

Penalising presence in public space: control through exclusion of the 'difficult' and 'undesirable'

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Abstract

Over the last two decades and across a number of jurisdictions, new measures enshrined in criminal law and administrative codes have empowered authorities to exclude unwelcome groups and individuals from public spaces. Focusing particular attention on recent reform in Britain, this paper traces the evolution of contemporary exclusionary practices, from their initial concern with proscribed behaviour to the penalisation of mere presence. The latter part of the paper offers a critical assessment of what has driven these innovations in control of the public realm. Here consideration is given to two possibilities. First, that such policy is the outcome of punitive and revanchist logics. Second, that their intentions are essentially benign, reflecting concerns about risk, liveability and failures of traditional order maintenance mechanisms. While acknowledging concerns about the over-eagerness of scholars to brand new policy as punitive, the paper concludes that any benign intentions are overshadowed by the regressive and marginalising consequences of preferred solutions.

Key words: anti-social behaviour; homeless; punitive; zoning; juveniles; liveability

Introduction: the penalisation of presence

"The late modern world celebrates diversity and *difference*, which it readily absorbs and sanitizes; what it cannot abide is difficult people and *dangerous* classes, which it seeks to build elaborate defences against" [emphasis in the original] (Young 1999, 59)

Across many western jurisdictions, reforms to the criminal law and administrative codes since the 1990s have increasingly made public space a site from which those whose presence is unwelcome or considered inappropriate find themselves barred. In particular, it is those who Tyler describes as 'abject' and Young (1999) as 'difficult' – the homeless, convicted sex, drug and public order offenders and marginalised youth – who find their rights within the public realm constrained by innovative mechanisms of 'preventive justice' (Ashworth and Zedner 2014) underpinned by criminal sanctions. These 'usual suspects' come into conflict with desirable norms governing contemporary urban space due to their behaviour, appearance, visibility or expropriation of the public realm for activities more usually associated with private space (Beckett and Herbert 2010; MacLeod 2002; Stevens 2009; Walby and Lippert 2012). Not only are these disorderly bodies considered to generate fear and unease amongst other users of these spaces (Tyler 2013; Wilson and Kelling 1982) but, as gentrification and urban regeneration have swept post-industrial towns and cities, so the eradication of signs and symbols of disorder, both physical and human, has become

viewed as central to the successful rehabilitation of urban economies and up-and-coming neighbourhoods (MacLeod and Johnstone 2012; Smith 1996; Slater 2006). The desire of corporate interests to produce unchallenging and well-managed environments for the middle class market – the ‘Starbucking’ (Zukin 2010) or ‘domestication by cappuccino’ (Atkinson 2003) of urban space – has been an additional driving force but, most notably in the UK, so have concerns about the liveability and sustainability of deprived residential neighbourhoods (Hancock and Mooney 2013; Johnstone and MacLeod 2007; Squires 2006), where the behaviour and expropriation of communal public space by some is considered to exclude fearful others (Donoghue 2010).

The principal concern of the paper is to interrogate the penalisation of presence: the deployment of legally-mandated ordinances and other techniques which make the mere presence of certain undesirable groups or individuals in defined spaces an offence, rendering them legitimate targets for interdiction. Developments in England and Wales since the 1990s are afforded particular attention. Here, concern about the problem of broadly defined ‘anti-social behaviour’ has led to the creation of a number of hotly debated ‘coercive prevention’ measures (Ashworth and Zedner, 2014) designed to suppress it. The practice of developing new mechanisms for excluding the ‘difficult’ from public space is, however, evident in a number of western democracies and the paper’s first objective is to explore this wider context. The second objective is to critically examine developments in Britain and, in particular, legislation passed by the UK Parliament in 2014 which has extensively reformed powers of control and exclusion. The likely implications of these reforms are considered. The final objective is to debate how we might best account for the penalisation of presence: should we view it as part of a more general turn towards punitiveness in the management of social problems under neo-liberalism – a perspective which is both seductive and contested – or a pragmatic and essentially benign, if flawed, attempt to resolve demands for safer and more liveable urban spaces?

