

Evicting the undesirables

The idealism of public space and the materialism of the bourgeois State⁽¹⁾

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ABSTRACT

In political as well as in scientific debates, the concept of «public space» is invoked by both supporters and critics of the eviction of undesirables (beggars, drug addicts, prostitutes) from urban spaces. Both sides use the concept as a codeword standing for opposing interests, both directed at the state. Drawing on Habermas's conception of the «public sphere», the paper argues that any such notion of «public space» is necessarily normative and does not help to explain the eviction of undesirables. Instead of this idealism, an analysis of the concrete processes and the interests that drive them is sought. This is done by examining the nature of regulating the access to urban spaces, the rhetoric of «zero tolerance» and the concrete measures of law enforcement applied in various cities in the US and Western Europe. These are shown to be means of the state to control the «reserve army» and thus part and parcel of global social processes.

KEY WORDS: public space, zero tolerance, reserve army, political geography

RÉSUMÉ

EVICION DES INDESIRABLES. IDEALISME DE L'ESPACE PUBLIC CONTRE MATERIALISME DE L'ESPACE BOURGEOIS

Dans les débats politiques et scientifiques, le concept d'«espace public» est cité par les défenseurs comme par les adversaires de l'éviction des indésirables (mendiants, toxicomanes, prostituées) des espaces urbains. Les uns et les autres utilisent ce concept comme un slogan représentatif d'intérêts antagonistes mais pareillement opposés à l'Etat. A partir de la conception de la «sphère publique» de Habermas, l'article défend l'idée que toute notion d'«espace public» est nécessairement normative et n'aide pas à expliquer l'éviction des indésirables. Au lieu d'un tel idéalisme, une analyse des processus concrets et des intérêts qui les sous-tendent est proposée. La nature de la régulation de l'accès aux espaces urbains, la rhétorique de la «tolérance zéro» et des mesures concrètes appliquées dans des villes américaines et européennes sont examinées. Ces processus sont des moyens de l'Etat pour contrôler «l'armée de réserve». Ils font à ce titre partie des processus sociaux globaux.

MOTS-CLÉS: espace public, tolérance zéro, armée de réserve, géographie politique

«At the very least it is time to revive and revise critiques of the state and to remake a clear critical distance from the state and state politics.» (Smith, 1998, p. 17)

THE LITTLE HELPFUL RHETORIC OF «RECLAIMING PUBLIC SPACE»

One of the most notorious documents of urban policing of the recent past is the «Police Strategy No 5», subtitled: «Reclaiming the Public Spaces of New York». This paper, bearing the names of then mayor Rudolph Giuliani and Police Commissioner William Bratton (Giuliani & Bratton, 1994), enumerates not only the types of behaviour that have to be fought (the so-called «quality of life-offences») but in so doing also names the people that have to be driven out of the «Public Spaces of New York»: panhandlers, prostitutes, squeegee men, street artists, the mentally ill and the homeless. As a reaction to such developments, a series of leftist activities since the mid-1990s used the slogan «Reclaim the Streets!» in a quite contrary sense: here the «reclaiming of public space» is seen as a way to fight the criminalization and eviction of «undesirables» (cf. Brünzels, 2001). Apparently both, the supporters as well as the critics of the «social cleansing» (Smith, 2001) of city spaces, use the concept of «public space» to support their claim. Whereas the critics claim that everybody has a right to enter «public spaces», the supporters state that «to be truly public, a space must be orderly enough to invite the entry of a large majority of those who come to it» (Ellickson, 1996, p. 1174).

Quite obviously here, «public space» becomes a codeword that stands for opposing ideas concerning the treatment of a certain part of the population, the undesirables. The debate about their presence in «public space» is part and parcel

of the debates concerning the management of the social consequences of the recent restructuring of global capitalism. Being one of the more visible effects of that restructuring, the growing number of undesirables in the streets and parks of the cities become a social problem as well as an eyesore. In this context, the «reclaiming of public space» can either mean «law and order», holding the poor and the homeless responsible for their own misery (the notorious «blaming the victim» approach; cf. Ryan, 1976), accusing them of «stealing the city» from the «orderly people» (cf. Smith, 1998) and calling on the repressive state apparatuses to deal with them (for a critical analysis of this «law and order» rhetoric cf. Beckett, 1997). Or it can mean «social justice», claiming that the state bears responsibility for the welfare of all citizens and calling for more money for education, social welfare and the like (for a critique of this kind of critique cf. Belina, 2002). In this second version, «public space» can even become «a code word for socialism», as Bruce Robbins (1993, p. x) remarks, commenting the usage of the term «the public» in radical politics.

