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Dealing with disorder

Social control in the post-industrial city

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Abstract _____

Over the past two decades, municipal governments across the
United States have adopted novel social control techniques
including off-limits orders, parks exclusion laws, and other
applications of trespass law. These new tools are used to exclude the
socially marginal from contested public spaces. These new social
control techniques fuse criminal and civil legal authority and are
touted as 'alternatives' to arrest and incarceration. Ironically, these
new techniques nonetheless increase the number of behaviors and
people defined as criminal and subject to formal social control. This
article describes these legal innovations and considers their origins
and theoretical implications. We argue that recognition of law's
constitutive effects helps to explain the origins and nature of the
urban social control innovations described here.

Recent developments in urban social control have been the subject of much
commentary. Geographers, sociologists, criminologists, and others have
called attention to new architectural forms of socio-spatial exclusion as well
as to the popularity of 'broken windows' policing and the 'civility' laws that
are ostensibly aimed at enhancing order and security. Although there is sig-
nificant variation in the extent to which these techniques are employed, it is
clear that municipal governments across the United States are implementing
new legal tools aimed at cleaning up contested urban spaces (see Davis,

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1992; Kelling and Coles, 1996; Duneier, 1999; Parenti, 1999; Sanchez, 2001; American Prosecutors Research Institute (APRI), 2004; Murphy and Venkatesh, 2006; National Coalition for the Homeless, 2006).[1]

Some academic work seeks to legitimate these developments, defining them as defensible extensions of criminal law aimed at keeping public spaces crime- and nuisance-free (Kelling and Coles, 1996; Felson, 2002). More critical analyses have generally been situated in one of two theoretical frameworks. Political-economic accounts attribute the intensification of urban social control efforts to the ascendance of neoliberal global capitalism and the transformation of the urban economy that has accompanied this reconfiguration of political power and social policy (Davis, 1992; Parenti, 1999; Smith, 2001; Gibson, 2003; Mitchell, 2003). Other analysts employ a Foucauldian framework that conceptualizes the new urban social control techniques as novel forms of governance and highlights the differences in logic that arguably distinguish newer, 'post-disciplinary' techniques from modernist mechanisms of control (see Simon, 1993a; Ewick, 1998; Merry, 2001; Sanchez, 2001).

This article extends these literatures in two ways. First, we describe a number of new techniques that are increasingly employed by municipalities across the country. Although the techniques upon which we focus build upon the civility codes, these new social control practices rest upon a complex mixture of civil, administrative, and criminal legal authority, and have been touted by proponents as alternatives to arrest and incarceration. They work nonetheless to expand the number of behaviors subject to investigation, arrest, and incarceration. These new techniques include off-limits orders and the creation of zones of exclusion, parks exclusion laws, and new applications of trespass law. We argue that these developments are significant for many reasons: they enhance and extend the segregative effects of architectural modes of exclusion as well as the 'civility' laws, undermine constitutional rights and due process, disperse and extend state surveillance throughout the urban environment, and contribute to the expansion of modernist institutions of control.

After describing some of the newest additions to US cities' social control arsenal, we consider their theoretical origins and implications. We suggest that the political-economic perspective provides a compelling account of the attractions of intensified urban social control efforts to urban developers and officials, and enumerate the insights afforded by the Foucauldian perspective on postmodern forms of governance. We also argue, however, that recognition of law's constitutive power is crucial for comprehending the particular form the new techniques have taken. By emphasizing law's unintended and contradictory effects, the constitutive perspective enables us to appreciate how the Supreme Court's invalidation of the traditional vagrancy and loitering statutes fueled and shaped the quest for legal alternatives to them.

This article unfolds in four parts. In the first section, we describe recent developments in urban social control, including the rise of what Mike Davis

(1992) calls the 'fortress city', and the adoption of the so-called civility laws. In our second section, we describe a series of more recent innovations employed in Seattle and elsewhere. In the third section, we consider the political-economic and post-structuralist accounts of the increased regulation and segregation of urban public spaces. In the fourth and final section, we argue that integration of a constitutive approach to law with insights from the political-economic framework enhances our understanding of the nature and operation of contemporary urban social control.

Social control in the post-industrial city

Many analysts have highlighted the centrality of new forms of social control to the post-industrial city. These include new urban architectural forms that encourage social segregation and exclusion as well as the 'civility' laws that were adopted in many US cities to facilitate the implementation of broken windows policing. A number of more recent innovations in urban social control, including new off-limits orders, parks exclusion laws, and new applications of trespass law, have received significantly less attention. Each of these developments is summarized briefly below.

The gated city: architectural modes of segregation and exclusion

In his (1992) description of post-liberal Los Angeles, Mike Davis called attention to new architectural methods of social exclusion:

> The defense of luxury life-styles is translated into a proliferation of new repressions in space and movement, undergirded by the ubiquitous 'armed response.' This obsession with physical security systems, and, collaterally, with the architectural policing of social boundaries, has become a zeitgeist of urban restructuring, a master narrative in the emerging built environment movement of the 1990s.
>
> (1992: 223)

Davis thus highlighted the double-sided nature of the transformation of the urban landscape. On the one hand, private spaces devoted to consumption, leisure, and luxury (supplemented by private and public security agents) have expanded. At the same time, transparently segregative and exclusionary architectural forms are now ubiquitous. Indeed, the use of fences, gates, walls, and armed security personnel to limit access to sites of luxury-living is now commonplace in cities from São Paulo to Los Angeles (Caldeira, 2000; Lynch, 2001). Critics argue that these techniques are used to channel the socially undesirable to one area of the city, a strategy Davis describes as 'containment'. These new architectural forms also effect what Davis argues is the ultimate raison d'etre of the fortress city: the enhancement and protection of social insulation and segregation. The proliferation of gated communities is symbolic of this shift, and arguably reflects the desire not

only for security, but for homogeneity as well. Indeed, those who market gated communities often stress their exclusivity and the benefits of 'like-minded' neighbors (Lynch, 2001).

Perhaps the most insidious feature of these changes in urban design is the way in which their appearance masks the underlying reality. As Christopherson (1994) argues, urban developers work hard to create urban spaces that offer opportunities for spontaneity and play. Yet the existence of these 'playful' spaces is, in fact, the result of the increasingly intense administration of urban space. Ensuring that these spaces remain attractive and appealing—'bourgeois playgrounds', in Neil Smith's (2001) words—requires the adoption of fortress-like architectural forms reinforced by enhanced surveillance and security efforts (see also Shearing and Stenning, 1992). In this sense, the innovations in urban architecture described here are incomplete; to achieve segregation and exclusion, they are necessarily reinforced by legal and penal coercion. It is, therefore, unsurprising that the emergence of the fortress city has coincided with the widespread implementation of broken windows policing and adoption of civility laws in cities across the United States.

Broken windows policing and the civility laws

Broken windows policing was first articulated by James Q. Wilson in a short *Atlantic Monthly* article in 1982 (Wilson and Kelling, 1982), and has become wildly popular in US urban police departments in the intervening years (Herbert, 2001; Herbert and Brown, 2006). Proponents of broken windows policing argue that neighborhoods that fail to fix broken windows or address other manifestations of 'disorder' display a lack of informal social control, thus inviting serious criminals into the neighborhood (Wilson and Kelling, 1982; Kelling and Coles, 1996). Advocates of broken windows policing therefore call for a fundamental reorientation of policing, one that offers city governments a broad and flexible means of regulating public spaces and removing those deemed 'disorderly'. Although the theory ostensibly concentrates on the built environment, it primarily focuses upon unwanted human behavior—particularly that which is engaged in by 'disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed'—as a cause of diminished quality of life for other urban residents, and as a precursor and cause of serious crime (Wilson and Kelling, 1982: 32). The police are therefore encouraged to consider misdemeanor offenses such as public drunkenness and panhandling as very serious matters (see also Skogan, 1990).

