On "Varieties of Punitiveness in Europe": A View from the United States

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Introduction

In early November 2012, the residents of Berkeley, California, were asked to consider (not for the first time) a ballot initiative that would have created a new sit-lie law. The "Berkeley Civil Sidewalks" initiative – Measure S – like so many of its brethren around the country sought to outlaw sitting or lying on sidewalks in districts zoned commercial between the hours of 7 am and 10 pm, except in cases of medical emergency, or by someone in a wheelchair, on a permanent bench or bus stop, at a street event for which a permit had been received, or in an outdoor café. Violators would be subject to a $75 fine (or the equivalent in community service) for a first offence; subsequent offences could be charged as misdemeanours. Before a citation could be issued, police would be required to issue a warning and the offender given a change to desist; warnings were to be effective for 30 days (City Attorney, 2012).

Supporters of the law, including the mayor and some city councilmembers, various merchants associations, and an organization called Livable Berkeley, argued that such laws had proved effective in more than 60 US cities, and that Berkeley was being asked to consider it now only because all previous efforts in what they called a "humanitarian city" had failed to dissuade the formation of "street encampments" nor to disperse those who "resist our help." If passed, the measure would not come into effect until July 2013 to give time for outreach workers (who were really Business Improvement District-paid "ambassadors") to educate street populations about the new law. For that reason, advocates argued, a primary purpose of Measure S was to "help people get social services", as well as to "help merchants grow local jobs, and ensure civil and welcoming sidewalks for everyone" (Arguments in Favor, 2012).

Opponents, who included other city council members, some merchants, the American Civil Liberties Union, the University of California, Berkeley student government, and various interest groups, noted there were four homeless people

in Berkeley for every shelter bed, and that the shelter shortage was particularly acute for homeless youth who seemed most directly targeted by the initiative. They argued that "ambassadors" were not trained in mental health or homeless outreach. They noted that a San Francisco City Controller's report had found that city's law – upon which the Berkeley initiative was based – had "failed 'to improve merchant corridors, serve as a useful tool for SFPD, connect services to those who violate the law, and positively contribute to public safety'" (Rebuttal to Arguments For, 2012). They questioned how criminalizing sidewalks would, as advocates asserted, "help people get the services they NEED to transform their lives" (Rebuttal to Arguments Against, 2012).

Though proponents outspent opponents by a factor of 10-1, Berkeley residents rejected the initiative, 52-48 percent. It was the first time since 1994 that voters in any city in the US rejected a ballot measure "criminalizing homelessness" (Messman-Rucker, 2012). This was, I think, a heartening result: A sound rejection of yet another attempt to punish poor people for their status and to divert attention from the structural factors that make homelessness *a condition of society* more than *an attribute of individuals*. But we should not read too much into it. After all, it was the *first* popular rejection of an anti-homeless law in almost twenty years – and that previous rejection was also in Berkeley. And even more, as O'Sullivan argues for Europe, "the historical record shows that a *core response to homelessness was always punitive*…. While the underlying motivations may have shifted over time from controlling landless labourers to gentrifying city centres, a punitive element has been ever present"(2012, p.88). O'Sullivan was making a particular point: He was arguing against assuming that punitive or "revanchist" approaches to managing homeless populations is *necessarily* an import from the US; it is too simple to hold a "good" (if perhaps susceptible) Europe up against a "bad" (though powerful) America.

Punitiveness in Europe and the US

A punitive element has ever been present on both sides of the Atlantic (after all the US colonies adopted British or Germanic poor laws and vagrancy statutes wholesale), and so has resistance to it, by homeless people themselves, by activists, and, every once in a while, by the broad populace itself (as with Washington DC voters' adoption of a "right to shelter law" in the early 1980s, and Berkeley's serial rejection of sit-lie laws). But neither should such occasional popular support for the rights of homeless people and against their further criminalization, any more than the occasional infusions of state-cash into jerry-rigged, volunteer shelter systems, occasional victories by advocates in the courts to annul anti-homeless laws, or policy innovations such as Housing First, be seen, as some now do (Cloke *et al,*

2010), as somehow negating the thesis that we live in particularly revengeful times (Smith, 1996). This popular support does not negate either that we live in an era marked by a particular absence of social justice as an organizing force of city-space, and thus in control over homeless people's lives (Mitchell 2001). Indeed, the Berkeley initiative lost as much on pragmatic grounds – opponents were very effective in convincing voters of the ineffectiveness of similar laws – as on a sense of what was just and right.