What is striking about these two antagonistic positions, though, are their communalities: Not only do both versions of «public space» use the term as a code word, an ideological weapon, for something else (something that has little to do with «space», be it «public» or not, but rather with economics and politics). What is more, both parties direct their claims at the same address: the state. This comes to no surprise: When the treatment

of the excluded – or, as Marx called them in *Capital*, the «reserve army» (Marx, 1962, chapter 23) – is at stake in capitalist societies, it is and has always been the state that has to take care of them – not for altruistic reasons, of course, but to guarantee the existence of a functioning and peaceful working class (Decker & Hecker, 2002; Piven & Cloward, 1993).

In this article I want to argue that the concept of «public space» does not help to explain the eviction of undesirables from city spaces. In the first part of the article I want to show that «public space» is a mere normative ideal and nothing that can be found in «real life». As such, it can be used to legitimise differ-

ent and even opposing interest. I want to further argue that, instead of some abstract nature of «true public space», the concrete analysis of the forms of and interest behind the eviction of undesirables from urban spaces should be the object of analysis. This approach is outlined in the rest of the paper: Part two deals with the general nature of accessibility of urban spaces and new forms of regulating it in the USA and in different Western European countries. The emergence of the latter is analysed in part three, where the role of the state, the recent changes in its approach towards managing the «reserve army» and new ideologies and scales of this approach are discussed.

RECLAIMING WHAT? THE NATURE OF PUBLIC SPACE

To come to grips with the conceptual difficulties concerning the nature of «public space», it makes sense to have a look at its two components, «public» and «space», which are both much disputed concepts themselves. As for the «space» in «public space», only one remark is necessary here: The «public space» I am interested in is a material space and not the metaphorical «public space» of debate or action that is sometimes referred to in the social sciences (cf. Arendt, 1959; Benhabib, 1992). For the sake of conceptual clarity, such metaphorical «spaces» should be referred to as the «public sphere», because, as Neil Smith and Cindy Katz (1992) remind us, the uncritical usage of spatial metaphors often obscures more than it helps.

As Jeff Weintraub (1992) shows, the term «public» can take on different meanings, depending on the theoretical context in which it appears. Weintraub distinguishes four main ways in which the concept is used: In the liberal-economist model, the public is the state as opposed to the market economy, which is the private. In the «republican virtue» approach the public is the sphere of collective decision

making, distinct from both the state and the market. Third, for theorists such as Richard Sennett (1976) or Jane Jacobs (1961), the public is primarily about «sociability» and has nothing to do with either decision making or the state. In many strands of feminist analysis, finally, the public is defined negatively as everything that is not the family or the household. The problem with these different meanings, of course, is that they are mutually excluding: Whereas for liberals the economy is the «private», for example, feminists regard it as part of the «public».

When «public space» is invoked in debates about the eviction of undesirables, usually a concept of the public derived from either the «republican virtue» or the «sociability» model is drawn upon, implicitly or explicitly. Although the two are analytically distinct, they also share some common features. Most importantly, in both cases the public is supposed to be open to everybody. Although this openness is of a more homogenising kind in the first case whereas it depends on a sort of heterogeneous coexistence in the second (Weintraub, 1992, p. 303),

the exclusion of individuals or groups in these models contradicts the very idea of «the public».

As Fredric Jameson put it, the topic of the «public sphere» can be said to «belong' to Jürgen Habermas» (Jameson, 1993, p. 48). As his «republican virtue»-type of analysis of it is usually regarded as the most influential and theoretically thorough, I will use it as an example to show the central problem with the idea of open accessibility of the public and its application to «public spaces».

HABERMAS'S TWOFOLD «ÖFFENTLICHKEIT»

Habermas's object of analysis in his seminal work *Strukturwandel der Öffentlichkeit* (first published in 1962 and translated as *The Structural Transformation of the Public Sphere* as late as 1989) is the bourgeois public sphere that emerged with the rise of capitalist social relations, and its subsequent transformation. The heyday of this type of bourgeois public sphere were the seventeenth and eighteenth centuries. It consists of private individuals (educated owners of private property) who form a «reasoning public» to debate issues of their common interest in order to promote them against the state. The self-perception of the bourgeois public includes the «principle of universal access. A public sphere from which specific groups would be *eo ipso* excluded [is] less than merely incomplete; it [is] not a public sphere at all» (Habermas, 1991, p. 85). As Habermas notes, this accessibility was never actually realized. But as its real participants, the bourgeoisie, acted *as if* the realization of their (bourgeois) interests was the common good, their «class interest was the basis of public opinion» (Habermas, 1991, p. 87). In this respect Habermas shows that the assumption of an all-inclusive public sphere is and has always been an ideological tool for the few who are and were allowed to participate.