The genesis of contemporary exclusion: Annihilating space for the usual suspects

The importance of exclusion as a technique for managing urban space was brought into focus in the 1990s by Don Mitchell's (1996; 1997) research on the anti-homeless legislation which had been implemented in U.S. cities during the preceding decade. The homeless and other 'out of place' social groups, Mitchell posits, are considered problematic because they expropriate urban public space for everyday activities that the majority of citizens are able to carry out in private space. In so doing, they pose a challenge to the aesthetic of urban public space that city managers wish to create in order to make downtown areas appealing for investors and consumers – an argument reinforced by Walby and Lippert's (2012) research on anti-homeless interventions in the vicinity of public buildings and tourist sites in Ottawa, Canada. Rather than penalise vagrancy by resurrecting old laws, Mitchell found that municipal authorities instead targeted the activities that those denied access to private space undertake in public, outlawing acts including sleeping and sitting on streets, urinating in public, street drinking and begging within certain designated zones (Mitchell 1997; Doherty et al 2008). Municipal authorities also sought to make city centre public spaces less liveable for the homeless by closing down or charging a fee to access public toilets and by removing benches on which they might sleep. Another tactic has been to privatise or otherwise restrict access to certain spaces usually open to the public. Doherty et al (2008) discuss how transport hubs in a number of European cities, which had long been places where the homeless would seek shelter, were either being shut overnight, had become accessible only to those with a valid ticket for travel or were being transferred to the management of private corporations who could then legitimately deploy security guards to restrict access to their premises.

Research by the National Law Centre on Homelessness and Poverty (NLCHP) (2014) documents how U.S. cities have further tightened and extended anti-homeless laws. In particular, it identified a surge in the number of cities imposing bans on camping in public. These bans were city-wide in 34% of cities (p18). Such laws are especially significant as they are often written so as to encompass all forms of temporary shelter a homeless person might utilise, from a tent to a car, and in some cases also prohibit sleeping outdoors without shelter. As the NLCHP (2014: 18) observes:

By leaving no single place where homeless people can lawfully camp, these bans transform entire communities into “no homeless zones” where homeless people are left with the choice of facing constant threat of arrest or leaving town.

In Los Angeles, a city with a homeless population estimated at over 28,000 (LAHSA, 2016), controversial policy proposals by the city administration (see Blasi and Mangano 2015) sought to empowered the police and sanitation department to confiscate and destroy possessions – and by extension their shanty-like encampments – which the homeless stored in public space.

Mitchell (1997) argues that restrictions over the usage of public space imposed by this type of carefully crafted legislation equates to the `annihilation of space by law` for the homeless, since activities which they have little choice but to undertake in public are proscribed, thereby making it impossible for them to be in these spaces. Mitchell went so far as to suggest that in annihilating space for the homeless, homelessness was being annihilated as a viable practice in some downtown areas. Significantly, the U.S. Department of Justice (DoJ) echoed this argument in 2015 when, using its powers to intervene in civil rights matters, it submitted a Statement of Interest to a district court hearing on an anti-camping ordinance. The DoJ (2015) argued that a shortage of shelter accommodation for the homeless in the city of Boise meant sleeping outdoors was the only option available to them – a function of their status as people with no abode rather than a conduct issue – making it impossible for many homeless to avoid breaching the criminal law. As the Statement of Interest makes clear: “If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless” (DoJ 2015: 12).

The exclusionary practices examined so far have been those targeted at particular types of observable behaviour. Intervention in these cases is a response to witnessed activity in a given location and public spaces are not (officially at least) off limits to anyone as long as they refrain from proscribed behaviour. However, a newer set of measures has seen the scope of exclusion widened, both in terms of who is targeted and the geographical zones from which they can be excluded.

Zoning out the problematic

A typical characterisation of public space is that which is open to all citizens: “so long as their behaviour does not violate specified conduct regulations (principally set forth in criminal law), they are at liberty to proceed as they please” (von Hirsch and Shearing 2000, 79). In a number of jurisdictions, however, traditional rules governing the use of public space have been inverted: for certain segments of the population designated urban zones have become off limits altogether, meaning their mere presence in these spaces, regardless of behaviour, is unlawful and can trigger removal and criminal penalty (see Beckett and Herbert 2008). Typically, although not in all cases, a civil or administrative order or admonishment, which bans the recipient from specific geographic zones for a set period, is triggered by prior conduct.

Drawing on their research on Seattle, one amongst a number of US cities to have adopted zoning provisions, Beckett and Herbert (2008; 2009; 2010; Herbert and Beckett 2009), explore how new exclusionary practices have led to ‘banishment’ for those on the margins of society. Large areas of Seattle have been zoned as Stay Out of Areas of Prostitution (SOAPs) and Stay Out of Drugs Areas (SODAs), the latter designation covering the whole downtown area. Those convicted of, or sometimes just arrested for, a wide set of offence are required to avoid these zones. Failure to abide by these limits on geographical presence is a criminal offence that can result in the enhancing of criminal penalties which recipients may already be serving. Police officers are also permitted to issue Trespass Admonishments to anyone “without legitimate purpose” to be on publicly owned facilities such as housing complexes, public transport termini and college campuses. Furthermore, the right to tackle trespass on private property can be transferred to the police, placing many other privately owned but publicly accessible spaces, such as parking lots, under the aegis of these new controls. An admonishment usually bans the recipient from a defined space or cluster of spaces, for example all parking lots in the downtown area, for a year with breach treated as criminal trespass (Beckett and Herbert 2010: 7). Another civil order which can lead to criminal conviction if breached is the Parks Exclusion Order. It can be issued to anyone in violation of park rules governing, for example, drinking alcohol, being in a park outside

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opening hours, and public urination, and “[t]he Seattle ordinance authorizes police and park officials to exclude an alleged rule violator without providing any evidence of wrong-doing” (Beckett and Herbert 2010: 8). Exclusion can be for a year and from all of the city’s parks.

