
Varieties of Punitiveness in Europe: Homelessness and Urban Marginality

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› **Abstract** *This article reviews the on-going debates on the use of criminal justice systems to manage homelessness. Many scholars have argued that countries have responded to the growing visibility of homelessness with exclusionary measures that have sought to restrict the rights of homeless people to occupy and inhabit public spaces and which prohibit behaviours such as sleeping in public or begging. These restrictions are manifest through the enactment of specific laws targeting the homeless and policing practices (including private security), often with the consequence of incarceration. It seems that homelessness is increasingly criminalised either through segregative incarceration amongst the growing prison populations in Europe and North America, or rendered invisible through spatial restrictions. Driven by the ideology of neoliberalism, this process started in the United States and has become increasingly influential in Europe as evidenced by recent restrictions in some member states on sleeping in public places and begging. The article challenges some of the assumptions underpinning this master narrative and suggests that the 'punitive turn' is variable and that local circumstances may be more influential in shaping responses to homelessness than neoliberalism. It also suggests that punitive response to vagrancy and anti-begging legislation and policies are not novel, but rather have a long history.*

› **Keywords** *punitive turn, criminalisation, vagrancy, neoliberalism.*

Introduction

At the dawn of the 21st century, a growing number of observers were suggesting that the last quarter of the 20th century had seen the emergence of *inter alia*, a 'culture of control' (Garland, 2001a) and a 'new punitiveness' (Pratt *et al.*, 2005), where societies are 'governed through crime' (Simon, 2007), contributing to the emergence of 'mass imprisonment' (Garland, 2001b) whereby unprecedented numbers were banished to penal institutions (for an overview, see Daems, 2008). It is incontestable that by the beginning of the second decade of the twenty-first century, prison populations in many advanced industrial nations had undergone a period of significant expansion. While the pace of expansion varied considerably, the overall trend was unequivocally upward. The ninth edition of the *World Prison Population List*, published in 2011, estimated a global prison population of more than 10.75 million compared with around eight million when the first edition of the list was published in 1999 (Walmsley, 2012).

In one of the best known accounts, David Garland argues that the emergence of a 'culture of control' can be evidenced through a decline in the rehabilitative ideal that dominated thinking on criminal justice until the early 1970s; the re-emergence of punitive sanctions and expressive justice; changes in the emotional tone of crime policy; the return of the victim; a concern that the public be protected; a new populism and the politicisation of crime; the reinvention of the prison; a transformation of criminological thought; an expanded infrastructure of crime prevention and community safety; a commercialisation of crime control; new management styles and working practices; and finally, a perpetual sense of crisis (2001, pp.8-20). The apparatus of crime control that had emerged from the beginning of the 20th century, what Garland terms 'penal welfarism', which had at its core the correction and rehabilitation of offenders through reasoned knowledge and professional intervention, has been displaced by a consensus that offenders should be punished.

For Garland, these changes need to be seen as part of the broader social and economic changes associated with late-modernity, and he poses the question as to why contemporary crime policies so closely resemble the anti-welfare policies that have grown up over precisely the same period. His answer is: "[b]ecause they share the same assumptions, harbor the same anxieties, deploy the same stereotypes, and utilize the same recipes for the identification risk and the allocation of blame. Like social policy and the system of welfare benefits, crime control functions as an element in a broader system of regulation and ideology that attempts to forge a new social order in the conditions of late modernity" (2001, p.201).

Garland provides a compelling account of the interlocking social, economic and political changes since the 1970s that have allowed the prison – particularly in the US where the rate of incarceration rose from 110 prisoners per 100 000 in 1975 to 730 prisoners per 100 000 in 2011 – to function “as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety” (2001, p.178). Although Garland’s book focuses primarily on the USA and England, as do many of the more dystopic accounts of the present (Zedner, 2002), it has been suggested that the USA “has emerged as the principal ‘exporter’ of policy ideologies, governance systems and program routines in the field of post-welfarist social and penal policy” (Peck, 2003, p.228), and that the key culprits for this unexpected increase in prison populations and dissemination across the advanced industrial countries are, variously, globalisation, right wing-party domination, high anxiety societies and neoliberalism (for an overview, see Simon, 2012).

This is part of the larger story in which prisons have increasingly abandoned any pretence of rehabilitation and instead operate simply to warehouse increasing numbers of the poor, often infused with a racist hue (Simon, 2012). Neoliberalism is, in many cases, the preferred explanation for increases in the numbers incarcerated and their characteristics, as prison is viewed as a mechanism for managing the advanced marginality or social insecurity generated through the systematic dismantling of the welfare state and a veneration of markets.

Variations in Incarceration Rates

While the rate of incarceration per 100 000 population varies considerably by country (and within the United States, very considerably by State), in broad terms, the majority of advanced democratic countries have seen some increase in their prison populations – some very modest, some very dramatic – over the past two decades. This variation in rates of incarceration suggests, as Nelken (2011, p.105) argues, “that there are multiple cultures of control rather than just one culture of control.” Explanations for these variations range from the country-specific to global trends, but an increasingly influential viewpoint explains both the variations in rates of incarceration and reasons for the variations in growth rates as linked to both the nature of a country’s organisation and scale of welfare provision, and the institutional mechanisms in place to manage the economy.

