The regulation, representation and enforcement of nuisance: A comparative study

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SUMMARY

This doctoral study is about the regulation, representation and enforcement of nuisance, which have been analysed in a comparative perspective.

The study has begun with a review of the relevant criminological literature on nuisance and its regulation. Such a literature study has been carried out on the basis of the first research question of this doctoral thesis, which considers which are the criminological theories and perspectives that have been elaborated or applied along the years to explain the raise in the regulation of incivilities and how has nuisance and its regulation been viewed by and framed within them. In the article "*Explaining incivility and the social reaction to it through different criminological perspectives*"[1] (chapter two of this thesis), which answers to this first research question, we detected the presence of a number of gaps in the relevant criminological literature on nuisance and its regulation. These gaps have informed the formulation of the subsequent three research questions of this doctoral study, which aimed to comparatively address the regulation, representation and enforcement of nuisance.

All these research questions have been answered in articles that have published, accepted for publication or submitted in international journals or in books by international publishers.

The second research question is concerned with the *regulation* of nuisance, and investigates whether courts in some selected European countries have examined the legality of nuisance regulations through fundamental principles of criminal law and whether (when needed) they have provided correctives to safeguard individual's freedoms. This question has been answered in the article entitled "*Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers?*"[2] (chapter three). In this article, we comparatively analysed the regulation of nuisance through two traditional principles of criminal law, the principle of legality and the principle of proportionality, as reflected in the judgments of courts in England and Wales, Italy and Belgium. The research conducted shows that national and local incivilities regulations in these European countries have been found by courts to be incompatible with these two fundamental criminal

[1] Di Ronco, A. (in press). Explaining incivility and the social reaction to it through different criminological perspectives. *GERN Research Paper Series.* Antwerp: Maklu.

[2] Di Ronco, A. and Peršak, N. (2014). Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers? *International Journal of Law, Crime and Justice, 42*(4), 340-365.

law principles and to excessively intrude into people's exercise of fundamental rights. To safeguard individual's freedoms, courts in these jurisdictions have tried to diminish the excessive effects of such regulations.

The third question addresses both the *representation* of nuisance and its *enforcement* and examines the societal attitudes towards uncivil behaviour, and how nuisance is seen and tackled by the authorities, in different cities and cities' areas (and whether cultural factors can contribute to explaining eventual differences in its representation and enforcement). This question has been answered in two articles, "*Regulating street prostitution as a public nuisance in the "culture of consumption:" A comparative analysis between Birmingham, Brussels and Milan*"[3] (chapter four) and "*Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy)*"[4] (chapter five). In the articles, we comparatively investigated dominant societal attitudes towards nuisance and its regulation, and the way law enforcers see and tackle it, in different cities and cities' areas. For these purposes, we considered two types of nuisance, which in the two studies were respectively street prostitution (in the first) and public drunkenness (in the second). Furthermore, we also attempted to explain the differences in the representation and enforcement of nuisance through (context- and country-specific) cultural factors. The results of the two studies have highlighted that there are similarities, together with differences, in the representations of, and enforcement responses to, nuisance in different societal contexts and that, in order to enhance our understanding of the differences, it is important to take into account also national and contextual cultural elements.

The fourth research question focuses on the *representation* of regulated nuisance in the Flemish press and inspects how the (print) media have represented regulated nuisance overtime, through the voices of whom, and whether criminologists have played any role in shaping such representations. The answer to this question has been provided in the article "*Media representation of regulated incivilities:*

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[3] Di Ronco, A. (2014) 'Regulating street prostitution as a public nuisance in the 'culture of consumption': A comparative analysis between Birmingham, Brussels and Milan'. In N. Peršak and G. Vermeulen (eds.) *Rethinking Prostitution: From Discourse To Description, From Moralisation To Normalisation?*, Antwerp: Maklu.

[4] Di Ronco, A. (submitted to *Crime, Law & Social Change* and in review). Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy).

Relevant actors, problems, solutions and the role played by experts in the Flemish press"[5] (chapter six). The findings suggested that the press, by relying on the voices of local actors and authorities, has mostly promoted the criminalisation of uncivil (and, more notably, of polluting) behaviour. By contrast, it has provided a very limited coverage of the voices of crime and justice experts, who, in the last four considered years, fundamentally question the system of sanctions and link it with broader questions of justice and social control. Having observed that experts' messages are rather incompatible with the dominant media frames on regulated nuisance, we concluded with a discussion of the actual possibility that experts have to change the established press images of crime and punishment. However, we also highlighted the importance for criminologists interested in news-making to look into experts' media engagement over time, which may offer them relevant routes of impact on the media.

To conclude, this doctoral research has advanced the previously established criminological knowledge by providing additional empirical data on the regulation, representation and enforcement of incivilities, which are important topics within which empirical research is much needed. As we highlighted in the conclusion of this thesis, the results of this doctoral study will hopefully stimulate future research avenues and lead to the formulation of new empirical research questions and to the identification of novel areas of inquiry, which will help to further advance our knowledge and understanding of the societal attitudes towards nuisance and its regulation, and of the ways uncivil conduct is seen and tackled by the authorities.

[5] Di Ronco, A. (in press). Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press. *Criminology & Criminal Justice.*

SAMENVATTING

Dit doctoraatsonderzoek handelt over de reglementering, beeldvorming en handhaving van overlast. Het onderwerp werd benaderd vanuit een vergelijkend perspectief.

Het onderzoek werd aangevat met een literatuurstudie waarbij relevante criminologische literatuur inzake overlast en de reglementering ervan onderzocht. De literatuurstudie werd uitgevoerd aan de hand van de eerste onderzoeksvraag in dit proefschrift, namelijk: "welke criminologische theorieën en perspectieven zijn in de afgelopen jaren uitgewerkt en toegepast om de toename van reglementering op het gebied van overlast te verklaren en op welke wijze werd overlast en de daarop betrekking hebbende reglementering binnen deze theorieën en perspectieven benaderd en gekaderd?" In het artikel: *"Explaining incivility and the social reaction to it through different criminological perspectives"*[1] (hoofdstuk 2 van dit proefschrift), dat antwoord geeft op de eerste onderzoeksvraag, hebben we een aantal leemten in de criminologische literatuur inzake overlast en de reglementering ervan vastgesteld. Deze leemten in de literatuur hebben het uitgangspunt gevormd voor de formulering van de drie daaropvolgende onderzoeksvragen, die als doelstelling hebben vanuit een vergelijkend perspectief de reglementering, de beeldvorming en de handhaving van overlast te benaderen.

Alle onderzoeksvragen zijn aan bod gekomen en beantwoord in artikelen die reeds zijn gepubliceerd, voor publicatie zijn aanvaard of ter publicatie zijn ingediend bij internationale tijdschriften of boeken van internationale uitgevers.

De tweede onderzoeksvraag heeft betrekking op de reglementering inzake overlast en handelt over de vraag of rechtbanken, in de voor dit onderzoek geselecteerde Europese landen, de legaliteit van reglementering inzake overlast hebben getoetst in het licht van de fundamentele strafrechtsprincipes en of zij deze reglementering hebben aangepast met het oog op de bescherming van de individuele vrijheid. Deze onderzoeksvraag is beantwoord in het artikel: "*Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers?"*[2] (hoofdstuk 3). In dit artikel hebben we een vergelijkende analyse van de

[1] Di Ronco, A. (in press). Explaining incivility and the social reaction to it through different criminological perspectives. *GERN Research Paper Series.* Antwerp: Maklu.