But more to the point, what the Berkeley vote indicates is that "varieties of punitive-ness" result from struggles over specific innovations in policy, governance, and policing. Homeless policy is both an arena of struggle and an outcome of struggle, not something that just descends on places or even whole countries in the abstract. As O'Sullivan (2012, p.79) notes, drawing on Wacquant (2009), marginal populations are typically managed in three ways: Socializing them, medicalizing them, and penalizing them. As the incarceration rates O'Sullivan (2012) provides indicate, at least parts of Europe seem to be retreating from the first and relying more heavily on the third. Discourses and practices of medicalization are explicit, but all three strategies require understanding homelessness as an individual attribute. None of the three does anything about homelessness as a societal condition. Even housing, in relationship to homeless populations, is understood as an intervention into individuals' lives not as an intervention into the housing question as such (which as we have known since at least Engels, the bourgeoisie has no answer to anyway).

Punitiveness and Housing First

This is especially the case with Housing First, which O'Sullivan (2012, p.81) indicates is gaining in popularity across the EU. It is vital to understand that Housing First's originators *did not* develop it as a housing program but rather as a treatment program. They were very explicit about this, making it clear that Housing First was targeted at a particularly small slice of the homeless population – a "recalcitrant" or "hard core" 10 percent or so. The other 90 percent of the homeless population – children, families, working poor, in other words victims of homelessness as a *societal condition* (or, really, a political-economic one) – is not meant to be part of the enormously expensive Housing First experiment which is, now, the centrepiece of just about every federally-mandated city-level "Ten-Year Plan to End Homelessness" (cf. Mitchell, 2011). Housing First does not seek to end homelessness. It seeks instead to manage what is understood as a *pathology* of individuals, and to do so by first offering the soft-side of the punitive stick: If "hard-core" homeless people can stay in a subsidized apartment, subject as much to the discipline of the lease as to the peering gaze of the case worker (Hennigan, 2013), then perhaps they can stay out of (the even more enormously

expensive) jail. Housing First is certainly a mode of socialization; it also relies on a medical and individualizing explanation for homelessness. But it is *also* a punitive strategy; only here the punishment sits just over the horizon, rather than directly in the baton of a cop rapping the feet of a sleeping street person. This is the "dual strategy of punitive responses to non-service compliant homeless people, and the provision of housing placement and supportive services for those who engage with services" that O'Sullivan (2012, p.81) talks about, only it parcels the homeless populations out – in fact it flips on its head the dialectic of deserving/ undeserving that structures intervention into homeless peoples' lives – so only 10 percent of them need to be focused on.

This is the face of homeless policy in the US and in Europe that steadfastly refuses to understand homelessness for what it is; a function and condition of society; a structural fact of our political economy. O'Sullivan (2012, p.88) is therefore correct to highlight the inability of "neoliberalism" to explain the turn to punitiveness in Europe ("neoliberalism" can never explain anything; it must be explained). But he is incorrect to imply, as he does in his critique of neoliberalism as an explanatory concept, that Housing First is somehow *different* from "policies that punish the poor" (*ibid.*, p.88) Housing First and punitiveness are two sides of the same coin.

Conclusion

Proponents of Measure S in Berkeley made the relationship clear: In a "humanitarian city," if troublesome people – understood as pathological – refused the soft side of the stick, then they should feel the hard side. Varieties of punitiveness, here in the US as well as there in Europe, *include* socialization and medicalization. It is to the great credit of voters in Berkeley that in this instance they rejected just that formulation, even if they did not necessarily move beyond seeing homelessness as an attribute of individuals rather than a condition of society. But that's one small struggle in a very big battle. The real fight has got to be around understanding homelessness as a condition of society, rather than an attribute of individuals, and with that to rework that society – and the mode of production upon which it is based – so that it quits so ruthlessly producing homelessness as a necessary condition of its own existence. Without that it won't matter that in Europe, as O'Sullivan (2012, p.89) concludes optimistically (if in contrast to his own evidence on incarceration rates and the adoption of punitive policies across the continent), that "homelessness policy is still largely driven by the politics of inclusion rather than the politics of social exclusion," just as it doesn't matter *as far as the condition of homelessness goes* that the voters in Berkeley so wonderfully rejected Measure S.

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