Its empirical debunking notwithstanding (see Sampson and Raudenbush, 1999; Eck and Maguire, 2000; Taylor, 2000; Harcourt, 2001; Harcourt and Ludwig, 2006), the theory of crime that underpins broken windows policing has arguably achieved the status of common sense. Broken windows policing is now widely embraced by police departments across the United States (Herbert, 2001) and in many other countries as well (Smith,

2001; Wacquant, 2003). Yet the implementation of broken windows polic-
ing has been hampered by a series of Supreme Court decisions that invali-
dated local vagrancy and loitering statutes. In these decisions (including
Papachristou v. Jacksonville, Robinson v. California and *Powell v. Texas*),
the Supreme Court ruled that penalizing people for behaviors over which
they had no control—that were, in legal terms, based on status—was
unconstitutional (see Ellickson, 1996; Kelling and Coles, 1996).

Proponents of broken windows policing argue that these legal rulings
intensified 'problems of neighborhood crime and decay' and prevented
police from fulfilling their 'traditional order maintenance role' (Kelling and
Coles, 1996: 69; see also Ellickson, 1996). With the advice and encourage-
ment of these academics-turned-consultants, urban governments both
within the United States (including ostensibly liberal cities such as Berkeley,
Santa Cruz, San Francisco, Portland and Seattle) and elsewhere have
adopted a number of civility laws that target those deemed disorderly. The
hope is that by more narrowly specifying the prohibited behaviors, these
laws will withstand constitutional scrutiny. The most widely adopted of
such civility laws prohibit sitting or lying on sidewalks or in bus shelters,
sleeping in parks and other public spaces, placing one's personal posses-
sions on public property for more than a short period of time, camping, uri-
nating or drinking in public, selling newspapers and other written materials
in public spaces, and begging (National Coalition for the Homeless, 2006).

Unlike the vagrancy and loitering laws that were deemed overbroad by the
courts, these civility laws specify the behaviors they criminalize in compara-
tively narrow terms. Advocates insist that these measures are intended to crim-
inalize disruptive 'street people' rather than the peaceful behaviors of the
unhoused (Kelling and Coles, 1996). Critics contend that even where the goal
of displacing homeless people is not explicitly stated, the relocation of the
homeless population is, in fact, a central object of the civility laws (Mitchell,
2003). Regardless of their intent, these laws undoubtedly have the effect of
criminalizing common behaviors—such as drinking, sleeping and urinating—
when those behaviors occur in public spaces, and therefore have a dispropor-
tionate impact on the homeless (National Coalition for the Homeless, 2006).

In some cases, these ordinances have enabled authorities to relocate mar-
ginal populations away from what David Snow and Michael Mulcahy
(2001) call 'prime' urban spaces to more peripheral and less visible areas.
In addition, these ordinances provide the police with an important set of
tools for general order maintenance and arguably enable the police to make
stops and conduct searches that they otherwise would not have legal
authority to make (Harcourt, 2001). In short, civility laws have signifi-
cantly expanded local governments' capacities to regulate urban residents
and spaces. Yet these effects have been far from complete. In many cities,
including Seattle, the civility codes have not led to the successful relocation
of the homeless and others who spend time on the streets. Moreover, those
arrested under these laws are entitled to legal representation, and many
civility laws have been successfully challenged in the courts (National

Coalition for the Homeless, 2006). These failures have been quite productive (in the Foucauldian sense): in Seattle and elsewhere, the quest for more expansive and invulnerable social control mechanisms is ongoing. Below, we describe a few of the new social control practices adopted to deal with socially marginalized populations.

Recent innovations in urban social control

Like the civility laws, the new social control techniques are legitimated by the claims, frames, and assumptions associated with broken windows policing. However, unlike the civility laws, these new social control practices combine criminal and civil legal authority, a fact that renders them extremely difficult to challenge. For example, some municipalities have enabled law enforcement officials to 'trespass' individuals from places normally open to the public (including libraries, public transportation systems, hospitals, social service agencies, schools, apartment buildings, public housing complexes, and commercial establishments) for a year or more. No evidence of wrong-doing is required to sustain the imposition of these admonishments, and there is no mechanism for appealing one's trespass admonishment. Nonetheless, violations of these 'civil' exclusion orders are a criminal offense. Similarly, in some cities, parks exclusion statutes authorize city officials to ban people who are alleged to have broken park rules from all city parks for up to a year. In many cities, judges and/or probation officers may now require that those under court supervision (whose prosecution has been deferred) and probationers stay out of particular exclusion zones of their city of residence; violations of these orders may lead to arrest, adjudication, and incarceration. In Seattle and elsewhere, these spatial exclusions are increasingly enforced by joint Department of Correction (DOC)–police patrols that extend and disperse the formal social control apparatus throughout the urban landscape.

Although there is likely significant variation in the degree to which these new techniques are employed, there is evidence that these new tools for dealing with disorder are becoming increasingly widespread (see, for example, APRI, 2004; National Coalition for the Homeless, 2006). Despite its liberal reputation, Seattle is in many ways a pioneer in the development of new techniques of urban social control. Both the civility codes and newer techniques of control described below are both widely employed and robustly contested in Seattle (see also Gordon, 1994; ACLU, 1998; Gibson, 2003; Feldman, 2004). Below, we describe several of the important new control techniques employed in Seattle and elsewhere.

Innovations in trespass law

Conventionally, trespass law enables private property owners to restrict access to their property. Currently, however, trespass laws are being interpreted,

adapted and implemented in ways that extend the right to exclude across both space and time. No longer limited to private spaces, trespass law undergirds restrictions on camping, sitting, and lying down in public spaces that are now common across US cities (National Coalition for the Homeless, 2006). Moreover, municipalities around the country increasingly convey public streets and sidewalks to local property owners to bestow upon said owners the right to enforce no-trespass orders (see also Flanagan, 2003; Mitchell, 2005). This practice has been documented in Richmond, Virginia; Knoxville, Tennessee; Tampa, Florida; El Paso, Texas; and many other US cities (Flanagan, 2003). In many such cases, streets located within a public housing facility have been conveyed to public housing authorities in order to endow those agencies with the right to exclude certain individuals from those formerly public streets (Mitchell, 2005).

Other innovations extend trespass authority over time, such that a person is not just asked to leave a particular space but is banned from that space—which can be defined quite expansively—for extended periods of time.[2] Notably, these exclusions are defined as civil in nature, a construction that alleviates the authorities from an obligation to guarantee due process to those excluded. Indeed, in Seattle, officers are not required to record the reason for a trespass admonishment, nor do the trespassed have an opportunity to contest their exclusion.[3] Dubbed 'trespass exclusion' laws by the American Prosecutors Research Institute (APRI), these innovations are legitimated as consistent with law enforcement's primary responsibility, that is, 'to make the problem go away' (APRI, 2004: 1).

Criminal trespass admonishments provide law enforcement officers with an attractive way of dealing with disorder in Seattle. As a former Seattle police officer explained:

> I mean, that's the thing about a trespass [admonishment], you can still trespass anybody for anything … It's an easy, it's like win–win. You know? … and then that [the admonishment] gives you a year, worth of, you know, being able to shake 'em, and pat 'em down … I mean, technically, they're trespassed, once you stop them, they can be under arrest … So every time I stop someone who's been trespassed, then I can completely search them.

Perhaps not surprisingly, our data indicate that trespass admonishments are widely used in Seattle[4] and elsewhere. In a growing number of municipalities, non-residents of public housing facilities, including the parents of resident-children, may be trespass-admonished from those facilities and arrested for criminal trespass if they subsequently return (Mitchell, 2005). Many no-trespass policies enacted by public housing authorities ban nearly all non-residents, not just those who are unwelcome to or uninvited by residents (Goldstein, 2003). In New York City, housing authorities and police officers can permanently exclude people from public housing property for a variety of reasons. The names of those who have been excluded appear in a published 'Not Wanted' list distributed to public housing residents, and those who violate these bans for any reason are subject to arrest for criminal trespass (Fernandez, 2007). The

recent adoption of this trespass program in NYC Public Housing and private apartment complexes appears to have resulted in a jump in trespass arrests across the city (Adame, 2004; Fernandez, 2007; Parascandola, 2007; Tabachnick, 2007). In *Virginia v. Hicks*, the Supreme Court affirmed the right of local governments to enforce laws such as trespass-exclusions, arguing that those practices reflect 'legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct'.[5]

Other innovations in criminal trespass law extend the spatial consequences of a trespass admonishment. In Seattle, for example, authorities have commenced 'Trespass Programs' such as the 'Aurora Motel Trespass Program' and 'West Precinct Parking Lot Program'. Under these programs, anyone excluded from one of the participating businesses is excluded from all of the properties owned by signatories of the agreement. Under the West Precinct Parking Lot Program, for example, someone who is trespassed from one parking lot may be arrested for criminal trespass simply for walking through any of 320 downtown parking lots.

