

BOOK REVIEW

Banished: The New Social Control in Urban America

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BOOK REVIEWED: Katherine Beckett and Steve Herbert, *Banished: The New Social Control in Urban America*. New York: Oxford UP, 2010

Banished: The New Social Control in Urban America by Katherine Beckett and Steve Herbert examines the way trespass laws have been enacted to authorize law enforcement officers to give people trespass admonishments. A trespass admonishment restricts a person from entering a particular area or district for a specific period of time usually anywhere from three months to a year. If the person violates their trespass admonishment, they can be arrested and taken before a judge. The judge may then issue a trespass exclusion which means that the person is permanently banned from that area. Violation of a trespass exclusion could mean time in prison. Essentially, police officers are free to decide who is suitable to be in a specific urban community. The argument for trespass exclusions rests on the argument that “the world is fairly neatly divided between the orderly and the clearly identifiable disorderly” (Beckett and Herbert 105), and furthermore that the police are qualified to judge this distinction.

While Beckett and Herbert’s focus is Seattle, Washington, they are quick to point out that this and similar policies have spread throughout most of the major cities in the United States. Vagrancy laws were abolished in the United States in the 1960s. They were, in fact, declared unconstitutional by the United States Supreme Court. However, much the same as Jim Crow laws were enacted throughout the southern states to prevent Afro-American people from voting in spite of their constitutional right to do so, trespass laws have been enacted to exclude certain people from occupying public space. As Bernard Harcourt has pointed

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out, this “new order-maintenance approach to criminal justice . . . merged in 1980s and 1990s” (2). Since the early 1980s, metropolitan areas from Boston and New York to Los Angeles and from Seattle to Miami have gotten around the constitutionality issue by reframing the narrative. Rather than excluding people because they are homeless, these new trespass laws exclude them for being at the risk of engaging in illicit activities such as purchasing and selling drugs or engaging in prostitution.

This notion of determining those who are “at the risk of” committing offences arises out of what has become popularly known as the “Broken Window Policy” originally outlined in “The Police and Neighborhood Safety” published in *Atlantic Monthly* in 1982 by James Wilson and George Kelling and later expanded on in *Fixing Broken Windows* by George Kelling and Catherine Coles which will be referred to later in this review. Beckett and Herbert explain broken windows as follows:

For Wilson and Kelling, broken windows symbolize a neighborhood that does not care about itself. In places where symbols of disorder accumulate, residents become more fearful. They withdraw from public space and become increasingly unable to exercise informal social control. According to Wilson and Kelling, this serves as a cue for those interested in committing criminal acts; they lack fear of detection in places where disorder is evident. Crime thereby becomes more common. Residents withdraw even further, and a cycle of deterioration is set in motion. It is therefore necessary to fix broken windows quickly to prevent this cycle from ever commencing. (32)

In the context of social control, “to ‘fix’ broken windows means, in large part, using the police’s coercive power to remove undesirable people from public space” (33) in order to make public space more visually appealing. The police officer administering an exclusion order does not have to explain in specific terms the basis upon which he or she handed out the exclusion order. This new maintenance-order approach gives the officer great flexibility in exercising his or her authority.

The Introduction defends Beckett and Herbert’s use of the term “banished” in the title and throughout the text as opposed to admonished or excluded. They argue that especially exclusion orders are a return to the ancient European tradition of banishing undesirables. This reviewer was rather uncomfortable with this comparison as it seems to me that the circumstances were entirely different in

ancient Europe and the reasons for banishment were usually quite different as well. They go on to argue that the difficulties of the last ten years are a logical outcome of gentrification and the sharp rise in unemployment and homelessness in the 1980s. Those homeless who were unable to find employment in the 1980s and 1990s, were unemployable by 2000 due in large part to drug abuse, mental illness, and years of unemployment so that the skills that they possessed during their years of employment had become lost.

The distribution of admonishment orders permits officers to do searches and seizures without a warrant on people found in violation of such orders. When a person is given an admonishment order, his or her name goes into a database. When someone is suspected of being in violation of such an order, that person can be stopped, searched, and arrested at any time. Whether or not the person is arrested is entirely up to the officer on the scene. Over half of urban Seattle is an exclusion area. Included are government offices where social services of various kinds can be applied for, medical facilities, and parks and recreation areas. The message is clear. If you want to use public services, walk carefully and quickly to where you are going. Do your business. Then get out.