But Habermas's argumentation takes a turn that is crucial to the meaning of his conception of the public sphere: «On the

basis of the continuing domination of one class over another, the dominant class nevertheless developed political institutions which credibly embodied as their objective meaning the idea of their own abolition: *veritas non auctoritas facit legem*, the idea of the dissolution of domination into that easygoing constraint that prevailed on no other ground than the compelling insight of a public opinion.» (Habermas, 1991, p. 88) This idea of the dialectical *Aufhebung* of the ideal of the rule of reason within the public sphere, despite its originally ideological character, i.e. its potential for the pursuit of the common good of mankind rather than a particular class interest lies at the origin of the twofold meaning the «public sphere» takes on in Habermas's work: it is both, an historical phenomenon and a normative ideal. As Oskar Negt and Alexander Kluge criticized as early as 1972, these two meanings are not distinguished clearly enough (cf. Calhoun, 1992; Frazier, 1992; Eley, 1992). Although the double meaning of «public sphere» is not Habermas's invention – the German term «Öffentlichkeit» was used in a normative as well as in a descriptive way since the 19th century (Hölscher, 1984, pp. 1138-1139) – it takes on a specific meaning in the context of Habermas's project of the reconstruction of critical theory. Here, the general idea is to measure bourgeois society against its own legitimizing ideals as a means of emancipation (cf. McCarthy, 1978, p. 382). But as Habermas cannot find any way to ground his hopes for the realisation of the ideal of the classical bourgeois public sphere within the actually existing world around him (cf. Calhoun, 1992, pp. 29-32), he gradually de-emphasises its importance as an historical reality and turns it into a merely normative concept in his later work (Habermas, 1989, 1992). Here, the «public sphere» becomes the «fundamental concept of a theory of democracy whose intent is normative» (Habermas, 1992, p. 446) and for which «complete inclusion of all parties that might be affected» (Habermas, 1992, p. 449) is constitutive.

This move towards an ideal of *Öffentlichkeit* very much like the one developed by Kant in his famous «Beantwortung der Frage: Was ist Aufklärung?» («An Answer to the Question: 'What is Enlightenment?'»; Kant, 1968 [1784]), that was so thoroughly criticised by both Hegel in the *Philosophy of Right* (1986, pp. 389-391) and later Marx as masking the actually existing antagonistic interests within bourgeois society (cf. Habermas, 1991, pp. 102-129), is a move away from an explanation and critique of capitalist society and towards a constructive critique that takes for granted its fundamental relations. In abstracting from the actually existing differences of interest and power to pursue these interests, this position takes an affirmative standpoint towards the existing power relations. Or, as Robert Holub puts it, Habermas «places great [...] faith [...] in bourgeois society» (1991, p. 6). This affirmative position is also the reason for the somewhat fascinating clinging to the ideal of an all-inclusive «public sphere» in this «emphatic sense» (as Bernhard Peters (1994) calls it): no matter how much empirical and theoretical proof for the impossibility of the realisation of such an ideal under contemporary social relations, it still prevails in scientific as well as in political discourse because of its normative attraction. It makes possible a (purely idealistic) reasoning about the paths towards a better world without having to analyse the actually existing world.

I have dealt with Habermas at some length because his is the most elaborate conception of a «public sphere» that saw the light of day as an historical description, turned into a normative concept and lives a double life ever since. This is important because I want to argue that any idea of a «public space» as open to everybody makes the same, ultimately affirmative assumption.

«PUBLIC SPACE» AS IDEOLOGY

For many theorists, «public space» is the somewhat spatial, material form of the ideal

of the public sphere (Goheen, 1998; cf. critically Mitchell, 1995, pp. 116-117). For Marshall Berman, for example, public spaces are (or should be) «environments open to everybody where, first of all, a society's inner contradictions could emerge freely and openly and, second, where people could begin to deal with these contradictions» (Berman, 1986, p. 477). For Sharon Zukin, public space is defined by «two basic principles: public stewardship and open access» (Zukin, 1995, p. 32). This conception bears at least three similarities with Habermas's «public sphere»: First, «open access» in these accounts is a constitutive element of «public space». Second, this ideal was never and can never be realised in «real life»: «[T]here are not and never have been truly open public spaces where *all* may freely gather, free from exclusionary violence» (Mitchell, 1996, p. 127). Third, the empirical and theoretical impossibility of «open access for everybody» notwithstanding, this idealism remains a strong ideological feature. Thus, the same criticism as with Habermas's normative conception of the «public sphere» apply here, too: it is an ultimately affirmative position (Belina, 2001). Applied to the process of the eviction of undesirables from urban spaces, both opposing claims from the beginning of the article can be legitimized by referring to the ideal of «public space», either claiming access for everybody or the eviction of undesirables in order to guarantee the access of the «orderly»⁽²⁾.