These accounts argue that penal growth is not inevitable, but rather that the use of prison as means of managing marginal populations is, in the first instance, shaped by the degree to which countries adopt either neo-liberal or co-ordinated market economies, and from these macro-economic structures, how the organisation of welfare broadly follows in terms of both the generosity and coverage of social

protection measures (Downes and Hansen, 2006; Lacey, 2008). For Lacey, the co-ordinated market economies of Northern Europe and Scandinavia, and the liberal market economies of Western Europe and the United States, generate different penal outcomes. This is as a consequence of co-ordinated market economies depending on a high degree of skills among its workforce, which results in a substantial investment in workers with education and training, and requires stability in the labour market over time.

Providing this stability requires co-ordinating (and well co-ordinated) institutions that regulate and run the market, and provide more security for workers, both in the sense that they are less likely to lose their jobs and also in that if they do, the welfare state will maintain them well until they are redeployed. A liberal market economy, on the other hand, relies on 'flexibility' in the labour market; thus, there is less job security, less social security for the unemployed, and less regulation of the market in general. Individual workers are more dispensable (being less skilled), and the system is also more likely to generate periods of high unemployment, when large numbers of potential workers are surplus to requirements. As a consequence, Co-ordinated Market Economies "may be more likely, other things being equal, to generate incentives for the relevant decision-makers to opt for a relatively inclusionary criminal justice system. For it is a system which is premised on incorporation, and hence on the need to reintegrate offenders in to society and economy" (Lacey, 2008, p.58).

Others, most notably Cavadino and Dignan (2006), following the influential work of Esping-Anderson on welfare regimes, argue that the organisation and generosity of welfare shapes penal populations – the more miserly liberal welfare regimes of the US and the UK with the largest penal populations, and the comprehensive and generous welfare social democratic welfare regimes of the Scandinavian countries with the lowest. Thus, the organisation of the economy and the nature of welfare provision shape both the size and nature of imprisonment. The table below outlines these variations by the organisation of welfare, with the Social Democratic regimes having the lowest level, and the Post-socialist Liberal regimes having the highest, albeit that the rate in the Post-socialist regimes is declining. The Liberal regimes also have the highest flow, rather than stock, of prisoners. The Table also uses public social expenditure as a percentage of GDP to measure the generosity and coverage of welfare regimes, and it demonstrates two key findings. First, that public social expenditure has increased in the majority of countries over the past decade, and secondly, that those countries with consistently generous public social expenditure have modest prison populations. As Downes (2012, p.33) argues:

“It is difficult to believe that the consistent finding of an inverse relationship between the commitment to welfare and the scale of imprisonment, both cross-nationally and across the United States, is simply accidental or coincidental, especially when such variations cannot be accounted for by crime rates... these studies imply that a substantial welfare state is increasingly a principal, if not the main, protection against the resort to mass imprisonment in the era of globalization.”

Pratt (2011, p.252), in his comparative study of the prison populations of Anglophone countries and social democratic countries, comes to a similar explanation for the variation in incarceration rates, suggesting that:

“the Scandinavian model, by generating a politics of acceptance and inclusion, helped to act as a barrier against the tendencies to penal excess that became so pronounced in these Anglophone countries. The Anglophone model, in contrast, has helped to make such excess possible by generating a politics of resentment and exclusion.”

Table 1: Prison Population per Capita and Public Social Expenditure

Public social exp % GDP	2001	2011	% change	Prison population per capita 2001	Prison population per capita 2011	% change
Estonia	13	18	38.5	353	252	-28.6
Czech Republic	20	21	4.3	189	225	19.0
Poland	22	21	-2.5	208	222	6.7
Slovak Republic	18	18	0.2	138	203	47.1
Hungary	20	23	14.6	170	173	1.8
Slovenia	23	24	4.4	55	64	16.4
<i>Average</i>	<i>19</i>	<i>21</i>	<i>10</i>	<i>186</i>	<i>190</i>	<i>10</i>
Portugal	19	25	31.7	128	126	-1.6
Spain	20	26	28.8	114	153	34.2
Greece	21	23	13.9	76	111	46.1
Italy	24	27	14.8	97	109	12.4
<i>Average</i>	<i>21</i>	<i>25</i>	<i>22</i>	<i>104</i>	<i>125</i>	<i>23</i>
Austria	27	28	4.8	87	104	19.5
France	28	30	9.5	75	101	34.7
Belgium	26	29	11.8	83	100	20.5
Netherlands	20	22	12.7	95	87	-8.4
Germany	27	26	-1.2	98	83	-15.3
Luxembourg	21	23	12.8	80	124	55.0
<i>Average</i>	<i>25</i>	<i>27</i>	<i>8</i>	<i>86</i>	<i>100</i>	<i>18</i>
Norway	22	23	2.0	61	73	19.7
Sweden	29	27	-5.2	64	70	9.4
Finland	24	28	16.8	60	59	-1.7
Denmark	26	30	14.5	60	74	23.3
<i>Average</i>	<i>25</i>	<i>27</i>	<i>7</i>	<i>61</i>	<i>69</i>	<i>13</i>
United Kingdom	19	24	22.5	101	136	34.7
Ireland	14	21	49.8	80	98	22.5
<i>Average</i>	<i>17</i>	<i>23</i>	<i>36</i>	<i>91</i>	<i>117</i>	<i>29</i>

Sources: Social Expenditure Database (SOCX; www.oecd.org/els/social/expenditure/) World Prison Brief (www.prisons.org)

