

Homelessness and the Control of Public Space – Criminalising the Poor?

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Introduction

In a review of control practices, Rose argued that such practices ‘manifest, at most, a hesitant, incomplete, fragmentary, contradictory and contested metamorphosis’ (2000: 322). Rather than seeing the emergence of a uniform ‘culture of control’ (Garland, 2001) or a ‘new punitiveness’ (Pratt *et al*, 2005), Rose suggests that we should be cautious in ascribing such broad generalisations to a diverse range of practices and sites. In this think piece, I wish to explore recent debates that have explored the control of public spaces and the impact of these apparent changes on those who, by virtue of their absence of fixed abodes, are required to utilise this space: those who are homeless. The dominant view in recent years is that the use of public space has become increasingly restrictive, with a raft of regulations prohibiting certain acts, resulting in the criminalisation of the homeless. The logic underpinning these punitive regulations are to safeguard and protect the public from the predatory actions of those inhabiting public space, which in turn can cleanse city centres and attract capital.

These trends appear well established in the United States (Mitchell, 2003) and Wacquant (2004: 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). However, 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, Jones and Newburn (2002: 189) argue that ‘police forces in Britain have rejected both the terminology and the practices associated with zero tolerance’. In this think piece, I shall explore the degree to which the criminalisation of poverty is evident in Europe by exploring the control of public space and its impact on the homeless. These differences especially those relating to the ways in which homeless people have been caught up in the ‘criminalisation of poverty’ and in attempts to impose controls on the use of urban space, form part of the subject matter of this paper.

The homeless and the criminalisation of poverty

Practices which restrict the use of urban space are targeted at a variety of street users, which are considered 'undesirable' in public space. Their presence, or their activity, is seen as constituting a danger, or a disturbance of the normal activities for which public spaces are intended, or they are seen as contradicting the images and symbols of those spaces. The activities targeted are frequently associated with homeless people. Some are typical of the homeless or implicit in the daily life of the homeless such as camping, sleeping in public spaces, bathing and so on (Fischer, 2004: 94). Other activities (such as begging, the use of drugs and alcohol) may involve the homeless to different degrees. In general there is a close association between homelessness, sleeping rough and begging; while it is acknowledged that only a relatively small proportion of all homeless persons beg, there are wide regional variations (see Tosi and Petrillo, 2006; O'Sullivan 2007). As a consequence, even if the homeless are not the explicit target of control measures, 'the impact is disproportionately felt by homeless people, because of their reliance on public space for conducting their day-to-day activities' (Doherty *et al*, 2006: 2).

A 'coincidence of places' also increases the probability of the homeless being affected. In Italy, even if the greater severity of controls and the growth of social prevention have mainly targeted groups different from the homeless, there has nevertheless also been a 'spill-over' effect, with the crackdown affecting other components of the broad category of marginalised population groups. It can therefore be concluded that a determined policy to control space, though directed at other objectives, has ended up by affecting a portion of the traditionally (street) homeless as a result of the objective coincidence of the places under surveillance and control (Tosi and Petrillo, 2006).

The 'penalisation of poverty' is a process which is observable in Europe, but in a very different context to that in the US. Even though, as Wacquant (1999) has argued, a shift in the balance – 'less social, more penal' – seems to be emerging almost everywhere, the link between insecurity, the reduction in welfare policy and the 'criminalisation of poverty' takes on a different character in European countries. The idea of the dismantling or reduction of the welfare state is itself a misleading image with regard to the European reality. According to Wacquant, the American model – 'that is to say a brutal substitution of the social-welfare treatment of poverty by penal treatment' – does not provide a valid description of the policy changes in Europe. Rather, there is in France, Italy and Germany an attempt to follow a 'European way' characterised by a 'conjoint accentuation of both the social regulation and the penal regulation of social insecurity' (Wacquant, 2001: 409).

