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“The renaissance of administrative orders and the changing face of urban social control”

Introduction

by Rossella Selmini and Adam Crawford

The use of administrative municipal orders and other kind of civil, hybrid or semi-criminal regulations to address a wide range of urban issues and social problems, from minor crime to behaviour of young people, is becoming common in many European and North American cities (Beckett and Herbert 2010). These new legal tools (sometimes adaptations on older modes of governing behaviour) tend to focus on the regulation of urban and municipal problems, notably associated with ‘public spaces’ and behaviours perceived to be problematic to local social order therein (Crawford 2009a). Frequently, administrative measures are preferred, in the first instance, precisely because such problems are believed to affront subjective insecurities that interpret signals of (dis)order in ways that are problematic for social relations and collective wellbeing due to their persistent or cumulative effects (Innes 2004). Moreover, these novel legal tools frequently seek to evade or dilute the traditional protections and due process rights associated with the criminal justice process (Ericson 2007).

These hybrid legal instruments – administrative or civil at a first step, and then potentially escalating to criminal proceedings upon breach – have a different legal nature in the Anglo-American context and in continental Europe. However, they share several common traits and seem to be part of a broader tendency to increase the regulation of social problems and different forms of disorder at the urban level increasing control and reinforcing the possibility of criminal sanctions. Consequently, the various administrative tools fashioned and deployed to address analogous terms of ‘incivilities’, ‘anti-social behaviour’ and ‘urban disorder’ have come to constitute and delineate a distinctive, if capaciously ill-defined, field of public policy and practice. Not only does this constellation of hybrid orders (con)fuses and transcends traditional differences between crime and disorder, but it also refigures and blurs relations between civil and criminal interventions as well as formal and informal regulatory responses. Moreover, in practice, the new tools of intervention operate in policy fields in which diverse organisational interests, working cultures, priorities and multi-disciplinary approaches coalesce, often in awkward combinations. Frequently, they draw their specific form from local, municipal rather than national administrative legal arrangements. What is more, some of the new tools constructed have themselves been the subject of considerable flows of policy transfer, emulation and diffusion (Jones and Newburn 2007; Crawford 2009b) often between

cities; in the process of which they have been adapted, transformed and given new expression. As such, we might contend (unsurprisingly) that similar social problems are increasingly being dealt with in different jurisdictions and in relation to different subject-matters in broadly similar or related ways, but frequently with significant elements of local specificity rooted in distinctive legal frameworks, local cultures of control and the outcomes of variable municipal socio-political tensions and alliances.

Thus far, little consideration has been given to the inter-connections between different types of administrative orders and the manner in which they collectively present challenges to established theorisation, research and practice. Moreover, current research on these new forms of urban control is limited to some national case studies, whilst cross - national analyses are strikingly absent. This special issue aims to begin to fill this gap by presenting some national case studies and drawing out some comparative themes and implications that might contribute to a better understanding of contemporary new regimes of controls over public space in Western cities.

The articles raise some important questions from a comparative point of view: why do governments in countries that, despite being all part of the 'Western world' are nonetheless different in their traditions, legal systems and above in all their criminal justice systems make such a wide use of these new, or relatively new, forms of urban control? Why does the attempt to regulate urban life need necessarily to rely upon practices and/or vocabularies of prohibition and punishment, also in countries characterized by a 'moderate' punitivity at the level of the criminal justice system (Gallo 2014) like Italy? And why is competition over the use of public space necessarily shaped through the lens of the model of punishment, even when the instruments that are deployed are themselves regulatory ones?

The broad picture that results from this collection of essays shows a general common trend towards novel and hybrid legal tools and forms of social regulation that seems to be part of the experience of everyday urban control in different countries in continental Europe (notably Spain, Italy, France and Belgium) and of the UK and the USA. The various contributions also highlight subtle yet important differences in the ways in which similar issues and recurring themes are played out and given effect in different cities and jurisdictions.