In addition to the organisation of welfare, Snacken and Dumortier (2012) and Lappi-Seppala (2011) argue that countries with the following characteristics tend to be less punitive: consensual rather than majoritarian democracies; countries where judges and prosecutors are not elected; countries where expert opinion is valued; countries where there are high levels of trust in political institutions; and countries where human rights are balanced with crime control imperatives. The countries in the table above with low and moderate rates of incarceration tend, indeed, to have some or all of these characteristics. Thus, the degree to which societies resort to incarceration as a means of managing marginality varies enormously. For the majority of countries in Europe, inclusive rather than exclusive policies dominate

responses to marginality, and in countries where increases are evident, as Tonry (2007, p.1) persuasively argues, “the reasons are not rising crimes rates, increased awareness of risk, globalisation, or the conditions of late modernity, but rather distinctive cultural, historical, constitutional and political conditions.” Significantly, even in a country like the Netherlands, which saw a dramatic growth in its prison population between 1985 and 2005, rising from 30 per 100 000 population – the lowest in Europe – to 120 per 100 000 population – one of the highest – and then dipping again below 100 a number of years later (Downes and van Swaaningen, 2007), the conditions within the prisons are less damaging than those in the UK (Kruttschnitt and Dirkzwager, 2011).

Crime Control, Welfare and Punitiveness

In seeking to account for the transformation of the penal sphere and the rise of prison populations, it is increasingly evident that we need to look outside the sphere of the criminal justice system. For example, it is clear that the relationship between rates of crime and rates of incarceration are largely independent of one another. Lappi-Seppala (2007) highlights this very clearly in relation to the Scandinavian countries, where from 1950 onwards, Finland, Sweden, Norway and Denmark showed very similar crime patterns, but while Finland experienced a very dramatic decline in its imprisonment rates, the other countries remained stable. Similarly, the extraordinary decline in crime in the United States from the early 1990s to the present is attributed by some to the massive increase in imprisonment over the same period. However, as Zimring (2007) points out, north of the American border in Canada, crime declined at a similar rate over the same period, but while the imprisonment rate in the United States tripled between 1980 and 2000, it increased by a modest 4% in Canada. Although the relationship between *crime rates* and incarceration are independent, *crime control strategies* and rates of incarceration are demonstrably linked.

Contemporary crime control strategies, according to Rose, can be divided into “two families: those that seek to regulate conduct by enmeshing individuals within circuits of inclusion and those that seek to act upon pathologies through managing a different set of circuits, circuits of exclusion” (Rose, 2000, p.187). Rose points to a series of strategic control mechanisms and technologies that aim to regulate conduct by placing individuals in ‘circuits of inclusion’, and by acting on social pathologies through these circuits of exclusion. Inclusion is achieved through the use of circuits of security manifested in institutions, conventions and associated rights; prime examples of such inclusionary circuits are nationality, citizenship, standards and actuarialism, welfare services (‘security net’), and they also extend into consumerist identities.

Conversely, exclusion is achieved through circuits of insecurity, which express themselves in individual liabilities and responsibilities, and under the guises of risk management technologies. The circuits of inclusion are also designed and formalised in such a way as to allow for the easy policing of their entry points – for example, the use of credit cards in relation to consumerist identities, and the necessity of bills, permanent addresses and specific identity documents to access services. As Rose has argued, in practice, such policies ensure that “(e)xclusion itself is effectively criminalized, as crime control agencies home in on those very violations that enable survival in the circuits of exclusion: petty theft, drinking alcohol in public, loitering, drugs and so forth” (2000, p.204).

Punitive Responses to Homelessness

Over the past decade or so, scholars and activists have highlighted increasingly punitive responses to homelessness, particularly street homelessness in the United States, which for some scholars has resulted in “annihilating public space” and making it “impossible for homeless and other street people simply to *live* (at least without breaking any laws)” (Mitchell, 2001, p.63); a consequence of this is the disproportionate representation of homeless people in the criminal justice system (Blower *et al.*, 2012). In a recent report, the International Council on Human Rights Policy stated that:

“..a number of North American and Australian cities have passed ordinances that have the effect of banning homeless people from the streets; one even penalizes individuals from providing food to the homeless in public parks. Such controls deprive the homeless not only of places to sleep but also access to water, other public conveniences and crucial economic opportunities. Criminalised and imprisoned or forcibly relocated to shelters at the peripheries of cities or isolated by urban planning codes from economically vibrant areas, the homeless and the extremely poor (including migrants) are effectively segregated from society.”(International Council on Human Rights Policy, 2010, p.29).

Similarly, in a report on Extreme Poverty and Human Rights by the Secretary General to the General Assembly of the United Nations, it was claimed that “[c]riminal or regulatory measures (e.g. ordinances) that make vagrancy and begging unlawful are becoming increasingly common across developed and developing countries” and that “[b]ans on begging and vagrancy represent serious violations of the principles of equality and non-discrimination” (Carmona, 2011, p.10). In early 2012, the United States Interagency Council on Homelessness (2012) gave examples of practices that criminalized homelessness, which included:

- Legislation that makes it illegal to sleep, sit, or store personal belongings in public spaces
- Ordinances that punish people for begging or panhandling in order to move people who are poor or homeless out of a city or downtown area
- Local measures which ban or limit food distribution in public places in an attempt to curb the congregation of individuals who are homeless
- Sweeps of areas in which people who are homeless are living in order to drive them out of those areas
- Selective enforcement of neutral laws such as jaywalking, loitering, and open container laws against people who are homeless
- Public health ordinances related to public activities and hygiene (e.g. public urination) regardless of whether public facilities are available.