Some theorists, less idealistic, have chosen another path. Instead of searching for «true public spaces» they point to the intertwining of «the public» and «the private» in urban spaces while emphasizing the necessity to cling to these concepts (Kilian, 1998; Ruddick, 1996). I would like to take this point one step further by arguing that the «public/private» distinction does not help at all when the analysis of concrete processes like the eviction of undesirables from urban spaces is at stake. Quite contrarily, the measuring of these processes against

some ideal of «public space» as well as their categorization within the framework of «the private» and «the public», no matter how intertwined, obscure these processes because of the affirmative character of the terms «public» and «private». By looking at the phenomenon through the spectacles of the «public/private» distinction, all one gets is a *normative categorization* of what is taking place: the eviction is either «good» or «bad», either «justified» or not.

What one does not get is an *explanation why* it takes place. Instead of choosing this necessarily normative approach, I want to argue that the analysis should concentrate on the concrete interests that are involved, the way that these interests are pursued and the ideologies that are used to legitimize this pursuit. Before turning to these questions, I want to focus on the more general one: How is accessibility to urban spaces regulated and by whom?

REGULATING THE ACCESSIBILITY OF URBAN SPACE

Rules and regulations concerning the accessibility of city spaces exist for every conceivable space. These rules are imposed by and reflect the interests of their respective owners, be it a private body or the state. They are not negotiated in a rational discourse between equals (as Habermas wishes) but fought for within the existing power relations, with ownership being a central element of these power relations. But ownership does not allow for arbitrary rules: Private owners cannot in- and exclude people according to their private interest only but have to obey the rules of the state, the law. Questions of in- as well as of exclusion are thus ultimately dealt with by the state, no matter who the owner of the respective space. The institution responsible for the enforcement of the state's interests is its executive branch, the police.

This relatively clear competence seems to be blurred by the (re-)emergence of private polices. In privately owned spaces, the owner can, in addition to the police, rely on private police forces. Recent years have witnessed the rise of such private polices in «public spaces», too, such as streets, plazas, parks or subways (Bayley & Shearing; 1996; Jones & Newburn, 2002; Nogala, 1995; Eick, 1998). Some commentators interpret this development as the end of the state's monopoly of policing (Bayley & Shearing, 1996) or as a threat to the state's monopoly of legitimate power and a further sign of

the «end of public space» (Beste, 1996). These authors point to the major difference between the public police and private polices: The private police execute private interests only (as opposed to the police's commitment to the common good) and act as if they had the same authority as the police (Beste, 1996, pp. 322-323). But as the deployment of private polices has to be permitted by the state, and as it is, unlawful excesses notwithstanding, confined to the state's laws, the private police can neither use means nor pursue ends that are not compatible with the framework provided by the state. As Trevor Jones and Tim Newburn (2002) emphasize, the term «monopoly of policing» is used in different ways within these debates. They continue: «If all that is meant by 'monopoly' is that the public police were the sole repositories of state-backed coercive power, then the public police monopoly continues today» (Jones & Newburn, 2002, p. 133). The co-operation between the two is a type of Public Private Partnership (Eick, 1998, p. 113), but one in which the «public» side, the legislature, makes the rules of the game. The legal debates in Germany, for example, therefore focus on the question of how much authority private polices can be granted without substantially weakening the state's monopoly of power (Krölls, 1997; Kirsch, 2002). The private police is not outside of the state's monopoly of power but a cheap expansion of it. The reason for the state to permit private police forces are primarily finan-

cial (Krölls, 1997, p. 445). That is why Nogala (1995) prefers to call the process the commodification and commercialization rather than privatization of security.

Emphasizing that the means and ends of policing are ultimately decided upon by the state and that the police (including the private police) are tied to the law does not mean that policing is equal in all locales and free from the influence of discourses other than the law. As police research has shown, the work of the police «on the street level» can take on different forms in different locales because of different «cultures of policing» (Skolnick & Fyfe, 1993, p. 90). Apart from different strategies of policing in different cities, local public debates concerning questions of policing or different local interpretations of national debates can affect the way laws are interpreted. This is especially true for all the forms of «proactive policing», that are so popular today, i.e. police activities that take place before any crime has happened. Here, the officer on the beat constantly makes «'low visibility decisions' that have great effects on the lives and liberties of individual members of the public» (Skolnick & Fyfe, 1993, p. 119). It is up to the discretion of the individual police officer whether or not to interfere in certain situations. It is a question of interpretation if, for example, a homeless person is begging «aggressively» (criminalized in many cities) or not, or if a group of young people are «loitering with the intent of selling drugs» (illegal in many U.S. cities) or if they are just standing around, chatting (Livingston, 1997). Taken together, local cultures of policing and the high level of police discretion in proactive forms of policing highlight the importance of the predominant debates, both local and national, concerning the means and ends of policing as they influence the way the law is interpreted and enforced. The case in point is the probably most important catchphrase concerning policing in recent years, the rhetoric of «zero tolerance».