Violations of these trespass admonishments is a misdemeanor criminal offense. In some cases, arrest for criminal trespass may be associated with other charges as well. Yet violation of a trespass admonishment is frequently the sole basis of an arrest, as was the case in the following instances:[6]

> On 04/04/05, at approximately 0542 hours, I was dispatched to a male sleeping in the loading dock at [number redacted] Elliot Ave that [*sic*] needed to be removed. I woke him up and placed him into custody. He has been trespassed from this location several times. Suspect was transported to the West Precinct … and then booked into King County Jail.

> On the above data and time, Officer [name] and I were on routine patrol in the 300 block of Pike St. when we observed suspect who we knew to be [name] … standing and leaning on the window of the Ross Dress for Less Clothing Store … Officer [name] and I had trespassed [name] on 01–18–2005 for loitering in a posted no trespass or loitering area of Ross … Sgt. [name] screened the arrest and [name] was transported to the King County Jail where he was booked for criminal trespass.

> On 4/11/05 at about 0754 Hours, I observed Suspect [name] sitting next to the building of 1032 S. Jackson St. (Asian Plaza). I had previously contacted Suspect [name] at about 0430 Hours, at which time I admonished him from this same address. I told Suspect [name] that he had to leave this area because he was currently admonished from this area by Officer [name], which is still in effect until 01/06/06. I watched Suspect [name] walk Westbound on S. Jackson St. and stop in another doorway of the same business complex. I recontacted Suspect [name] and told him he needed to keep moving … At 0745 Hours on 4/11/05 I was conducting a premise check of this area when I observed Suspect [name] sitting in the same location where I observed him earlier that morning. I placed Suspect [name] under arrest for criminal trespass with no further incident.

Parks exclusion laws

Another important innovation in trespass law has been the adoption (in Seattle, Portland, and elsewhere[7]) of so-called 'parks exclusion' laws. Prior to the adoption of these statutes, individuals could be removed from public parks only if there was probable cause that they had committed an offense that warranted arrest; more minor violations typically resulted in a citation. With parks exclusion laws, however, police are authorized to immediately remove persons for committing minor infractions (such as littering or possessing alcohol) and to ban them from one, some or all public city parks for up to one year. Legal controversy around these laws has centered on the issue of over-breadth, the over-representation of people of color among those banished, and the fact that the exclusion orders are imposed by the police without a prior hearing (ACLU, 1998; Jolin, 2005).

Despite their controversial nature, Seattle's parks exclusion laws are routinely used to remove transients and others from Seattle city parks.[8] Just as criminal trespass admonishments appear to frequently result in arrest, so too do violations of parks exclusions result in 'Trespass in the Parks' arrests, as illustrated in the following incidents:

> Suspect was trespassed from all Zone 5 parks on 10/08/04 for one year … Suspect known to officers and known to be trespassed. Officers observed suspect underneath pagoda in Hing Hay Park, a Zone 5 park. Suspect placed under arrest and taken in to King County Jail.

> On 08–30–05 at approximately 1600 hours R/O's observed suspect [name] in Occidental Park in clear violation of her 1 year Zone 4 Parks Ban … Suspect was booked into the King County Jail for Trespass in the Parks.

> Officers observed [name] sitting on the steps on the East end of City Hall park. [Name] was trespassed from Zone 4 on 08–08–05 … When contacted [Name] said he knew he wasn't supposed to be in the park. [Name] was placed in custody and booked into King County Jail.

Off-limits orders

In many municipalities, trespass exclusions are supplemented by new spatial restrictions and exclusion zones. These exclusions are imposed on defendants whose prosecution has been deferred and/or as a condition of a probation sentence (see Sanchez, 2001; Flanagan, 2003; Hill, 2005). These off-limits orders rest on the combined principles of trespass and zoning law, and enable judges and/or probation officers to order those convicted of drug or prostitution offenses to stay out of areas where drug sales and prostitution are believed to be common (Flanagan, 2003). In Seattle, these orders are called 'Stay Out of Drug Area' (SODA) and 'Stay Out of Areas of Prostitution' (SOAP) orders. In Portland, Oregon and Cincinnati, Ohio, these orders were initially authorized by city legislation and were imposed
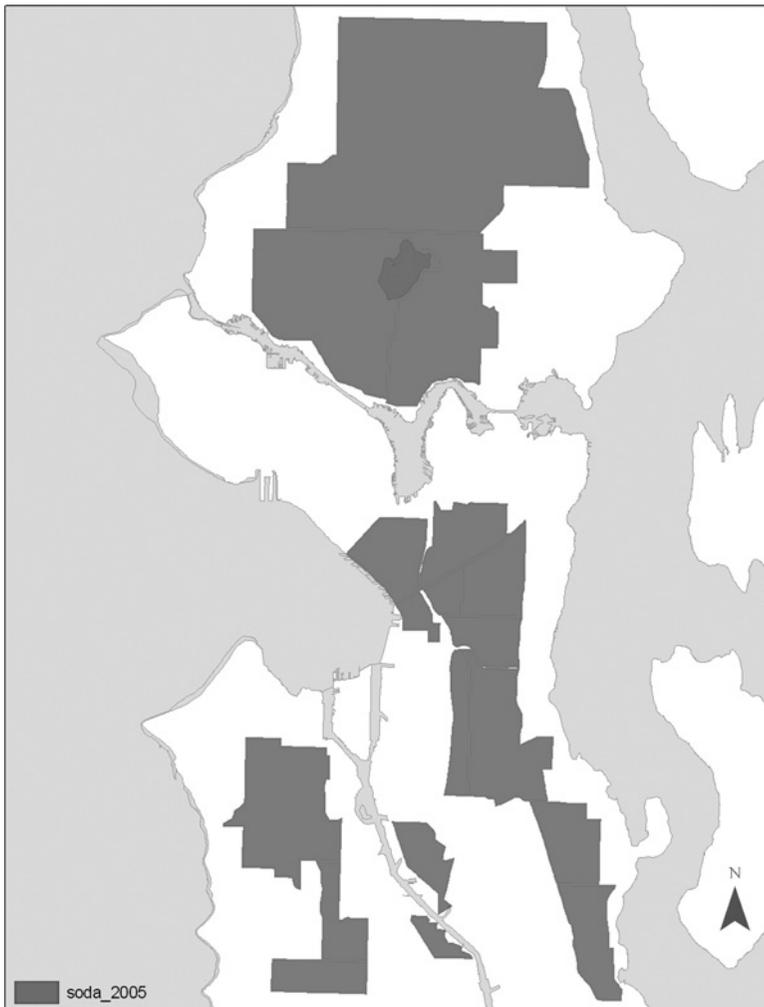
Figure 1
Stay Out of Drug Area (SODA) zones, Seattle 2005

by the police at the time of arrest (Sanchez, 2001; *Johnson v. City of Cincinnati*).[9] Challenges to these ordinances led to their modification, such that the spatial restrictions are now imposed after conviction by judges and/or probation officers (Moser, 2001). Recently, however, the city of Seattle has begun imposing SODA orders on those arrested for, but not convicted of, an attempted drug violation.[10]

In some cities, the areas from which people may be banned comprise significant parts of the city, including the entire downtown core in which social and legal services are concentrated. According to the most recent data available in Seattle, for example, roughly half of the city's terrain,

including all of downtown, is defined as a 'drug area' from which some-one might be banned (see Figure 1). Those subject to these orders are gen-erally prohibited from being in the proscribed areas for any reason; violations may lead to the imposition of a year-long jail term. Exceptions may be granted if people live, work, or have other 'legitimate' reasons to be in the proscribed areas. Even where these exemptions are theoretically available, judges' willingness to grant them varies a good deal, and enforcement remains highly discretionary.