Thus, it seems that across advanced industrial nations, after half a century or so of broadly social inclusive policies and practices geared at ameliorating the plight of the homeless and destitute, vindictive punitive policies are increasingly becoming the norm. In a recent special volume of the journal *Urban Geography*, it was argued that across post-industrial countries “a kind of Americanization of homelessness and homeless policy is certainly occurring” and that “(the) most commonly reported evidence for a potential Americanization pertains to the proliferation of punitive approaches to address increasing street homelessness and other undesirable ‘fringe’ groups” (von Mahs, 2011, pp.928-929).

The New Vagrancy Laws

Over the 20th century, in the majority of advanced industrial countries, responses to homelessness had gradually moved from the punitive, based on an understanding of vagrancy as a source of disorder and criminality (Rangasinghe, 2012), to inclusive welfare services, based on an understanding of homelessness as a varying balance of personal and structural deficiencies. As a consequence of this shift, there was “no historical or normative justification” for the criminalisation of street activities such as begging (Baker, 2009, p.212). Despite this broadly inclusive turn, from the early 1980s certain cities in the United States began passing laws that involved the prohibition of begging, loitering, and sleeping in public, as well as other public space restrictions (Foscarinis, 1996; Simon, 1996; Beckett and Herbert, 2008). These enactments, in large part, reversed the constitutional rulings between 1965 and 1975 that limited the powers of urban authorities to criminalise vagrancy, begging and public drunkenness (Ellickson, 1996). In addition to the constitutional rulings, a broader view had taken

hold that argued against, for example, criminalizing public drunkenness, as the outcomes in terms of arrests simply demonstrated the “ultimate futility of handing this social and public health problem through the criminal justice system” (Aaronson, Dienes and Musheno, 1982). Spradley, for example, in his ethnography of Skid Row in Seattle noted that in 1965, one-third of all arrests in the United States were for public drunkenness and in Seattle “70 percent of police man-hours are spent on this type of offences and 80 percent of the jail population throughout the year are the chronic drunkenness offender” (1970, p.9).

In light of the discussion above, what drove the return of the criminalization of homelessness and related activities? For some, it was compassion fatigue towards homeless people, and the desire to revitalise and gentrify city centre areas in order to enhance business and tourism, as well as to encourage middle class consumerism. Arguably, however, these influences dovetailed and were subsumed within the increasingly dominant view that homeless people were disorderly, and, thus, a coercive response was required to maintain order in the cities of North America.

Despite critiques of the both the efficacy and outcomes of order-maintenance policing (Harcourt, 2001; Sampson, 2012), it spread across the United States from the early 1990s, and was then exported to parts of Europe (Wacquant, 1999). Order maintenance policing had gained popularity following the publication of the now famous article by Wilson and Kelling in 1982 on ‘Broken Windows’, where they argued that minor acts of incivility would lead, in a developmental sequence, to an environment where more serious crimes could flourish. They gave the example of a broken window, which, if not quickly fixed, would send a visible symbol that nobody cared, which would in turn lead to further broken windows. For Wilson and Kelling (1982: 30), “[t]he unchecked panhandler is, in effect, the first broken window”. This is despite the fact that both fear of crime and actual victimisation is a significant part of the experience of homelessness for many people (Huey, 2012).

Despite the scant research evidence for the efficacy of order-maintenance policing in reducing crime, and the fact that homeless people were more likely to be victims than perpetrators of crime, many American cities – particularly cities with low levels of welfare benefits – adopted order maintenance ordinances, in particular anti-begging regulations, from the 1990s onwards (Smith, 2005), and by 2000, over 30 000 arrests had been made under various vagrancy statutes. Anti-begging legislation was also introduced in a number of Canadian cities during the 1990s, most controversially the British Columbian Safe Streets Act, implemented in January 2005, which aims “to ensure public street safety of citizens from aggressive solicitation” (Hitchen, 2005). In England, certain areas were targeted by the police to tackle street level

disorder, including begging (Hopkins-Burke, 1999). In Australia, vagrancy legislation and similar laws have resulted in ongoing arrests for not having visible means of support, for begging and for habitual drunkenness (Walsh, 2005).

In addition to the widespread adoption of order-maintenance policy, what Beckett and Murakawa (2012) have termed ‘innovative bureaucratic actors’ have also developed hybrid social control mechanisms to deal with ‘urban disorder’. As an increasing number of city ordinances and statutes in the United States that were introduced in the 1980s and which criminalised begging, sitting on pavements etc., were successfully challenged and deemed in some cases to be unconstitutional (Foscarinis *et al.*, 1999; Hansel, 2011), civil orders that imposed spatial restrictions were instead increasingly introduced, but violations of these civil orders could also trigger criminal sanctions (Beckett and Herbert, 2010a, b). In addition to this blurring of civil and criminal law, there is increasing evidence of other arms of the State policing homelessness (Walby and Lippert, 2012), and of private companies such as Business Improvement Districts (Lippert, 2012) further contributing to the extension of the penal or carceral state.