THE CATCHPHRASE «ZERO TOLERANCE»

As may be well known, the term «zero tolerance» is usually connected to the plummeting crime rates in New York in the 1990s. The new strategy of the NYPD is credited with this success by many commentators and, of course, by the protagonists of that strategy (Bratton, 1998; Kelling, 2000). In the following years, the concept of «zero tolerance» as the solution to the «urban crime problem» spread throughout the world, relying on the «New York success story» as empirical prove (Wacquant, 1999; Smith, 2001; see below). This is somewhat strange for several reasons. First, critics point to similar trends in crime rates in cities with different policing strategies and offer alternative explanations of the crime drop, such as demographics or the end of the crack epidemic (Greene, 1999; Innes, 1999, pp. 403-408). Second, the «fathers» of the new strategy, Police Commissioner William Bratton and his Deputy Commissioner for crime control strategies, Jack Maple, respectively emphasise, that their approach should not be characterized as «zero tolerance» («zero tolerance is neither a phrase that I use nor one that captures the meaning of what happened in New York City»; Bratton, 1998, p. 43; «'zero tolerance' is bad policing and a bad strategy»; Maple, 1999, p. 213). Third, there is no coherent concept of «zero tolerance policing». The only relatively clear idea behind it is the «cracking down» on all sorts of minor offences («quality of life offences») such as drinking, sleeping or urinating in public, begging, vandalism, graffiti, littering, fare evading and so on. The theoretical assumption behind this approach is the «broken windows theory» (Wilson & Kelling, 1982), according to which physical decay and «incivilities» are signs of deteriorating social control and therefore invitations for criminal acts. In practice, all sorts of strategies and measures can be and have been called «zero tolerance» and linked to «broken windows». According to Martin Innes, «it is precisely this 'flexible' quality which has

made a partial contribution to the popularity of the Zero Tolerance Policing perspective» (1999, p. 397). By calling them «Zero Tolerance», many different initiatives are discursively linked to the «New York success story», making the term a strong ideological tool. As legal scholar Michael Walter summarizes for the German discourse: «'New York' and 'broken windows' have become symbols in the field of the politics of crime which, beyond their actual origin, stand for a tougher way of coping with petty criminals and against rehabilitation as a *leitmotiv*» (Walter, 1998, p. 359). The terms «zero tolerance» and «broken windows» have thus become ideological catchphrases that stand, as Christian Parenti calls it, for «the science of kicking ass» (Parenti, 1999, p. 69). One of the effects of the usage of these catchphrases by local or national elites may be the perception by the police that a «tough» interpretation of the existing laws is on the agenda.

Thus, on the «street level», the law and its interpretation both frame how urban spaces are policed and thus who is allowed to enter them. But the law remains the main set of rules as differing interpretations of it must remain within its confines.

CONCRETE MEASURES

To become a powerful ideological catchphrase, «zero tolerance» has to be more than a mere idea, of course, and refer to something concrete. «On the street level», this «something» are various measures of surveillance and law enforcement, sometimes introduced under the name «zero tolerance», sometimes not, that are relatively new in the US and Western Europe. Three types are especially clearly aimed at the eviction of undesirables.

One is the practice of the police to stop and control people that have not done anything wrong and are controlled without proper probable cause. In the USA, such stops are theoretically forbidden by the 4th Amendment and several Supreme

Court decisions in the 1960s guaranteed the right not to be stopped without probable cause. Since the 1990s the police has therefore begun to systematically use «pretext stops», where a minor (and sometimes made up) offence is used as a pretext to stop a person. According to Jack Maple, his «tactic one» for the NYPD was the «assertive enforcement of quality-of-life laws, like those against public urinating, public drinking, loud radios, turnstile jumping, and truancy» (Maple, 1999, p.151). According to Maple, this is different from «zero tolerance» as the NYPD was «selective about who [they] were arresting on quality-of-life infractions» (Maple, 1999, p. 155). What this means is demonstrated in an analysis of police stops during William Bratton's tenure as Police Commissioner by Jeffrey Fagan and Garth Davies (2000). They show that the new strategy resulted in «a vast increase in misdemeanor arrests, but also a sharp decline in their quality and sustainability in court» (Fagan & Davies, 2000, p. 476). But not only did apparently arbitrary stops increase. They were also «primarily tied to race as well as places that are defined by race» (Fagan & Davies, 2000, p. 496). The authors conclude that the strategy was «not about disorderly places, nor about the quality of life, but about policing poor people in poor places» (Fagan & Davies, 2000, p. 457). In Germany, to give another example, stopping people without any probable cause, making even a pretext unnecessary, was first legalized in Bavaria in 1994 with the legislature of other *Länder* and the Federal Border Police, that polices airports and railway stations, following the example. Here, too, minorities and the poor are most affected (Herrnkind, 2000).