The banishment of undesirables from certain urban zones is not restricted to the USA.

Belina (2007) documents the introduction of area bans [*Aufenthaltsverbote*] into the police law of Germany’s regions, giving the authorities considerable powers to ban, from a designated zone, anyone reasonably assumed to be likely to commit a crime. His research in Bremen explores the use of this power to curb the open-air drug scene in the city’s principal leisure district, highlighting the way in which the discourse surrounding such bans “links the mere presence of undesirables to ‘crime’, making their eviction a task for the police” (Belina 2007, 324). In contrast, it is disorder associated with alcohol that has led to the development of ‘zonal controls’ in Australia. Like Beckett and Herbert, Palmer and Warren (2014) draw attention to the use of administrative or ‘police’ laws to exclude problem populations without the need to go through lengthy prosecution processes associated with traditional criminal sanctions. In Victoria, they note the use of such ordinances “to restrict the mere presence of people in designated areas where alcohol can be purchased and consumed” (2014: 432). Here zones are demarcated once agreed upon by senior police and liquor licensing officials on the grounds that they are areas prone to alcohol-related disorder and violence. Exclusion from designated zones takes two forms: a short term ban (maximum 72 hours) imposed by the police on someone whose track record of minor offences marks them as a high risk of recidivism, or a court-imposed ban of up to 12 months on someone who has committed a specified offence within the defined zone. Breach attracts criminal penalties.

As the discussion so far has shown, measures enabling the penalisation of presence in public space have been developed in a number of jurisdictions under a variety of guises. Each contribution to this uneven patchwork has typically originated locally, driven by a city or regional government eager to better-manage potential sources of disorder in its territory. Britain is unusual, therefore, in that civil ordinances, zoning and other dispersal mechanisms have been written into law by central governmentⁱ, meaning that their use is geographically

widespread. In large part the British conjuncture is a consequence of the prominence afforded the perceived problem of anti-social behaviour (ASB) by Tony Blair and his New Labour government in the late 1990s and early 2000s (see Johnstone 2016 for a summary). During this period a climate developed which was extremely hostile to ASB – rowdy, uncivilised conduct and low level criminality, such as graffiti and vandalism – and those thought to perpetrate it (Squires 2006), spurring the introduction of uncompromising control measures. The official definition of ASB as “Acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not at the same household as himself” (Crime and Disorder Act 1998, s.1.1a) provided scope for intervention in a wide spectrum of behaviour. The mechanisms put in place to combat ASB have, moreover, significantly empowered the police and local government to exclude from public space those engaged in behaviour deemed unwelcome. It is to the British experience we now turn.

Controlling the anti-social in England and Wales: continuity and change

The Anti-Social Behaviour, Crime and Policing Act 2014 swept away many of the ordinances directed at ASB in England and Wales which had accumulated since 1998 and replaced them with new powers and mechanisms of control (Johnstone 2016)ⁱⁱ. Some of these were adaptations of previous provision, others innovations that provided government bodies and local communities with powers they had not previously enjoyed. Under the New Labour governments, the first generation of ASB controls targeted both problematic behaviour and spaces considered to be prone to anti-social activity. While the ‘usual suspects’ targeted in other jurisdictions were frequently caught up in the web of constraints directed at ASB (NAPO 2005), a crucial difference was that young people quickly became a privileged target (Bannister and Kearns 2012; Squires and Stephen 2005; Waiton 2005). This was especially so in those acutely disadvantaged neighbourhoods where young people disengaged from education and drifted into ‘street corner society’ (MacDonald et al 2010). Visibility coupled with political rhetoric reconstructing nuisance behaviour as anti-social and, therefore, in need of interdiction ensured that young people found their activities within the public realm under close scrutiny (Squires 2006; Pickering et al 2012; Tyler 2013)ⁱⁱⁱ.