We can further observe that the attempt to introduce more punitive criminal policies was not directed at homeless people *per se*. The homeless – and especially the

street homeless – are among those who suffer most under the measures to control urban space, but they are not the main target group and are infrequently the explicit target (Doherty *et al*, 2006). For instance, in Norway, Dyb (2006: 11) observes that, ‘... public discussions are centred around beggars and drug users in the urban landscape and not on homelessness’ and Doherty *et al* (2006; 12) argue that ‘by and large, attempts throughout Europe to introduce legislation that explicitly targets homeless people have been unsuccessful.’ However, the complexity of the relationship which the homeless have with control processes tends to obscure our view and understanding of precisely the ways in which they are affected.

Some of the features which mark the difference between Europe and the USA concern the role of criminal justice in the processes of controlling public space and the ‘harshness’ of the control practices employed, and to what extent homeless populations have been involved in the ‘criminalisation of poverty’. On balance, the new process of regulation in Europe is less punitive and less pervasive than in the USA and the practices employed for the control of urban space are less harsh. At least for the moment, more extreme measures of deterrence are largely absent from the European scene. Experiments with zero-tolerance policing have mostly been unsuccessful in the European context (Doherty *et al*, 2006). The discourse on zero tolerance was transferred from the US to Europe, however ‘after a short and heated boom the influence of this debate on measures taken in practice was not as radical as it might have appeared’ (Busch-Geertsema 2006: 13). That the impact in Europe was less than in the US can be considered a consequence of specific legislative and cultural traditions in some countries (such as more positive attitudes towards marginal groups) and of the persistent solidity of the welfare state in European countries. For example, in Germany it has been observed that ‘the populist heated debate propagating New York as ‘the model’ has found its clear limits... because of the differences in constitutional state tradition and policy concepts for police and order’ (Hecker, quoted by Busch-Geertsema, 2006: 6).

Control over public space and the changing construction of homelessness

These are all traits which would at least partly explain the paucity of resistance and opposition on the part of homeless people and homeless organisations to restrictions on the use of public space. However, the absence of overt reaction should not lead to an underestimation of the impact of these control measures on the ‘life-worlds’ of homeless people. Regardless of the extent to which they are directly targeted at the homeless, the new practices of controlling public spaces have severe consequences for the homeless. The regulation of public space further restricts the life spaces of homeless people in that it deprives marginal groups

which spend most of their day in public space of 'a location for basic human functioning'; of 'spaces to congregate for social interaction'; of 'places where they can claim some degree of personal comfort in keeping (relatively) warm and dry' (Doherty *et al*, 2006: 12) and also paradoxically 'places where one may feel safe and somehow protected' (Giannoni, 2007: 9). The reduction in the life spaces of the street homeless is the most direct evidence and the most obvious indicator of how the new regulation of public space impacts on the life of the homeless.

However, this is not perhaps the most pervasive implication – these processes of regulation also have less direct consequences in that they impact on the delivery of homeless services further reducing the opportunities available to the homeless and the space for potential solutions to their problems; further they also contribute to the degradation of homeless policies. For example, a corollary of the implementation of measures to control public space is the drive towards alternative (often less satisfactory) forms of provision such as emergency accommodation. One typical case is the supply – as a result of arrangements between organizations working with homeless people and railway authorities – of facilities for homeless people in or around railway stations, a process which regularly follows the refurbishment of stations and expulsion of marginal populations from the railway space. Another example is the provision of services by private companies which, as Sahlin (2006: 26) observes, are at one and the same time 'anxious to exclude homeless people from their territory and willing to fund and organise shelter for them – as long as it helps keep homeless people away from their territory.' Such relocations do not solve the problems of the homeless and may even make them worse (see the anti-hostel 'arguments' in Busch Geertsema and Sahlin in this volume). Additionally it is the case that, at least in Sweden, '[m]obile out-reach teams have been formed in the big cities to help rough-sleepers find other places to spend the nights than the commercial centres'. The homeless are being squeezed out of public space and into shelters as Sahlin observes access to these shelters tends to depend on 'the homeless persons' compliance with work-plans, sobriety requirements and similar preconditions,... [additionally]... the shelters themselves may be very unsafe places to be and therefore might not solve the problem' (Sahlin, 2006: 26).

