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The Banishment of the Poor From Public Space: Promoting and Contesting Neoliberalisation at the Municipal Level

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With growing levels of homelessness, many municipalities in western jurisdictions are increasing social control of public displays of poverty through criminalisation, marginalisation and banishment. This has recently been apparent in England with the introduction of public spaces protection orders. Based on notions of localism, these grant local government significantly enhanced powers to regulate public space. This article uses the English example to provide a critical, empirically informed, exploration of how populist neoliberal rationalisations about the street poor are finding increasing favour among local authorities. It charts how in a period of austerity, with municipalities struggling to fulfill welfare obligations to the homeless and other poor, banishment provides a cheaper solution to citizens' concerns about visible displays of poverty in public space. The article investigates the troubling ways in which municipalities endorse a neoliberal authoritarian approach to public consultations to claim legitimacy for introducing measures that target vulnerable minorities. It also examines how opponents, with limited success, have challenged such measures and the predominant neoliberal-populist narrative associated with them.

Keywords: Homelessness; Localism; Municipal; Neoliberalisation; Public Space; PSPO; Public Consultations; Vagrancy; Contestation

INTRODUCTION

Homelessness is on the increase across much of the western world. A 2018 study found that levels of homelessness are rising in all but one of the 28 European Union (EU) member states (Abbé Pierre Foundation and Feantsa, 2018). Recent reports have also found increasing homelessness in Australia, New Zealand and the United States of America (Homelessness Australia, 2016; Barrett and Greenfield, 2018; Ruiz-Grossman, 2018). The United Kingdom is no exception to this trend with levels of recorded homelessness reaching new heights (Crisis, 2018). The growth in homelessness is associated with rising levels of social inequality in these societies (Levitz, 2017; OECD, 2017). The process of neoliberalisation, which has intensified in reach and depth since its emergence in the late 1970s, has been identified as the primary source of this rising inequality (Harvey, 2005; O'Hara, 2015). Neoliberalisation involves the adoption by states of policies which tend to combine 'a commitment to the extension of markets and logics of competitiveness with... antipathy to... Keynesian and/or collectivist strategies' (Peck and Tickell, 2002: 381). The welfarist role of the state in alleviating social problems is rolled back, coupled with a rolling out of the coercive power of the state against those who challenge the market by failing to play their role as 'good consumer citizens' (Peck, Brenner and Theodore, 2018).

There was some speculation in the aftermath of the economic crash of 2008 that there would be a tide of popular left-wing uprisings against neoliberalisation (Worth, 2018). While this did occur in some countries for a time (e.g. the election of a leftist populist government in Greece in 2015 and the Occupy Wall Street Movement in 2011) (Worth, 2018), we are now witnessing the resurgence of the politics of the right, which increasingly promotes a neoliberal authoritarian populism (Bruff, 2014; Dean, 2010; Guardino, 2018). It is exemplified by Trump in America, the rise of the United Kingdom Independence Party and then the Brexit Party in the United Kingdom (UK), and the election of far-right populist governments in Italy and Brazil (Kennett and Dukelow, 2018). This manifestation of neoliberalisation is sceptical or hostile towards elements of the neoliberal project of globalisation such as immigration, while maintaining support for an authoritarian neoliberal understanding of societal management (Dean 2010; Worth, 2018). It demonises left or liberal 'elites' and unpopular, often vulnerable minorities, 'with mythical appeals to 'the people'... draw[ing] outside that perimeter anyone conceived as unwilling or unable to enact or promote an imagined individualist market subjectivity' (Guardino, 2018: 459). This is accompanied by a newfound commitment to populist punitive law and order rhetoric, which until recently had appeared to have been somewhat in abeyance (O'Malley, 2018). This rise in neoliberal authoritarian populism leads to displays of poverty such as rough sleeping, begging and loitering becoming subjects of often-enhanced coercive control (Beckett and Herbert, 2009; Dum, Norris and Weng, 2017; Sanders and Albanese, 2017). This study critically examines, through a socio-legal, empirically informed analysis, the recent manifestation of this in England. In doing so, it provides original insights into the regulation of the poor in public space in contemporary, authoritarian neoliberal society.

In 2014, the British Government introduced new powers to regulate public spaces through Public Spaces Protection Orders (PSPOs) to England and Wales.¹ These provide local authorities, which hitherto had limited powers in comparison to many other common law jurisdictions (Beckett and Herbert, 2009; Blomley, 2010; 2011), with wide-ranging discretion to introduce local codes to govern activities in public space. This article critically builds on previous explorations of municipal regulation of public space in other jurisdictions including that by Blomely (2010; 2011) of Canada. The applicability to the modern English context of Blomely's (2010; 2011) influential theory of pedestrianism, which seeks to explain why municipalities regulate activities such as begging and rough sleeping, is questioned.

Influencing the introduction of PSPOs has been the Conservative Party's ideology of localism, which advocates a shift away from the era of 'top-down government' associated with the welfare, bureaucratic state, encouraging the emancipation of communities through the devolution of power (Cabinet Office, 2010; Cameron, 2009). Critics argue instead that the localism agenda is, in reality, a methodology

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¹The PSPO legislation applies to England and Wales. The research focuses on England due to differences in the operation of local authorities between England and Wales.

for 'the promotion of the interests of the middle class ("taxpayer")' to justify laws and policies which disadvantage the 'undeserving' poor and other unpopular groups (Newman, 2014: 3301). 'In the context of localism, the process of identifying a local 'unit' legally, establishes it as a site of governance, spatially, socially and institutionally' (Layard, 2012: 555). Sometimes those local units are municipalities, but at other times they are particular neighbourhoods, communities, or, as is the focus with this article, spaces. This article explores how the legislation governing PSPOs allows for the use of a 'combination of spatial mapping and legal designation' in the context of public spaces to 'perform a social and spatial enclosure' (Layard, 2012: 556) which excludes the visible poor.

