultural nomadism in the UK, via 'Negotiating Stopping' and as founder of the national Moving for Change collaboration of Gypsy and Traveller groups and individuals.

**Ryan Powell** is Reader in Urban Studies in the Department of Urban Studies and Planning at the University of Sheffield where he has worked since 2016. Prior to that he worked for 14 years at the Centre for Regional Economic and Social Research (CRESR) at Sheffield Hallam University. His research focuses on urban marginality and the stigmatisation of outsider groups.