[2] Di Ronco, A. and Peršak, N. (2014). Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers? *International Journal of Law, Crime and Justice, 42*(4), 340-365.

reglementering inzake overlast uitgevoerd aan de hand van twee strafrechtelijke basisprincipes, namelijk het legaliteitsbeginsel en het proportionaliteitsbeginsel, zoals gereflecteerd in rechterlijke uitspraken in Engeland en Wales, Italië en België. Het gevoerde onderzoek wijst uit dat rechtbanken in deze drie Europese landen de nationale en lokale reglementering inzake overlast onverenigbaar hebben bevonden met de fundamentele vereisten van legaliteit en proportionaliteit in het strafrecht, en excessief inbrekend op het genot van fundamentele rechten. De rechtbanken in deze landen hebben de disproportionele effecten van deze reglementering geneutraliseerd of gereduceerd om de vrijheden van het individu te kunnen waarborgen.

De derde onderzoeksvraag richt zich op zowel de beeldvorming als de handhaving van overlast en gaat in op de maatschappelijke houding ten aanzien van overlast en hoe overlast door autoriteiten in steden en in de wijken binnen die steden wordt benaderd en aangepakt (en of culturele factoren kunnen bijdragen aan het verklaren van mogelijke verschillen aangaande de beeldvorming en handhaving). Deze vraag werd beantwoord in twee artikelen: "*Regulating street prostitution as a public nuisance in the "culture of consumption:" A comparative analysis between Birmingham, Brussels and Milan*"[3] (hoofdstuk 4) en "*Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy)*"[4] (hoofdstuk 5). In deze artikelen hebben we de dominante maatschappelijke houding ten aanzien van overlast en de daarop betrekking hebbende reglementering vanuit vergelijkend perspectief onderzocht, alsook de wijze waarop de politie in verschillende steden en in de wijken binnen die steden deze problematiek benadert en aanpakt. Omwille van deze doelstellingen hebben we twee typen overlast geanalyseerd, namelijk straatprostitutie en openbare dronkenschap. Daarnaast hebben we getracht de verschillen inzake de beeldvorming en handhaving van overlast te verklaren aan de hand van (context- en land-specifieke) culturele factoren. Beide studies hebben aangetoond dat er zowel gelijkenissen als verschillen zijn ten aanzien van de beeldvorming van - en de handhavende reacties op – overlast in verschillende maatschappelijke contexten en dat, ten einde ons inzicht in deze verschillen te vergroten, het van belang is om tevens de nationale en contextuele culturele factoren in acht te nemen.

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[3] Di Ronco, A. (2014) 'Regulating street prostitution as a public nuisance in the 'culture of consumption': A comparative analysis between Birmingham, Brussels and Milan'. In N. Peršak and G. Vermeulen (eds.) *Rethinking Prostitution: From Discourse To Description, From Moralisation To Normalisation?*, Antwerp: Maklu.

[4] Di Ronco, A. (submitted to *Crime, Law & Social Change* and in review). Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy).

De vierde onderzoeksvraag focust op de beeldvorming van gereglementeerde overlast in de Vlaamse pers en onderzoekt hoe de (geschreven) media gereglementeerde overlast in de voorbije jaren heeft voorgesteld, via de stem van welke actoren dit geschiedt, en of criminologen een rol hebben gespeeld bij de beeldvorming hieromtrent. Het antwoord op deze vraag komt aan bod in het artikel: "*Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press*"[5] (hoofdstuk 6). De bevindingen geven aanleiding om aan te nemen dat de pers, door zich te baseren op de visie van de lokale actoren en autoriteiten, de criminalisering van overlast (en dan in het bijzonder die van vervuiling) heeft bevorderd. Daarnaast heeft zij slechts in zeer beperkte mate een stem gegeven aan misdaad- en justitie-experten, die in de afgelopen vier jaar het systeem van sancties fundamenteel in vraag hebben gesteld en die dit systeem in verband brengen met ruime vraagstukken van rechtvaardigheid en sociale controle. De vaststelling dat de visie van experten in grote mate onverenigbaar is met de *framing* van gereglementeerde overlast in de media, liet ons toe te besluiten dat moet worden betwijfeld of experten daadwerkelijk in staat zijn om het gevestigde beeld (in de media) van misdaad en bestraffing te beïnvloeden. Desondanks hebben we ook het belang benadrukt, voor criminologen die geïnteresseerd zijn in hoe nieuws tot stand komt, om het optreden in de media van experten doorheen de tijd te bestuderen, omdat dit mogelijk interessante aanknopingspunten oplevert om hun invloed op de media te vergroten.

Deze dissertatie heeft in essentie bijgedragen aan de ontwikkeling van criminologische kennis door het verschaffen van aanvullende empirische gegevens inzake de reglementering, beeldvorming en handhaving van overlast, welke belangrijk thema's zijn waarover empirisch onderzoek ten zeerste noodzakelijk is. Zoals aangegeven in de conclusies van dit proefschrift zullen de resultaten van dit onderzoek hopelijk verder onderzoek stimuleren en leiden tot de formulering van nieuwe empirische onderzoeksvragen. Daarnaast zullen zij hopelijk aansporen tot de identificatie van nieuwe onderzoeksgebieden die kunnen bijdragen aan het vergroten van onze kennis en ons begrip inzake de maatschappelijke houding ten aanzien van overlast en de reglementering ervan en inzake de wijze waarop overlast door de autoriteiten wordt benaderd en aangepakt.

[5] Di Ronco, A. (in press). Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press. *Criminology & Criminal Justice.*

CHAPTER ONE: Introduction

1 State of the art and research questions

In recent times many European countries have witnessed an expansion in the scope of their crime prevention policies (Hughes, 1998; van Swaaningen, 1999; Crawford, 2002, 2009a; Duprez and Hebberecht, 2002; Edwards and Hughes, 2005). Roughly in the last thirty years, crime prevention at the European level has not only relied on its traditional goal of pre-empting the commission of crime (which has to be read as crime proper, or as criminal behaviour defined as such and sanctioned by the criminal law).[1] It has also been entrusted with functions that have usually pertained to other legal systems, such as to the one of social policy (Rodger, 2008), and sought to accomplish objectives such as the reduction of fear, insecurity, and of the (perceived) risks of being victim of a crime, while simultaneously increasing the "life quality" of local communities.[2] As put it by Crawford (2009c: 15, emphasis in the original), crime prevention in many European countries has been featured by an "emphasis upon *wider social problems*, including public perceptions and fear of crime, quality of life, broadly defined harms, incivilities and disorder".

One of the results of this expansion in many Member States' crime prevention policies has been the penalisation of sub-criminal forms of conduct such as anti-social, uncivil, or nuisance behaviour,[3] which (especially in the last two decades) has progressively attracted a great deal of criminological attention.

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[1] For example, Garland (2001) observed a similar expansion in the scope of crime prevention in the US and UK, whereas Crawford and Evans (2012) did so with respect to England and Wales.

[2] "Zero tolerance" or tough approaches on incivilities, which informed the British safety policy (Innes and Jones, 2006) and the local management of disorder in New York (Newburn, 2007), have been (criminologically) justified in Wilson and Kelling's (1982) "Broken Windows" theory on the basis of a (contended) link between disorder in a neighbourhood, the increase of residents' fear (which leads to their withdrawal from public spaces, and to the subsequent reduction of informal social control) and of serious crime. As it will be illustrated in chapter two of this thesis, such a link has been problematized in subsequent studies (see, among others, Sampson and Raudenbusch (1999) and Taylor (2001)).