Such out-workings of the process of neoliberalisation are increasingly commonplace, but such policies are open to contestation leading at times to resistance, adaptation or hybridisation (e.g. mixing neoliberal with social democratic policies) (Peck, Brenner and Theodore, 2018; Leitner, Peck and Sheppard, 2007). Challenges to measures such as PSPOs and their comparative equivalents occur at various jurisdictional levels and scales (Valverde, 2009) - neighbourhood, municipal, regional, national and international (Beckett and Herbert, 2009; Blomley, 2011). This article explores the process of contestation and the role of what Valverde (2009) refers to as jurisdiction and scale in shaping it.

The article first examines how the process of neoliberalisation, pursued with mounting vigour over the last 40 years, has led to increases in the numbers of street poor and their subsequent exposure to coercive control. There then follows a discussion of the methodology. The article subsequently analyses original empirical data, using a theoretically informed approach, to understand the regulation of the street poor by municipalities in an era of contemporary neoliberal authoritarian populism. It draws on a wealth of quantitative and qualitative data including the extent of use of PSPOs to target homelessness and begging, textual analysis of these orders, the accompanying consultation and policy documentation, the websites of non-governmental organisations (NGOs) opposing PSPOs and local media reports.

NEOLIBERALISATION AND THE GOVERNANCE OF STREET POVERTY

For centuries in western jurisdictions, the visible poor have been subject to a combination of moral re-education, rehabilitation, welfarist support, exclusion, banishment and criminalisation (Chambliss, 1964). The balance between supportive strategies and punitive ones has ebbed and flowed over time and across localities. The process of neoliberalisation in the western world since the late 1970s has seen an erosion of welfare protections and a renewed focus on separating the deserving from the undeserving poor (Harvey, 2005; Pantazis, 2016). Critical features of domestic policy influenced by neoliberalisation include the curtailment of welfare programmes, devolution of responsibility for social ills away from central government, and a return to a historical emphasis on a moralising, individualistic approach to poverty and inequality (O'Hara, 2015;

Pantazis, 2016). Structural factors contributing to increased levels of homelessness in the neoliberal polity include welfare reforms; affordable housing shortages; the casualised private rented sector; increased numbers of non-nationals who are unable to access benefits; and a lack of adequate support for those with mental health and addiction issues (Bramley, 2018; Wilson, 2018). The economic crash of 2008, which initially looked like it may have led to challenges to the process of neoliberalisation, instead appears, at least for now, to have cemented it in place. The crash ushered in the discourse and policies of austerity, which brought significant cuts across the public sector (O'Hara, 2015). More recently, as austerity has become increasingly unpopular, politicians on the right of the political spectrum in the UK, USA and other jurisdictions have championed its selective abandonment (Sabbagh and Inman, 2018). In its place populist promises have been made to increase funding for those public services supported by the respectable citizen-subject, in the UK this includes the National Health Service (NHS), education and policing (Sabbagh and Inman, 2018; Elliot 2019). Neoliberal populism remains authoritarian continuing to frame the users of the parts of the welfare state associated with the unpopular others as a drain on scant resources, while levels of inequality, poverty and homelessness continue to increase (Bruff, 2014; Crisis, 2018; Jackson, 2017).

With increasing visible signs of poverty in public spaces, national and local policymakers have come under pressure to take action. Following an effective lobbying campaign by the third sector, the British government supported the passage of the Homelessness Reduction Act 2017, accompanied by a promise from the government of £1.2 billion of additional funding for support services (Gov.uk, 2018). However, an examination of the legislation confirms that the reforms will mask the problem of homelessness rather than tackle it (Cowan, 2019). Such inadequate reforms encourage cash-strapped local authorities to rely instead on coercive and punitive responses to street homelessness and poverty. In the UK, as elsewhere, the increasing spread of new vagrancy codes across the country has caused increasing alarm amongst homelessness charities (Sanders and Albanese, 2017) and garnered significant negative media attention (Greenfield and Marsh, 2018).

Local authorities' approaches to public space in England and elsewhere are operating in the context of a global, national and local policy focus on urban regeneration and gentrification (Langeegger, 2016). This involves town centres and urban neighbourhoods competing with one another to transform themselves into more desirable spaces to live, enjoy leisure activities and consume. While some localities have adopted an inclusive approach to this process, too often neoliberal rationalisations lead to a concentration on the citizen as consumer and business interests (Fuller and West, 2017). Gentrified space is one where the expectations of normal behaviour are deliberately altered. According to Langeegger (2016: 1805), 'this is how the gentrification of space operates; the rhythms of public space are changed to reinforce and reproduce gentrifier norms and practices...'. Those not conforming to new social norms, such as the street poor, risk being marginalised or excluded.