Two ASB control measures introduced by the Blair governments, which live on in revised form post 2014, had notable implications for access to and use of public space. Recipients of the flagship Anti-Social Behaviour Order (Asbo), imposed by the courts, were required to desist from specified behaviour or face criminal sanction. In this regard, it was functionally similar to the US anti-homeless legislation documented by Mitchell (1997) in that participation in banned behaviour or activities needed to be witnessed before enforcement action was triggered. However, an Asbo could also ban its recipient from entering designated spaces, ranging from a specific property to a whole neighbourhood, making mere presence in the proscribed location(s) a breach of the Order. There is a distinct parallel here with the way in which the ordinances discussed by Beckett and Herbert (2009) and Palmer and Warren (2014) operate. The designation of zones from which problem populations could be excluded was, however, a feature of another first generation ASB control mechanism. The Dispersal Order permitted defined areas, where senior police and local government officers concurred that ASB was a recurrent problem, to be designated as Dispersal Zones for a six month period. Such zones might encompass a few streets or extend across whole neighbourhoods. The police could require groups of two or more people to leave these zones and not return within 24 hours if their *presence* or behaviour had resulted in or was “likely to result in any member of the public being intimidated, harassed, alarmed or distress” (Anti-Social Behaviour Act 2003: s.30). Failure to comply was a criminal offence. Those aged under 16 found in these zones at night could be returned home.

The most recent developments in ASB control in England and Wales have placed a renewed focus on problematic presence. The 2010-15 Conservative-Liberal Democrat coalition government, although relatively silent on the problems of crime and disorder for much of its period in office, made reforming the ASB control mechanisms bequeathed it by previous Labour administrations one of its goals. Rationalising and tidying up the patchwork of statutory measures created by earlier legislation was one of its objectives but so was making the powers available more responsive to need and better able to tackle behavioural challenges to liveability and quality of life (Home Office 2012). Of the many provisions

included in the 2014 Act, there are three that appear most consequential for usage of public space: the Injunction, the dispersal power, and the Public Spaces Protection Order.

The Injunction is essentially a revised form of the Asbo and, like its predecessor, requires a recipient to abide by specified conditions, which can include not entering certain spaces. As a wholly civil remedy, applications are assessed against the civil burden of proof ('on the balance of probability') and breach is no longer a criminal offence but contempt of court, attracting less severe penalties than failure to abide by the conditions of an Asbo. The maximum duration of an Injunction is 12 months for under 18s and must be specified for adults but there is no minimum or maximum prescribed by the legislation.

The new dispersal power draws heavily on the old Dispersal Order, maintaining the same criminal penalty and similar triggers for dispersal, but considerably extends its reach. Its deployment is now entirely at the discretion of the police and the officer involved in designation in any given locale is of a more junior rank than before. Crucially, the power to disperse has become more geographically mobile, no longer constrained within fixed and publicised Dispersal Zones. Pre-designation of the areas in which use of dispersal powers is permitted is still required but this is now temporary (for a maximum of 48 hours) and a police Inspector can make the designation as and when one is considered appropriate. The power to disperse within a designated area rests with all police and police community support officers. It is no longer expressly a measure to tackle group ASB and can be deployed against anyone in the designated area on the grounds of their witnessed or potential for ASB. Anyone directed to disperse can now be required to stay out of the temporarily-designated area for up to 48 hours. The dispersing officer can also require the surrender of any possessions considered to have been, or which may be, used in the commission of ASB. Failure to comply is a criminal offence.

The zonal component of the Dispersal Order – and the participation of municipal authorities in identification and designation of these zones – lives on in the new Public Spaces Protection Order (PSPO), although this is where any similarity ends. Parallels have, instead, been drawn between the PSPO and the Asbo (Garrett, 2015) because the new order allows

locally-specified non-criminal activities to be banned from designated spaces with failure to comply attracting punishment, in this case a fixed penalty fine. Non-payment of the fine becomes a criminal offence. Rather than being imposed on an individual, municipal authorities subject geographic areas to PSPOs. Their locally-defined prohibitions apply to all users of the designated space or a sub-population, such as teenagers. Crucially, the threshold for imposing a PSPO – activity with ‘a detrimental effect on the quality of life of those in the locality’ (ASBCPA 2014: s.59.2) – is much lower than for new byelaws (Manifesto Club 2014). Moreover, it is not necessary for the activities attracting the PSPO to be shown to be impacting negatively on a locality since an Order can be future orientated, imposed on activities which are *likely* to be detrimental and *likely* to be persistent or continuing. A PSPO lasts for up to three years but can be renewed before it expires for a further three years. There are no limits on the repetition of the renewal process.

