Narratives of Punishment: Neoliberalism, Class Interests and the Politics of Social Exclusion

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Introduction

In an instructive piece, O'Sullivan challenges the grand narrative according to which the punitive turn in Europe can be explained by reference to neoliberal policies originating from the United States or to socio-economic and cultural changes associated with late modernity (e.g. Wacquant, 1999; Young, 1999; Garland, 2001; Simon, 2013). While he agrees that European countries have also adopted exclusionary measures to police, control, and incarcerate homeless people who occupy public spaces in the last decades, he suggests that such punitive measures have a long history in Europe, and that we should rather speak of varieties of punitiveness based on "distinctive cultural, historical, constitutional and political conditions" (p. 75, quoting Tonry, 2007, p.1). O'Sullivan also suggests that the adoption of punitive measures developed alongside more inclusionary measures adopted by a majority of EU member States relying on relatively generous social democratic welfare regimes. As a result, he argues that "homelessness policy is still largely driven by the politics of social inclusion rather than the politics of social exclusion" and he calls for further research in this area (p.89).

Neoliberalism and Broken Windows Theory as Legitimating Discourses

O'Sullivan's first argument is generally well-taken. It is true that neoliberalism, as an all-encompassing political economic theory and ideology, as well as recent U.S. policies advocating broken windows policing cannot directly explain the adoption and enforcement of repressive measures at the national and local levels across Europe and the Americas. Such a totalizing diagnosis is reductive of the complexity

of the penal field (Carrier, 2010) and tends to over-generalize the U.S. and U.K. experiences to the detriment of solid comparative analysis (Lacey, 2008). However, it is difficult to maintain that neoliberalism and theories such as broken windows have not been widely and conveniently used as *legitimating discourses* to justify existing repressive practices elsewhere. For instance, in Montreal, Canada, public officials and the police relied on U.S. (and European) initiatives to justify the adoption of their program on antisocial behaviour targeting homeless people as they resonated with local concerns (Sylvestre, 2010a). Similarly, in Rio de Janeiro, Brazil, officials did not need the ideas or techniques of the *Manhattan Institute for Policy Research* to police street people, – they knew all too well how to do it and had been doing it for a long time (Holloway, 1993) – but it would be naive not to recognise that the ideas conveyed by the think tank have been opportunely welcomed as they support well-established repressive practices founded on years of military influence (Wacquant, 2004).

Interestingly, while O'Sullivan refuses to attribute the punitive turn to neoliberalism and invites us to consider local politics, culture and experiences, he does not deny the importance of structuralist accounts which emphasize the connection between penal policies and different states' political and economic forms of organization, including in many cases neoliberal market economies, as well as class interests. He does so for instance by referring to Lacey's "varieties of capitalism" (2008) (p. 71-75). Moreover, in his conclusion, he suggests that punitive measures may be reflective of "elite perceptions of homeless people" throughout successive historical periods from "dangerous" to "disaffiliated", "disturbed" and more recently, "disorderly" individuals (p. 88). Similarly, in the Canadian context, historical research has shown that the nineteenth century elites perceived vagrants as being either "indolent, lazy and worthless" individuals who chose not to work, "habitual criminals" likely to engage in serious criminality if provided the right opportunity, and/or "morally depraved" individuals belonging to a "self-perpetuating class of citizens who lived without fixed abode" (Ranasinghe, 2010, p.60-61). Such perceptions of the homeless as criminals, morally depraved, or individuals who should be blamed for their own misfortunes, are echoed by 20th and 21st centuries elites' discourses (Sylvestre, forthcoming), and are directly connected to the creation and reproduction of class relations in contemporary (capitalist) societies.

In Bourdieu's sociology, social classes are constituted by individuals who, by virtue of the fact that they occupy similar positions in a social space and are subjected to similar conditions of existence, share affinities, tastes and interests but also common aversion, misrepresentations and misunderstanding of people from other classes, and are predisposed to act as a class if so mobilized (1984). Thus, if we think about class struggles as including other forms of capital and symbolic power, we clearly see how the regulation of homelessness and urban

marginality corresponds, both historically and in the present, to certain empowered groups' interests related to the preservation of a certain social and economic order. The rejection of neoliberalism as a totalizing explanation to the punitive turn does not necessarily invalidate structural constructivist approaches (Lacey, 2008). Such theories remain interesting to (re)build local relationships and to see how they interact with macro and global narratives such as neoliberalism and broken windows theories (Bell, 2010).