Reducing crime and incivilities has been a focus of urban regeneration policies (Hancock, 2013). Local authorities have been expected by national governments to adopt a pro-active role in reducing crime and disorder, despite in recent years, facing significant cuts in expenditure (Burney, 2009). An influential populist theory of recent decades to shape policy in this regard has been the 'Broken Windows' thesis of Wilson and Kelling (1982). This thesis, which was largely based upon the authors' instinct as opposed to evidence, holds that constant low-level crime and incivilities can undermine neighbourhoods just as much, if not more so, than occasional acts of violence or other serious criminality. In New York City and other US cities, this theory influenced a controversial style of policing labelled 'zero tolerance'. This involves the authorities targeting those engaged in low-level criminality and incivilities, including rough sleepers and beggars (Punch, 2007). In the UK, politicians thought they were experiencing the reality of the Broken Window's thesis in the urban decay and rising crime and nuisance they were witnessing in their constituencies in the 1980s and 1990s as Thatcherism's neoliberal agenda transformed the country (Burney, 2009). Responding to this social upheaval, the New Labour Government, elected in 1997, incorporated both left realist and more neoliberal understandings of crime in designing one of its flagship policies - the anti-social behaviour agenda (Squires, 2008). This agenda was a British manifestation of a broader western policy trend of a return to favour punitive measures based on individualistic rational choice based understandings of human behaviour to deal with the fraying of society cohesion (Brownlee 1998; Garland, 2002). The British Government sought to empower local agencies to target incivilities and disorder in local communities through a combination of civil and criminal measures of social control including the Anti-Social Behaviour Order (ASBO) and Dispersal Orders (Burney, 2009). Building on the anti-social behaviour agenda and incorporating their localism approach (Layard, 2012), in 2014 the Conservative-led Government introduced a new range of civil and criminal remedies to enhance the ability of local agencies to govern public space (via the Anti-Social Behaviour, Crime and Policing Act 2014 Act henceforth referred to as 2014 Act) (Brown, 2019). The PSPO is the most far-reaching and troubling of these remedies.

PSPOs have become popular across England with local authorities introducing multiple orders covering significant amounts of public space and a diverse range of behaviours (Brown, 2017). It is at the discretion of each local authority, in consultation with the public, to determine the activities that undermine quality of life and therefore warrant restriction. PSPOs embody the localism agenda by encouraging municipalities to be responsive to local concerns. Breaching a condition of a PSPO, without reasonable excuse, is a criminal offence, the maximum penalty for which is a level three fine (£1,000) (2014 Act s67). The legislation also allows for fixed penalty notices in place of prosecution (2014 Act s68). PSPOs have an initial maximum duration of three years, after which a local authority may renew them for a further maximum three-year period (2014 Act s60). There are no limits on the number of renewals (2014 Act s60). The PSPO provides local government with a more formidable technology than the traditional authority to pass byelaws as the latter is subject to stringent accountability mechanisms and limitations on their scope (Brown, 2017). PSPOs

also go further than existing criminal offences associated with public space in the latitude of potential behaviour covered and ease of enforcement. The remainder of this article explores the insights gained from an empirically informed study of how and why municipalities are making increasing use of PSPOs to regulate the street poor and the drivers of resistance to such policies.

METHODOLOGY

A mixed methodology involving analysis of original quantitative and qualitative data allowed for the following questions to be answered: are PSPOs introduced to target activities associated with homelessness and street poverty? Why are they targeting those activities? How are the views of the local populations shaping the actions of the municipalities? And what attempts have there been to resist the introduction of such measures?

Of the 353 councils in England, 125 (just over 1 in 3 of the total) were sampled in autumn 2018 for this paper. Initial purposive sampling of 100 local authorities was conducted to select a sample that was reflective of the population in terms of political control, geography, levels of multiple deprivation (Department for Communities and Local Government, 2016) the rough sleeping count (Ministry of Housing, Communities and Local Government, 2018a) and rates of homelessness acceptances (Ministry of Housing, Communities and Local Government, 2018b).² Added to this sample were all the remaining local authorities not yet included who are in the top ten for highest levels of multiple deprivation, and/or in the top ten for highest rough sleeping counts and/or the top ten for highest levels of homelessness acceptances. This produced an overall sample broadly representative, but with a deliberate skew towards those local authority areas with higher levels of deprivation and homelessness.

Local authorities publish information on the existence and content of PSPOs on their websites, as the publication of the orders is a requirement of the governing legislation. The initial research for this paper thus involved visiting each local authority's website to locate the information. From each local authority sampled the following information was collected: the number of PSPOs if any; their dates of introduction and expiration; whether they contained a provision targeting the following activities: begging, loitering, rough sleeping, sleeping in the open air and/or busking; the wording of such provisions.

To better understand the rationales for introducing PSPOs to target activities associated with street poverty, the relevant local policy documentation was obtained and analysed thematically. This involved using Nvivo software to undertake initial coding of the documentation and then the drawing out of themes, which explored why authorities introduced the relevant PSPO. Most of this material was obtained via the websites of the relevant authorities. However,

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² The author acknowledges that both of these datasets are subject to criticism, particularly in that they underestimate the social problems that they seek to measure (Greenfield. 2019). However, they are used here as they provide an indicative method for identifying local authorities with higher levels of deprivation and rough sleeping.

some additional material was also gained through freedom of information (FoI) requests.

Before introducing a PSPO, a local authority must conduct a public consultation. A reading of the supporting documents behind the introduction of the PSPOs sampled found that all of the authorities had undertaken a form of online consultation, sometimes in addition to other types of consultation (e.g. paper-based). To better understand the role of the consultation, a thematic analysis of the format and wording of the online consultations and the results of these surveys was conducted (22 local authorities were able to provide such data out of 32 authorities contacted). The 32 authorities represent those that had a relevant PSPO in place.

To gain a better understanding of the process of enforcement of PSPOs, FoI requests were made to each authority in the sample that targeted begging (the most targeted activity of the list above). These requests inquired into the number of warnings, Fixed Penalty Notices and prosecutions for such a breach, since the introduction of the provision. Twenty-two authorities provided data.

To explore resistance to PSPOs, the websites of leading national campaign organisations were thematically analysed (Liberty, Keep the Streets Alive Campaign and the Manifesto Club). In addition, a thematic analysis of media stories discussing resistance at the municipal level was undertaken.