The switch from Asbo to Injunction appears likely to have relatively little impact on the public space context, although it is unclear whether authorities will be more or less eager to seek Injunctions than they were Asbos or if decisions may be influenced by the availability of other new powers. By contrast, the enhancing of dispersal powers would seem much more significant. In removing the focus on group ASB and handing designation of areas where the power of dispersal can be exercised to a middle ranking police officer, the legislation has sharply increased the potential for the removal of the unwanted from urban space. Indeed, the Manifesto Club (2014) has raised concern about the dispersal power being used to criminalise “being in public space”. In vesting the dispersal power solely in the police, the 2014 legislation has also removed a formal opportunity for local agencies to discuss the problem of ASB – and what the most appropriate long-term remedy might be – in a given locality. The PSPO has attracted even greater criticism, especially since local authorities have started to set out where and against what they will be deployed. Since its inception, civil liberty pressure groups (Manifesto Club 2014; Liberty 2015) have argued that the PSPO is too vaguely defined in the 2014 Act, giving local government too much power to outlaw activities and, by extension, those groups that engage in them, from large areas of towns and cities. They also point out that the grounds for appeal against the imposition of an Order are extremely narrow and the fixed penalty notices for a breach can be issued by

anyone authorised by the local authority making the Order, such as private security contractors. Liberty (2015) has already expressed concern about the PSPOs in place or under development, some of which involve blanket bans across large geographic areas on activities typically associated with the homeless or young people. Begging, street drinking, sitting on the ground, camping, storing possessions, the congregation of youths in groups (of three or more) and skateboarding have all been identified by various local authorities as threats to quality of life which need banned (Liberty 2015; Manifesto Club 2014).

Reading exclusion: punishing the precarious?

The mobilization of criminal law to address “disorder” is... part of a larger rendering of certain individuals as outside the bounds of respectability, as unwanted miscreants in need of expulsion (Herbert and Beckett 2009, 4)

There is a certain logic in reading the penalisation of presence as yet another punitive policy response: one designed to sooth the anxieties of an intolerant public and reassure investors by corralling those who may make urban life challenging. The penalisation of poverty (Wacquant 2009), the criminalisation of social policy (Rodger 2008) and the criminalisation of immigration (Aliverti 2014) have each served to extend the ability of criminal justice systems to enmesh and cloister away ‘deviant bodies’ (Alexander 2010; Hallsworth and Lea 2011). The array of measures discussed in this article is seemingly of a piece, attesting to a willingness to resolve perceived social problems in ways that often tend to deepen the marginalisation of those already socially excluded, be it through criminalisation or restrictions on their movement through urban space. Those caught up in the new web of controls are punished by exclusion for what they have done in the past or for what they might do in the future. Crucially, some commentators argue, “a criminology of the alien other” (Garland 1996), which separates, demonises and abjectifies perceived miscreant groups (Young 1999; Wacquant 2009; Tyler 2013) legitimates the penalisation of their presence and closes down narratives that might lead to alternative, more inclusive interventions (see, for examples, Barker 2016; Koch and Latham 2013). Rather than tolerance of the sometimes difficult, through their elimination from urban space policy seeks to minimise the “often uncomfortable and troublesome heterogeneous interactions of urban life” (Mitchell 1997, 327).

In *The Precariat*, Guy Standing (2011, 14) argues that restrictions on access to rights typically associated with citizenship (civil, cultural, economic and political) has created a class of people which he terms 'denizens', a sub or secondary class within a society. Given they are coerced to stay away from public space having often committed no criminal act in these spaces, many of the targets of exclusionary mechanisms might reasonably consider themselves to have slid into denizenry. This impression is reinforced by evidence of the consequences of exclusion. Beckett and Herbert (2010) discovered that the homeless found themselves banned from spaces, especially parks, where they typically spent a lot of their time, stored possessions or received food and other assistance from charities. As a consequence they were forced to move to more peripheral and less familiar areas or cities where they felt unsafe sleeping outside. But their sense of being punished extended beyond material privations: "Being excluded was often a powerful emotional experience, one that confirmed their sense that they were no longer considered citizens, even fully human, by other residents of Seattle" (Beckett and Herbert 2010, 34). Gray and Manning's (2014) research with young people living in perceived ASB 'hotspots' in an English city uncovered similar sentiments. Here, teenagers were especially frustrated that simply being young people in public space should precipitate constant surveillance or interference from the authorities. They recognised that some teenage behaviour was problematic but resented the construction of their presence as a form of transgression.

The concept of 'revanchism', Neil Smith's (1996) characterisation of the retaking of urban space from the marginalised, adds weight to the argument that the expulsion of the abject is tainted by punitiveness. Smith argued that gentrification, specifically of Manhattan's Lower East Side during the 1980s and 90s, was part of a broader revengeful retaking of the city by a middle class made insecure by economic shocks, uncertainty about the future, social change and crime (see also Standing 2011; Atkinson 2015). The brunt of the revanchist reclamation project was felt by marginalised minorities, including the homeless, considered to have expropriated urban space from its rightful owners by their presence and behaviour. If not driven out by wave after wave of gentrification, which dispossessed them of their homes (see also Slater 2006), marginalised groups were finding up-and-coming

neighbourhoods increasingly unliveable due to ever more punitive criminal sanctions, targeting previously-tolerated activities, and the much stricter policing of public space.