An even wider range of consequences resulting from the imposition of controlled access to public space can be observed in the character of the urban environment that is produced by these control measures. The result is a city that reduces the 'moral space needed to deal with the problem of homelessness as demonstrated in the spatial exclusion, and segregation of the homeless from spaces occupied by other citizens and the resultant destruction or impoverishment of the public character of cities. Cabrera quite rightly invites us to assert the normality of the presence of the homeless in the urban space:

... not only vindicating their right to occupy these spaces, in the face of attempts to privately take over public spaces, but also in some way... vindicating their presence as 'normal' in a space that is essentially versatile and ambiguous and should continue to be so, a space with a calling to remain chaotic, permanently erupting and in some way, wild, where all conflicts have their place and where all the triumphs and failures of our times can be found, facilitating the most incredible and unexpected encounters. (Cabrera (2006: 3)

Finally the control of public spaces indicates a profound change in the social construction of homelessness, which can have serious consequences on policies. Framing homelessness in terms of public order and nuisance subtracts the question of homelessness from social policies. It takes it out of the area of 'positive' policies and this new approach reflects an individualist/social pathology perspective which seeks to make homeless people responsible and even guilty for their own situation. By de-socialising the problem and reducing it to a principle of 'order', it attempts to eliminate homelessness literally by directing effort towards making homeless people invisible, rather than meeting their needs.

The need therefore arises to oppose these policies of control and at the same time to redefine targets and to base actions to oppose them on a more adequate identification of the processes in play. This concern must be located in the context of the new social construction of homelessness which the control of public spaces reveals. From this viewpoint the definitions of the problem play a prominent role and it is appropriate to represent the substance of the control process as 'struggles about definitions – of people, places and acts' (Sahlin, 2006). To the extent that it is a struggle of/for definitions, the construction game brings to the fore not so much the fact that the homeless are being adversely affected (possibly criminalised) by the phenomenon of control, but the designations of the activities and figures which populate the scene of the control of public spaces.

The homeless in urban disorder

The 'disorder' which the control of public spaces is intended to prevent and repress evokes two different types of concerns in the policy discourse: respectability and good behaviour on the one hand, and security and safety on the other. The two types of concern summarise, in some ways, the variety of pressures that lie behind the trend to increase restrictions and limitations on 'the right to roam': the growing security alarm and demand for securitization, the conversion of public spaces in order to make the city more attractive for affluent customers and visitors (Sahlin, 2006), and to meet the disciplining and security demand of the well-to-do classes,

who are installed in the gentrified neighbourhoods, as claimed with the concept 'revanchist city' (Meert *et al*, 2006). Not surprisingly, the two types of argument overlap and intermingle and this occurs most often through the emphasis on security, a label which covers a variety of urban activities ranging from prostitution to street trading and unauthorised occupation. For many of these activities the connection with security is uncertain to say the least. However, the undesirable figures are nevertheless typically construed with predominant reference to one or the other of the concerns: respectability or security.

How are the homeless involved in the system of discourse which indicates those 'responsible' for the different types of disorder? What importance do they have in the construction of control targets and in the entire discourse on the re-designation of public space? What do they represent in the variety of figures of street users whose presence is considered undesirable or whose activities are held to be dangerous or disturbing in public space? In attempting to answer these questions we can demonstrate the basic differences between the USA and European countries. To simplify a little, we can say that the homeless in the USA are subject to repression in public spaces on both grounds of undesirability related to both respectability concerns over security. Through a specific construction of the homeless, in the USA the control of public space has found a major target in this figure of the homeless to the point where they are almost identified in the discourse as the purpose of control itself. In the USA the homeless constitute a general figure of hardship and degradation: the term goes beyond its literal meaning of the lack of a home and assumes the role of a metonym in the discourse. In contrast, in Europe, there is a split between the two types of concerns: here the homeless represent more a threat to public decency, while the security concerns – the defence of urban space from threats, danger, insecurity and crime – are directed against other figures, starting with immigrants (who naturally are also eminently dangerous figures in the USA also: see Story, 2005: 2).