Second, the video surveillance of urban spaces is a «selective gaze» (Williams & Johnstone, 2000) that is used «to ensure that an area looks correct, and should be rid of anybody who is judged out of place» (Williams & Johnstone, 2000, p. 194). Again, it is clear who is «out of place». As Clive Norris and Gary

Armstrong have shown, analysing 600 hours of video surveillance in three British cities, mainly the young and minorities were surveyed (1999, pp. 108-116).

Third, measures exist that make the mere being in certain spaces a crime for certain people. In all German cities, for example, alleged drug users are banned from certain city center spaces. These people are issued with a map showing the area that they are not allowed to enter anymore. These so called «Betretungsverbote» («entering bans») are applied to «break up open air drug scenes» in German cities since the early 1990s. In many cases, the measure is applied against people who are only suspected to belong to the open air drug scene; a suspicion that can only be based on the appearance of that person, making people of color the primary victim of these bans (Belina, 2000; Krasmann & de Marinis, 1997). A similar, spatial approach are the «anti loitering statutes» used in the US. As statutes directed merely at loitering as such were declared unconstitutional by the Supreme Court in the 1960s and 70s (Simon, 1992, pp. 641-645), cities are now passing more specific ones aiming at «those who are loitering for a particular purpose, with a certain intent, or in a certain place» (Wozniak, 1999, p. 23). Here is one example of how these statutes work: In «drug free zones» in Baltimore, Maryland, it is illegal «to loiter or remain in any public way, public place or place open or legally accessible to the public [...] for the purpose of engaging in drug related activity» (*Baltimore City Code*, Art. 19, § 58C). Although the Maryland Court of Appeals stated that «an arresting officer must find probable cause

that a person is loitering 'with the intent of engaging in drug-related activity'» (Monahan, 1994, p. 779), reality seems to be different. As the authors of the much acclaimed book *The Corner*, a half journalistic half ethnographic description of a drug corner in West Baltimore, David Simon and former police officer Edward Burns summarize their experience: «There is nothing for a patrolman or plainclothesman that is as easy, as guaranteed and as profitable as a street-level drug arrest. (...) In Baltimore, a cop doesn't even need to come up with a vial. He can simply charge a suspect with loitering in a drug free zone, a city statute of improbable constitutionality that has exempted a good third of the inner city from the usual constraints of probable cause» (Simon & Burns, 1998, p. 167). Again, the measure is applied against people that are not wanted in a certain space.

Usually a mix of measures and strategies is applied to evict the undesirables. The treatment of the homeless in the USA is a case in point. As the National Law Center on Homelessness & Poverty summarizes in a 1999 report, local anti-homeless actions «typically include the enactment and/or enforcement of city ordinances that restrict homeless people's use of public spaces for necessary activities such as sleeping or sitting, the enactment and/or enforcement of restrictions on begging, police 'sweeps' to remove homeless people from specific parts of town, or selective enforcement of generally applicable laws such as prohibitions on loitering, obstruction of sidewalks, or public intoxication» (NLCHP, 1999, p. 1; cf. Mitchell, 1997).

SOCIAL WELFARE AND POLITICS OF CRIME: BRINGING THE BOURGEOIS STATE BACK IN

All of these measures are made and enforced by the state, be it on the local or on the national scale. They are fixed in laws and ordinances and enforced by the police. The question then is why the state takes care of the undesirables by evicting them from urban spaces, in other words: why he makes it his interest to deal with them in this manner. As this is not the place to engage in state theory, only some central arguments of Marxist debates about the state, especially the state derivation debate of the 1970s, shall be summarized here (Flatow & Huisken, 1973; Holloway & Picciotto, 1978; Decker & Hecker 2002).

THE STATE, CAPITAL AND THE RESERVE ARMY

The interests of the bourgeois state are not identical with the interests of capital; in some cases they are derived from them, in others the state pursues interests of his own. The state, depending on a successful national economy, shares the interests of «his» national capital as a whole in economic success. As single capitalists do not pursue these interests of their class in general because of the competition among them, the state takes care of these interests. The case in point here is the constant reproduction of a functioning working class according to the needs of capital (Decker & Hecker, 2002). This interest coincides with the genuine interest of the state in a pacified population that does not rebel but sees the state as its means to a better life. To achieve this aim of a socially peaceful and functioning working class, politics of social welfare and politics of crime are pursued simultaneously. The criminologists Helga Cremer-Schäfer and Heinz Steinert call the complementary relationship between the two the «alliance of 'crime & punishment' and 'weakness & welfare'» (Cremer-Schäfer & Steinert, 1997, p. 252). As for the politics of welfare, it is important not to assume that they are morally driven and