Much as the expulsion of people from their own neighbourhoods makes the perspective seductive, it is important to note that revanchism is a highly contested concept, even in the U.S. context. Zukin (2010), for one, observes that the ‘reclaiming’ of public space and associated improvements in public safety that took hold in New York during the 1990s was popular with many incumbent residents. Even if we accept that a punitive revanchism did – and may still – underpin aspects of U.S. policy^{iv}, we must be careful about exporting Smith’s critique of Giuliani-era New York to a European policy context (Uitermark and Duyvendak 2008; May and Cloke 2014). Indeed, DeVerteuil (2012) warns us that narrow interpretations of ‘grammars of urban injustice’ can lead to the categorisation of policy responses as mean-spirited and intentionally punitive when other more benign explanations might be applicable. Echoing some of the reservations articulated by Matthews (2005) in his dissection of the alleged ‘punitive turn’ in criminal justice, DeVerteuil is critical of scholars’ over-eagerness to see punitiveness at the heart of policy solutions. This poses an important question: if not punitive and intolerant, how else might we interpret exclusion from public space? Three alternative explanations can be identified: risk management, enhancing liveability and quality of life, and empowering the authorities to solve problems. These are considered in the next section.

Reading exclusion: benign intentions?

Exclusion seems a simpler and more effective strategy. It forecloses harmful or disruptive behaviour: the person is just kept out. There will be no need to induce the person to behave properly while present, since he no longer can be there (von Hirsch and Shearing 2000, 78)

While they may appear penal and uncompromising, the innovations in control discussed in this article have tended to be presented by their proponents as preventive, risk minimising and problem-solving: designed to avert or interdict disorderly or pre-criminal behaviour, and underpinned by a “precautionary logic” (Crawford 2009a). The restrictions placed on recipients of civil and administrative orders are invariably future orientated, geared to discouraging the recurrence of previously witnessed behaviour, eliminating the potential for collective disorder from a space before it occurs, or removing, through threat of criminal

penalty, those considered at risk of recidivism from spaces where the opportunity to reoffend is viewed as high. Ashworth and Zedner (2014) use the helpful term 'coercive prevention' to characterise the statutory ASB remedies introduced in the UK after 1998: coercive because the recipient had no choice but to abide by limits placed on their behaviour or use of public space if they were to avoid criminal sanction, yet preventive because they were geared to deterring recurrence of ASB. Designers of exclusion-based measures elsewhere, even those equated with banishment (Beckett and Herbert 2009; 2010), can point to the fact that recipients of orders or admonishments restricting access to public spaces only come into conflict with the criminal law if they breach the conditions imposed on them: coercive prevention for certain but not unavoidable penalisation.

In many respects the penalisation of presence could be read as a modern manifestation of the control over public space whose demise Wilson and Kelling (1982) famously lamented over 30 years ago. In their influential 'broken windows' article, they argued that crime and disorder were developmentally linked and a failure to nip disorderly conduct 'in the bud' – or, in other words, to identify and effectively manage low level risk – could lead to the emboldening of proto offenders and an upward spiral in the severity of their criminal conduct. Although Wilson and Kelling's policing-focused solutions to burgeoning disorder were never pursued in the UK, the concept of 'broken windows' – and the perception that action was needed to fix them – was, as Blair (2010) confirms, highly influential over New Labour ASB policy (see, for example, Home Office 2003). Indeed, the language of early intervention, positioning exclusion as a strategy for closing down the possibility that more serious criminality may occur in the future, is a feature of nearly all the control measures discussed so far.

A second justification for the penalisation of presence is that those targeted undermine quality of life and threaten the liveability of communities (Johnstone and MacLeod 2007; Stevens 2009; Beckett and Herbert 2010; Hancock and Mooney 2013). Innes (2014) maintains that crime and disorder can be more important for what it signifies to residents about the safety and security of their neighbourhood than for its direct impact. These 'signal' crimes and disorders, even when seemingly minor, can alter perception, creating

fear and unease. Indeed, Wilson and Kelling (1982) argued that, to most people, incivilities and disorderly behaviour are as fear inducing as criminal behaviour, warning that unchecked disorder is a key ingredient in neighbourhood decline. In Britain, curbs on ASB allowed the Labour government to demonstrate that it was reversing the 'defining down' of low level deviance witnessed under previous governments (Garland 1996) and responding directly to the concerns of communities living with persistent disorderly conduct (Blair 2010; Donoghue 2010). In many respects, the 2014 creation of the PSPO, with its explicit focus on protecting quality of life, renewed and extended the British government's commitment to this objective. Ordinances in the USA and elsewhere (Beckett and Herbert 2009; Walby and Lippert 2012; Zukin 2010), which target people and conduct considered problematic and out of place in particular locales, arguably serve a similar function.