Chapter 1 examines the gradual development of banishment as a practice. It examines the gutting of social programs, including affordable and public housing and aid to the needy during the Reagan administration together with the sharp rise in unemployment and homelessness. The statistics that they cite for the Reagan/Bush years are staggering. Nearly half of the homeless during that dark period were children in the care of one or both parents. This is not a diatribe against Reagan. They never mention his name. Nevertheless, at least half of Chapter 1 is an elementary overview of the results of the economic policies practiced during the 80s in contrast to the more Keynesian policies of his predecessors.

The chapter goes on to discuss the broadening of what are called civility codes used to keep the homeless moving farther and farther away from the public eye. Generally when we think of civility codes, we think of public drunkenness, urinating in public, spitting on the sidewalk. But these policies were broadened during the 1980s. As Beckett and Herbert explain, “The civility codes legitimated by the broken windows philosophy criminalized such behaviors as sitting or lying on a sidewalk, engaging in aggressive panhandling, or sleeping in parks” (24). They weren’t being arrested for being homeless; they were being arrested for being in violation of a civility code. The police are not required to explain specifically what the violation is under the civility code, so there is rarely any

record that the constitutional ban against vagrancy laws has been effectively violated.

Chapter 2 examines the way admonishment and exclusion orders take away the rights of individuals as full citizens. In a very real sense it puts the homeless under the jurisdiction of another set of laws in between the laws that ordinary citizens live by and rules of the street that those who live on the street are forced by circumstances to live under. Most of us live under the laws of the State. Those on the street live under the rules of survival on the street, whether it be pan-handling or finding conspicuously unsavory ways of finding food and shelter. When these two laws come into conflict, the police step in with a third set of laws/civic violations (read: admonishments and exclusions) that the homeless are also forced to live under. This tertiary set of laws is enforced by police who exercise a *de facto* judicial authority, separating homeless people from their rights of citizenship.

The hazy nature of these tertiary set of laws makes them open to abuse. Homeless people sitting around in the car that they live in may be threatened with arrest for “the intent to commit a crime” if they don’t move along. Actual arrest would make it harder for these same people to find work and turn their lives around thus they are induced to move along. It is important to remember that many of these people—an estimated two-thirds of them—had a job before 2001. The same can be said of the homeless during the 1980s. But suddenly they become the unwashed outsiders and the homeless and the public’s whole perception of them changed. They become fearful and suspicious of them. It is true of course that many homeless were taken in by family and friends thus escaping many of these stares of mistrust. But removing the truly homeless in this way and labeling them broken windows loses sight of their humanity. It’s reminiscent of Naomi Klein’s discussion of the Paz government in Bolivia where she writes of “the economic erasure of whole sectors of workers; their jobs were soon lost, and they ended up warehoused in the shantytowns and slums surrounding La Paz” (153). There they have to fend for themselves without any means of protecting and feeding their families.

One of the strongest contributions of this book is that it reveals the way in which admonishments have gradually taken over the role of dealing with the poor while at the same time job training and job placement programs have been cut as funds for these programs have been repeatedly cut back first by the Reagan administration and then again in the first year of George W. Bush’s administra-

tion.

As an adjunct to these admonishments Seattle has created SODA and SOAP off-limits orders. SODA is an acronym for Stay Out of Drug Areas and SOAP is an acronym for Stay Out of Areas of Prostitution. These orders were originally handed down only to those who had been found guilty and/or served time for these crimes and were generally a part of their probation or parole agreement. Increasingly however, these orders have been handed out to those who have been convicted of other entirely unrelated crimes if the judge or police suspects that the person might be tempted to engage in these crimes. Since violations of these orders are not in themselves crimes but rather violations of probation or parole, violation of these orders results in serving time in prison for the original unrelated crime.

Trespass exclusion laws enable property owners (read: public businesses) to bind together in an agreement to exclude “undesirable” people from their properties. These property owners sign an agreement with the police which authorizes the police to act as their agents in enforcing exclusion laws on their properties. But as Beckett and Herbert reiterate, trespass admonishments are also used in public areas. “In Seattle, for example, people are also trespass admonished from libraries and recreation centers, the public transportation system, college campuses, hospitals and religious institutions, social service agencies, and commercial establishments” (50). As the reader can see from this list, rehabilitation is neither a goal nor even a concern:

Thus, by simultaneously defining these exclusions as civil and their violations as criminal, city authorities significantly expand their capacity to regulate those considered disorderly. The legal hybridity that characterizes these tools thus strongly reinforces the extent to which Seattle officials turn to criminalization as a solution to the problems and people defined as disorderly. This hybridity also makes these social control tools more difficult to challenge in the courts. Indeed, the popularity of the new tools is to a large extent the consequence of their ease of use and their imperviousness to challenge. (58)

The message is simply to move along. Stay out of urban areas. Oh, and the suburban areas . . . that’s becoming increasingly gated. As Setha Low points out in one of her studies of gated communities, the disparity between those in the

upper 20% income bracket and those in the lower 80% widened enormously during the 1980s creating a two-class system of haves and have-nots. Together with this there has developed a wave of distrust among the “haves” toward those who are not well defined within the system (388-89). So just keep moving.

In an examination of the growth of the US prison system since the early-mid 1980s, Beckett and Herbert point out that those who refuse to move on largely fill our massive and growing prison system. Bernard Harcourt, in his study, points out what might be considered a bitter irony. He writes, “Ironically the continued popularity of order-maintenance policing is due, in large part, to the dramatic rise in incarceration. Broken windows policing presents itself as the only viable alternative to three-strikes and mandatory sentencing laws” (5). Fearful of imprisonment, many do leave the urban areas for the rural areas, where as Yvonne Vissing has pointed out, “there are far more homeless people in small-town America than we ever imagined” (11). Fuelled largely by deregulation followed by unskilled labor jobs moving overseas since the early 1980s coupled with the loss of low-cost housing, homelessness is problem all over the United States, not simply in urban areas.

Chapter 3 looks at a number of statistics regarding those convicted of trespass exclusion laws. It examines racial distribution. It looks at the specific types of arrest. It looks at the areas that are covered in the exclusion orders (not surprisingly, most of the downtown area). It tallies the reasons officers gave for giving out the admonishments. Officers failed to provide any reason at all in 60 % of the admonishments, but Beckett and Herbert tallied the ones in which a reason was given.

Those given admonishments are predominantly white simply because in Seattle most people are white. Only 8% are Afro-American. Of those given admonishments in Seattle, 41.1% were Afro-American in spite of the fact that they represent only 8% of the overall population (Table 3.1 p. 68).

Chapter 4 examines interviews with police and correctional officers in order to analyze why trespass admonishments and exclusions have become so popular. One response was that because Seattle has become such a tourist attraction as a post-industrialist city, there has been much political pressure on the police department to do something about disorder and incivility. Handing out exclusion orders shows the business community that they are doing something. But it also broadens the power of police officers to monitor, search, and if necessary detain people that they wish to exclude from public space. Imprisonment is meted out

to those who refuse to move on. Most either move on or remain in seclusion in their own small sectors of the community where other banished people live . . . that is, until gentrification and more inclusive exclusion orders force them to move on even farther.

The chapter ends by discussing the high cost of incarcerating such people creating in essence debtor's prisons which do nothing to deal with the mental illnesses and drug addictions that many of these people suffer from. It also gives them a criminal record making them even more unemployable when they get out.

Chapter 5 consists of numerous interviews with those that have been given trespass admonishments and exclusions. In many ways this chapter struck me as the weakest chapter in the book. The authors frequently struck me as acrobatic in their credulity and in their effort to be sympathetic in supporting those they interviewed. They overlooked responses that often seemed evasive or openly deceptive. But to their credit, they do record them for our perusal.

Beckett and Herbert say of their interviews, "Our interviews . . . indicate that banishment is best understood as a punishment in and of itself. It functions as a pathway to criminal justice intervention, rather than an alternative to it" (104). This strikes this reviewer as the main issue facing all those interviewed. Rather than training the unemployed for some work, broken windows philosophy merely pushes the unemployed further into the shadows or incarcerates them. This merely exacerbates the problem.