[3] In this thesis, nuisance, incivilities, uncivil, anti-social or disorderly behaviour are considered as synonyms.

We focused on the state of the criminological research on nuisance, and on the social control mechanisms envisaged to target it, in the preparatory phase of this doctoral research. The goal of this phase was to identify areas of inquiry that have been left relatively unexplored, or that have been under-addressed, in the relevant literature. To carry out the literature review we formulated a specific research question, which corresponds to the first research question of this doctoral research:

(1) *Which criminological theories and perspectives have been elaborated or applied along the years to explain the raise in the regulation of incivilities and how has nuisance and its regulation been viewed by and framed within them?*

The question has been answered in the article "*Explaining incivility and the social reaction to it through different criminological perspectives*", which has been included in chapter two of this thesis. By reviewing a number of perspectives, which included the labelling perspective, left and right realism, environmental criminology, critical criminology and cultural criminology, we wanted to detect the way nuisance and its regulation have been viewed by and framed within them.

From the review, it emerged that criminologists concerned with analysing nuisance regulations have mainly problematized them on the basis of the excessive effects they have on groups of people who are often already marginalised and stigmatised, such as anti-social tenants, homeless, prostitutes, migrants and young people (Brown, 2004; Bannister et al, 2006; Squires, 2006, 2008; Burney, 2009; Crawford, 2009b). In their critical analyses of nuisance regulations (which we further reviewed in a following stage of the research), criminologists have also taken into account the normative issues present in them. For example, to highlight the excessive effects that the UK anti-social behaviour legislation has on the fundamental rights of individuals and groups, criminologists have also relied on the work of many criminal law scholars, who have negatively assessed its legality on the basis of fundamental principles of criminal law, such as the principles of legality, due process and proportionality (Ashworth, 2004; Ashworth and Zedner, 2008; Cornford, 2012 etc.).[4]

In short, through the literature study we found that the criminological literature on incivilities regulation has mostly problematized the excessive effects that social control mechanisms against nuisance have on certain segments of the population and, as a consequence, on individual's rights. By

[4] For the scholarly debate on the legitimacy of nuisance regulations and, in particular, on the principles for criminalisation (such as the harm principle and the offence principle) applicable to the case of the regulation of incivilities, see, for example, Simester and von Hirsch (2006) and Peršak (2014).

contrast, it has relatively under-addressed the (eventual) presence of safeguards, or of remedies used in practice by criminal justice actors, such as by courts, to neutralise or reduce the negative impact of nuisance measures on people's freedoms.

To fill this knowledge gap in the relevant criminological literature, this doctoral study examines the legality of nuisance regulations, or their compatibility with traditional principles of criminal law, as reflected in the case law of selected European countries. It also, and above all, inspects whether courts, when finding (national and local) nuisance regulations incompatible with criminal law principles, have safeguarded individual's autonomy by providing correctives. As a result, we formulated the following research question, which corresponds to the second research question of this thesis:

(2) *Have courts in some selected European countries examined the legality of nuisance regulations through fundamental principles of criminal law and have them (when needed) provided correctives to safeguard individual's freedoms?*

In the literature study, which we conducted at the beginning of the doctoral study, we also observed that some of the reviewed criminological perspectives, namely the labelling perspective and cultural criminology, have placed emphasis on the context-specific character of nuisance and of its regulation, which have largely been associated with the values, and behavioural and aesthetic expectations, of groups with political capital in a given community.[5] This notwithstanding, we also noticed that such perspectives have seldom approached the analysis of regulated nuisance in a comparative perspective. In other words, what we found is that criminologists working within the labelling perspective and within the perspective of cultural criminology have mainly investigated the processes of criminalisation targeting excluded minorities deemed to behave "uncivilly" by considering one specific context (be it a city or a city area). By contrast, they seem to not have approached the topic in a comparative perspective, for example, by comparing how a typical case of nuisance is viewed by dominant societal groups in different cities or cities' areas, and how it is seen and tackled by the law enforcement authorities there.

The identification of this literature gap led us to the formulation of the third research question of this doctoral study. Such a research question aims to *explore* whether in uneven societal settings there are

[5] For studies carried out within the labeling perspective, see, for example, Dixon et al. (2006) and Millie (2008, 2011). For studies conducted within the framework of cultural criminology, see Ferrell and Sanders (1995) and Ferrell (1996, 1997).

differences, along with similarities, in the societal attitudes towards nuisance, and in the representations and enforcement responses of agencies of formal control. Furthermore, it also aims to *explain* the (eventual) differences through the cultural values embedded in the "context" under study (e.g., the community of reference). On these bases, we formulated the third research question of the study, which reads as following:

(3) *Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?*

Through the literature study carried out at the outset of the doctoral research, we also found that the criminological perspectives that focused on regulated nuisance and the media have mainly analysed the *effects* that the media reporting on it has on dominant societal groups and on policy-makers, which have mostly been understood in terms of "moral panics" (Cohen, 1980). By contrast, they have not so much addressed the *content* of media news, or the specific media representations of the problems and solutions connected to regulated nuisance through time. However, to fully understand the effects of media representations, it is crucial to investigate *what* the media say, and what it is said by *whom*. To a great extent, indeed, our knowledge and perception of general crime and punishment comes from the crime-related news broadcasted by the television and disseminated by high-circulation newspapers (Innes and Fielding, 2002). Particularly the press, by giving voice to certain categories of actors and by excluding (or representing less substantially) the opinions of other societal groups, can favour certain representations of crime and punishment, and offer to the audience specific ways of looking at the problem and at its solution(s) (Kidd-Hewitt, 2002).

According to the broader literature on media and crime (which we revised in a subsequent stage of the research), the voices of certain actors, such as of law enforcers (Chermak, 1995; Sacco, 1995; Reiner, 2002, 2003), are substantially covered in the media. By contrast, the opinions of others, including the ones of criminologists and criminal justice experts, are usually much less represented. Moved by a concern over the relative absence of the voices of criminologists in the media, some of the authors, who engaged in the wider debate on the public role of criminologists,[6] have called on criminologists to make a better use of the electronic (including the social) and the print media in order to become central

[6] For more on the scholarly debate on the public role of criminologists, see, for example, Currie (2007), Loader and Sparks (2010), Uggen and Inderbitzin (2010) and Turner (2012).

news-making actors (Barak, 1988; 2007a; Groombridge, 2007). In his idea of "newsmaking criminology", for example, Gregg Barak (1988, 1994, 1999, 2007a) argued that in order to be able to critically react to, and to ultimately correct, the mediated images of crime and of crime control, which are at some degree distorted by "dominant cultural ideologies" (Barak, 1994: xiii), criminologists need to gain access to them and to learn how to effectively communicate through them.

Studies in newsmaking criminology, however, do not say much about whether criminologists have actually participated in the mediated discourse on crime and crime control *over time*, thus contributing to influencing the public views on them.[7] In contrast, when they addressed criminologists' efforts to manipulate the public discourse, newsmaking criminological research has mainly focused on criminologists' own experiences of engagement with the media (Barak, 2007b; Fox and Levin, 1993; Greek, 1994; Henry, 1994), which tended to refer to specific, time-limited, crime events or issues (Barak, 1988, 1999, 2007a; Mopas and Moore, 2012). In other words, research in newsmaking criminology seem not to have focused on inspecting whether criminologists, by (actively) participating in the media discourse on particular crime-related issues *over time*, have contributed to the long term shaping of the public views on it.