Narratives of Resistance and Inclusiveness

In his article, O'Sullivan also emphasizes recent studies focusing on more inclusive responses to homelessness and suggests that we pay attention to narratives of resistance and inclusiveness. Being born and raised in Quebec, a North American state with European (and Aboriginal) cultural roots, a "coordinated market economy" with (existing, yet continuously challenged) welfare regimes, (primarily) public education and health care systems, and a dynamic civil society, I understand very well the intersections, tensions and contradictions between punitive and inclusive measures in dealing with poverty and social problems, as well as those between repression and resistance. For the past ten years or so, my colleague Céline Bellot and I have conducted research on the regulation of homelessness in Montreal in partnership with *Opération Droits Devants* (ODD), a coalition of community groups and researchers committed to defending the rights of homeless people dealing with the criminal justice system as a result of their occupation of public spaces (Bellot *et al*, 2013). The first studies conducted between 2005 and 2007 found that there was an important increase in the number of statements of offences issued against homeless people for violations of by-laws, systemic and generalized use of imprisonment for default payment of fines, a connection between penalization and incarceration and the production of homelessness and delayed street exit process, increasing legal costs (Bellot *et al*, 2005), and a lack of empirical evidence that such punitive measures were justified by harmful behaviour or supported by a community consensus (Sylvestre, 2010b).

Public officials and the legal community reacted strongly to the publication of our studies and to the political actions led by the ODD. The Quebec government launched a Parliamentary Commission on Homelessness which found that the penalization of homelessness should be avoided at all costs and that alternatives, including investments in social programs, should be supported; the Quebec Human Rights Commission issued a legal opinion holding that the penalization of homeless people in Montreal constituted a case of social profiling and was a direct consequence of penal policies against antisocial behaviour; the Quebec Bar called for striking off homeless people's records; and the judges of the Montreal Municipal

Court stopped issuing warrants of committal for incarceration for default payment of fines, and along with the City's prosecutors and fine collectors, they put together a special program in order to attenuate the impact of the criminalization on homeless people by withdrawing charges and striking off their judicial debts. Even the Montreal police admitted that there had been some cases of social profiling and created a special unit in which police officers started patrolling with social workers. Finally in 2013, the Quebec government held a two day consultation on the adoption of a national policy on homelessness aiming to address penalization, but most importantly access to housing, health care, education and decent income.

Meanwhile however, the same government announced important cuts to the welfare regime as well as to health and education programs, and remained committed to eliminating the province's deficit within the first year of its mandate, and business improvement organizations, promoters, downtown residents' associations and local politicians continued to advocate for a more visible police presence and to support investments in the downtown area at great social costs for the homeless. We published a third study which concluded that between April 1st, 1994 and December 31st, 2010, the police had issued 64 491 statements of offence to 8 252 homeless people, for violations of municipal by-laws or Montreal Transportation Society (STM) regulations, and that almost half of those statements (30 551) had been issued between January 1st, 2006 and December 31st, 2010 as public officials and the legal community renewed their efforts to deal with criminalization (Bellot *et al*, 2012).

Conclusion

There is little doubt that historically and in the modern era, control and regulation of the poor and the homeless through relief programmes and public welfare policies have existed alongside repressive penal policies. Moreover, actors working within the criminal justice system have long walked a thin line between terror and mercy (Hay, 1975). While we should acknowledge the existence of inclusionary responses to homelessness, celebrate stories of resistance, and support genuine efforts to mitigate the impact of criminalization, we ought to recognize however that inclusive measures are insufficiently funded and that they are generally neutralized by counterproductive punitive strategies. The police and the State may act as mediators between conflicting and contradictory sets of demands for exclusion and inclusion from different interest groups within a community (Huey, 2007), but ultimately the demands of certain groups of people sharing socio-economic characteristics and tastes prevail.

The tensions and the apparent ambivalence between inclusiveness and punitive-ness may be finally explained by reference to an important line of differentiation among homeless populations alluded to by O'Sullivan in his article and which also shows remarkable historical continuity, namely the distinction between the deserving and the undeserving poor (Geremek, 1987; Foucault, 1975). From vagrancy statutes of the 16th century to poor houses managers of the 19th century, and to 21st century judges and police officers walking their beat in downtown Montreal, the distinction made between homeless people who "refused" to work and should be blamed for their "choice" of living in the streets as opposed to those who are deserving objects of charity and public relief, is a key differentiating factor between punishment and compassion. Again, this distinction bears a direct connection to class interests and forms of economic organization, which cannot be completely left out of the analysis.