EVIDENCE OF THE EXCLUSION OF PUBLIC DISPLAYS OF POVERTY

Analysis of the sample of 125 local authorities in autumn 2018 found 32 had at least one PSPO targeting poverty through prohibitions on begging, rough sleeping and/or loitering or aspects of those activities. A further five authorities were consulting on introducing such an order. In comparison to an earlier study for Vice Magazine, conducted in 2016, the findings from this sample show an increasing number of local authorities are targeting poverty through PSPOs (an increase from one in six to one in four authorities with such orders) (Wilding 2016). Part of the reason for the increase is policy transfer between local authorities, as practice in one is adopted in others.

When the statistics are broken down by demographic characteristics, neither levels of rough sleeping nor levels of homelessness acceptances in a local authority area correlated with the likelihood of a PSPO targeting the poor being in place. However, local authorities with higher levels of relative multiple deprivation in the sample were found to be more likely to have PSPOs targeting the poor. Four of the ten local authorities with the highest level of multiple deprivation in England had such a PSPO in place, while another was consulting on introducing one. Of the 80 local authorities in the sample that were in the top 50% of authorities for higher levels of deprivation in England, 25 had a PSPO targeting public displays of poverty (approximately one in three), while a further four were consulting on introducing such orders. Of the 45 local authorities that were in the bottom 50% of authorities for levels of multiple deprivation, seven

(approximately one in six) had such a PSPO in place while one was consulting on introducing such an order. Citizens living in the poorest parts of England are more likely to face PSPO curtailments on public displays of deprivation.

When it comes to political control, a higher proportion of Labour-controlled councils (17 out of 49) had PSPOs targeting the poor than Conservative ones (15 out of 65). None of the five councils controlled by the centrist Liberal Democrats, who have opposed the criminalisation of the street poor from a civil liberties perspective (Smith, 2018), had any such order in place. What the statistics tell us is that both the centre-right and centre-left parties of English politics are at the municipal level willing to adopt punitive approaches to public displays of poverty. Political science research over the last thirty years has found that parties of the centre-left, particularly when governing under budgetary pressures, are susceptible to policies shaped by neoliberalisation (Harvey, 2005; Meegan, 2014; O'Hara, 2015). In the UK, Labour-controlled councils are more likely to have higher levels of deprivation with greater demands on support services. This has forced such authorities to make difficult decisions regarding which services to support during the last decade of austerity (Meegan, 2014; O'Hara, 2015). The temptation for authorities, in such times, is to respond to public signs of social need by adopting low cost, neoliberal authoritarian measures such as PSPOs. Such measures allow local politicians to claim to constituents that they are doing something to tackle issues such as street poverty, even if what they are doing is unlikely to deal with the underlying causes of the problem. For further discussion of the rationales behind introduction of PSPOs see the following section.

PSPOs targeting begging were found in 27 of the 32 local authorities that had introduced at least one order, while another five local authorities from the sample were consulting on introducing such a provision. The precise wording of the restrictions on begging varied across the sample. Some local authorities placed a blanket restriction through a widely framed provision such as Cherwell District Council (2016) whose PSPO states 'No person shall beg in the Restricted Area'. Other local authorities have sought to define the activity of begging in the order. For example, Coventry City Council's (2016) PSPO states:

Any person is prohibited from begging. The act of begging is deemed as either approaching people for money or being stationary and directly asking for money, or positioned on the floor to invite the offer of money or goods.

To this extent, such local codes go no further than the Vagrancy Act 1824, which continues to apply in England. There are though three crucial differences. Under the Vagrancy Act begging on an isolated occasion is not sufficient for prosecution. This does not apply to a PSPO unless it is so framed. Secondly, the 1824 Act can only be enforced by the police, whereas a wide range of officials, including the police, council officials and contracted private security enforce PSPOs. Thirdly, fixed penalties may be issued in place of prosecution for PSPOs, but not for Vagrancy Act offences. The latter makes PSPOs easier and cheaper to process for officials with less likelihood of prosecutorial or judicial scrutiny.

Coventry City Council (2018) included an additional provision, via its Code of Conduct for Performers, designed to cover beggars disguised as buskers:

The appearance and quality of an 'act' should demonstrate a positive intention to entertain passers-by, not to solicit money through sympathy.³

Engendering the emotion of sympathy in fellow human beings is potentially criminalised in this context and space. Local officials are to be arbiters of whether relationships between the busker and passerby are transactional (acceptable) rather than relational (unacceptable). Entertaining your fellow human beings is seen as acceptable, presumably because it conforms to a mentality of public spaces as being a locality for consumption or leisure rather than charity. Encountering beggars contributes to a mix of individual and collective emotions, including sympathy, compassion, indifference, disgust, fear, guilt and shame (YouGov, 2013). These emotions can be unpleasant to experience, so measures that offer to remove such emotional triggers can have populist appeal. For the street poor, not only must they suffer, but also they must 'be punished for making direct requests for help' (Hershkoff and Cohen, 1991: 897).

Other local authorities have targeted what is commonly labelled 'aggressive begging' which is not a term defined in statute in England, although it is in other jurisdictions (Blomley, 2011). Some local authorities have left the word 'aggressive' undefined, while others have defined the concept or given examples of what might constitute aggressive behaviour in this context. Exeter City Council's (2017) PSPO defines aggressive begging in the following terms:

Exeter City Council would define that behaviour as: (1) clearly intimidating, i.e. through the use of threatening language or gestures, or (2) intimidating by being passive-aggressive, such as standing or sitting in close proximity (i.e. within 5 metres) of a cash machine or pay station either singly or in a group of two or more ie where people expect privacy and/or feel vulnerable with their money, bank cards, wallets or purse on display.