In light of the above lines of inquiry, which have so far not prominently featured the criminological literature on media and crime, and on newsmaking criminology, we came to the following research question, which corresponds to the fourth (and last) question of this doctoral study:

(4) *How have the media represented regulated nuisance overtime, through the voices of whom, and have criminologists played any role in shaping such representations?*

The aim of the doctoral study and of this thesis, or, more concretely, of the research activities that have been carried out to answer these four research questions, was to obtain valuable comparative empirical data on the regulation, representation and enforcement of nuisance.

[7] As it emerges from the literature (see, for example, Rowe, 2012), the interventions of criminologists in the media should be regular if they are to shape public images of crime and punishment.

2 Methodology and methods

2.1 Delimiting the object of the study

Before taking any methodological decision to answer the research questions indicated above, we decided to delimit the object of the study. To investigate the regulation, representation and law enforcement of uncivil behaviour, this research has focused on three specific European countries, where the empirical data have been collected. They were the UK, Belgium and Italy.[8] The UK has been selected for the wide availability of criminological studies analysing the regulation of anti-social behaviour in the UK.[9] Belgium has been included in light of the funding institution that has provided financial support for the research project (Ghent University, BOF).[10] I decided to include also Italy, my home country, for pragmatic reasons, as I believed that my familiarity with the legal system and knowledge of the overall culture would have likely helped me in the analysis of the gathered findings.

2.2 Research design

This section is dedicated to illustrating the methodology and methods that have been employed, in chapters four and five, to answer the third research question (i.e., *Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?*) and, in chapter six, to answer the fourth question of this doctoral study (i.e., *How have the media represented regulated nuisance overtime, through the voices of whom, and have criminologists played any role in shaping such representations?*).

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[8] Not all parts of the doctoral research have, however, involved the collection of data in all these three countries, as it is in chapters three and four. Chapter five analyses data that have been collected in two urban areas of cities found respectively in Belgium and in Italy (and not in the UK), whereas chapter six focuses on data that refers only to Flanders (a Region of Belgium).

[9] The UK regulation of anti-social behaviour has also been deemed to have had powerful influences in the shaping of incivilities regulations in some Continental countries. For example, scholars have acknowledged the influences of the UK approach on anti-social behaviour in the national incivilities legislations, for example, of the Netherlands (Koemans, 2010; van der Leun and Koemans, 2013) and of Belgium (Devroe, 2012).

[10] The present research has been carried out under the framework of the BOF-funded project entitled "Dealing with nuisance: regulation, representation and legitimate penalisation", which was awarded to Prof. Nina Peršak in November 2012 (01N01713).

By contrast, this section does *not* include the methodology and methods that we utilised in chapter two to carry out the literature study (which answers the first research question, i.e. *Which criminological theories and perspectives have been elaborated or applied along the years to explain the raise in the regulation of incivilities and how has nuisance and its regulation been viewed by and framed within them?*), nor to conduct, in chapter three, the comparative analysis of the legality of nuisance regulations as reflected in the case law (which has answered the second research question, i.e., *Have courts in some selected European countries examined the legality of nuisance regulations through fundamental principles of criminal law and have them (when needed) provided correctives to safeguard individual's freedoms?*). In chapter three we reviewed the regulatory frameworks that exist in the three selected European countries, and assessed (through case law) their compatibility with fundamental principles of criminal law, as a preparatory activity to the "core" part of this thesis, which focused on the representation and enforcement of (regulated) nuisance. In other words, before dwelling on the description and explanation of the societal and law enforcement attitudes towards incivilities and their regulations, and of the media representations of regulated nuisance, we considered it relevant (also in light of the detected gaps in the reviewed literature on the topic) to firstly focus on the (national and local) regulatory frameworks as assessed in their legality by national courts. For insights into the methodology and methods adopted in this part of the doctoral study, we refer to chapter three of this thesis.

2.2.1 Qualitative approach

In light of the very nature of the doctoral study and, more specifically, of its third and fourth research questions, we selected a qualitative approach. A qualitative approach has the advantage to allow the researcher to focus on the contextual, the case or the particular and to investigate the phenomenon holistically and in depth, for example, by using a series of techniques for the data gathering that are "flexible and sensitive to the social context in which data are produced", and of analytic methods that "involve understanding of complexity, detail and context" (Mason, 2002: 3). As Mason (2002: 1) put it, "[t]hrough qualitative research we can explore a wide array of dimensions of the social world, including the texture and weave of everyday life, the understandings, experiences and imaginings of our research participants, the ways that social processes, institutions, discourses or relationships work, and the significance of the meanings they generate". As emerges from this quote, qualitative research is interpretative and involves a naturalistic view of the world (Denzin and Lincoln, 2003), which implies that the research takes place in the natural setting where the phenomenon under study occurs

and that it interprets the meanings or significance assigned by people to it. The study is also based on a realist ontological and epistemological position, which poses the existence of a real world that can be discovered by the researcher, although not comprehensively or only in a probabilistic fashion (Guba and Lincoln, 1994; Healy and Perry, 2000).

2.2.2 Methodology: case studies

To answer the third research question (i.e., *Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?*) and the fourth question (i.e., *How have the media represented regulated nuisance overtime, through the voices of whom, and have criminologists played any role in shaping such representations?*), this research has relied on three case studies.[11] While the first two, which have to do with the nuisance brought about street prostitution (the first) and public drunkenness (the second), are comparative case studies and answer to the third research question, the third case, which addresses the representations of regulated nuisance in the Flemish press, answers to the fourth question of this doctoral thesis.

Case studies have been chosen as a research method in light of the research questions posed in this doctoral study (and answered through the three case studies), which are descriptive (in all case studies), and *also* explanatory (in the first two case studies on the nuisance of street prostitution and of public drunkenness). According to Yin (2012, 2014), descriptive and explanatory research questions are appropriately answered through the adoption of case study research designs.

In all three cases, we relied on both a deductive and an inductive approach. In the first two case studies on the nuisance of street prostitution and of public drunkenness, for example, we deductively derived from theory models or hypotheses for the purpose of *explaining* (through empirical testing) the data analysed. We adopted a more inductive approach in the phase of data gathering, where we were open to capture new analytical insights offering rival explanations to the investigated phenomena (that is, beyond the theoretical propositions formulated at the outset of the two studies). Furthermore, also in

[11] As defined by Yin (2014: 16), a case study is "an empirical inquiry that investigates a contemporary phenomenon (the "case") in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident".

the third case study on the representations of regulated nuisance in the Flemish press we analysed the data (which were made of newspaper articles) only partially through an inductive approach: while we deductively developed the main content codes or categories, which are "questions with which the coder addresses the material" (Bauer, 2000: 135), from theory, we also inductively elaborated sub-codes (or sub-categories that inherently belong to the main codes) in the course of the analysis of the data. Part of the *descriptive* findings was, moreover, related back to theory, without leading to the formulation of new theoretical propositions (as it is in the case of research based on inductive approaches).