In their contribution to this special issue, Adam Crawford, Sam Lewis and Peter Traynor draw on a study of an inter-related 'ladder' of novel anti-social behaviour interventions – 'anti-social

behaviour orders' (ASBOs), acceptable behaviour contracts and warning notices - introduced in the UK at the turn of the millennium. These were designed primarily to regulate deviant youth behaviour through different types of formal/informal control both outside of, and at the interface with, criminal justice processes. Crawford and colleagues situate these 'hybrid' developments within the context of a period of regulatory 'hyperactivity' and trace their awkward and uneven implementation within the framework of national and local political and ideological fluctuations. Focusing on research findings into the use of acceptable behaviour contracts with young people across a number of English cities, they explore the extent to which their application and use conform to notions of procedural justice; defined in relation to characteristics of: voice; voluntariness; respectful treatment; parsimony; accuracy of information; fairness; and neutrality. They highlight significant inconsistencies over the implementation of, and commitment to, a tiered approach to anti-social behaviour tools or a 'ladder of interventions' which can contribute to young people being escalated up the 'ladder' at different speeds in different localities – often dependent on local cultures of control. They reveal how under the benevolent cloak of preventing future offending, young people are becoming the subject of earlier and more intensive interventions and closer scrutiny which risks propelling them faster into possible criminalisation. Moreover, the informal nature of some of these administrative interventions belies the ways in which principles of voluntary cooperation can be corrupted by threats of punitive sanctions. Finally, they question the extent to which the use of such hybrid orders either foster perceptions of legitimacy or support the real capacity of young people and their families to avoid criminalisation.

Steve Herbert and Katherine Beckett, drawing on data from their extensive study in the city of Seattle, discuss how legally imposed spatial exclusion – 'banishment' – has (re)emerged as municipal governments struggle to manage neoliberalism's urban manifestations, including, most especially, homelessness. The new social control tools that they assess in their contribution – criminal trespass admonishments, off-limits orders and park exclusion orders - all entail forms of 'banishment' that rest on a complex and often novel blend of civil, administrative and criminal law. After outlining these new tools, the capabilities they create, and the implications of their deployment, Herbert and Beckett argue that these tools are aimed at pushing undesirables to the margins – spatially, socially, politically, and legally. Moreover, although exclusion orders are routinely flouted by those who possess them, they nonetheless work to further marginalize and destabilize those they target. Although the new social control practices are touted by proponents as alternatives to punishment, they are best understood as punitive in nature. They conclude that this increase in police powers in dealing with marginal people through hybrid tools is a failed public

policy, and that therapeutic and harm reduction based measures are a better and more efficient alternative.

Carolina Villacampa in her contribution analyses the effects of banning street prostitution through municipal ordinances in Spain. Both the legal and political context in which these ordinances have been promoted and spread across Spanish cities and the impact of 'anti-prostitution' ordinances in the city of Lleida, are discussed. The interaction of different patterns of ordinances across time and space with the debate on model of policies for sex workers (abolitionist, prohibitionist or mixed) is an interesting peculiarity of Spanish ordinances, that also shows once again how these tools interact with broader policies in ways that are deeply influenced by the local context. For what concerns the implementation and the impact of the ordinances, she shows that not only the offer and purchase of sexual services in the street has not disappeared, but also that the conditions of police control and of the street workers have worsened in many different ways.

The focus of the contribution by Elke Devroe, Gerben Bruinsma and Tom Vander Beken is the Municipal Administrative Sanctions Act (1999) a federal legislation whose goal was to regulate incivilities in public space trough local administrative tools. The paper discusses this national law, and its impact, through the results of an empirical study in two Belgian cities, Antwerp and Liège. This legal response to incivilities in the public space and the following empirical local studies are contextualized in David Garland's ideas on governmental responses to insecurity in late modern societies. In particular the article focusses on the broad question whether or not the new security discourse led to a larger control by the government and the exclusion of the well-being of meaningful groups of the population. Differently from other European contexts, the Belgian federal law seems to have played an important role in keeping administrative and criminal sanctions separated, and in avoiding the spread of an overall punitive approach towards some social groups, because of the pre-eminence given at the national, and sometimes at the local level, to more proactive social measures in controlling incivilities.