To the author's knowledge, this is the first example of its kind of the specific criminalisation of passive aggression. In reality, the Exeter Council provision involves a form of thought projection where beggars in certain situations (e.g. within five metres of a cash machine) are perceived to have aggressive attitudes or intent because the respectable consumer citizen might feel vulnerable or guilty at withdrawing cash in front of those who have none. Given the framing of the 2014 Act, it is unlikely that such measures would be found to be ultra vires.

In addition to targeting begging, six local authorities from the sample included provisions prohibiting rough sleeping. In December 2017, the Home Office issued an update to statutory guidance accompanying PSPOs to instruct local authorities not directly to target rough sleeping and to be mindful of the impact of PSPOs on the homeless. This update was forced upon them following negative

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³ The local PSPO makes it a criminal offence not to abide by the code of conduct. In 2019, Coventry City Council introduced a new Code of Conduct which removed this restriction.

media attention and complaints from homeless charities about how PSPOs are being used (Sanders and Albanese, 2017). Arguably, this means that provisions targeting rough sleeping are now non-enforceable. Since the updated guidance, local authorities have increasingly shifted their focus to activities associated indirectly with rough sleeping, presumably in an attempt to stay within the law. The Borough of Poole introduced a PSPO in 2018 which includes a prohibition on leaving unattended 'any personal belongings including bedding, bags etc in the designated area.' It also includes a prohibition on obstructing doorways without reasonable excuse. Nottingham City Council introduced a PSPO in 2019 which prohibits 'anyone from obstructing ingress or egress from a building' or 'to prevent or hinder the street cleansing activity in the council'. The same PSPO also prohibits the distribution by unauthorised persons of free matter, which has been seen as an attempt to criminalise donations to the homeless (Togoh, 2018). Poole's PSPO is now subject to a legal challenge in the High Court in 2020 (Greenfield, 2019).

PSPOs allow the regulation of behaviour across a wide variety of spaces. 'Public place' is given an expansive interpretation under the legislation meaning 'any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission' (2014 Act s74(1)). The definition covers spaces commonly understood as public, including roads, pathways, squares, greens, commons, parks, and playgrounds. It also includes public buildings such as libraries, transport hubs and sporting facilities. The definition also applies to quasi-public spaces such as shopping centres, arcades, stadiums and entertainment hubs (Home Office, 2017: 48). The only limitation on the geographical reach is the boundaries of the local authority (2014 Act s59). This definition of public space is more comprehensive than is used in England for other areas of legal regulation, such as for parking fines (Department for Transport, 2012). Some local authorities have covered large areas including entire town centres when introducing a PSPO (e.g. Cheshire West and Chester Council, 2016). The orders generally demarcate the area covered through maps. Within these maps can be public, semi-public and private spaces. Anyone reading the maps is left unsure as to the spaces falling within the definition of public. Mapping gives these spaces legal identity through a process of 'spatial juridification' (Layard, 2012: 555). These maps are providing a visual representation of a governmental regime that holds that the street poor are not welcome in shared spaces.

All local authorities in the sample that targeted begging were asked to provide details on how they enforce PSPOs. The findings demonstrate that local authorities, for the most part, rarely rely upon fixed penalties or prosecutions (see a sample of six authorities' data in Table 1). The lack of prosecutions is reassuring on one level in that it suggests that potentially vulnerable individuals are not being criminalised for begging. However, in some local authorities, a lack of prosecutions is being accompanied by extensive use of non-court alternatives such as warnings, which often serve to exclude the individual from the locality temporarily. As council officials usually issue warnings 'on the spot' there is no judicial oversight of the use of these powers. Getting an accurate picture of the extent of use of warnings was difficult as a majority of local authorities stated

that they do not gather data on them. For those that did, some reported extensive use of warnings. Coventry City Council reported 793 warnings for begging between introducing their order in 2015 and the date of the request in 2018. Doncaster Metropolitan Borough Council recorded 307 warnings for begging and a further 596 of loitering presumed begging. Other councils reported minimal or even no use of formal warnings. Given the apparently sporadic level of enforcement, it appears from the data that PSPOs play a symbolically significant function for municipalities who choose to introduce them. The following section investigates the rationales for introducing PSPOs.

Local Authority	Warnings	Fixed Penalties	Prosecutions
Coventry City Council	793	49	11
Doncaster Metropolitan Borough Council	307 (+596 loitering presumed begging) ⁴	34	6
Chesterfield Borough Council	77	8	0
Hastings Borough Council	83	1	0
Luton Borough Council	244	0	0
Sandwell Borough Council	178	5	0

Table 1. A sample of six local authorities' enforcement data on begging prohibitions within PSPOs. Data covers the period from the introduction of the relevant PSPO to the end of 2018.

OFFICIALDOM RATIONALISING THE EXCLUSION OF THE POOR FROM PUBLIC SPACE

In Blomley's (2010; 2011) influential research on the regulation of sidewalks, based on his extensive empirical studies in Canada, he argues that the predominant logic underlying municipal ordinances is what he labels 'pedestrianism'. According to Blomely (2011: 3), pedestrianism

understands the sidewalk as a finite public resource... The role of the authorities, using law as needed, is to arrange ...bodies and objects to ensure, that the primary function of the sidewalk is sustained: that being the orderly movement of pedestrians from point a to point b. ... Beggars protestors, commuters at a bus stop or patrons at a sidewalk are all potential obstructions.