One way of enhancing perceptions of neighbourhood safety and liveability is to focus on removing those who symbolise disorder. As Stevens (2009: 374) points out, "calls for 'a more liveable environment' very often mean [...] 'a more visually ordered environment'". Those groups who, he argues, stand in the way of this goal due to their association with nuisance, hazard, conflict or decline, are out of place and ripe for exclusion. While long term banishment is evidently one possible response, the use of expulsion can have more modest goals. Walby and Lippert (2012) argue that the dispersal of problem populations, which offers a short-term remedy to an immediate concern but does not prevent the dispersed from returning to that locale in the near future, should not be conflated with other more far-reaching measures. Indeed, they reject the notion that all exclusionary practices are expressly or equally punitive, arguing that dispersal "has a specific logic that differs from the logic of banishment and more punitive spatial regulation" (p1016-17). Their nuanced reading is echoed by Barker (2016) who identifies four specific 'mentalities' of public space regulations, each characterised by techniques and objectives which result in highly varied levels of state control over the public realm.

A final argument for benign intentions is that, having identified a need to more effectively manage the risky and protect quality of life, it was necessary to empower the police and municipal authorities to act in ways which had not previously been lawful. Indeed, Tony

Blair (2010) argues that New Labour moved to develop new mechanisms to combat ASB in Britain because the authorities were unable to curb it effectively using existing police powers and criminal law. Not only did his government create new ordinances, it also actively encouraged their deployment. Blair himself praised cities like Manchester, which had issued a large number of Asbos year on year, and pressed municipal authorities which had been reticent about taking an enforcement-based approach to ASB to follow their example (Blair 2004)^v. Having decided ASB was a problem, New Labour was keen to demonstrate that action was being taken to fix it. The 'giving the authorities the powers they need' argument was also central to reform of British ASB law in 2014. This was, in large part, positioned as a tidying up of old legislation to make it more effective and to fill in some important gaps in provision (Home Office 2012).

The creation of administrative codes that enhance the police's order maintenance role has been particularly evident in the U.S. Rather than return to informal ways of enforcing community rules, as Wilson and Kelling (1982) had advocated, the development of coercive preventive measures has empowered the police to impose as well as enforce exclusions. Herbert and Beckett (2009) observe that the patchwork of ordinances implemented in Seattle mixed deterrence with greatly enhanced – and gratefully accepted (see Beckett and Herbert 2008) – police powers and discretion to manage, often by arrest, problem populations whose use of public space would not previously have been a breach of the criminal law. Reasonable suspicion or probable cause, which would usually guide U.S. police action, became irrelevant when dealing with those subject to spatial bans who strayed into a zone from which they had been excluded.

In England and Wales, it was initially the Dispersal Order which gave a boost to police power. Crawford (2009b) established that young people would often be encouraged to leave Dispersal Zones voluntarily in the full knowledge that failure to do so would trigger formal dispersal proceedings. This informal moving on of groups of youths made it appear that post-2003 dispersal powers were being used relatively little when in reality the designation of a zone empowered the police beyond the letter of the law. Although post-2014 dispersal powers in England and Wales allow the police more discretion than the old

Dispersal Order, the 48 hour exclusion of those considered anti-social from a locality pales in comparison to the power of Seattle police officers to exclude a named individual from parks across the city for a whole year. In Britain, this level of power has, instead, been vested in local government through the creation of the PSPO and draws these authorities further than ever before into the policing of perceived public nuisance.

As convincing as the three explanations offered here may be, a problem remains: at the heart of exclusion from public space is an acceptance that barring those deemed problematic based on an assessment of previous or potential future misconduct is the most appropriate action. The possibility that the 'misuse' of public space could be ameliorated through alternative means less reliant on enforcement is not seriously countenanced^{vi}. Furthermore, local and national governments, which might previously have resisted calls for punitive action or taken steps to dispel public fears around sources of moral panic, have adopted the inverse stance (Waiton 2005). In the cases of ASB in England and Wales, the Blair government actively positioned anti-social activity as a primary social problem and urgent state suppression as the tonic (Cummings 2005; Waiton 2005; Squires 2006). As Crawford (2009a, 3) argues, "in the ASB policy domain, the explicit intention of government has been the expansion of regulation: 'more and more is better', alongside the communication of government as sovereign risk manager". However, in giving life to the concept of ASB, indicating to citizens that they were right to be fearful about it, criminalising aspects of it and positioning state enforcement as the remedy to it, Bannister and Kearns (2012) argue that recent governments may well be responsible for ingraining concern about ASB and those categorised as anti-social in public consciousness (see also Tonry 2004; Waiton 2005). Atkinson (2015) does not see this as an accident, arguing that policies focusing public ire on the "social detritus of neoliberal systems" (p867) perform a 'cathartic' function as a pressure release for middle class anxiety and insecurity.