Managing Marginals

In his influential book, *Punishing the Poor*, Loic Wacquant (2009b, pp.xxi-xxii) argues that at least three mechanisms exist for states to manage marginality and behaviour that is deemed “undesirable, offensive or threatening”. Using the example of homelessness, he argues that homeless people can be *socialized* “by building or subsidizing accommodation, or by guaranteeing them a job or an income that would enable them to acquire shelter on the rental market”; they can be *medicalized*, in that by understanding homelessness as a consequence of addiction or mental illness, a medical remedy can be sought “to the problem that is defined from the outset as an individual pathology liable to be treated by health professionals”; and they can be *penalized*. The latter strategy criminalizes homelessness by outlawing begging and regulating the use of public space, thus eliminating homelessness through incarceration, with the prison operating as “a judicial garbage disposal into which the human refuse of the of the market society are thrown” (Wacquant, 2009b, pp.xxi-xxii) Much of his analysis has focused on what is happening in the United States, but he goes on to note in another publication that:

“harassment of the homeless and immigrants in public space, night curfews and ‘zero tolerance,’ the relentless growth of custodial populations, the disciplinary monitoring of recipients of public assistance: throughout the European Union, governments are surrendering to the temptation to rely on the police, the courts,

and the prison to stem the disorders generated by mass unemployment, the generalization of precarious wage labour, and the shrinking of social protection” (2009a, p.1).

The development of these policies in the United States and their transfusion across the European Union are consequences of the making and remaking of what Wacquant terms the *neoliberal state*. In brief, he argues that a combination of ‘workfare’ and ‘prisonfare’ have provided the means to regulate the poor intensively while simultaneously withdrawing any regulation from the wealthy, resulting in a “centaur state, liberal at the top and paternalistic at the bottom” (2012, p.250). As neoliberalism as an ideology becomes increasingly embedded in transnational institutions such as the International Monetary Fund and transmitted via a series of influential think-thanks, the penalisation of poverty becomes increasingly evident across the Member States of the European Union. The emergence of this penal state is increasingly displacing the welfare state as the mechanism for governing the poor.

Detailed case studies of processes through which neoliberalism, or indeed other forces, have reshaped homelessness to position it as requiring an exclusionary, rather than an inclusionary, response are relatively rare, but Steffen (2012a), for example, demonstrates how the corporate sector of Atlanta, Georgia in the United States redefined homelessness as a public safety problem in their pursuit of mobile capital and their efforts to revitalise downtown Atlanta. Steffen (2012b) also highlights the fact that homeless people and some of their supporters resisted these changes, but were ultimately unsuccessful. Mitchell and Staeheil (2006) document the transformation of public space into private space in San Diego through various business interests and the consequent displacement of homeless people. This issue of resistance to the punitive term is important as it is clear that the “homeless are not just voiceless and hapless victims of state oppression, but actors who navigate a complex landscape with impressive skill and creativity” (Herbert, 2010, p.258).

Challenging the Dystopian Narrative

Despite the dystopian tone of much of the research on recent responses to homelessness that has stressed the punitive nature of these responses, other analyses, which challenge this master narrative of punitiveness, are also available. DeVerteuil *et al.* (2009) argue that while there is ample evidence of punitive responses, other more inclusive responses are also evident and that this is particularly the case when the focus shifts from the US to other jurisdictions (see also Cloke *et al.*, 2010). Laurenson and Collins (2006, 2007), for example, in their analysis of homeless policies in New Zealand, a country generally viewed as neo-liberal in comparative public policy terms, demonstrate that while some punitive responses

have been introduced, they have been counterbalanced by supportive, non-punitive responses. Similarly, Huey (2007) in her comparative study of Edinburgh, San Francisco and Vancouver could discern no overall uniform punitive response to homelessness. Even within the United States, as Murphy (2009) highlights in San Francisco, there is a 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. The motivation for the 'punitive shift' was explored by Johnsen and Fitzpatrick (2010) who concluded that coercive policies on homelessness were in part motivated by the desire to assist service-resistant rough sleepers engaging in self-destructive behaviour, rather than being simply vengeful actions against the powerless. Forms of urban surveillance such as CCTV, rather than merely policing and excluding homeless people from public spaces, may also provide a degree of security to some vulnerable homeless people (Huey, 2010).

In addition, the homeless strategies developed and implemented by a large numbers of EU Member States (Benjaminsen *et al.*, 2009), as well as the increasing popularity of Housing First as a means of addressing homelessness across the EU (Pleace, 2011), all point to a counterbalancing, inclusionary strand of the punitive turn. Furthermore, although Wacquant (2004, p.163) has argued that "the new penal common sense fashioned in America and aiming to criminalize poverty is being internationalised" *via* a network of neo-liberal policy think tanks (the Manhattan Institute in the US, the Institute of Economic Affairs in the UK and their equivalents in Sweden, Holland, Belgium, Spain, Italy, Germany and France), the degree to which the rhetoric and polemics of these agencies have translated into practice is slight. For example, in the UK, where it might be expected that the influence of the 'new penal common sense' would be most pronounced, Newburn and Jones (2002, p.189) argue that "police forces in Britain have rejected both the terminology and the practices associated with zero tolerance." Elsewhere in Europe there is little evidence of order-maintenance policing displacing existing models of policing, or of increasing punitiveness (see for example, Roche, 2007 on France; Lappi-Seppala, 2012 on Finland).