To analyse the data in these three case studies, we used different criminological perspectives. In the first case study, for example, we employed a theoretical model (Hayward's (2004) "culture of consumption" model) that was developed within the broader theoretical framework of cultural criminology. Similarly in the second case study (one of) the formulated theoretical proposition(s) drew as well on cultural criminology scholarship (among others, we referred to Ferrell (1995, 1996), Ferrell and Sanders (1995)). In the third case study, by contrast, the data were analysed against the backdrop of the perspective of newsmaking criminology (Barak, 1988; 2007). Notwithstanding their differences, these perspectives are all situated within the broader theoretical framework of critical criminology (DeKeseredy and Dragiewicz, 2012).

As specified by Stubbs (2008), there is no overarching definition of "critical criminology". Critical criminology is a rather broad notion that encompasses a different set of perspectives, each of them having their own origins, methods and political orientations (see also Carrington (2002) and DeKeseredy and Dragiewicz (2012)). However, critical criminology or, more properly, "critical criminologies", as Carrington (2002) put it, also share a number of characteristics. Among others, authors writing within such perspective(s) are considered to view the causes of crime as dependent on the system of social inequalities established in our contemporary society, and to identify as solutions to the crime-problem "progressive initiatives designed to "chip away" at the inequitable status quo" (Messerschmidt in DeKeseredy and Dragiewicz, 2012: 2). Among the perspectives that fall within critical criminology there are also cultural criminology, which has been described as "one of the

newest directions in critical criminology" (DeKeseredy and Dragiewicz, 2012: 11), and newsmaking criminology[12] (DeKeseredy and Dragiewicz, 2012; Edwards, 2013).[13]

The three case studies are singular as they each focus on one singular "case". The uniqueness of the case studies may not be that apparent when it comes to considering the first two case studies on the nuisance of street prostitution and of public drunkenness, which include *multiple* "cases" or contexts (represented by cities or by urban areas within cities) with multiple *embedded* units of analysis.[14] However, since they are organised and analysed in one (macro) comparative case study, they are considered as single cases (for more on this point, see below). If the first two case studies rely on a multiple (embedded) case study design, the third case study, which is about the press representations of regulated nuisance, is rather based on a single (holistic) case study design (Yin, 2014). A holistic approach to case study research has been chosen as it allows for a ""thick" description of events" (Gerring, 2006: 49) or for "a more or less comprehensive examination of a phenomenon" (Gerring, 2006: 17).

In order to examine different aspects of the cases at issue and get a broader, multifaceted reading of them from different angles, this doctoral research has used multiple methods for the gathering of data, which are a typical feature of case study research designs (Yin, 2014). Although the employed multiple methods are mostly qualitative, in some parts they are also quantitative (Yin, 2012). A combination of qualitative and quantitative methods is found, for example, in the second case study on the nuisance of public drunkenness, where an analysis of the (qualitative and quantitative) results of the ethnographic study is provided (see chapter five of this thesis). According to Brewer (2000), the utilisation of combined methodologies is a common characteristic of ethnographic research: during the ethnographic fieldwork, the researcher can not only observe how a given phenomenon occurs in its

[12] There is overall consensus among (critical criminology) scholars on the belonging of the perspective of newsmaking criminology to the broader framework of critical criminology. This notwithstanding, Barak (as quoted in Pavlich, 1999: 36) addressed with scepticism the meaning of the word "critical" in critical criminology, and, as argued by Edwards (2013), did not necessarily want to situate his writings within this perspective.

[13] For a review of the perspective of cultural criminology, we refer to chapter two of this thesis. For an overview of the literature on newsmaking criminology, see chapter six.

[14] According to Patton (2002), units of analysis are usually identified in the design stage of the research and are characterised by specific data collection methods and by a certain focus in the analysis of the data. Patton (2002: 447) speaks about "layered or nested" case studies, which consist of smaller case units that are built from a larger or a macro case study.

social context; he can also measure the frequency of its occurrence, for example, by counting the number of times a certain phenomenon takes place. The content analysis of press news performed in third case study (and included in chapter six of this dissertation) has also involved the gathering and analysing of quantitative data (alongside qualitative data). Through computer-assisted content analysis (which in the research has involved the use of the software NVivo), the sampled material has been organised under categories or content codes. These codes are automatically counted by the software, which shows the number of times a given category occurs (or has been coded) in the text.

Combining methods for the gathering of data also contributes to enhancing external validity through triangulation, which is "the use of different methods of research, sources of data or types of data to address the same research question" (Jupp, 2001: 308). In qualitative research, as opposed to quantitative research, the use of multiple sources for the data gathering and analysing is not considered as a tool to corroborate the validity of the different methods employed and, ultimately, to obtain an accurate picture of the phenomenon under study (Patton, 2002; Noaks and Wincup, 2004; Mason, 2004). As argued by Walklate (2000: 193) "different research techniques can uncover different layers of social reality and the role of the researcher is to look for confirmation and contradictions between those different layers of information". In other words, triangulation of methods in qualitative inquiry is not used to check whether different methods lead to similar or identical results; it is used to detect and explain consistencies as well as inconsistencies among the gathered data (Patton, 2002).

In each case study we selected specific methods for the gathering of data on the basis of the research question to be answered in the case and, therefore, of the type of data we wanted to collect (for more on this, see below under the section "Methods of data collection" of each case study). Furthermore, I decided to use multiple (combined) methods, which are typically and traditionally employed in social science research, also to show that, throughout the stages of the research, I developed an in-depth knowledge of, and familiarity with, the strategies of criminological inquiry.

In the following sections, the methodologies and methods that have been used in the three case studies are illustrated. Within each case study, I will describe the units of analysis, the mixed-type of deductive and inductive approach used, the selected methods for the collection of data and the used analytical strategies. We refer to the related chapters of this thesis and, more notably, to chapters four, five and six for more information on the sampling strategies and on the limitations of the studies, as well as for a review of the theoretical approaches that have been chosen and used for analytical purposes in the three cases.

2.2.3 First case study on the nuisance of street prostitution

2.2.3.1 Unit(s) of analysis

To answer the third research question of this doctoral research (i.e., *Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?*), a first comparative case study was designed and carried out. In this first case, we were interested in *comparatively* detecting similarities and differences in the societal attitudes and enforcement responses to street prostitution, the uncivil behaviour selected for this case study, in similar urban areas of different cities. Furthermore, we were also interested in explaining their differences through (national or context-specific) cultural factors.

To the latter (explanatory) end, we deductively derived from theory a model, the "culture of consumption" model (Hayward, 2004), that conceptualised the existence in the contemporary city of three urban spaces, which are "spaces of consumption and pleasure", "centripetal spaces" and "spaces of deprivation". These spaces are characterised by definite architectural features, and are inhabited by people who have a specific social and economic status and attitude to uncivil behaviour. We subsequently tested the model empirically by: i) identifying the presence of these three areas, presenting the (architectural and socio-economic) characteristics of Hayward's (2004) model, in three selected cities, which were Birmingham, in the UK, The Brussels Capital Region, in Belgium, and Milan, in Italy;[15] and by ii) checking for the dominant societal attitudes towards the nuisance brought about by street prostitution. More inductively, to explain the differences in the societal attitudes and law enforcement responses to street prostitution in a specific city area of Milan, *Porta Nuova*, which diverted from the culture-of-consumption model, we relied on (context- or country-specific) cultural elements.

Accordingly, the units of analysis in this first case study were *urban areas* (or city areas having specific physical and socio-economic characteristics) and *people*, meaning the attitudes that societal groups (residing in specific urban zones) have with respect to the considered uncivil behaviour and its regulation.

[15] See chapter four for the cities' selection criteria.