Like trespass exclusions, these off-limits orders appear to be an increas-ingly popular tool in the Seattle area. According to data provided by the Department of Corrections, the proportion of King County felony drug offenders who had a 'geographic boundary' restriction as part of their pro-bation sentence increased from 7.1 percent in 2001 to 30.1 percent in 2005.[11] Like trespass exclusions, violations of these off-limits orders fre-quently result in arrest and jail booking.

In sum, innovations in trespass law and off-limits orders impose significant spatial restrictions on their recipients and significantly expand police officers' authority to investigate people deemed 'out-of-place'. At the same time, authorities' capacity to detect and enforce these spatial exclusions has been enhanced by the emergence of new DOC–police patrols, described below.

Joint Department of Correction–police patrols

In 1999, the Manhattan Institute released a report entitled 'Broken Windows Probation: The Next Step in Fighting Crime'. Noting that the probation population has grown rapidly—over four million US residents are now on probation (Bureau of Justice Statistics, n.d.)—and that many probationers are re-admitted to prison or jail, the report advocated a fun-damental reorientation of the community supervision program. Probation, the report urged, must be primarily seen as a mechanism for achieving pub-lic safety rather than rehabilitation (Manhattan Institute, Center for Civic Innovation, 1999: 5). In order to undermine probationers' expectation that they get two or more 'free' violations, the report argues that 'this permis-sive practice must be abandoned. All conditions of a probation sentence must be enforced, and all violations must be responded to in a timely fash-ion' (1999: 7). Furthermore, arguing that effective supervision of three (now over four) million probationers cannot be achieved from within the probation office during normal business hours, the report urged that the 'neighborhood should be the place of supervision', and this supervision should take place 'around the clock' (1999: 6).

A number of DOC officials and analysts have since argued that DOC and joint DOC–police patrols are the best way to enhance supervision of pro-bationers and, in some cases, parolees. Noting that 'Probation officers have broad authority to stop and question offenders and immediately revoke their probation if they violate its requirements', these advocates stress the 'advantages of combining forces' (Reichert, 2002: 2). Toward this end,

different versions of broken windows probation have been implemented in cities across the United States (see Parent and Snyder, 1999). In Boston, for example, 50 police officers and 50 probation officers patrolled together 7 nights a week for several years (Reichert, 2002). In Seattle, a dedicated team of DOC officers now patrols the city, and units consisting of one or more DOC officers and a police officer often ride together as part of the cities' 'Neighborhoods Corrections Initiative'. Detecting violations of SODA orders and other spatial restrictions is a key component of the work of these patrol teams.

***

The new social control techniques described above share a number of important characteristics. First, they tend to be quite explicitly aimed at spatial exclusion. Second, many of the new practices are hybrid in nature, combining elements of criminal, civil and administrative law and thus providing little opportunity for contestation. Third, despite their legally hybrid nature, they have significantly broadened the police's discretionary authority to stop, question, and search urban residents. Finally, despite being promoted as alternatives to arrest and incarceration, these techniques have created a number of new criminal and administrative offenses, violations of which result in many court visits, administrative hearings, and short-term jail stays.[12] Working together, these new social control techniques represent a significant extension of the State's authority and dispersal of its surveillance capacity throughout the urban landscape.

Theoretical perspectives on the transformation of urban social control

Critical analyses of the transformation of the urban built environment and adoption of 'civility' laws have generally been informed by political-economic and post-structuralist frameworks. In this section, we analyze each of these, and suggest that integration of insights from a third perspective—the constitutive approach to law—enables a fuller understanding of the role of the law in the transformation of urban social control tactics.

The political-economic perspective

From a political-economic perspective, the intensification of urban social control measures stems from the ascendance of neoliberal global capitalism and the related transformation of urban economies. According to this argument, the increased mobility of industry and finance in the context of deindustrialization has led many cities to compete with each other to create the most hospitable environment for corporate investment and headquarters, luxury-living facilities, tourism, and retail operations (Davis, 1992; Christopherson, 1994; Parenti, 1999; Gibson, 2003; Mitchell, 2003). As a result, post-Fordist cities

increasingly host two distinct service economies, one focused on generating and managing information connected to financial flows, the other focused on the retail and tourist sectors (Christopherson, 1994; Sassen, 2000). At the same time, federal and local government policies have become increasingly focused on economic growth rather than redistribution, and the US 'semi-welfare' state has been significantly retracted (Wacquant, 2000; Gibson, 2003). Profit enhancement and tax relief have largely replaced policy efforts to enhance social citizenship.

Together with the expansion of the penal system, these policies have exacerbated inequality and rendered life increasingly difficult for the socially and economically marginal (Wacquant and Wilson, 1989; Wacquant, 2000; Western, 2006). Furthermore, cuts in federal housing assistance, wage reductions, and the demolition of low income housing in the name of urban renewal have deprived a large number of US residents of permanent housing (Wolch and Dear, 1993; Gibson, 2003; Feldman, 2004). These economic and policy developments appear to fuel both home-lessness and participation in the informal economy (Duneier, 1999; Wacquant, 2000; Gowan, 2002). But the expansion of the homeless and marginalized populations poses a real problem for urban developers in the context of post-Fordist, global capitalism. Particularly in cities that depend upon capital investment, tourism, retail, and suburban shoppers for their economic well-being, the environment on commercial streets has become the subject of much official attention.

In this context, city governments often engage in what Timothy Gibson (2003) calls 'projects of reassurance': efforts to counter widespread images of cities as sites of decay and danger with sanitized images of urban con-sumer utopias. The presence of large numbers of homeless people and oth-ers involved in the informal economy is highly inconsistent with these images. From the political-economic perspective, the appeal of broken win-dows policing to urban developers and city officials is obvious: broken win-dows policing, and the civility laws that facilitate it, promise to aid the revitalization of urban downtowns (see Feldman, 2004). Indeed, former New York Mayor Rudolph Guiliani indicated that the removal of poor people in areas slated for redevelopment was 'not an unspoken part of our strategy. That [was] our strategy' (quoted in Body-Gendrot, 2000: 59).

Evidence for the political-economic explanation comes largely from case studies, which demonstrate the many connections between urban economic developments and innovations in urban social control (see Davis, 1992; Parenti, 1999; Body-Gendrot, 2000; Smith, 2001).[13] Like the transformation of the built urban landscape and the civility laws that are the subject of this body of scholarship, the new control techniques also help to perpetuate the seg-regation that is so essential to the maintenance of 'playful' urban spaces, spaces that are, in turn, increasingly vital to the well-being of the urban economy.

This literature helps to explain both the intensification of the problems associated with social marginality and the dilemma these problems pose for post-industrial cities that are increasingly dependent upon capital investment,

retail, tourism, and other high-end services. At the same time, as an explana-
tion of the spread of civility laws and even more recent innovations in law and
law enforcement, this account is incomplete. Although this literature provides
a compelling account of urban officials' support for the new control mecha-
nisms, it does not identify the origins of the new techniques, make sense of
the particular form they have taken, or recognize the role of law enforcement
agencies in their development. For this, recognition of law's constitutive
power is crucial. Before developing this argument, however, we first provide
a brief overview of another prominent perspective on developments in urban
social control.