exist to help people in need as an aim in itself. As Frances Fox Piven and Richard Cloward showed, focussing on the example of the USA: «Relief arrangements are ancillary to economic arrangements. Their chief function is to regulate labor» (Piven & Cloward, 1993, p. 3). Besides taking care of these interests of the capitalist class as a whole, the state may in certain cases share the interests of specific capitals, for example when agriculture or steel production are subsidized or when wars are waged to help the national oil industry. But this is not to be mixed up with reducing the state to an accomplice of single capitals. This last point is of importance when it comes to the interplay of scales in the policing of city spaces. On the local scale, the success of shopping and retail capitals and the tourism industry in city centres is the main aim of much of the new initiatives (Mitchell, 1997; Parenti, 1999, pp. 90-110; Ronneberger et al., 1999). But politics on the local scale cannot be pursued against the general direction into which the nation state's treatment of the working class is heading. The example of the treatment of vagrants in Germany may serve as an illustration: The *Deutsche Städtetag*, the lobby organisation of German cities, started an initiative to re-criminalize vagrancy (and thus homelessness) in 1977, three years after it had been decriminalized. This initiative clearly aimed at the eviction of the homeless as a means to promote city centre shopping (Klee, 1979, pp. 68ff.). But at the time, such an initiative was not compatible with the more inclusive general trend in national politics of welfare and crime.

FROM INCLUSION TO MANAGING THE EXCLUDED

So what is the reason for the change in national politics? The criminologist David Garland, writing about the USA and the UK, has termed the general approach of

the 1970s «penal-welfarism» (Garland, 2001, pp. 27-51), a combination of «the liberal legalism of due process and proportionate punishment with a correctionalist commitment to rehabilitation, welfare and criminological expertise» (Garland, 2001, p. 27). Focusing on the German case, the sociologist Joachim Hirsch uses the term «Fordist security state» (Hirsch, 1980, 1998) to describe the strategy of mass integration based on the simultaneous increases in both social welfare and surveillance pursued throughout the 1960s and 1970s. Both Garland and Hirsch agree that the focus of the state's politics of that period was the inclusion of the individual. The material reason for this approach were the low unemployment figures of the period that gave rise to the fear of a scarcity of workers and an increasing cost of labor (Cremer-Schäfer & Steinert, 1997). As this situation has changed completely, so has the importance of inclusionary politics of social welfare and rehabilitation compared to exclusionary politics of crime and punishment. As large parts of the working class have become unnecessary and joined the «reserve army», they are dealt with in a merely repressive manner. Today, the aim of social control is not the inclusion of the individual, but the management of certain groups: «The task is managerial, not transformative» (Feeley & Simon, 1992, p. 452). This managerial type of control is also the reason for the popularity of spatial measures of policing (see above) as it abstracts from the individual and focuses on groups («dangerous classes») and spaces (Belina, 2000, pp. 105-109).

The managerial approach is especially visible in the USA, where the Fordist welfare state has never been as established as in most Western European countries. In his account of the development of the us-American criminal justice system, Christian Parenti gives a detailed account of the new law-and-order approach and is also able to show how this approach is linked to the development of US capitalism. According to Parenti, beginning in the

early 1980s, «law and order» in the USA «is fundamentally about controlling the 'deregulated' populations created by economic restructuring» (Parenti, 1999, p. 43). But similar trends can be observed in different Western European countries as well. Hebberecht and Duprez (2001) sum up the development in Western Europe of the past two decades as a general move away from a policy directed at social prevention and towards a more situational prevention that focuses on technical means, especially in «public and semi-public spaces» (Hebberecht & Duprez, 2001, p. 374). Quite in contrast to the neoliberal ideology of «less state», the state is very active and interventionist in this respect (Hebberecht & Duprez, 2001, p. 375). In France, for example, a law-and-order approach began to replace the French model of prevention that was based on social prevention from the early 1990s onwards (Body-Gendrot & Duprez, 2001). In this context, the term «tolérance zéro», introduced into political discourse by the extreme right (FN) in the early 1990s, spread and was used extensively by the (victorious) right during the presidential campaign 2001 (Elie, 2001). In Ireland, «zero tolerance» was the key to the victory of Fianna Fail in the 1997 elections which was dominated by the topic of «crime». In the two years after, «the criminal justice system has undergone the most fundamental changes in the history of the state» (Cleary, 1998)⁽³⁾. Finally, in the UK, too, «politicians across the spectrum have hailed zero tolerance as the most promising remedy for Britain's crime problems» (Dejevsky, 2002) with Tony Blair being a long time and outspoken supporter of the concept (Macaskill, 1997; Webster 1998).