Carole Gayet-Viaud's article focuses mostly on the social construction of the concept of incivilities, and on the way to deal with them in French cities. Interestingly, the kind of behaviours that are defined as incivilities in France, as described by Gayet-Viaud, are exactly those that are defined as 'anti- social behaviours' in the UK: loitering of young people in the public space or in buildings, threating attitudes, nuisance, damage to facilities, graffiti and tags, rudeness and inconsiderate behaviour. The local peculiarities, however, redefined the concept in order to relate it to some

peculiar problems of French cities, notably riots and other forms of urban violence performed by young people, and to other social problems like homeless presence in the street. Gayet-Viaud discusses this definition critically, arguing that it does not include other forms of incivilities perpetrated by public bodies and other agencies, and therefore the perpetrators of 'incivilities' are at the same time the victims of a variety of institutional misbehaviours against them. The way of dealing with incivilities in France is based on a double-track model, where criminal sanctions (for some prostitution- related crimes and for aggressive begging, for instance) go hand by hand with municipal ordinances, and both systems alternate accordingly to a wide range of variables. The paper also shows how administrative measures interact not only with the criminal justice systems, but with other situational measures that are aimed at banishing some people from some areas of the city. As demonstrated by Gayet-Viaud's empirical study, implementation of these measures (both administrative and criminal) is however severely limited by lack of resources and of legitimacy, and by dicretionary power of the different professionals who are required to administratively sanction some behaviours, but who belong to different professional culture than the police, like mediators and social prevention educators.

The contribution by Stefania Crocitti and Rossella Selmini discusses the origin and development of tools defined as 'mayor administrative ordinances' that in the last decade has been widely used in Italy to deal with a variety of behaviours and problems in public spaces. These ordinances derive from the municipal powers of mayors and as a consequence give rise to an administrative fine. Their violation, however, may open the path to a criminal sanction. A national law in 2008 extended the fields in which mayors could use these powers, in the broad and vague context of 'urban safety' interventions. The article describes the mechanisms that characterize these tools and how they interact with the criminal justice system and immigration laws in different ways. Since many of the behaviours targeted by these ordinances are performed in the public space by immigrants, Crocitti and Selmini focus their analysis and discussion on the impact that these instruments potentially have in undermining immigrants' opportunities for survival and integration and how they foster anti-immigrant sentiments in Italian society.

From a comparative point of view, these papers show that the tendency to modulate and integrate the more traditional and punitive criminal justice system measures with new tools, that implies the combination of different legal structures, is a very common tendency in all the countries taken into consideration. What is clear, from the UK at least (Lewis *et al.* 2016), is that rather than operating in isolation, such novel administrative tools often form interconnected parts of a larger whole, a

‘regulatory ecosystem’, which interacts with the wider socio-economic and political landscape. This ensemble is often infused with complex and contradictory norms that inform and foster interactions between prevention, social policies (such as family, housing, health and employment), behaviour control and criminal justice interventions, as well as, in some cases, immigration policy. In all these contexts, there seems to be a general common trend towards the establishment of a continuum of control that alternates and modulates criminal, civil and administrative tools, often in creative ways, whose final result, with the only exception of Belgium, is a new regime of social control at the urban level and invariably increased levels of punitiveness. The research presented in this special issue serves as a remind to criminologists that potent, punitive and disciplinary efforts to induce behavioural change exist outside of the formal criminal justice system but simultaneously inform and interact with it. The empirical findings provided herein also highlight the need for new conceptual thinking that is attuned to the complex interaction effects between different levers of control and administrative regulation, as well as to their intended and unintended effects and their place within wider regulatory landscapes.

In this common context, there are of course many local peculiarities that are related to the different legal systems, and to national or local cultures. The first important difference is that ASBOs and related measures in the UK and the civility laws described respectively, by Crawford and colleagues for the UK and by Herbert and Beckett in Seattle have a different legal nature, being based on civil powers and addressed to individuals. In continental Europe, these tools are based on the administrative powers of local authorities (mayors in Italy and Spain, mayors and prefects in France), a difference that stems from the peculiar institutional arrangements of these different countries. In all cases, however, the concept of ‘hybridity’ (Beckett and Herbert 2010; and Herbert and Beckett this volume) captures perfectly the attempt of fusing different legal structures. The way ‘hybridity’ works from a legal point of view has been acutely conceptualised by Simester and von Hirsh (2006) as a ‘two–step prohibition’ process. A description that, despite the differences between civil and common law systems, encapsulates well what occurs in continental Europe as well.