The Foucauldian approach: spatial governmentality

The political-economic and Foucauldian perspectives on urban social
control begin from very different premises and have quite distinct objec-
tives. Whereas the former seeks to explain new developments such as the
emergence of the 'fortress city' and spread of civility laws, the latter draws
on Foucault's notion of governance to re-conceptualize the new control
techniques and identify the differences in logic and objective that distin-
guish them from their 'modernist' predecessors.[14] Foucault's later (1991)
work conceptualizes forms of regulation that seek to control populations
(rather than individuals) as instances of 'governmentality'. This neologism
was quite purposeful: the term 'governance' reconceives regulation as a
process rather than institution, directs our attention to the many non-state
institutions and actors that regulate identity and conduct, and highlights the
ways in which regulatory ideals and techniques may be internalized and
lead to 'the regulation of the self' (Hunt, 1993: 295).

Drawing on this theoretical framework, many analysts have conceptual-
ized developments in urban social control as instances of 'spatial govern-
mentality' (see Ewick, 1998; Merry, 2001; Sanchez, 2001). In particular,
the transformation of the built urban landscape, including the expansion of
privatized spaces of consumption and leisure, architectural forms that limit
access to these spaces, the contraction of public spaces, and the increased
reliance upon gates, fences, and walls as a means of achieving socio-spatial
exclusion, have been conceptualized as post-disciplinary techniques aimed
at 'spatial governmentality'.[15] Although most of these techniques are private
rather than public forms of ordering, Sanchez (2001) also defines new, legal
tools used to manage sex workers as instances of spatial governance.

Those employing this conceptual framework suggest that new techniques
of urban governance are distinct from modernist methods of urban regula-
tion in several ways. First, these scholars argue, post-disciplinary control
techniques such as 'bum-proof' benches are aimed at the management of
populations and the regulation of spaces rather than of individual persons
(O'Malley, 1992; Simon, 1993a; Merry, 2001). Second, post-disciplinary
techniques are said to be proactive rather than reactive: they prevent or
exclude problematic behavior rather than detecting and punishing it. As

Merry writes, 'Disciplinary regulation focuses on the regulation of persons through incarceration or treatment, while spatial mechanisms concentrate on the regulation of space through excluding offensive behavior' (2001: 17; see also Simon, 1993a). Similarly, Ewick argues that post-disciplinary forms of social control appear to be, and are, non-punitive, insofar as they manage 'opportunities for behaviors, as opposed to manipulating behaviors themselves' (1998: 49). These mostly architectural forms of social control, then, 'channel out' those segments of the public that are thought to pose more risks than benefits to the space under surveillance.

Shearing and Stenning (1992) and Ewick (1998) note another important dimension of post-disciplinary forms of control: they are tied to, and reinforce, the expansion of the market as a means of regulating behavior and shaping identity. As private spaces of consumption and leisure expand, these authors suggest, post-disciplinary control techniques become ever more entrenched. Ewick (1998) points out that the non-penal nature of the regulation that occurs in these spaces of consumption stands in sharp contrast to the more transparent and brutal forms of control that predominate in more marginalized sections of the city (see also Feldman, 2004). This emphasis on the spread of the market-based consumption as a mode and space of regulation provides an analytic link to the political-economic framework (which also emphasizes the expansion of the retail sector), as does the recognition of the centrality of more transparently penal forms of coercion in the less playful parts of the city.

Although highlighting the spatial dimensions of post-disciplinary forms of social control, theorists of spatial governmentality recognize that older, modernist institutions of control (which, they point out, coexist with 'postmodern' techniques) also have spatial implications and consequences. The difference, they suggest, is that whereas modernist institutions seek to enclose, capture, and contain, post-disciplinary techniques seek instead to exclude (Simon, 1993a; Ewick, 1998: 50). For example, Sanchez (2001) suggests that emphasis on exclusion inherent in Portland's 'Stay Out of Areas of Prostitution' ordinance distinguishes it from previous attempts to regulate prostitution. Pointing out that late 19th- and early 20th-century US cities generally attempted to contain prostitution in particular sections of the city—typically, red-light districts—through zoning law and/or the selective application of criminal law, Sanchez suggests that the objective of Portland's prostitution-exclusion law is to exclude sex workers from the gentrifying sections of the city.

This 'spatial governmentality' literature makes an important contribution to our understanding of urban social control, usefully highlighting the varied and subtle ways that social control may be enacted, particularly through the built landscape, and calling attention to the centrality of consumption and leisure to the regulation of the contemporary city and its inhabitants. The Foucauldian concept of 'governmentality' usefully allows analysts to see the many connections between the administrative, civil, criminal, and private mechanisms through which the disorderly are governed. In addition,

governmentality theorists' recognition that apparently chosen behaviors may be construed as the effect of power/regulation rather than choice is a key contribution and opens up important areas of empirical enquiry.

At the same time, the juxtaposition of 'modernist' and 'post-disciplinary' regulatory techniques that characterizes this literature often leads to an overstatement of the differences between older and newer forms of regulation and a failure to recognize the ways in which the two interact. For example, although some governmentality scholars argue that post-disciplinary techniques manage spaces rather than people, it is clear that both 'modernist' institutions of control such as the jail and 'post-disciplinary' sites of regulation such as prostitution-free zones and shopping malls regulate both individuals and urban spaces (see also Sanchez, 2001). Similarly, while the regulation effected by the images and practices associated with consumption and leisure and stressed by theorists of spatial governmentality may appear to be voluntary, the 'ubiquitous armed response' (Davis, 1992) and security apparatus that limits access to such spaces are decidedly coercive. The juxtaposition of 'modernist' and 'postmodern' mechanisms of control obscures the fact that many of the new techniques expand 'modernist' control institutions that contain populations, namely prisons and jails (but see Sanchez, 2001).

The argument that modernist institutions contain while post-disciplinary mechanisms of control exclude also oversimplifies the matter. Inclusion and exclusion are but two sides of the same coin; an incarcerated person may be said to be contained, but s/he is also excluded; although the bars that exclude the banished may be invisible, the exile is both excluded and contained. And as an empirical matter, cities have long used criminal law to relocate and concentrate prostitution and other urban ills—and continue to do so today (see Harcourt, 2005). In the late 19th century, for example, mass arrests and anti-loitering ordinances were used by urban officials to relocate and concentrate the sex trade to the periphery of the city. Later in the 20th century, criminal law enforcement was used once again to move sex workers from white areas to black neighborhoods where red-light districts were tolerated (Hobson, 1987; Mumford, 1997). Similarly, many 'postmodern' cities also seek to contain marginalized populations in abandoned sections of the city[16] (Davis, 1992; National Coalition for the Homeless, 2006). Containment and exclusion were, and remain, inseparable.

Finally, the idea that older (modernist) mechanisms of control operate in public urban spaces while the newer, post-disciplinary techniques are used in private spaces obscures the way in which the new techniques blur the boundary between public and private. Recall, for example, that in Seattle and elsewhere, public and formerly public spaces are increasingly subject to trespass law as municipal governments convey public spaces such as sidewalks to private property owners and extend trespass law to public spaces such as parks. Conversely, trespass programs endow state authorities with the right to monitor and regulate access to private spaces normally open to the public.

In short, the Foucauldian perspective usefully draws attention to the varied modes and spaces of urban governance. In addition, the conceptual development of the notion of 'governance' highlights the subtle ways in which power may be exercised and, to the extent that it is internalized, may lead to self-regulation. However, the tendency to juxtapose the new techniques with their 'modernist' precursors may be misleading. Indeed, the very notion that older modes of control such as the prison remain 'modernist' in the sense that they are aimed at disciplining/correcting individuals is problematic: as is now well documented, prisons and related institutions such as parole and probation have largely abandoned their correctional/normalizing rationale and focus (Cullen and Gilbert, 1982; Simon, 1993b; Petersilia, 2002), although the emergence of 'therapeutic' courts somewhat complicates this observation.

