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# The Criminalization of Homelessness: A Canadian Perspective

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## Introduction

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In “Varieties of Punitiveness in Europe”, O’Sullivan sets out to review on-going debates on the use of criminal justice systems as a strategy to manage homelessness. That is, he explores the question of how do we understand exclusionary measures such as the enactment of laws targeting people who are homeless, as well as specific policing practices intended to restrict the use of public spaces, in terms of the neoliberal turn of the past quarter century. To this end, O’Sullivan challenges some of the assumptions of the neoliberal narrative, arguing that the evidence from various European countries is quite variable and the use of law enforcement as a response to homelessness must be contextualized in terms of local circumstances. O’Sullivan begins with a thoughtful review of the criminological literature that indicates that many nations in both Europe and North America have taken a ‘punitive turn’, as evidenced not only by higher rates of incarceration, but also by laws, legislation and practices that result in the use of law enforcement to ‘manage’ marginalized populations such as the homeless.

The point highlighted by O’Sullivan that context matters in making sense of this shift is important. O’Sullivan also correctly notes the necessity of accounting for the historical development of punitive vagrancy and anti-begging legislation, which extend back to the 19<sup>th</sup> century in many countries, and that the enhanced use of legal measures and law enforcement to deal with homelessness, cannot be understood simply in terms of contemporary ideological shifts.

Without jettisoning the impact of neoliberalism altogether, it is worth taking a deeper look at how such contemporary political shifts may interact with other factors, some with deep historical roots, others that are local and contextual, and finally serendipitous factors that can shape local policy development. Examining

the criminalization of homelessness in the Canadian context is perhaps instructive in making sense of how neoliberalism is enacted, experienced and shaped by local political, historical and social factors.

## Managing Homelessness

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The first point to be made is that in understanding the development of punitive approaches to homelessness, we must make sense of how neoliberalism acts not only upon the logic of law enforcement, but importantly, on how homelessness is managed and sustained. The two are inherently interconnected, as O'Sullivan points out in his analysis of crime control and welfare. There is no doubt that in the Canadian context it was in fact neoliberal shifts in federal and provincial approaches to welfare provision that preceded the 'punitive turn'. Significant socio-economic transformations led to homelessness becoming a 'problem' in Canada in the 1990s, which resulted from a range of policy decisions at the national, provincial and local levels that were certainly shaped by neoliberal ideologies. In 1993 Canada cancelled its National Housing Strategy, which in the early 1980s was producing around 18000 new units of social housing annually. The belief was that there was a market solution to the creation of affordable housing, a faith in market forces that in the end was never borne out. At the same time Conservative governments in many jurisdictions cut government benefits for low-income earners and people living in poverty, including welfare supplements. Finally, a restructuring of the Canadian economy led to lower incomes for the bottom forty per cent of the population. This was the perfect storm, and led to a noticeable and visible increase in homelessness in many communities across the country throughout the 1990s.

The response since that time has been largely to rely on emergency services and supports, rather than a strategy to prevent homelessness or aggressively move people into housing. As a result, many people became locked in homelessness, and the numbers of chronic and episodic homeless people began to increase. The key point here is that when people are kept in a state of homelessness for long periods of time, the problem becomes more visible. And when it is visible, there is often an outcry to 'do something about it', which may include more positive or supportive social welfare responses. However, in many – but not all – Canadian cities this 'something' was to use law enforcement as a solution, in addition to (not in opposition to) more supportive strategies.

It could be argued that the fertile ground for the shift in the latter direction builds on negative and long-standing prejudices about homeless persons. There is evidence that a considerable number of Canadians feel that people who are homeless 'choose' to be so, don't want to work, are petty criminals etc. (Norris, 2011). These negative

attitudes are enhanced when the public perception of homelessness is also shaped by longstanding prejudices against marginalized subpopulations, whether they are youth, radicalised minorities (in Canada, Aboriginal people), or others. Homelessness is not a neutral category, but one that is often conflated with other experiences of marginality. There is, however, no evidence that these negative attitudes regarding the homeless were particularly new, and as O’Sullivan rightly reminds us, the problems of the present have deep historical roots.