This centrality of the homeless in concerns over the control of public space may occur only if some device allows the various elements which constitute disorder and crime to be linked. The zero tolerance theory is the best known example of discourse mechanisms through which minor infringements are connected with criminality, thereby authorising 'an inflexible application of the law against minor offences such as drunkenness, making a noise, begging, offending public decency and other antisocial behaviour associated with the homeless' (Kelling, quoted in Wacquant, 1999: 19).

In most European countries the discourse on the homeless in public spaces is not based on these associations. The risk that this may occur must nevertheless be considered. The link between disorder and the homeless in the construction has

been a function of the zero tolerance discourse in the USA. However the same outcome may result from opposite premises. Paradoxically, advocates of zero tolerance have been able to accuse homeless advocacy groups and civil libertarian organizations of confusing poverty and homelessness with anti-social behaviour. This is not surprising, according to Kelling and Cole, because 'advocates should preserve the myth that every person who begs aggressively, who lives in an encampment in a city park, or who urinates, defecates, or engages in sexual acts in public, is homeless. After all, making the problem of homelessness as vast as possible lends a compelling urgency to their argument' (1996: 67). The explanation may be tendentious, but the risk of these organisations fostering this identification/confusion is real. Because, to quote again Kelling and Cole, 'virtually every anti-social behaviour can be framed as one of *homelessness*' (1996: 67).

Disorder and insecurity: the social construction of the migrant

The social construction of homelessness and the comparison between the different dynamics in the USA and in Europe raise the question, 'what is it that makes unwanted acts to appear as crimes and the actors as criminals?' (Christie, 2004; p3). As has been seen, the 'dangerousness' which 'motivates' instances of control and then removal from public space and then the differing harshness of the control may be motivated differently and connected with different figures. In many European countries, the most prominent target group of public fear and hence of control measures are migrants: they perform in some ways, in the control of public space, a role similar to that which is played by the figure of the homeless in the discourse in the USA. They are subject to similar discursive mechanisms. And if it is true that the penalization of poverty has not (yet) represented a dominant factor in European policies and for the homeless even less so, this has been in progress for some time in the case of immigration.

Throughout all Europe, foreigners, non-western immigrants termed 'second generation' [...] and coloured people, whom it is known constitute some of the most vulnerable figures on the labour market and with regard to the state welfare sector, because they are distributed among the lowest classes and are inflicted with multiple discrimination, they are massively over represented within the prison population and to a degree comparable to or even greater in many places than the enormous over representation of black people in prisons in America (Wacquant, 2003: 1).

From the early 1990s, the number of immigrants in the prisons of Europe has been rising, and by 2004, countries such as Spain, the Netherlands, Italy and Germany, between a quarter and one-third of all prisoners were 'foreign' (Council of Europe, 2006: 70). For an earlier period, Wacquant (1999) documents how this over representation is explained, not just by the lower class composition, but also by the much greater severity of the criminal institutions towards them on the one hand and the deliberate decision to repress clandestine immigration with imprisonment on the other. This is, to a large extent, the consequence of identifying immigration as a problem of security, which occurred in Europe as in the USA in that period. As Wacquant argues

Under the effect of the instruments contained in the Schengen and Maastricht treaties designed to accelerate legal integration and to ensure the genuine 'free circulation' of their citizens, immigration was redefined by the authorities of the signatory countries as a problem of continental security, and, by implication, of national security under the same heading as organised crime and terrorism with which it is linked as much in the discourse as in administrative measures. Thus a true process of immigrant criminalisation [occurs]. (2004: 3-4).

The debate on the consequences for the homeless of the control of public spaces underestimates the roles that securitization trends and immigration policies perform in the configuration of the control itself, and actions to oppose and resist are affected by the limit imposed by this control. This is clearly demonstrated when we look at the large numbers of immigrants (homeless or not) persecuted by control measures in public spaces and the predominance of immigrants among those on the receiving end of the various measures (such as anti-begging legislation) to repress 'undesirables' in public spaces (Tosi and Petrillo, 2006).