As mentioned above, the cities that were selected for this first case study were Birmingham, in the UK, The Brussels Capital Region, in Belgium, and Milan, in Italy. Each of these cities corresponded to a "context" or a micro "case" within our macro comparative case study. Any of these three micro "cases" also included two *embedded* units of analysis (Yin, 2014), composed of both *urban areas* and *people*. In other words, in each of these three cases we focused on the physical characteristics and on the socio-economic composition of the urban spaces, as well as on the dominant societal attitudes towards the nuisance of street prostitution in these spaces. Further, within each (micro) case we analysed these two units (i.e., urban spaces and people) to check for correspondences with the culture-of-consumption model. In a subsequent analytical phase, moreover, we comparatively analysed the three (micro) cases in the comparative macro case study (which is, in this case, the product of the analysis) through cross-case analysis (see below under "Methods of data analysis").

2.2.3.2 Methods of data collection

The methods to gather data on the *spaces*, as well as on the societal and law enforcement attitudes towards street prostitution (*people*), the study relied on documentary sources and on open-ended questions or questionnaires.

Documentary sources

A number of documentary sources was used in the study to identify the areas conceptualised within Hayward's (2004) culture-of-consumption model in the three selected cities.[16] Documentary sources were based, for example, on the relevant literature, which documented the historical, urban, architectural evolution of the three cities and of their areas. They also relied on official reports of the selected municipalities, which provided information on, for instance, the demographics, mobility, religious and ethnic diversity, unemployment rates and the socio-economic characteristics of the resident population per city area(s). Furthermore, documentary sources of evidence entailed local regulations and policy documents, which illustrated the local normative approaches to street prostitution in the three considered cities (and, if available, in their specific areas). They also included

[16] The "spaces of consumption and pleasure", "centripetal spaces", and "spaces of deprivation" were respectively identified in the wards of Ladywood, Sparkbrook, Soho and Lozells, in Birmingham; in the municipalities of Ixelles, City of Brussels and Schaerbeek, in The Brussels Capital Region; and in the zones of Porta Nuova (zone 8), Ticinese-San Lorenzo (zone 1) and Loreto and Buenos Aires (zone 3), in Milan.

official reports issued by the local police, addressing the presence of criminal or deviant activities connected with street prostitution and the enforcement strategies employed by them in the different areas of the three cities.

Documentary sources of data also encompassed reports of international organisations (e.g., of the European Commission and of the European Union Agency for Fundamental Rights) available online, which were used to further investigate the national (cultural) attitudes of people to gender, sex and sexuality.

Open-ended questions and questionnaires

Responses to open-ended questions, despite suffering a number of limitations that are linked to, for example, the writing skills of the respondents, the time they take to fill in the questionnaire, and the difficulties of probing or following-up on the given answers, are according to Patton (2002: 21) "the most elementary form of qualitative data": they provide an in-depth insight into the feelings, experiences and beliefs of the respondents.

In this case study, to obtain a broader view on people's perceptions of the nuisance of street prostitution, questionnaires with open-ended questions (or simply open-ended questions) were sent via email to police officers, an NGO, a residents' association, and a city manager. As a result, we reconstructed the societal attitudes towards the nuisance of street prostitution through the perceptions and views of these specific categories of actors.

The requested respondents were at first contacted via an email, where we shortly explained the purpose of the study and illustrated the general topics of the questions we wanted to pose to them.[17] To prompt the respondents' reactions on our first email, a reminder was sent to them via email (when necessary) and an eventual phone call was also made. The forwarding of the open-ended questions followed the respondents' positive response to our request.

[17] An email was originally sent to a larger number of people, who, however, did not reply. Such actors were, for example, a number of third-sector associations in Birmingham and residents' associations in Milan. In the phase of inspecting the correspondence of the three cities' urban spaces with the spaces identified within the culture-of-consumption model, emails were also sent to the police units of the Birmingham West and Central Police working in the Ladywood ward and in the Sparkbrook ward. Only the Sparkbrook police shortly answered to our email. Their answer, which reported the absence of street prostitutes in the ward, was used in the study as source of evidence.

Open-ended questions were sent, for example, to the Birmingham West and Central Police wards of Soho and Lozells. In the case of the required Soho police officers, they subjected the answering to the questions to the condition that an official document, containing information on the goal(s) of the research and on the modes to disseminate the findings, was submitted to them. Accordingly, we produced an official request that included all the required fields (i.e., general research purposes and research dissemination activities) and an additional provision on anonymity and confidentiality, which were granted to the respondents. The forwarding of this document, however, led to no result as we did not receive any answer to the questions from the requested Soho police agents. We sent a similar request (containing the aims of the study, its dissemination modes and provisions on confidentiality and anonymity) also to the competent police officer of the ward of Lozells, after appreciating their consent to participate in the study.[18]

An open-ended questionnaire was sent to a third sector association present in Milan (Fondazione Padri Somaschi – Servizio Bassasoglia) and open-ended questions (not in the form of a questionnaire but, more informally, in an email) were forwarded to a resident committee (the Ticinese Committee in Milan). These questions were sent with the explicit purpose of gathering a greater insight into people's attitudes towards the nuisance brought about by street prostitution in the different areas of Milan and, more implicitly (and inductively), to grasp contextual cultural factors explaining the deviation from the culture-of-consumption model in the high-end area of Milan known as *Porta Nuova* (which, in Milan, corresponded to the "space of consumption and pleasure").

An open-ended questionnaire was also forwarded to an administrative manager of the City of Brussels, a municipality that is part of The Brussels Capital Region and that presented the features of Hayward's (2004) "centripetal spaces". The purpose of the questionnaire was to obtain a broader view on people's attitudes towards street prostitution in that city area as well as in the other identified culture-of-consumption areas of The Brussels Capital Region (i.e., Ixelles and Schaerbeek, which corresponded to "spaces of consumption and pleasure" and to "spaces of deprivation" respectively). In this case, however, the filled-in questionnaire provided little insight into the societal perceptions of street prostitution (as it rather focused on the displacement plans and enforcement strategies adopted by the

[18] After receiving their answers to the open-ended questions, we inquired again the respondent with probes and follow-ups (aimed to ask for clarifications and to investigate possible implications) and with related questions (generated from their answers). The respondent, however, did not reply to such (additional and related) questions.

municipality of City of Brussels). The data gathered through this questionnaire was, therefore, not included and used in the study.[19]

2.2.3.3 Methods of data analysis

For each "case" within the macro comparative case study, we gradually analysed the documentary sources and the answers to the open-ended questions or questionnaires when we collected them.

Analytic induction has been used for the comparative (or cross-case) analysis (Patton, 2002). According to Denzin (1978), analytic induction is one of the three strategies (the other two being the experimental method and multivariate analysis) that enable the researcher to engage in rival explanations of social phenomena. This analytic approach is based on the deductive development of theoretical hypotheses or propositions to be tested empirically through the collection of data. Following this deductive step, or in combination with it, this analytic strategy allows adopting a rather inductive approach to the analysis of data: as put it by Patton (2002: 454), in the inductive analysis "the researcher strives to look at the data afresh for undiscovered patterns and emergent understandings". Furthermore, analysing the gathered data through the theoretical propositions identified at the beginning of the study, and examining rival explanations, also correspond to two common analytic strategies usually employed in case study research (Yin, 2014).