Penalisation, Criminalisation and Migration

In response to his critics, Wacquant (2012, pp.246-247) has argued that "penalisation takes many forms and is not reducible to incarceration", while at the same time noting, first, that levels of incarceration have risen; secondly, that many European societies utilise the police more than prison to curb social disorder, which he refers to as the front end of the penal chain rather than the backend; and thirdly, that European societies have simultaneously and contradictorily expanded police inter-

vention and welfare intervention, which has “both stimulated and limited the extension of the penal mesh.” A further argument against the apparent penal moderateness of most EU Member States is that migrants / foreigners are substantially over-represented in the prisons of Europe, particularly in the Southern and Continental Member States as shown in Table 2 (see Barker, 2012).

Table 2: Foreign Prisoners as a Proportion of the total Prison Population

Estonia	40.3
Latvia	1.3
Lithuania	1.3
Czech Republic	7.2
Poland	0.7
Slovak Republic	1.8
Hungary	3.4
Slovenia	11.7
<i>Average</i>	8.5
Portugal	20
Spain	34.2
Greece	57.1
Italy	36.2
<i>Average</i>	37
Austria	46.4
France	17.8
Belgium	41.1
Netherlands	26.2
Germany	26.7
Luxembourg	68.7
<i>Average</i>	38
Norway	32.5
Sweden	27.6
Finland	13.3
Denmark	21.7
<i>Average</i>	24
United Kingdom	7.8
Ireland	13.6
<i>Average</i>	11

Source: World Prison Brief (www.prisons.org)

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This overrepresentation led De Giorgi (2010, p.156) to claim that “when observed from the perspective of those who cannot claim full membership in the EU but only some form of subordinate inclusion in its flexible labour markets, the picture of European societies as strongholds of penal tolerance and moderation becomes increasingly blurred, leaving room to a reality of selective criminalization.”

Historical Perspectives

There is a long tradition of scholarship in examining vagrancy laws and how they have been introduced, adapted and modified to ensure the maintenance of social order (for an early example, see Gillin, 1929, who provides a brief overview of the development of repressive methods and institutions to manage vagrants and beggars in the latter half of the 19th century, drawing largely on the seminal work of Ribton-Turner, 1887). However, the origin of vagrancy laws and their role in maintaining social order is subject to considerable debate. Chambliss (1964) argued that vagrancy laws provided an example of how elites utilized the legal system to maintain their dominant economic position, or as Chambliss himself expressed it: “shifts and changes in the law of vagrancy show a clear pattern of reflecting the interest and needs of the groups who control the economic institutions of the society” (1973, p.442). For Chambliss, vagrancy laws were a legislative innovation that reflected the socially perceived necessity of providing an abundance of cheap labour to land-owners during a period in which serfdom was breaking down and the pool of available labour had been depleted.

With the eventual breakup of feudalism, the need for such laws eventually disappeared, and the increased dependence of the economy upon industry and commerce rendered the former use of the vagrancy statutes unnecessary. As a result, for a substantial period, the vagrancy statutes remained dormant, undergoing only minor changes and, presumably, being applied infrequently. Finally, the vagrancy laws were subjected to considerable alteration through a shift in the focal concern of the statutes. Whereas at their inception, the laws focused upon the ‘idle’ and ‘those refusing to labour’, after the turn of the sixteenth century their emphasis switched to rogues, vagabonds, and others who were suspected of being engaged in criminal activities. Alder (1989a, p.222) has criticized Chambliss, arguing that his historical analysis was flawed and that detailed case studies invalidate his thesis, suggesting instead that “economic concerns were but one among a multitude of pressures that influenced the development of criminal law” (see also Chambliss, 1989 and Alder, 1989b for rejoinders).

Whatever the motivation of these statutes, it is clear that punitive vagrancy and anti-begging legislation and policies are not novel, but rather have a long history. Vagrancy codes were substantially modified in the 19th century to regulate those who threatened social order, particularly tramps and beggars, with the key objective of ensuring that the undeserving poor did not consume the food and occupy the shelter reserved for the deserving poor. To safeguard against relief programmes that could spawn the rise of a dangerous class of wanderers, laggards and parasites, casual wards, separate from the workhouse, were provided for. From both historical accounts and contemporaneous accounts of the lives of tramps and vagrants, it is known that these facilities were punitive, degrading institutions (Freeman, 2001; Higbie, 1997), or as Vorspan (1977, p.60) put it: "official Poor Law policy towards vagrants combined a legal recognition of their right to relief with a determination to award this relief under intensely disagreeable conditions with the result that prisons were viewed as less punitive than the Casual Wards." Even for those who did not end up in the Poor Law facilities, as Kimber (2010) has shown in her case study of a homeless woman in Australia in the first 40 years of the 20th century, long sojourns in criminal justice facilities were often the fate of those at the margins of society.

The policing of homelessness, particularly in the United States, shifted as homeless people began to cluster in 'skid row' areas, with the key objective being to contain homeless people within these urban spaces and to ensure the observance of certain basic rules. In his classic study of the policing of Skid Row, Bittner (1967, p.706) outlined why the inhabitants thereof required such intensive policing:

"From the perspective of society as a whole, skid-row inhabitants appear troublesome in a variety of ways. The uncommitted life attributed to them is perceived as inherently offensive; its very existence arouses indignation and contempt. More important, however, is the feeling that persons who have repudiated the entire role-status casting system of society, persons whose lives forever collapse into a succession of random moments, are seen as constituting a practical risk. As they have nothing to forsake, nothing is thought safe from them."