Blomely (2011) argues this logic over-rides alternatives in the minds of municipal officials such as viewing public place as a space for the exercise of democratic rights or the promotion of inclusive public citizenship. He also cautions (Blomely, 2011: 106) against assumptions by academics that what he

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⁴ Doncaster Metropolitan Borough Council defined these as 'engagements' when responding to the Freedom of Information Request.

labels 'sexier rationalities' such as neoliberalisation are the governing logic. Blomley (2011:107) makes a convincing case for the predominance of his 'everyday, routinized rationality'. At the time of Blomley's writing on the subject, English municipalities lacked the freedom to introduce similar municipal codes to their North American counterparts. The introduction of PSPOs has changed this, allowing the applicability of Blomley's research findings to England to be tested. There are two related reasons to hypothesise that pedestrianism may not carry the same over-riding influence in England as it does in Canada. The first is the legal test officials must apply to establish a PSPO and its legislative history and context. The second is the occupational background of the officials applying the test.

As discussed, the Government introduced the PSPO as part of a wider refreshing of the legislation governing anti-social behaviour, with a new tool-kit of legal remedies made available to public agencies. The socio-legal construct of anti-social behaviour encompasses a wide range of nuisances and incivilities that are annoying, alarming or distressing to others (MacDonald, 2006). A local authority may issue a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition is the activities they wish to target have had, or are likely to have, a detrimental effect on the quality of life of those in the locality (2014 Act s59(2)). The courts have held that local authorities have 'a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area', while also holding that 'behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying.'⁵ The second condition is the effect, or likely effect, of such activities is, or is likely to be, of a persistent or continuing nature such as to make the activities unreasonable, therefore justifying restrictions on such behaviour (2014 Act s59(3)). The focus of the test and the legislative context is on preventing behaviour that is perceived as anti-social, rather than the smooth flow of pedestrian traffic in public space (Blomley, 2011).

The socio-legal phenomenon of anti-social behaviour in the UK and the accompanying national legislation and policy agendas have had a profound influence on policy and practice at the municipal level. This has included the creation of teams of officials in local authorities tasked with tackling the behaviour (Brown, 2013; Burney, 2009). These officials are encouraged to perceive their localities and the spaces within them as sites of potential anti-social behaviour. Their roles are to facilitate the reduction of such behaviour. It is these officials in their community safety or crime prevention teams that are taking the lead on the introduction of PSPOs according to the policy documentation analysed for this study. They have a very different occupational viewpoint from the civil engineers in Canada, whom Blomley (2011) found were responsible for regulating public space. The engineers instead viewed public space as littered with obstacles and impediments (including the visible poor) to be regulated, thus shaping the municipal codes they introduced.

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⁵ *Summers v Richmond upon Thames London Borough Council* [2018] EWHC 782 (Admin) para. 25-26; *Dulgheriu v Ealing LBC* [2018] EWHC 1667 (Admin).

The English legislation invites a populist majoritarian over-arching rationalisation when introducing PSPOs that target activities such as begging, rough sleeping or loitering by classifying them as detrimental to the quality of life of the majority of users of that space. Such activities are frequently described in supporting local documentation as intimidating or a nuisance to others, especially those who are vulnerable (e.g. Blackpool Borough Council, 2015). There is evidence to support this assertion made by local authorities. A 2013 survey by YouGov found that by far the most common feelings amongst the British population when asked for money from a beggar was annoyance (43%) and intimidation (34%). Begging captures a broad spectrum of behaviour. Whereabouts within that spectrum behaviour becomes annoying or intimidating will differ depending on the passer-by's tolerance level. For some, this threshold of intolerance will only be reached at the more severe end, which involves the person begging making threats to elicit money. For others, the threshold of unacceptable behaviour will include persistent solicitation, encroachment on personal space. For others still, the mere passive presence of someone begging may be sufficient to intimidate or cause a nuisance. The framing of PSPOs tends to rely on the lowest tolerance threshold. Unpacking this further, annoyance and nuisance are often equated by policy-makers with offensiveness, leading to arguments that action needs to be taken against rough sleeping, begging or loitering as they amount to an unwarranted intrusion on the enjoyment of public space by others (von Hirsch, 2000).

Reading the policy documentation, it is apparent that for policymakers the ideal autonomous user of public space is often the 'good consumer citizens' (Peck, Brenner and Theodore, 2018). Begging, rough sleeping and loitering are therefore potential hindrances to the smooth flow of consumption. In this regard, elements of pedestrianism logic (Blomely, 2011) do exist in the framing of PSPOs in England, even if such thinking is not the predominant reason for acting. Another related common rationale for PSPOs targeting street poverty was that such behaviour undermines business by putting consumers off from using those public spaces that facilitate consumption (Adur and Worthing Councils, 2018). This returns us to Broken Windows theory (Wilson and Kelling, 1982) where agencies are encouraged to tackle incivilities and signs of urban decay to avoid a spiral of deterioration with consumers avoiding specific spaces.

Local authorities in their policy documentation in favour of PSPOs nearly all acknowledged that the street homeless are vulnerable, but they tended to apply authoritarian neoliberal logic by arguing that the homeless are choosing to be so by refusing assistance (Dean, 2010; Peck, Brenner and Theodore, 2018; Guardino, 2018). They are therefore in need of a 'push' or the 'stick as well as the carrot' to encourage them to engage with the support services available (e.g. Doncaster Council, 2017). A coercive approach (O'Malley, 2018) is adopted where the threat of sanctions is thought to encourage greater engagement by homeless people. This fits with central government's endorsement of welfare conditionality – reform or be punished for not doing so (Fletcher and Flint, 2018). This rationale has echoed down the centuries giving rise to institutions such as the House of Correction and the workhouse (Eccles, 2012). A recent survey on attitudes of the British public found that the vast majority view

homelessness as caused by individual circumstances (willpower, character and choices) rather than systemic factors (O'Neil et al., 2017). An emphasis on personal responsibility downplays the reality that the context in which many homeless people live makes engaging with agencies on a consistent basis difficult (Cromarty and Strickland, 2018).