The final chapter, Chapter 6, begins by addressing the futility of trying to fight the use of trespass laws in the court system. The ambiguity and vagueness of the laws makes them very difficult to fight. There is also the fact that the courts and the police like the system because—since admonishments are civil violations and not officially classified as laws—no attorneys are necessary and it is fast and simple to deal with:

Banishment works to help achieve what one Seattle judge referred to as "damage control." As the judge explained, "You want to minimize the effect that disorder has on people, whether it be the victims or the neighborhood—and the neighborhood is a victim—or others that this may affect. And so sometimes we may have to impose sentences just for that purpose alone. We don't get to some of the underlying things. So, many times the exclusions are just damage control." (145)

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The chapter then goes on to examine alternatives to the trespass law program. They look at the use of what are called therapeutic courts. But here again in Seattle, therapeutic courts are held within the judicial system meaning that mentally ill subjects will be dealt with within the criminal justice system (which is over-burdened and ill-equipped to deal with such problems) rather than the social service network. They look at the housing first model. As Beckett and Herbert explain:

The housing first model holds that individuals must possess steady and secure housing before they can address any other problems that may (or may not) beset them. In other words, the problem of homelessness must be addressed prior to any other social service intervention aimed at improving the situation of the socially marginalized. (143-44)

This is rather hard to argue with. It is rather difficult to find a job, find social services, or find medical attention (either physical or psychological) when one is being pushed farther and farther away from the sources of those opportunities and resources. The Department of Housing and Urban Development (HUD) that was started in 1965 under President Johnson to provide homes and shelter for these people was essentially gutted under Reagan and hundreds of thousands found themselves on the street. It was beefed up under Clinton, but then immediately gutted again under Bush who at one point proposed eliminating it altogether. Obama has done little substantial to put it back on its feet again.

Many celebrate this new maintenance-order approach to criminal justice. Malcolm Gladwell in *The Tipping Point* celebrates it, writing, “If a window is broken and left unrepaired, people walking by will conclude that no one cares and no one is in charge. Soon, more windows will be broken, and the sense of anarchy will spread from the building to the street on which it faces, sending a signal that anything goes” (141). This would seem to imply that the answer to the problem would be simply to repair the window before the problem starts. Gladwell continues:

This is an epidemic theory of crime. It says that crime is contagious—just as a fashion trend is contagious—that it can start with a broken window and spread to an entire community. The Tipping Point in this epidemic, though, isn’t a particular kind of person. . . . It’s something physical like graffiti.

The impetus to engage in a certain kind of behavior is not coming from a certain kind of person but from a feature of the environment. (141-42)

This is contradictory because broken windows theory does not simply deal with broken windows or physical objects. Beckett and Herbert argue that broken windows theory is deeply flawed from the beginning because it deals with people that it treats like things. It deals with outward appearance. It does not deal with people as people. It deals with images of disorder that it wants to prettify and make orderly. This is probably the most important contribution that *Banished* makes to the discussion of how the various states need to think about and deal with the poor and the homeless. In *Fixing Broken Windows* George Kelling and Catherine Coles argue that they are being unfairly accused by the press of wanting to force the homeless out of urban areas without providing them anywhere to go. They write, “How we get from enforcing laws against disorderly behavior to reading people out of the human race, or casting them aside, is a rather tortuous bit of logic” (39). Unfortunately, loitering and sleeping in public places are considered broken windows by the Seattle Police Department and people are arrested for it on a daily basis.

Kelling and Coles argue that homeless people with psychological and substance abuse problems should get psychological help but they provide no answer for how they should get this help. They seem to be saying, look, we created a theory. The way Seattle, San Francisco, and Baltimore are interpreting and using it isn't our fault. It also isn't our fault that Reagan and Bush both gutted HUD thus expanding this horrendous problem. While at the same time attempting to distance themselves from speaking of homeless people as all bad, both *The Tipping Point* and *Fixing Broken Windows* speak of homeless people in broad general terms as the problem, sleeping in public and begging for money. Kelling and Coles point out that there are homeless shelters for these people, but homeless shelters in New York,* Cincinnati, Baltimore, Seattle, San Francisco, Los Angeles and in practically every major city are notoriously violent places. There is not enough funding to keep them safe at night. Most homeless avoid them.

Beckett and Herbert present a strong argument against broken windows theory, but unfortunately they are able to provide no serious workable solutions. They

* Between 1981 and 1989, homelessness tripled in the United States. During the initial burst of homelessness New York tried to deal with the situation by segregating men and boys from women, girls, and babies. They had separate facilities and were not allowed to mix in their separate shelters (see Susser).

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point to the fact that the government needs to do more to provide job training and job placement. They do not make it clear where the funds to do so might come from however. Even Kelling and Coles admit that broken windows theory raises serious questions of constitutionality and individual rights (21). Still, the police and the courts love the ease with which they are able to deal with disorder under this new order-maintenance approach and they are not likely to change it any time soon. And, as has pointed out above, HUD is powerless to help these people, so as far as housing for these people is concerned the picture is bleak indeed.

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