Those who patrolled skid rows displayed a degree of paternalism in their dealings with the homeless men and women who inhabited them, which was interspersed with an abuse of their power (Schneider, 1988), or, as described by Wiseman in her ethnography of skid row alcoholics, the police officers "operate with a rare mixture of almost paternal indulgence, strictness and *ad hoc* decision-making not found else where in the city" (1970, p.65). Skid rows survived until the early 1970s (Bahr, 1967), but were gradually destroyed as business interests sought to acquire the valuable sites on which they were often situated. However, in dismantling skid rows, as Metraux (1999, p.706) argues in relation to Philadelphia, city planners "all but

ignored Skid Row's historical function as an inexpensive refuge for the economically and socially down and out." Not surprisingly, once Skid Row was destroyed in Philadelphia, an increasing number of homeless people became visible in the business district, which in turn led to a raft of ordinances that attempted to restrict the mobility and survival strategies of these visibly homeless people.

It is not clear to what degree skid rows existed outside of the United States and Canada. Ward, in his analysis of skid rows in North America, noted that it was puzzling that these did not exist in Australia, particularly when "many of the economic and historic forces that were important in maintaining skid rows in Canada and the United States found similar expression in the Australian context" (1975, p.294). Some authors described 'skid rows' as scattered derelict areas where a very small number of rough sleepers tended to congregate, usually attracted by soup kitchens, rather than as specific residential areas of a city (Edwards *et al.*, 1966). The absence of these skid row zones in most cities in Europe may explain in part the later and more muted punitive response to homelessness when compared with that experienced in North America.

European Labour Colonies

In much of the recent commentary on contemporary punitive events, Europe is portrayed as succumbing to the punitive dogma emanating from the United States. However, at the beginning of the 20th century, the punitive practices of many European countries were under envious scrutiny from American visitors. In England, Vorspan (1977, p.75) argues that by the 1880s, labour colonies were "promoted by every conceivable public and private organisation", where

"professional tramps should be compulsorily detained for lengthy periods in penal colonies modelled on existing German, Belgian, Dutch and Swiss settlements. This course of action would accomplish numerous objectives. It would deter prospective vagrants, not merely from public relief but from the nomadic life altogether; it would remove vagrants from the public domain and thereby lessen the incidence of sleeping out, petty crime and begging; it would facilitate the reclamation of habitual tramps; and, finally, it would prevent professional vagabonds from exploiting public assistance to the 'deserving'".

Analogous in some ways to contemporary debates about the use of shelters for homelessness, most observers of the continental labour colonies were underwhelmed by the actual practice and outcomes of these colonies in comparison with the *rhetoric* of the promoters of such institutions. For example, the Rev. J.J. McCook, having reviewed the labour colonies in Germany, France and England in the last decade of the 19th century, concluded that "[t]he labour colonies are by

no means an unmitigated good. They have not come up to the expectation of their founders. But there seems no reason to doubt that things are better with than were without them” (1893, p.763).

In a review of the efficacy of these colonies by a Departmental Committee on Vagrancy in England, the Committee found that such colonies had little long-term positive effects. Despite the limited effect of these colonies, the Committee (1906, p.74) was of the view that:

“We consider that the need of some power of keeping habitual vagrants in detention for long periods is clearly proved, and in view of the impossibility of making prison serve that purpose, we feel we have no alternative but to recommend that compulsory labour colonies should be established in this country. Even if they are not successful in achieving greater reformatory effects than the existing labour colonies abroad, we think that they may clear the streets of the habitual vagrant and loafer, and make him lead a more useful life during his detention.”

The Departmental Committee was not alone in its advocacy of labour colonies for vagrants; Edmund Kelly, for example, in his 1908 treatise on how to eliminate the tramp in the United States by introducing the European labour colony system commented favourably on the system that pertained in Holland, noting that:

“Obviously a labour colony must not be made a place so agreeable that it will constitute a resort for all those who prefer freedom from responsibility to the freedom of competitive life. In Holland every person who is found begging in the streets is imprisoned for at least two weeks as a punishment. Imprisonment in a dark cell with nothing to eat or drink but bread and water might usefully be resorted to as a deterrent in cases where perfectly able-bodied men show a disposition to abuse of the hospitality of the labour colony system.” (1908, pp.78-79)

Similarly, in 1910, William Harbutt Dawson, an English Poor Law Commissioner, was convinced of the efficacy of the continental system, stating that:

“It is now some twenty years since I first directed attention to the Continental method of treating vagrants and loafers in Detention Colonies and Labour Houses. Repeated visits to institutions of this kind, both in Germany and Switzerland, together with active work as a Poor Law Guardian, only served to deepen my conviction that prolonged disciplinary treatment is the true remedy for the social parasite whose besetting vice is idleness” (1910, p. x).

The aforementioned Gillin (1929, pp.430-431) singled out Belgium, in particular, as an exemplar of best practice in managing vagrancy:

“The best institutions in Europe for the treatment of beggars and vagrants are to be found in Belgium and Switzerland... When I visited Merxplas (Belgium) in the spring of 1928 the inmates were employed either on the land or in the extensive shops at the institutions. At that time there were 600 employed in the workshops and 100 on the farm. There are four divisions: (1) division for old men who cannot work; (2) one for the immoral man, i.e. homosexuals and those who visit prostitutes (3) one for feeble-minded vagrants; and (4) one for young men from 16 to 21 years who have been committed for vagrancy before. All of these are detained from 3 to 7 years.”