Conclusion

Disorderly and anti-social conduct has come sharply into focus in many jurisdictions over the last two decades, with the UK and USA leading the way in deploying new mechanisms

backed by criminal sanction to curb who and what is permitted in public space. Innovations have ranged from outlawing certain types of behaviour or activity, essentially making these spaces off limits to certain 'problem' groups, to banishing individuals from spaces altogether on the grounds that their presence poses an unnecessary risk to security or liveability. As Beckett and Herbert (2010:34) contend, "banishment works primarily to expand the criminal justice system and to diminish both the life circumstances and the rights-bearing capacity of those who are targeted". Central to such policy is the elimination from public view of the visual manifestations of deeper social problems (Rutherford 1997). Success is defined in narrow terms: those considered problematic stay away from spaces where they might cause trouble or impinge on the quality of life of others through their presence. Delivering more fundamental, long-lasting solutions (Barker 2016; Koch and Latham 2013) has been marginal to a project which, to date, has paid little attention to the limitations of coercive prevention let alone its negative consequences.

Solving such problems through the penalisation of presence would appear an example of Young's (1999) 'cosmetic fallacy': the construction of crime and disorder as a blemish on society which can be remedied by the application of the appropriate crime prevention ointment, rather than a deeper problem of society which has structural causes and requires more complex and fundamental change. Once the 'misuse' of public space is perceived as the consequence of inadequate preventive 'ointments' – a control deficit perspective – so eliminating the blemish by extending and filling gaps between existing administrative and criminal law powers appears an appropriate solution, even when this can mean eroding due process, making it almost impossible to challenge exclusion (Herbert and Beckett 2009), or acting to "lower the threshold of intervention, formalize previous informal responses, intensify forms of intervention and hasten punishment" (Crawford 2009a, 3). From this perspective, enforcing civil, pro-social behaviour in an uncompromising way on users of public space becomes a legitimate and necessary job for the state to undertake.

What the future holds for those who are not welcome in public space remains unclear. In England and Wales, legislative reform has repealed the Asbo, for so long viewed by critics as a blunt instrument that enlarged the criminal justice dragnet in a way which unduly

ensnared young people (Squires and Stephen 2005), but at the same time it has created the PSPO with its sweeping new powers to ban perceived problem behaviours and activities from large geographic zones. Although too few PSPOs have yet moved from draft to implementation, it appears that the 'usual suspects' and young people will once again feel the brunt of this new mechanism of control and exclusion. In the U.S., the relentless drift towards ever tougher sanctions appears to be stalling (Clear and Frost, 2013) as debate has opened up about the purpose and value of criminal justice solutions to social policy problems. The DoJ (2015, 15) summed up some of the contradictions arising from punishing the poor when it observed, "Criminalizing public sleeping in cities with insufficient housing and support for homeless individuals does not improve public safety outcomes or reduce the factors that contribute to homelessness"^{vii}. Nonetheless, Clear and Frost (2013) point out that the 'punishment imperative' has become normalised in the U.S. meaning its rollback will be, "less like a lightbulb being turned off and more like the slow cooling of a white-hot oven" (p4).

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ⁱ Although passed by the UK parliament, recent legislation on ASB only applies to England and Wales, policing and justice matters having been devolved to the Scottish Parliament and Northern Ireland Assembly.

ⁱⁱ See Burney (2005), Millie (2009a; 2009b) and Squires (2008) for discussion of pre-2014 ASB policy.

ⁱⁱⁱ Ministry of Justice (2014) data shows, for example, that of all ASBO recipients between 2000 and 2013, 36% were youths aged under 18.

^{iv} See Clear and Frost (2013) on the direction of travel in the U.S. penal policy

^v Liverpool, for example, had a very different attitude to deploying the Asbo (Millie 2009a)

^{vi} See Koch and Latham (2013) on alternative strategies for resolving conflict over public space and Barker (2016) on 'mediated conviviality'

^{vii} It is somewhat ironic that in the same year that the DoJ acknowledged the flaw in anti camping bans, municipal authorities in England and Wales started to write them into PSPOs.