› **References**

Bell, E. (2010) Anglo-Saxon Sociologies of the Punitive Turn: A Reply, *Champ Pénal* [Penal Field] [ONLINE], vol. VII: http://champpenal.revues.org/7915

Bellot, C., Raffestin, I., Royer, M.-N. and Noël, V. (2005) *Judiciarisation des populations itinérantes à Montréal: 1994-2004* [The Criminalization and Prosecution of Homeless People in Montreal: 1994-2004] (Montreal: Secrétariat National des Sans-Abri).

Bellot C., Sylvestre, M.-E. (2012) *La judiciarisation des personnes en situation d'itinérance à Montréal: 15 années de recherche – faits et enjeux (1994-2010)* [The Criminalization and Prosecution of Homeless People in Montreal: 15 Years of Research – Facts and Issues](on file with the author]).

Bellot, C., Sylvestre M.-E. and St-Jacques, B. (2013) Commitment and Participation in Research: A Collective Action Strategy to Defend the Rights of Homeless People in Montreal, in: J. Kilty, M. Felices-Luna, and C. Fabian (Eds.) *Experiencing Qualitative Methods: Research Practices in Action*, pp.77-98. (Vancouver: University of British Columbia Press).

Bourdieu, P. (1984) *Distinction – A Social Critique of the Judgement of Taste* (Cambridge: Harvard University Press).

Carrier, N. (2010) Anglo-Saxon Sociologies of the Punitive Turn, *Champ Pénal [Penal Field]* [ONLINE], vol. VII: http://champpenal.revues.org/7952

Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books).

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press).

Geremek, B. (1987) *La potence ou la pitié. L'Europe et les pauvres du Moyen âge à nos jours* [The Gallows or Pity: Europe and the Poor from the Middle Ages to the Present Day] (Paris: Gallimard).

Hay, D. (1975) Crime, Property and Authority, in: D. Hay, P. Linebaugh, J. Rule, E.P. Thompson and C. Winslow (Eds.) *Albion's Fatal Tree – Crime and Society in Eighteenth-Century England*, pp.17-63. (New York: Pantheon Books).

Holloway, T.H. (1993) *Policing Rio de Janeiro: Repression and Resistance in a 19th Century City* (Palo Alto: Stanford University Press).

Huey, L. (2007) *Negotiating Demands: The Politics of Skid Row Policing in Edinburgh, San Francisco, and Vancouver* (Toronto: Toronto University Press).

Lacey, N. (2008) *The Prisoner's Dilemma: Political Economy and Punishment in Contemporary Democracies* (Cambridge: Cambridge University Press).

O'Sullivan, E. (2012) Varieties of Punitiveness in Europe: Homelessness and Urban Marginality, *European Journal of Homelessness* 6(2) pp.69-97.

Ranasinghe, P. (2010) Reconceptualizing Vagrancy and Reconstructing the Vagrant: A Socio-Legal Analysis of Criminal Law Reform in Canada, 1953-1972, *Osgoode Hall Law Journal* 48(1) pp.55-94.

Simon, J. (2013) Mass Incarceration: From Social Policy to Social Problem, in: J. Petersilia and K.R. Reitz (Eds.) *The Oxford Handbook of Sentencing and Corrections*, pp.23-52. (Oxford: Oxford University Press).

Sylvestre, M.-E. (2010a) Disorder and Public Spaces in Montreal, Canada: Repression (and Resistance) through Law, Politics and Police Discretion, *Urban Geography* 31(6) pp.803-824.

Sylvestre, M.-E. (2010b) Policing the Homeless in Montreal: Is this Really what the Population Wants?, *Policing and Society* 20(4) pp.432-458.

Sylvestre, M.-E., (Forthcoming) Crime and Social Classes, in: D. Brock, A. Glasbeek and A. Murdocca (Eds.) *Criminalization, Representation and Regulation: An Introduction,* (Toronto: University of Toronto Press).

Tonry, M. (2007) Determinants of Penal Policies, in: M. Tonry, (Ed.) *Crime, Punishment and Politics in Comparative Perspectives*, pp.1-48. (Chicago: University of Chicago Press).

Wacquant, L. (1999) How Penal Common Sense comes to Europeans: Notes on the Transatlantic Diffusion of the Neoliberal Doxa, *European Societies* 1(3) pp.319-352.

Wacquant, L. (2004) Toward a Dictatorship over the Poor? Notes on the penalization of poverty in Brazil, *Punishment and Society* 5(2) pp.197-205.

Young, J. (1999) *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity* (New York: Sage).