Another neoliberal populist rationale found for targeting street poverty through PSPOs is those engaging in begging or loitering are often not, in fact, homeless or vulnerable (e.g. Wandsworth Brough Council, 2017). Instead, they are at times the 'undeserving poor', often foreign, operating in gangs taking advantage of the sympathies of unsuspecting members of the local community. The supposed threat from such groups has received frequent media attention in recent years from the right-wing press who find the combination of foreigners and begging a potent mix (Vicol and Allen, 2014). This conceptualisation of the homeless as outsiders invading the local community resonates with the vagrancy regimes of the past (Eccles, 2012). Moral panics about gangs, especially those originating from Eastern Europe, encourage the public to treat all beggars and homeless with suspicion (Vicol and Allen, 2014). Such rationales for PSPOs alleviate the need for sympathy for the street homeless or guilt at taking punitive action against them.

PSPOs are also being introduced as a form of reassurance policing demonstrating their symbolic power (e.g. Doncaster, 2017). A PSPO is a low-cost mechanism for a local authority to communicate that they are doing something. Welfare-orientated solutions require substantial resources. PSPOs do not. When PSPOs are introduced, they garner local and occasionally national media attention, so they have expressive power. Billboards are put up in prominent public places declaring the list of prohibited behaviours. A PSPO prohibiting begging or loitering communicates to enforcement officers, local businesses, the general public and the homeless that such behaviour is problematic and unacceptable in those spaces. This, it is envisaged, will provide reassurance to communities concerned by such activities, even if in reality the orders are rarely formally enforced.

Blomely's (2010; 2011) finding that civil humanistic logics of public space rarely influence municipalities in Canada also holds in England. Largely absent from policy documentation were discussions of the function of public space as a place for the exercise of democratic rights or an inclusive citizenship. This brings to mind the work of Valverde (2009) who has explored the relationship between jurisdiction and scale. Valverde (2009) argues that at the municipal regulatory formation and implementation is less likely to be influenced by constitutional human rights perspectives.

THE VOX POPULI IN ENDORSING OR RESISTING THE EXCLUSION OF THE POOR

When municipalities in England introduce measures targeting the street poor, the leading rationale they provide is that they are acting on popular demand on

behalf of the law-abiding or respectable majority of residents. In doing so, they are following the statutory guidance which states '[t]he broad aim [of the legislation] is to keep public spaces welcoming to law-abiding people and communities' (Home Office, 2017: 51). Law-abiding here is shorthand for a form of neoliberal-populist discourse which holds as the exemplar of the people 'the citizen-subject... who relies on a self-cultivated work ethic, discipline and initiative to 'produce' [or consume]' (Guardino, 2018: 452) in contrast to the feckless, the unreliable and the outsiders.

A key technology used to discern that populist opinion is against the activities of the street poor is the consultation. The legislation governing PSPOs requires local authorities to carry out 'the necessary consultation' to establish the need for an order or the renewal or variation of an order and the conditions to be attached (2014 Act s72). The local authority must consult with whatever 'community representative the local authority thinks it appropriate to consult' (2014 Act s72(4)). Unlike with byelaws in England, there are no requirements as to how the consultations for PSPOs are advertised (Brown, 2017). This provides local authorities considerable discretion to decide whom they consult with and how they do so. Typical methods chosen for consultation, including completing an online survey or visiting the council offices for a written survey, mean consultees are not likely representative of the diversity of users of the relevant public space. Those minority groups who may be negatively affected by the terms of a PSPO, such as ethnic minority groups, the traveller community and the homeless are hard to reach groups when it comes to consultations (Jones and Newburn, 2001). A 'justificatory veneer of democratic engagement' is provided by these consultations which

silence views through a sort of participatory disempowerment whereby the existence of an official consultation exercise closes off further, alternative or subaltern voices that are silenced by the existence of an official depiction of 'the public'. (Morison, 2017: 657-658)

When it comes to PSPOs, this 'participatory disempowerment' is all too apparent. From the author's sample, it was found PSPOs consultation surveys tend to invite participants to rate the extent to which they agree that various named activities are problematic and/or the extent to which there is a need for a restriction on the named activities. For example Barnsley's (2018) consultation listed the following: people being rowdy in public spaces; people harassing, intimidating or causing distress to other people; begging; pedlars or street traders (people who offer items for sale but don't have or comply with a Pedlar's licence or run a legitimate market stall); people dropping litter. Only in relation to begging is mention of 'people' lost from the descriptor in this consultation. Listing begging as a verb without its subject is common in other consultations. This serves to dehumanise the activity (Blomely 2010; 2011; Beckett and Herbert 2009). The surveys themselves are an essential technology of governance as a reader of a consultation is likely to be inclined towards the conclusion that said activities must be problematic to warrant inclusion. Indeed, the results of the various consultations suggest this is the case, with commonly all listed behaviour being seen as problematic by most respondents.

Some local authorities include the reasons that the listed activities are proposed to be included in the PSPO further influencing the likely outcome of the consultation. For example, Enfield Council (2016) had the following in its consultation on the issue of begging:

In the last three years, there have been 844 calls to the Police about begging. February 2016 experienced the highest number of begging calls yet, with 47 calls. There were 153 calls between November 2015 and March 2016. In the past four months, a substantial amount of incidents were recorded in St Marks Road, the northern section of Hertford Road, Green Lanes, and Angel Road/Fore Street. Given the level of public concern, we are considering if a PSPO should be borough-wide.