Recognizing law's constitutive power

In what follows, we knit together insights from the political-economic literature with a consideration of law's constitutive effects to offer a modified account of the transformation of urban social control. Unlike traditional, behaviorist approaches to socio-legal studies, the constitutive approach to law highlights law's social and cultural meanings, as well as its broad, complex, and unintended consequences (see especially Galanter, 1983; Hunt, 1993; McCann, 1996; Valverde, 2003). As Michael McCann argues, 'Judicial authority may be able to command compliance only from parties in specific conflicts … but its influence on citizen understandings, practices and contests throughout society nevertheless can be highly significant, if complex and indeterminant' (1996: 467). Thus, 'courts not only resolve disputes, they prevent them, mobilize them, displace them, transform them' (Galanter, 1983, cited in McCann, 1996: 468).[17]

By highlighting law's varied, subtle, and far-reaching effects, the constitutive approach enables us to see that the new techniques described here were, like the civility laws themselves, developed and adopted in response to judicially imposed limits on older mechanisms of urban control. Proponents of broken windows policing and 'civility' laws were quite frank about the dilemma created by the invalidation of the vagrancy and loitering laws for those interested in order maintenance, and the need for new legal tools that would restore police power to maintain order in the city (see Kelling and Coles, 1996: chs 1–3). Indeed, much of Kelling and Cole's book, *Fixing Broken Windows*, details how cities may seek and obtain legislation that allows it to replace older order maintenance techniques while simultaneously reducing the chances that the new legal tools will be successfully challenged in the courts.

Archival records from Seattle provide further evidence that the prior decriminalization of public drunkenness, urination, vagrancy, and loitering was the backdrop for the development of proposals for alternatives to those

laws, and that concerns about their constitutionality shaped their form. For example, two years prior to the adoption of Seattle's drug traffic loitering ordinance, a police sergeant sent a memo to the Seattle Police Department Legal Advisor:

> Having been given the job of clearing the [downtown] area of drug users, sellers, juveniles, and unwanted transients, I'm running into some difficulties. One of the main complaints my officers have is that they are not supplied with adequate ordinances to do the job … we can no longer arrest people for urinating or loitering in the area. Would it be possible (constitutional) to set up an ordinance that would limit the hours a juvenile could loiter in a known high drug area? Secondly, could this be extended to all known drug offenders? Third, if all the above is possible, could the 'known high drug activity area' be worded in such as way as to be floating …?[18]

Thus, under pressure to clear the downtown area of the socially marginal, this police sergeant urged city officials to search for constitutionally viable alternatives to public urination and loitering laws. Similarly, a 1991 memo from the Seattle Chief of Police urged the mayor to 'review those portions of the Municipal Code that decriminalized many offensive behaviors' and to 'develop alternatives in order to address the cumulative effect of small but significant quality of life issues'.[19] In these and other archival records, the need to fashion this legislation in such a way as to render it challenge-proof was stressed. As then City Attorney Mark Sidran put it,

> It was out of fear of drawing an unsympathetic judge [that] we spen[t] a great deal of time assessing the nature of the problem, identifying the most defensible constitutional position to be in, and how [to] … make the best record.
> (quoted in Kelling and Coles, 1996: 218)

Over the next decade, the city adopted a series of laws that, at least on paper, either target very specific behaviors or allow the police to issue civil exclusion orders in order to avoid being challenged on constitutional grounds. At the same time, the city commenced a variety of new programs and practices such as those described previously that did not require the adoption of new legislation. The constitutive approach to law helps us to see that the varied nature of these new social control techniques is, to a large extent, an unintended consequence of the Supreme Court's rejection of traditional vagrancy and loitering statutes.

The creation of joint DOC–police patrols can also be understood as a response to prior legal developments. In particular, the implementation of broken windows probation in many cities is a response to the massive growth of the probation population that occurred in the 1980s and 1990s. According to supporters of broken windows probation, traditional forms of surveillance are now inadequate; the old, rehabilitative paradigm must be replaced by around-the-clock supervision, given rising caseloads. Of course, around-the-clock supervision and the new emphasis on public safety rather than rehabilitation are also more consistent with dominant ideological

currents; this undoubtedly helps to explain the success of this reform movement. Nonetheless, it is clear that the primary justification for the transformation of DOC surveillance practices is the prior expansion of the populations under surveillance (and the fiscal implications of this development).

In sum, it is notable that many of the new social control tactics are defined as civil or administrative, a construction that alleviates authorities of the obligation to ensure due process even as they broaden existing definitions of crime. As a result, many of the new tactics are not readily subject to constitutional challenge. Ironically, this legal opacity may well be the unintended effect of the Supreme Court's decriminalization of vagrancy and loitering. At the same time, it is clear that the pressure to clean up urban areas has intensified as cities seeking to establish their place in a global, post-Fordist economy compete for, and increasingly depend upon, the high-end service sector, retail, tourism, and white collar residents. In Seattle, for example, the archival record is replete with memos from the Downtown Seattle Association, First Avenue Association, the Bon Marché, Nordstrom's, and other representatives of the downtown business community detailing security problems, suggesting remedies, and urging immediate action in order to prevent revenues from declining as shoppers and tourists flee beggars and drunks. Integrating a constitutive approach to law with the political-economic perspective allows us to identify both the political-economic context that fueled elite interest in cleaning up city streets, as well as the unintended impact of the law on developments in urban social control.

Conclusion

A number of important new tactics have been added to municipalities' social control apparatuses. We have argued that both the transformation of the urban economies associated with the transition to post-Fordism and the Supreme Court's invalidation of the vagrancy and loitering statutes fueled city officials' interest in securing these apparently challenge-proof social control mechanisms. Deprived of traditional vagrancy and loitering statutes, many cities have adopted a range of civility laws and, more recently, a legally hybrid set of social control practices that provide police officers once again with broad and largely unchecked discretion. The integration of insights from the constitutive perspective on law with the political-economic framework allows us to recognize the ways in which the techniques described here were the unintended and ironic consequence of prior legal developments. Recognition of law's far-flung and unintended consequences is thus a crucial component of a comprehensive account of the recent transformation of urban social control tactics.

The implications of the new urban control techniques are potentially enormous. Working together, these new social control techniques represent a significant extension of the State's authority and dispersal of its surveillance capacity throughout the urban landscape. Indeed, this landscape is

increasingly characterized by a social control apparatus that embodies the characteristics outlined by Stanley Cohen (1979) in his well-known, dystopian essay 'The Punitive City': blurred boundaries between inside and out, guilty and innocent; broadened and increasingly fuzzy definitions of crime; an expanded social control net; and dispersed state social control mechanisms beyond prison (or office) walls. Contrary to Cohen's predictions, however, this control apparatus is very much part of the State.

Once in place, the new regulatory regime will likely have long-lasting effects. Because the new tools are not exclusively based in criminal law, they may prove to be more durable than the vagrancy and loitering laws they have replaced. Broadened definitions of crime, enhanced police authority, and the expansion of spatial regulation and surveillance mean that arrests and jail bookings for violations of spatial exclusions are likely to skyrocket, as has occurred in Seattle. Once arrested, misdemeanants are subjected to an increasing array of spatial and behavioral regulations, violations of which are increasingly likely to be detected. The punitive city of 21st-century America appears to be one in which mere presence in urban space is once again a crime; the State's ability to search, detain, regulate, and monitor is expanded; and a system of invisible yet highly consequential gates and barriers increasingly regulates the movement of some urban residents.

Notes

1. Although beyond the scope of our analysis, it appears that similar, though not identical, techniques are increasingly employed in other countries as well. For example, in the United Kingdom, Anti-Social Behavior Orders place a wide range of spatial and behavioral restrictions upon recipients; although civil in nature, violations of these orders may result in up to five years of incarceration (see http://www.crimereduction.gov.uk/asbos/asbos 2.htm).
2. In order to be trespassed from a public space, a person must be forewarned—either by posted regulations or in the form of a trespass warning or admonishment—prior to arrest. In Seattle, for example, a person may be arrested for criminal trespass if in a public park at 11:01 p.m. if posted rules state that the park closes at 11:00 p.m. The police may also issue an 'admonishment' to stay out of a particular public space or type of space (i.e. all metro stops and buses) for violating a rule in one such location.
3. No reason was given for the civil exclusion in over half of the admonishments included in our four-month sample from 2005.
4. Based on data from our four-month sample of 2005 trespass admonishments, we estimate that the Seattle Police Department issues between 9000 and 10,000 criminal trespass admonishments a year.
5. In this case, the defendant was arrested for trespassing when delivering diapers to his daughter; he did not receive formal notification of his banishment until after his second such arrest (see Mitchell, 2005).