By 1930, a Departmental Committee on the Relief of the Casual Poor in England had developed a nuanced and welfarist approach to vagrancy, declaring that they found it “difficult to recommend the establishment of labour colonies as a deterrent to vagrancy” (1930, p.29), and that based on the evidence obtained from other countries, “the reformatory effect of a compulsory detention colony is very little” (1930, p.30).

However, a Departmental Committee on Vagrancy in Scotland reported in 1936 (1936: 67) that it remained “convinced that habitual vagrants cannot be dealt with, as the Royal Commission on the Poor Laws put it, ‘humanely, adequately and restoratively, unless there is power to subject them to continuous control under conditions which can be enforced.’ We, therefore, definitely recommend the setting up of such institutions to which these vagrants could be committed for such periods as an appropriate judicial authority may consider necessary with a view, if possible, of inculcating in them the better traits of citizenship.”

While labour colonies fell out of favour, the casual wards and allied institutions associated with the Poor Laws remained in place in many countries, surviving until the late 1960s and early 1970s. The inhabitants of these institutions were surplus to labour requirements and, hence, the application of vagrancy laws gradually dissipated. As the relationship with the labour market declined and this surplus population was contained either within the skid rows of North America or within various charitable or poor law institutions in Europe, there was no “need nor rationale for disciplining them” (Hopper, 1990, p.24).

Neo-liberalism and the Punitive Turn

It is difficult to sustain the thesis that the contemporary punitive turn towards homeless people is a consequence of a neoliberalism largely exported from the United States, when the historical record shows that a *core response to homelessness was always punitive* and that it originated in countries like Belgium and Switzerland. While the underlying motivation may have shifted over time from controlling landless labourers to gentrifying city centres, a punitive element has been ever present.

Different economic forces generate different responses to homelessness, and neoliberalism may well be the driver of the current impulse towards punishing the poor and homeless, but Lacey (2013, p.277) has argued that “the conceptual vagueness of neoliberalism, and the institutional deficit which characterises the neoliberal penalty thesis, dooms it to failure as an explanatory account of contemporary punishment.” She further argues (2013, p.277) that “[h]istorical and comparative analysis..... comprehensively undermines the idea that ‘neoliberalism’ is plausible as an explanation of current trends in punishment, striking though it may be as a characterisation of a certain kind of political reaction to a constellation of current geo-political and economic conditions.” The elasticity of the notion of neoliberalism has also allowed the term to be applied both to policies that punish the poor through criminalisation and incarceration and to policies that aim to house them via ‘Housing First’ type projects (Willse, 2010).

Conclusion

Over the past two centuries, we can trace a relationship between elite perceptions of homeless people and the broad state response. From the beginning of the 19th century until the post- second world war period, the elite view of homeless people was that they were dangerous – a danger to compliance with the needs of industrial capitalism – and thus required resocialisation in labour colonies to ensure participation in the labour market. Coinciding with the growth of welfare states in the post war period, the elite view of homelessness was of disaffiliation – homeless people as mildly deviant and undersocialised, but small in number and corralled in declining skid row areas, or festering in casual wards and other remnants of the institutions of the great confinements of the 19th century, and requiring the intervention of welfarist type agencies, bolstered, if necessary, by the truncheon of the neighbourhood cop.

From the early 1970s, as visible homelessness increased, the dominant view of homeless people was that they were disturbed; this view was based on an assumption that they had been discharged from various psychiatric institutions, and the response was to place them in shelters. The perception of homeless people as

disturbed, and the relatively benign response of placing them in shelters, was gradually replaced with a view that homeless people were either disorderly in and of themselves, or else that they contributed to a disorderly environment that was detrimental to public safety and economic revitalisation. Whatever the motivation of these statutes, it is clear that punitive vagrancy and anti-begging legislation and policies are not novel, but rather have a long history.

Starting in the mid-1970s, the role of prisons in the United States shifted from rehabilitating individuals to becoming sites for the mass incarceration, or warehousing, of marginal populations. This shift occurred in tandem with a shift of economic and social policy towards neoliberalism, which argued for a diminished role for the state and an increased role for markets. This in turn led to a shift in social policy from welfare to workfare to ensure participation in labour markets and prisonfare for those who would not comply. Homelessness, as a visible symbol of destitution and disorder, came under the scrutiny of those arguing for new forms of public policing, and the alleged disorder caused by those sleeping on the streets or begging became the target of those advocating 'broken windows policing.' Arguing that the behaviour of those consuming alcohol in public, begging and sleeping rough was criminogenic, in that it fostered a milieu that encouraged criminality, a range of punitive measures was enacted, firstly in New York and then spreading across the United States and to Europe, to restrict the movement and activities of those sleeping rough.

There is clear evidence across the EU of the re-introduction of legislation regulating behaviour in public spaces, begging in particular. However, the evidence that this is part of a strategy of punishing the poor or annihilating public space is scant. Homelessness policy is still largely driven by the politics of social inclusion rather than the politics of social exclusion, as evidenced by homeless strategies in the majority of EU Member States. However, future research needs to explore fully the intent of legislatures, the operationalisation of policy and the outcomes of interventions, and detailed case studies are required in different welfare regimes to tease out the implications of these policies.

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