Unsurprisingly, 87% of the nearly 800 responses agreed that a PSPO should cover the behaviour. If, instead, the preface to the question had more sympathetic language about the context in which people find themselves begging the response may well have been different. Professional opinion surveys suggest that the public is conflicted on their views on the street poor and are therefore open to persuasion (YouGov, 2013).

Consultation processes can be made more inclusive by providing appropriate alternative forums and broadening the frame of reference to elicit essential insights from those most likely to be the target of such actions by municipalities. Valverde's (2016) recent research in Toronto on inclusive consultations provides an example of how a dialogue between the various users of a locality can be engendered so that various users are not set in opposition to one another. The experience with PSPOs, to date, however, suggests that many local authorities are not interested in gaining this diversity of views.

With the limitations of the typical consultation exercise, those opposed to the orders have sought to challenge PSPOs at various jurisdictional levels and scales (Valverde, 2009). Under the legislation, challenging the provisions of a PSPO in court is difficult, and the few cases to reach the courts in England have ruled in favour of bestowing municipalities significant discretion to regulate *their* localities or spaces.⁶ The courts have endorsed a scale that understands public spaces as the domain of the municipality rather than the nation (Blomely 2010; 2011; Layard 2012; Valverde 2009). Municipalities are allowed to operate in this urban level jurisdiction where civil humanistic concerns are relegated behind more neoliberal populist rationales (Blomely 2010, 2011). Faced with these difficulties, national level special interest groups including Liberty, the Manifesto Club, Living Streets, and Crisis have campaigned, thus far without success, for Parliament to repeal the legislation governing PSPOs (Liberty, 2019).

These interest groups have had more success when they have altered the jurisdiction and scale of the challenge and taken their opposition to the municipal level. They have helped organise local petitions, responses to

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⁶ *Summers v Richmond upon Thames London Borough Council* [2018] EWHC 782 (Admin) para. 25-26; *Dulgheriu v Ealing LBC* [2018] EWHC 1667 (Admin).

consultations, social media campaigns, as well as the hosting of more traditional public protests in city centres and at town halls (Liberty, 2019). There have been prominent examples where local authorities have abandoned or amended plans for PSPOs in the face of organised opposition. For example, there were protests in Oxford against proposals to prohibit 'rough sleeping' and 'persistent and aggressive begging' (Summerville, 2015). The Oxford protesters placed cardboard 'beggar traps' at different points in the city to symbolically convey their position that the proposed PSPO would entrap those who beg into the criminal justice system. Opponents gathered a petition of 66,000 signatories (Summerville, 2015). The proposals were amended to remove reference to rough sleeping and persistent begging, although provisions on so-called 'aggressive begging' remained (McKenna, 2015). The campaigns demonstrate that it is possible to mobilise opposition at the municipal level successfully. The problem with engaging at this jurisdictional level is that the outworking of contestations at the municipal level remain subject to local variables. These variables include political capital amongst those locals opposed to the PSPOs, the level of interests of local media in such contests and the role of opposition parties on local councils in such debates. In some areas, PSPOs face challenges while in others, the inclusion of similar or even identical conditions targeting the street poor goes mostly unnoticed or attracts only muted protest. This creates a postcode lottery of civil liberties.

CONCLUSION

PSPOs represent an English manifestation of an increasing trend in western countries of using municipal codes to marginalise, exclude and criminalise the visible poor (Beckett and Herbert, 2009; Blomley, 2010; 2011). Local authorities in England now have considerable discretion in deciding what behaviour to target in implementing the statutory objective of improving quality of life for users of public space. Neoliberal authoritarian populist ideals increasingly influence the use of this discretion in both Labour and Conservative-controlled authorities. The quality of life, which local authorities tend to focus upon when targeting street poverty, is the right of the so-called law-abiding majority to have an unhindered use of public space, in particular for business and consumption. This promotion of security forms part of a broader gentrification strategy of reducing nuisance in public areas on the basis that this makes them more liveable and consumer-friendly. Welfarist concerns about rehabilitation or reform of the street homeless are sometimes evident when PSPOs are introduced, but are a secondary priority and couched in terms of conditionality and coercion. Supportive measures to help the street homeless are resource heavy and take time to show results. Measures such as PSPOs can be introduced quickly, with little cost, offering a way for local authorities to communicate to residents that they hear their concerns and are taking action.

The minimal requirements on consultation and democratic accountability mean there is a limited evidence base for the introduction of widely framed provisions coercively controlling the street poor. There is also minimal oversight or opportunity to challenge. It is some of the most vulnerable and marginalised

members of society who are being subject to these codes, but they are the least likely to have a say in their design and implementation. Informal enforcement of these orders allows for the exclusion of the poor to go unmonitored. PSPOs have given rise to a postcode lottery of rights, with the targeting of activities associated with the street poor in some local authority areas, but not in others.

Resistance to the use of PSPOs to target the street poor has been successful in some localities with co-ordinated campaigns involving petitions, public protest and local media scrutiny pressuring some authorities to back down. These campaigns demonstrate that local contestation of neoliberal policies can achieve results. However, the campaigns have been sporadic. The history of the PSPO thus far shows the limitations of contesting at the local level, without at the time securing reform to national-level policies to guarantee more sweeping change. Only by challenging this pervasive neoliberalisation at a local, national and global level (Layard, 2012; Valverde 2009) will a sustainable, inclusive solution be found to the exclusion of the poor from 'the daily practice of urban life' (Sanders and Albanese, 2017: 18).

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