6. The illustrative incidents described below were recorded by Seattle Police Department officers in an Incident Report and obtained by us through a Public Disclosure Act request. We have taken the liberty of editing these narratives for clarity and length. Suspect names were redacted, but officer names were not. We have chosen not to include officer names here.

7. For a partial list of other cities that employ similar measures, see http://www.mrsc.org/Subjects/Parks/adminpg.aspx#Enforcehttp://www.mrsc.org/Subjects/Parks/adminpg.aspx#Enforcehttp://www.mrsc.org/Subjects/Parks/adminpg.aspx#Enforce

8. Based on data from a 4-month sample of parks exclusion notices issued in 2005, we estimate that approximately 2000 parks exclusions are issued annually by the Seattle Police Department.

9. In Portland and Cincinnati, these statutes were successfully challenged on the grounds that the barring did not require conviction, but merely arrest (see Busse, 2002; National Coalition for the Homeless, 2006).

10. In 2005, the King County Prosecutor's office made a policy decision not to file felony charges against those who possessed only drug paraphernalia and drug residue. In response, the City Attorney's office began charging most of those arrested for possession of drug residue with 'attempted' VUCSA (Violation of the Uniform Controlled Substances Act)—a (non-existent) gross misdemeanor offense. As a result of the creation of this legal fiction, many drug offenders are being funneled from the District Courts to the Seattle Municipal Court. As a matter of policy, the city attorney's office agrees to defer prosecution in these cases if the defendant complies with a number of court-imposed conditions for a specified time period. These conditions include remaining outside relevant SODA zones. See http://www.seattle.gov/law/precinct_liaisons/newsletters/LiaisonLink Spring06.pdf

11. Data were provided by Keri-Anne Jetzer, Research Analyst at the Department of Corrections in Olympia, Washington. This figure is conservative, as it includes only those probationers who cases were still open as of 31 July 2006.

12. For example, data provided to us by the Seattle Mayor's Office indicate that trespass charges comprised 10 percent of all criminal case filings in the Seattle Municipal Court in 2005.

13. Indeed, some cities specifically prohibit particular behaviors in tourist areas. In Atlanta, Georgia, for example, the city council adopted a ban on panhandling in 'the tourist triangle' (as well as within 15 feet of an ATM, bus stop, taxi stand, pay phone, public toilet, or train station) (see National Coalition for the Homeless, 2006: 28).

14. Many governmentality scholars argue that the task of the researcher is not to explain origins, but to provide detailed accounts of historical shifts in the rationales, uses, and effects of regulatory techniques and discourses (Rose and Miller, 1992; Valverde, 2003).

15. This conceptualization may underestimate the role of zoning law in the creation of private spaces.

16. In Los Angeles, for example, many have alleged that homeless and other marginalized people have been 'dumped' (i.e. contained) in the Skid Row area, now home to 8000–11,000 people. The recent upsurge in concern about this practice appears to be related to efforts to develop the area (Harcourt, 2005; National Coalition for the Homeless, 2006: 41).
17. Valverde's (2003) emphasis on the constitutive effects of the law is slightly different. Whereas Hunt and McCann analyze how laws and legal rulings affect the institutional landscape, opportunities for social movement organizing, and cultural meanings and expectations, Valverde analyzes legal 'truths' about various social problems. Valverde's approach leads her to adopt a more internal focus, that is, one that focuses on legal knowledge and the construction of legal truths rather than the institutional effects of those constructions.
18. This Seattle Police Department memo, dated 1 December 1988, is available in the Seattle city archives; a copy is also on file with the authors.
19. This Seattle Police Department memo, dated 30 April 1991, is available in the Seattle city archives; a copy is also on file with the authors.

References

ACLU of Washington (1998) *Seattle Parks Banishment Ordinance: Second Analysis & Report*, August. Washington: ACLU.

Adame, Jaime (2004) 'Operation Safe Housing', *Gotham Gazette*, 17 August. Available at http://www.gothamgazette.com/article/crime/20040817/4/1087

American Prosecutors Research Institute (APRI) (2004) *Unwelcome Guests: A Community Prosecution Approach to Street level Drug Dealing and Prostitution*. Alexandria, VI: APRI.

Body-Gendrot, Sophie (2000) *The Social Control of Cities: A Comparative Perspective*. Oxford: Blackwell Publishers.

Bureau of Justice Statistics (n.d.) *Adult Correctional Population 1980–2004*. Available at http://www.ojp.usdoj.gov/bjs/glance/corr2.htm

Busse, Phil (2002) 'The Catch 22 Zone: Lawsuits Challenge Drug-Free Zone', *The Portland Mercury*, 14–20 February. Available at http://www.portland-mercury.com/portland/Content?oid=26373&category=22101

Caldeira, Teresa P.R. (2000) *City of Walls: Crime, Segregation, and Citizenship in São Paulo*. Berkeley, CA: University of California Press.

Christopherson, Susan (1994) 'The Fortress City: Privatized Spaces, Consumer Citizenship', in Ash Amin (ed.) *Post-Fordism*, pp. 409–27. Cambridge, MA: Blackwell Publishers.

Cohen, Stanley (1979) 'The Punitive City: Notes on the Dispersal of Social Control', *Contemporary Crises* 3(4): 339–57.

Cullen, Francis T. and Karen E. Gilbert (1982) *Reaffirming Rehabilitation*. Cincinnati, OH: Anderson.

Davis, Mike (1992) *City of Quartz: Excavating the Future in Los Angeles*. New York: Vintage Books.

Duneier, Mitchell (1999) *Sidewalk*. New York: Farrar, Strauss & Giroux.

Eck, John E. and Edward R. Maguire (2000) 'Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence', in Alfred Blumstein and Joel Wallman (eds) *The Crime Drop in America*, pp. 228–56. Cambridge: Cambridge University Press.

Ellickson, Robert C. (1996) 'Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning', *Yale Law Journal* 105(5): 1165–214.

Ewick, Patricia (1998) 'Punishment, Power and Justice', in Bryant G. Garth and Austin Sarat (eds) *Justice and Power in Sociolegal Studies*, pp. 36–54. Chicago, IL: Northwestern University Press.

Feldman, Leonard C. (2004) *Citizens without Shelter: Homelessness, Democracy, and Political Exclusion*. Ithaca, NY: Cornell University Press.

Felson, Marcus (2002) *Crime in Every Day Life*. Thousand Oaks, CA: Pine Forge Press.

Fernandez, Manny (2007) 'Barred from Public Housing, Even to See Family', *New York Times*, 1 October, p. A1.

Flanagan, Peter M. (2003) 'Trespass-Zoning: Ensuring Neighborhoods a Safer Future by Excluding Those with a Criminal Past', *Notre Dame Law Review* 79: 327–87.

Foucault, Michel (1991) 'Governmentality', in Graham Burchell, Colin Gordon and Peter Miller (eds) *The Foucault Effect: Studies in Governmentality*, pp. 87–104. Chicago, IL: University of Chicago Press.

Galanter, Marc (1983) 'The Radiating Effects of Courts', in K.D. Boyum and L. Mather (eds) *Empirical Theories of Court*s, pp. 117–42. New York: Longman.

Gibson, Timothy A. (2003) *Securing the Spectacular City: The Politics of Revitalization and Homelessness in Downtown Seattle*. New York: Rowman & Littlefield Publishers.

Goldstein, Elena (2003) 'Kept Out: Responding to Public Housing No-Trespass Policies', *Harvard Civil Rights-Civil Liberties Journal* 38: 216–48.

Gordon, Diana R. (1994) *The Return of the Dangerous Classes: Drug Prohibition and Policy Politics*. New York: W.W. Norton.

Gowan, Teresa (2002) 'The Nexus: Homelessness and Incarceration in Two American Cities', *Ethnography* 3(4): 500–34.