NEW IDEOLOGIES AND NEW SCALES

Part and parcel of the practice of the new politics of crime is an ideological shift. As Garland notes for the years following the early 1980s: «Crime – together with associated 'underclass' behaviours such as drug abuse, teenage pregnancy, single parenthood, and welfare dependency –

came to function as a rhetorical legitimation for social and economic policies that effectively punished the poor and as a justification for the development of a strong disciplinary state» (Garland, 2001, pp. 101-102). In this national context, local initiatives to re-criminalize homelessness and other underclass behaviours in city spaces, much like the unsuccessful one by the *Deutscher Städtetag* mentioned above, are more successful today than they were back in 1977. Thus, when it comes to policing the undesirables, it is still the nation state that is in charge and redirects politics and ideologies according to the perceived needs of «his» national capital. Although the new measures of policing the poor are enacted by the authorities on the local scale, they are framed by the state on the national scale. What is more, many of the new measures that aim at the eviction of undesirables on the local scale have been initiated by the national scale. Two trends from the UK may serve as illustration: The fact that British citizens today are «the most surveilled population in the world» (Norris & Armstrong, 1999, p. 39) can largely be explained by the extensive funding of local CCTV systems by the Home Office that

began in the 1980s and exploded after 1994 (Williams & Johnstone, 2000, p. 188) – so much so that for example in the Welsh town of Cardigan, with a population of fewer than 4,500, the available funding seems to have been the only reason for the implementation of a CCTV system (Williams & Johnstone, 2000, pp. 199-200). Second, since the passing of the «Crime and Disorder Act» in 1998, cities and towns in the UK are obliged to form «Community Safety Partnerships», where problems of disorder are to be addressed, in order to get funding for crime policy initiatives. A similar approach was taken in Belgium, where community policing («*police de proximité*») was introduced in the early 1990s when the central state decided to emphasize the role of the local police and obliged communes to form «*Conseils consultatif communal de prévention*» if they wanted to profit from financial aid (Cartuyvels & Hebberecht, 2001, pp. 406-411). This decentralization in effect made proactive policing and, in some cities, elements of zero tolerance «the main lines along which an approach of an enhanced spatial and temporal proximity of police intervention is based» (Cartuyvels & Mary, 2002, p. 47).

CONCLUSION

In the context of a general shift from a more inclusionary politics of welfare to an exclusionary politics of «law and order» as a means of social control and the reproduction of a functioning working class, the debates and struggles concerning the «reclaiming of public space» are just one moment of much larger social processes that are at their core driven by the development of the capitalist economy and regulated and managed by the state. In this light, then, the opposing claims over the «reclaiming of public space» are basically two different ideologies of «public space» (Mitchell, 1995) that are used to legitimize different interests and hope to affect the law making as well as the law

enforcement process on the local scale (Belina, 2001). Thus, the «nature of public space» and the distinction between «private» and «public spaces» are not substantially important here, but used ideologically. As such they do not contribute to an explanation of the eviction process but in calling on the state rather obscure its reasons. Although the high visibility of the presence of undesirables in the cities gives this struggle a symbolic importance, and although it may have positive effects for their everyday life, it is nevertheless one derived from much broader developments. Substantially, the struggle is not about access to public spaces but about wealth. Concerning the geography of the struggle, it is

finally important to note that the developments that explain the recent emphasis that is put on the eviction of undesirables

from urban spaces are not fought out on the local scale but concern global capitalism and its regulation by the nation state.

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(2) Thus the claim quoted already earlier on: «to be truly public, a space must be orderly enough to invite the entry of a large majority of those who come to it» (Ellickson, 1996, p. 1174). In a thorough analysis of Ellickson's influential Law Review article «Controlling Chronic Misconduct in City Spaces» (Ellickson, 1996), Don Mitchell shows that, with the exception of «orderly» people and the police, «Ellickson's community is thus apparently the community of property» (Mitchell, 2001, p. 79) – an unintended reference to the bourgeois public sphere, where, as we have seen, private ownership of property was the central precondition for accessibility.

(3) There is a nice story concerning the

«traveling concept» of «zero tolerance» to be told here: In 1997, the Dublin-born then NYPD Deputy Commissioner John Timoney, who was invited to take part in a committee on the politics of crime in Ireland, rallied for «his» «zero tolerance» approach. Only Fianna Fail's shadow minister for Justice, John O'Donoghue, endorsed the concept while the rest of the political elite and the Irish police were not too impressed. Although O'Donoghue's initiatives after the victorious elections were «no more than a token gesture towards the full-blown notion of zero tolerance» (O'Mahony, 1997), his name came to be identified with «zero tolerance» so much that, when in 1999 an Irish-American became mayor of Baltimore (USA) on a «zero tolerance» platform, the Sunday Times commented: «Even his political platform has Irish resonances: one of O'Malley's promises is to introduce John O'Donoghue-style zero-tolerance policing to Baltimore» (Burns, 1999).

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