### **Homelessness and Moral Panics**

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The existence of prejudice against homeless persons in a context where the size and visibility of the homelessness problem is growing still doesn’t tell us why some communities, but not others take the punitive turn, as these conditions surely exist in many, if not most, communities across Canada. Here, we must make sense of local political circumstances and culture that produce a climate for such change. In several Canadian cities in the late 1990s, a moral panic emerged regarding the growing visibility of homeless youth who were begging and/or squeegeeing car windscreens in many cities. Comments by local politicians and newspapers fanned the flames, with such homeless youth being framed as ‘dangerous’ and ‘delinquent’, and as a threat to public safety and the local economy, particularly tourism (Parnaby, 2003; O’Grady *et al*, 2011). The result in cities such as Montreal and Toronto, and the province of British Columbia was to enact legislation outlawing begging and restricting the use of public spaces. Laws such as the Ontario Safe Streets Act (2000), while not mentioning homeless persons (or even youth) in the actual language of the legislation, were essentially designed to address these public concerns.

Now a clear irony – one pointed out by activists at the time – was that the use of legislation to criminalize homelessness (through anti-begging laws) was overkill, in that police already had in their arsenal a wide range of laws relating to minor offences and disorderly conduct that can – and are – deployed both to ‘control’ how public space is used, and to potentially remove or exclude marginalized sub-populations (including not only people who are homeless, but youth, visible minorities, and more generally the poor) from these places. That is, laws against drinking in public, loitering, and even seemingly unrelated acts such as ‘jay-walking’ can and are regularly deployed against marginalized population such as homeless people in many Canadian cities. So too is the practice of regular ‘stop and searches’, of asking people for identification, interrogating them, and searching through their possessions.

It can be argued, then, that legislation such as the Safe Streets Act in Ontario – and the debates surrounding the increasing visibility of homelessness – are in some ways designed for public consumption by politicians and political parties (typically Conservative) interested in projecting a ‘get tough on crime’ agenda. Clearly, the local political context is a factor in making sense of how and why legislative shifts leading to punitive responses to homelessness take place.

An additional factor to be considered in making sense of punitive approaches to homelessness is the culture of policing, which can differ from jurisdiction to jurisdiction. That is, the actual practice of policing, both in terms of broadly sanctioned strategies to address urban crime, but also in terms of local practices of policing must be made sense of. It should be noted, for instance, that in the 1990s the philosophy of “Broken Windows” policing, originating in New York City, also resonated with many police services in Canada, including the City of Toronto. Toronto is Canada’s largest city, with a large police service and a budget of almost one billion dollars annually. It is also one of Canada’s safest cities, according to regular national surveys of criminal victimization. Low crime rates combined with a large police presence can mean more charges for minor offences, as police strive to meet performance targets. So, in spite of several studies that show that the incidence of public begging declined dramatically in Toronto since the turn of the last century (City of Toronto, 2009; O’Grady *et al*, 2011), the number of tickets issued under the Safe Streets Act increased exponentially, from 782 in 2000, to over 15 000 annually ten years later (O’Grady *et al*, 2011). As O’Sullivan points out, there is often a considerable disconnect between actual incidences of criminal activity or minor offences, and enforcement.

Yet the experience in Toronto of actively policing the homeless cannot be easily generalized to other jurisdictions in Canada, where a different approach to homelessness has emerged, one that focuses on strategic plans to end homelessness through prevention, an investment in affordable housing, and the adoption of Housing First. In several communities that have made major progress on homelessness, including Calgary (pop. 1 million) and Lethbridge (pop. 90 000) police have actually been engaged in a supportive role in addressing homelessness, working collaboratively with local service providers, Assertive Community Treatment teams and outreach workers, to assist people experiencing homeless to access services.

## Conclusion

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So, the Canadian case supports O’Sullivan’s contention – that while neoliberalism can go some ways to explain both the rise in homelessness (through reductions in state interventions in housing, and cutbacks to benefits), and particular law and order responses that essentially ‘criminalize’ homelessness, other factors also seem to be at play. One of the challenges of structural analyses – including the use of master narratives such as ‘neoliberalism’ – is that they can often be wielded as an over-determining (near causal) explanation of social phenomena. The reminder that “context matters” is one that we should heed, as well as the need to understand the deep historical roots of punitive responses to homelessness and poverty. Different nations, and indeed within nations different jurisdictions, have ‘cultures’ of law enforcement and policing’ that may be distinct, as well as local histories and political configurations that may lead to legislative turns that may support or conversely counter broader neoliberal shifts in how the state constitutes itself regarding the poor. The problem in jurisdictions such as Toronto where a punitive response has been embraced by police services, then, is perhaps not one of ‘out of control’ begging, or disorderly behaviour. It is more so the failure of all levels of government to actively reduce the problem of homelessness in the city. Point in time counts show homelessness to be a seemingly intractable problem, and one that remains visible. And once again, when we keep people in a state of homelessness, the problem is made visible, and law and order follows, alongside emergency shelters and soup kitchens.

**› References**

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