In line with this analytical method, in this first case study we deductively started our research from a theoretical model (the "culture of consumption" model that we derived from one of Hayward's (2004) writings), which helped us to organise and analyse the collected (comparative) qualitative data. In the process of searching for a theoretical framework to apply to the case study (which is, according to Yin (2014), a first step in case studies research) we also benefitted from the literature review that has been carried out at the beginning of the doctoral study to answer the first research question (see chapter two of this dissertation). Through empirically testing the chosen theoretical model, it was acknowledged that in one case or context (i.e., in the city of Milan) one embedded unit of analysis (i.e., the attitudes of *people* in the urban space of Porta Nuova) diverted from the expectations derived from the culture-of-consumption model. Since the phase of data collection (and simultaneous analysis), therefore, we

[19] At the outset of the study (i.e., during its pilot phase), I also conducted a semi-structured interview with a senior officer of the Flemish Association of Cities and Municipalities (or VVSG), in order to get insights into the municipal trends in the penalisation of uncivil behaviour connected to street prostitution in the Flemish Region.

inductively searched for contextual, unanticipated cultural elements providing rival explanations for this deviation from the model.

2.2.4 Second case study on the nuisance of public drunkenness

2.2.4.1 Unit(s) of analysis

In the second comparative case study, which (as the first case study illustrated above) was designed and developed to answer the third research question (i.e., *Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?*), we focused on the nuisance of public drunkenness. Also in this case study, we wanted to *comparatively* explore the reality of alcohol-related disorder in nightlife areas of different cities, which are Ghent, in Belgium, and Trento, in Italy, and the way police officers there see and tackle the nuisance of public drunkenness. Further, we wanted to explain through culture or, more specifically, through culturally-based hypotheses deductively derived from theory, expected differences in the reality of alcohol-related disorder and in police officers' representations of, and enforcement responses to, the nuisance of public drunkenness in those areas. To explain these differences, during the phase of data gathering and analysing we were also inductively open to contextual cultural elements and rival sources of explanation.

The units of analysis selected at the outset of this case study were the observed *behaviour* of street drinkers in nightlife areas at certain night times, and *people*, or the views of police officers on the phenomenon and on its regulation.[20]

Also this second comparative case study is made of two micro case studies, where two matching pairs of units of analysis (made of both *behaviour* and *people*) are *embedded* in two different contexts (i.e., the two nightlife areas in the two chosen cities), thus forming two distinct "cases". These two cases have comparatively been analysed in the comparative (macro) case study through testing their correspondence with two theoretical hypotheses, which have deductively been elaborated at the

[20] See chapter five of this thesis to learn more about (among others) the selection of the two cities (Ghent, in Belgium, and Trento, in Italy), of the two nightlife locations in the two cities (the Vlasmarkt, in Ghent, and the Santa Maria Maggiore Square, in Trento), and of the time-frames and periods for the observations. The limitations of the study are have also been highlighted in a dedicated section of chapter five (No 5).

beginning of the study, and, more inductively, through analytical insights detected during the phase of data collection (see below under "Methods of data analysis").

2.2.4.2 Methods of data collection

In this second comparative case study, the methods for the collection of data on the behaviour of street drinkers and on the views and attitudes of police officers have relied on systematic observations and on face-to-face semi-structured interviews respectively.

Ethnographic work

Observations were carried out in two nightlife areas located in the city of Ghent, the first, and in the city of Trento, the second. By observing people's behaviour in these areas we were interested in measuring alcohol-related uncivil conduct and, more broadly, in exploring the underlying cultural norms and practices of drinking established in such nightlife zones (which, as explained below, were also discernible though the perceptions and views of people that were informally interviewed on the spot). We also inspected the *reality* of the nuisance of public drunkenness in the belief that by observing the phenomenon as occurring in its natural setting we would have been able to obtain a more complete view on, and understanding of, the meanings and significance given by police officers (and, as reflected in their views, by societal groups with policy-making influence) to alcohol-related disorder and its regulation.

To carry out the observations in the two selected nightlife areas, I used Systematic Social Observations (SSO) (Mastrofski et al., 2010), which is an established method of data collection in criminological research for the study urban disorder (see, for example, Sampson and Raudenbusch, 1999; Sampson, 2009). As explained by Reiss (1971), observations of social phenomena and activities occurring in their natural settings are "systematic" in the sense that they are based on specific rules that permit replication. Drawing on Weisburd et al.'s (2012) coding protocol, observations have been carried out on the basis of a (paper-based) coding sheet. It allowed to measure (among others) the number of people present in the area per time-span (including their gender, average age, level of alcohol consumption and of intoxication), the number of interventions by the police, bar owners, bartenders and residents (when occurring), and the number of uncivil behaviour taking place in the nightlife area. Recorded disorderly behaviour of drunken people included littering, urinating, causing loud noise, yelling, loudly disputing, physically assaulting others, and engaging in vandalism (including graffiti

and tags). To ensure validity, in our coding sheet we defined or operationalized all the mentioned concepts (such as the specific types of uncivil conduct to be observed) by mainly relying on Weisburd et al.'s (2012) coding protocol.[21]

The filling-in of the coding instrument was combined with the taking of descriptive field-notes, which were written (both on paper and electronically on a smartphone[22]) at frequent intervals. They were used to note down descriptions of the setting(s) where the observations took place (at the beginning of the observations and throughout them), as well as of the events and activities that occurred, and of the people involved in those events or activities (e.g., their gender, average age, behaviour, and attitudes). Also the words of people, heard casually or gathered through informal interviews, were reported in the field notes, when considered significant for their potential to provide analytic insights in the subsequent phase of analysis.

Informal interviews were held during the ethnographic fieldwork with bar owners, bartenders, and street drinkers, with a view to obtaining a greater insight into the phenomenon being observed, and to detecting the cultural norms and patterns underlying such a phenomenon.[23] According to Patton (2002: 342) the informal interview carried out during the observations is "the most open ended approach to interviewing", as it "offers maximum flexibility to pursue information on what emerges from

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[21] Under "Public disorder and Anti-social Behaviour", the "Codesheet for timed events" designed by Weisburd et al.'s (2012) enlists, and provides a definition for, a number of disorderly behaviour to be observed. To the end of the study, we only considered some of the behaviour listed there (such as public drinking, drunkenness, littering, loud noise or music, verbal disorder, loud dispute, physical assault) and added the activity of "urinating", which has not been included in Weisburd and colleagues' coding instrument. We drew on this protocol, moreover, also to inform the observations of the interventions pursued by guardians. According to Weisburd et al. (2012), "Guardianship" can be pursued not only formally by the police, but also informally by "place managers", who exercise control on the behaviour occurring in public spaces (e.g., residents, club's bouncers and employees, etc.).

[22] My personal smart phone was especially used to note down my own impressions when observing street drinkers' behaviour in the chosen nightlife area of Trento (Italy). Since during the first nights of the observations I noted that the activity of writing on paper tended to attract the attention of some of the observed people (as a few of them approached me to ask what I was writing), I tried to mainly jot down my thoughts in my smartphone (which seemed to be a less noticed activity by people in the setting). This is linked with my effort to be in the setting as much as possible as onlooker, non-participant. When approached by people, however, I took the chance to ask them questions about the typical (established or contextual) modes and practices of drinking in the nightlife area. In such cases, I conveyed to them my identity as a researcher and obtained their informed consent.

[23] As explained above (in footnote No 22), the identity as a researcher was conveyed to the respondents.

observing a particular setting or from talking with one or more individuals in that setting". Due to their casual nature, informal interviews were not recorded. Notes of the conversations were taken in the form of jottings, which were later developed in descriptive field notes. Field notes were also employed to write down my own experiences, impressions, interpretations, and feelings about the observed events and activities. They were also occasionally supplemented with videotaping and pictures taking.