The example of begging bears witness to the practical and political limits of a construction which does not acknowledge the importance of immigrants in the configuration of the control of urban spaces. Stephan Nagel reports the case of the prohibition of begging in certain areas of Hamburg, where the proposal was made to prohibit at least professional bands of beggars from Eastern Europe:

... Groups of beggars from Bulgaria, who exhibited their physical disabilities for begging purposes, had particularly aroused the indignation of many Hamburg residents. The chamber of commerce called for a prohibition of 'organised begging'. It was feared that beggars from Bulgaria were victims of a smuggling and exploitive mafia. A prohibition would not be directed against old-established beggars of Hamburg... A broad resistance formed, and the introduction of (this) prohibition was averted (for the time being), but in the following months, an ordinance based on the traffic law prohib-

ited begging by physically handicapped beggars, mostly from Bulgaria, in specified places... This action too was openly criticised. [But] the action against 'alien', 'foreign' beggars elicited only minor political resistance in Hamburg. In the months that followed, places were declared off limits to physically handicapped foreign beggars on several occasions... (Nagel, (2007: 11-13)

Nagel does not hesitate to report the different development of the 'resistance' to a 'racist discourse': 'as the majority of the press presented a picture of a 'foreign', 'mafia controlled' 'band of beggars' from Eastern Europe taking 'advantage of German compassion', finding differences in the treatment of our 'own', 'domestic' beggars as opposed to 'foreign' beggars, legitimate and self-evident' (Nagel, 2007, 12; also see Busch-Geertsema 2006).

At least we need to remark on the weakness of collective action and of a construction which does not identify and distinguish between different 'undesirable' figures hit by measures to control urban space. The different treatment of foreigners reminds us that securitization is the dominant concern which drives collective instances of control. And the example shows how the variety of reasons underlying undesirability in public spaces – securitization, the concern for decency and the preservation of determined life styles... – can converge and reinforce each other reciprocally: 'aggressive begging' and 'organized begging' are typical ways of linking them to bridge between the different types of concern.

Finally, the treatment of immigration makes the political frame of the problem clear. Exclusion from public spaces is one of the spatial forms of social exclusion. As the declarations that accompany repressive actions indicate, exclusion in the case of immigrants is not simply removal from public spaces but can even become an intention of expulsion from the community. Immigrants, stigmatised and considered extraneous to the nation and superfluous on the dual level of economics and politics (Wacquant, 2003), thus become one of those redundant populations (Bauman, 1998). Their exclusion from public space thus reveals two complementary faces of measures to control urban space: measures to regulate stigmatised/excluded populations and at the same time a sign that redundant populations may be abandoned by social policies. In this current situation, the homeless have all the characteristics needed to become candidates for this treatment. As has been said, the new paradigm subtracts the question of homelessness from integration policies: reduced to a principle of order, it is no longer a social welfare policy issue.

Conclusion

Laurenson and Collins (2007) note that, while 'the majority of academics writing about anti-homeless regulations adopt avowedly critical approaches' (2007: 653), in the case of New Zealand 'the policy environment may not be as uniformly hostile to homeless people as dominant accounts have suggested (2007: 650). Huey (2007: 211) in her detailed analysis of the policing of 'skid row' in three locations (Edinburgh, San Francisco and Vancouver) concurs when she argues 'that there has been no singular uniform move towards increased exclusivity as a consequence of a rise of U.S.-style neo-liberalism'. Similarly, DeVerteuil in a case study of Los Angeles, argues that alongside punitive responses to homelessness, what he terms 'a social welfare' approach is also evident, manifested in the growing number of shelter beds. In this paper, a similar argument is put forward. The reasons for this are related to the specificity of the European experience with regard to controls over public space, which – contrary to some interpretations – differs significantly from that which has characterised the USA, which in turn may be unduly pessimistic. In the European case, those classified as immigrants are more likely to be targeted for public space violations than those classified as homeless. While the homeless are not the main focus of measures to control urban space, and are infrequently the explicit target, it is the immigration characteristic which may lead to an underestimation of the impact of control on the life worlds of the homeless.

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