Harcourt, Bernard E. (2001) *Illusion of Order: The False Promise of Broken Windows Policing*. Cambridge, MA: Harvard University Press.

Harcourt, Bernard E. (2005) 'Policing L.A.'s Skid Row: Crime and Real Estate Development in Downtown Los Angeles (An Experiment in Real Time)', *University of Chicago Legal Forum*. Available at SSRN: http://ssrn.com/abstract=739130

Harcourt, Bernard E. and Jens Ludwig (2006) 'Broken Windows: New Evidence from New York City and a Five-City Social Experiment', *University of Chicago Law Review* 73: 271–320. Available at SSRN: http://ssrn.com/abstract=743284

Herbert, Steve (2001) 'Policing the Contemporary City: Fixing Broken Windows or Shoring up Neo-liberalism?', *Theoretical Criminology* 5(4): 445–67.

Herbert, Steve and Elizabeth Brown (2006) 'Conceptions of Space and Crime in the Punitive Neoliberal City', *Antipode* 38(4): 755–77.

Hill, Gordon (2005) 'The Use of Pre-Existing Exclusionary Zones as Probationary Conditions for Prostitution Offenses: A Call for the Sincere Application of Heightened Scrutiny', *Seattle University Law Review* 28: 173–208.

Hobson, Barbara M. (1987) *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition*. New York: Basic Books.

Hunt, Alan (1993) *Explorations in Law and Society: Toward a Constitutive Theory of Law*. New York: Routledge.

Jolin, Marc (2005) 'Exclusion Appeals Prohibitive for Some Individuals', *Street Roots*, 11 February. Available at http://streetroots.org/past_issues/2005/02_11/street_law.html

Kelling, George L. and Catherine M. Coles (1996) *Fixing Broken Windows*. New York: Martin Kessler Books.

Lynch, Mona (2001) 'From the Punitive City to the Gated Community: Security and Segregation across the Social and Penal Landscape', *University of Miami Law Review* 56: 89–110.

McCann, Michael W. (1996) 'Causal versus Constitutive Explanations: Or On the Difficulty of Being So Positive ...', *Law and Social Inquiry* 21(2): 457–82.

Manhattan Institute, Center for Civic Innovation (1999) 'Broken Windows Probation: The Next Step in Fighting Crime', *Civic Report* No. 7. Manhattan, NY: Manhattan Institute, Center for Civic Innovation.

Merry, Sally Engle (2001) 'Spatial Governmentality and the New Urban Social Order', *American Anthropologist* 103(1): 16–29.

Mitchell, Don (2003) *The Right to the City: Social Justice and the Fight for Public Space*. New York: The Guilford Press.

Mitchell, Don (2005) 'Property Rights, the First Amendment, and Judicial Anti-Urbanism: The Strange Case of *Hicks v. Virginia*', *Urban Geography* 26(7): 565–86.

Moser, Sandra L. (2001) 'Anti-Prostitution Zones: Justifications for Abolition', *Journal of Criminal Law and Criminology* 91(4): 1101–37.

Mumford, Kevin J. (1997) *Interzones: Black/White Sex Districts in Chicago and New York in the Early Twentieth Century*. New York: Columbia University Press.

Murphy, Alexandra K. and Sudhir Venkatesh (2006) 'Vice Careers: The Changing Contours of Sex Work in New York City', *Qualitative Sociology* 29(2): 129–54.

O'Malley, Pat (1992) 'Risk, Power, and Crime Prevention', *Economy & Society* 21(3): 253–69.

National Coalition for the Homeless (2006) *A Dream Denied: The Criminalization of Homelessness in U.S. Cities*, January. Available at http://www.nlchp.org/content/pubs/ADreamDenied1-11-06.pdf

Parascandola, Rocco (2007) 'Trespass Arrests Under Attack', *Newsday*, 13 April, p. A17.

Parent, Dale and Brad Snyder (1999) 'Police-Corrections Partnerships', *Issues and Practices in Criminal Justice Series*. Washington, DC: National Institute of Justice.

Parenti, Christian (1999) *Lockdown America: Police and Prisons in the Age of Crisi*s. New York: Verso Press.

Petersilia, Joan (2002) *Reforming Probation and Parole*. Lanham, MD: American Correctional Association.

Reichert, Kent (2002) *Police–Probation Partnerships: Boston's Operation Night Light*. Available at http://www.sas.upenn.edu/jerrylee/programs/fjc/paper_mar02.pdf

Rose, Nicholas and P. Miller (1992) 'Political Power beyond the State: Problematics of Government', *British Journal of Sociology* 42(2): 173–205.

Sampson, Robert J. and Stephen W. Raudenbush (1999) 'Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods', *American Journal of Sociology* 105(3): 603–51.

Sanchez, Lisa (2001) 'Enclosure Acts and Exclusionary Practices: Neighborhood Associations, Community Police, and the Expulsion of the Sexual Outlaw', in David Theo Goldberg, Michael Musheno and Lisa C. Bower (eds) *Between Law and Culture: Relocating Legal Studies*, pp. 122–40. Minneapolis, MN: University of Minnesota Press.

Sassen, Saskia (2000) *Cities in a World Economy*. Thousand Oaks, CA: Pine Forge Press.

Shearing, Clifford and Philip Stenning (1992) 'Say Cheese! The Disney Order That Is Not So Mickey Mouse', in C. Shearing and P. Stenning (eds) *Private Policing*, pp. 317–23. Newbury Park, CA.: Sage Publications.

Simon, Jonathan (1993a) 'From Confinement to Waste Management: The Post-Modernization of Social Control', *Focus on Law Studies* 8(2): 4–8.

Simon, Jonathan (1993b) *Poor Discipline: Parole and the Social Control of the Underclass, 1890–1990*. Chicago, IL: University of Chicago Press.

Skogan, Wesley G. (1990) *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods*. Berkeley, CA: University of California Press.

Smith, Neil (2001) 'Global Social Cleansing: Postliberal Revanchism and the Export of Zero Tolerance', *Social Justice* 28(3): 68–75.

Snow, David A. and Michael Mulcahy (2001) 'Space, Politics, and the Survival Strategies of the Homeless', *The American Behavioral Scientist* 45(1): 149–69.

Tabachnick, Cara (2007) 'Trespass Laws Questioned, Stricter Rules Aimed at Curbing Crime and Violence in Projects Often Catch Innocent Bystanders in Wake', *Newsday*, 10 April, p. A.04.

Taylor, Ralph (2000) *Breaking Away from Broken Windows: Baltimore Neighborhoods and the Nationwide Fight Against Crime, Grime, Fear, and Decline*. Boulder, CO: Westview Press.

Valverde, Marianne (2003) *Law's Dream of a Common Knowledge*. Princeton, NJ: Princeton University Press.

Wacquant, Loïc (2000) 'The New "Peculiar Institution": On the Prison as Surrogate Ghetto', *Theoretical Criminology* 4(3): 377–89.

Wacquant, Loïc (2003) 'Toward a Dictatorship over the Poor? Notes on the Penalization of Poverty in Brazil', *Punishment & Society* 5(2): 197–205.

Wacquant, Loïc and William Julius Wilson (1989) 'The Cost of Racial and Class Exclusion in the Inner City', *Annals of the American Academy of Political and Social Science* 501: 825–35.

Western, Bruce (2006) *Punishment and Inequality in America*. New York: Russell Sage Foundation.

Wilson, James Q. and George E. Kelling (1982) 'Broken Windows: The Police and Neighborhood Safety', *Atlantic Monthly* March: 29–38.

Wolch, Jennifer and Michael Dear (1993) *Malign Neglect: Homelessness in an American City*. San Francisco, CA: Jossey-Bass.

Cases

Johnson v. City of Cincinnati, 310 F.3d 484, 2002 WL 31119105 (6th Cir. 2002).

Papachristou v. Jacksonville 405 US 156 (1972).

Powell v. Texas 392 US 514 (1968).

Robinson v. California 370 US 660 (1962).

Virginia v. Hicks US No. 02–371 (2002).

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