One more important difference is related to the implementation and the final impact of these measures for what concerns the potential for criminalisation and punitivity. Whilst in the Anglo-American context the individualisation of the measures opens the path to the direct criminalisation and punishment of the violations, in continental Europe criminalisation remains at a symbolic level and punishment is not a necessary consequence of the violation. Once again this seems to be the result of the different legal nature of the tools and of some differences in the process of implementation. Thus, if in all cases the violation of an administrative or civil regulation becomes

potentially a crime, only in the UK and the US the criminal consequence occurs in practice on a wide scale.

This does not mean, however, that also in the other contexts where punishment is not the automatic consequence of the violation of an order, punitiveness is not increased. This happens in different ways than just opening the path to a prison sentence. For instance, as in the case of Italy, ordinances against some behaviours of immigrants in the public space, even when not enforced, nonetheless increase police powers of control and more generally contribute to stigmatisation and exclusion, reinforcing anti -immigrant sentiments and punitive attitude in the larger public (Crocitti and Selmini, this volume). In France, criminal national laws and municipal orders reach the same goal through a redefinition of a broad concept of 'incivilities' as a criminal activity mostly performed by some specific groups of 'troublemakers', often identified with the same young people involved in urban violence and riots (Gayet- Viaud, this volume).

In Italy and France, given the difficulties in the implementation of the orders, criminalisation remain thus more at the symbolic level. The use of these new tools affect anyway the lives of those who are involved, making it more difficult for the recipients in different ways as the studies in those countries and in Spain (Villacampa, this volume) shows for sex workers. . In all these context, even though the punishment of the violator of the administrative order may not result immediately in a criminal sanction, these new urban control regimes contribute to the shift towards a criminal definition of many undesirable ways to live in the public space. Thus, with the exception of Belgium, in which a national law has marked the borders between administrative and criminal measures in a clearer way and where the local powers have adjusted the implementation of the measures against incivilities in more nuanced means (see Devroe *et al*. this volume), in the other contexts described in these paper stigmatisation, criminalisation and increased punitivity are the final results of the orders. In several cases these tools went under some kind of legal scrutiny (like in the Italian case, see Crocitti and Selmini, this volume) or have decreased and have been replaced by other tools (this occurred in the UK in the replacement ASBOs as a result of legislation introduced in 2014 (see Crawford *et al*. this volume)). However, as other works have shown, there are few doubts that they contributed to the spread of a more punitive culture and greater social intolerance in the large public and in the broader culture of crime control of a country (Tonry 2010).

Beyond these practical consequences in terms of concrete punitiveness, these national case studies describe the variety of ways in which civil and administrative tools mutually reinforce each other in

a complicated game of interactions: criminalizing behaviors once decriminalized (vagrancy, begging and prostitution are the best examples); increasing the numbers of behaviors that are under a double regime (both administrative and criminal, like prostitution - related crime); using selective enforcement of administrative orders to circumvent the absence of a criminal offence - as in the case of Italy, where they have been used to fill the lack of criminal sanctions in the immigration law. Sometimes, in continental Europe, these tools have been used also as an anticipation of future potential new crimes. Though not discussed by Gayet-Viaud, the recent case of administrative ordinances issued in several French cities that prohibited Muslim women from using their bathing costumes – the infamous 'anti-burkini' ordinances – is an example of this way in which the process of criminalisation may take effect (albeit that in August 2016 France's highest administrative court ruled that 'burkini bans' being enforced on the country's beaches were illegal and a violation of fundamental liberties).

Even though continental European ordinances are addressed universally to 'anybody' and not to an identified person, they target some well-defined groups of people, the same people among which the British or American 'troublemakers' who receive an 'anti-social behaviour' or 'incivility' measure, or a trespass order, are selected: young people, socially vulnerable people, like immigrants, sex workers, homeless, drug addicted. These categories overlap each other: homeless in Italy, for instance, are often immigrants, as sex workers often are as well, and the young people who receive a warning notice for anti-social behaviour in England or Wales almost always belong to marginal families. In other words, those who are socially, legally and spatially excluded from public spaces in many European and North American cities. It is hoped that this collection will add to and spur a greater understanding of the role, effects and implications of hybrid new administrative orders, their interaction effects and interconnections with processes of criminalisation and the changing face of urban social control. It should also provide a platform for interrogating the linkages and flows between novel policy developments in the governance of urban safety and new forms of punitiveness across different jurisdictions and municipalities.

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