Through combined methods of data collection, the observations led to the gathering of multi-dimensional data. Such data were only partly quantitative, such as the ones resulting from the filling in of the coding scheme, which led to numerical data reflecting, for example, the number of people present in the night-time venues at given time-spans, and the number of times a certain uncivil behaviour occurred. The data, especially when gathered through the taking of the field notes, were also (and mostly) qualitative: they provided insights into the drinking patterns and practices established in the nightlife location and into the meanings given to them by the observed people (who were informally interviewed).

During the fieldwork, I also had to adapt the research design to a number of emerging situational circumstances that were unexpected at the time the research was designed and set off. For example, since I noticed that at around midnight the locus of the night-time entertainment in both cities was moved from the selected nightlife areas to close-by zones (also featured by the presence of bars and clubs), I decided to shift the observations to these latter spaces after midnight. This choice is in line with the naturalistic and (at least, partly) inductive nature of this qualitative study, which makes its design flexible and adaptable to the unpredicted and contextual elements (Patton, 2002).

Face-to-face semi-structured interviews

Interviews are one of the most important sources of data in case studies (Yin, 2014). In this case study, we decided to use face-to-face semi-structured interviews to understand and explain how police officers see and tackle alcohol-related uncivil behaviour in the selected nightlife areas of Ghent and of Trento. The interviews were also, and more broadly, directed to shedding light on the societal (cultural and contextual) significance given to "acceptable" alcohol-drinking in public spaces as opposed to "unacceptable" alcohol-related uncivil behaviour, as reflected in the views of police agents. We believed that it was possible to achieve an in-depth knowledge on police officers' contextual accounts,

experiences and attributed societal meanings, only through oral interaction with them, and, therefore, not through written surveys.[24]

Semi-structured interviews did not constrain the content of the responses of the interviewees. Interviews were semi-structured in the meaning that a list of main topics was used during any individual interaction with police officers (see below). In the course of the interviews, however, I was also open to new insights brought up by the respondents, which, when considered significant (and relevant to the study's research questions), were followed up on through the formulation of new open-ended questions. Through their answers, respondents were able to further elaborate on their experiences, impressions, feelings, and overall attributed meaning(s).

The selection of police agents[25] required the prior establishment of contacts with the competent offices of the Ghent and of the Trento police. In Ghent, such an office was the "*contactpunt studenten*", and, in Trento, it was the central secretary of the Trento *Polizia Locale*. These offices were approached through an email, where we attached a document explaining the research background (i.e., the broad doctoral research project), the specific purposes of the study and of the interviews, and the selected ways to disseminate the findings. In this document, we also suggested a time slot for the interviews, and indicated the type of officers to be interviewed, their approximate number (stretching from ten to twenty) and the duration of each individual interview (about one hour). We also assured confidentiality and anonymity to the respondents.

While in Ghent the requested office ("*contactpunt studenten*") promptly answered to our email, in Trento reminder emails were sent and a phone call was made to the central police's secretariat, which was ultimately forwarded to the Deputy Chief Superintendent. Both "gate keepers" (i.e., the Ghent "*contactpunt studenten*" and the Trento Police Deputy Chief Superintendent) conditioned the (positive) processing of our request to the reception of the list of topics to be discussed with the interviewees. In

[24] Interviews were selected as a method for data gathering also because they allow the interviewer to observe the non-verbal behaviour of the respondents, or their modes, gestures and body language. Such a non-verbal behaviour is also useful to obtain a greater understanding of the meaning conveyed by the respondents.

[25] Interviewed police officers in Ghent and in Trento have purposively been selected among the agents patrolling the areas with alcohol-related problems and tasked with sanctioning (alcohol-related) uncivil behaviour. The enforcement bodies within which the police agents were sampled were the *Lokale Politie*, in Ghent, and the *Polizia Locale*, in Trento. For more on the selection criteria of the interviewed police officers, see chapter five of this dissertation.

Trento, moreover, access to the respondents was granted in so far as the number of agents to be interviewed was reduced to a maximum of ten, and that the (anonymised) results of the interviews were made available to the municipality at the end of the study. Eight police agents were sampled for the interviews in Ghent and nine agents were selected in Trento.[26]

The list of topics (see Appendix One at the end of this thesis) was individually sent to the sampled Ghent police officers via email, whereas in Trento it was forwarded to the agents by the Office of the Deputy Chief Superintendent. The topics covered three main areas: 1) police officers' views on public drunkenness as a nuisance in the chosen nightlife areas; 2) their perceptions of the dominant societal views on alcohol-related disorder occurring in such urban zones; and 3) their enforcement attitudes and levels of enforcement of (national and local) nuisance regulations in those areas.

Semi-structured in-depth interviews have been carried out with the aid of a checklist summarising the main list of topics to be discussed with the interviewees. During the interview, I asked probes to seek for clarifications and follow-ups to investigate the implications of some of the answers to the questions (Evers and de Boer, 2012). As explained above, during the interactions with the respondents in the individual face-to-face interviews I also asked questions about topics or issues that were spontaneously brought up by the respondents. This inductive approach allowed me to more broadly understand police officers' views of and enforcement attitudes towards the nuisance of public drunkenness (and their views on the dominant societal attitudes towards it in the selected nightlife area), beyond the explanations provided by our initial theoretical propositions. I also noted down through jottings (either during the interviews or, when not possible, immediately after) the respondents' attitudes, behaviour, and body language, as well as my impressions and feelings about what they were conveying (and about the ways they did so). Interviews were taped, transcribed, anonymised and manually coded.[27]

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[26] While in Ghent we could have interviewed more police agents (due to the availability of agents who volunteered to participate in the research), we were constrained in the number of agents to interview in Trento. In both cases, despite the limited number of police officers interviewed, the level of saturation was reached, as the last questioned agents provided little additional or new information (Bachman and Schutt, 2012).

[27] Semi-structured interviews have also been held in the initial stages of the research for the pilot: two local public servants working for the Department of Local Prevention and Safety of the City of Ghent have been interviewed together. This interview has been conducted (among others) with the purpose of getting more information on the local policy approach to the nuisance of public drunkenness, and on their perceptions of the dominant societal attitudes towards alcohol-related disorder.

2.2.4.3 Methods of data analysis

Similarly to the first case study, also in this second (macro) comparative case study we deductively elaborated two theoretical (and culturally-based) hypotheses in the design stage of the study. Through the first theoretical proposition we hypothesised that differences in the *reality* of the nuisance of public drunkenness in the two selected nightlife locations were to be explained on the basis of different culture(s) of drinking in the ("dry") western European countries (to which Belgium belongs) and in the ("wet") southern countries of the region (like Italy) (Anderson and Baumberg, 2006; Calafat et al., 2010). More accurately, we expected the two realities to vary in Belgium and Italy in four elements: 1) the type of drink consumed (beer, in Belgium, as opposed to wine, in Italy); 2) the frequency of drinking (which was expected to be lower in Belgium and higher in Italy); 3) the levels of intoxication (assumed to be higher in Belgium and lower in Italy); and 4) people's engagement in violent and disorderly behaviour (which was considered to be higher in Belgium and lower in Italy).

On the basis of the second formulated theoretical hypothesis, we also expected that different representations of, and enforcement attitudes to, alcohol-related disorder of police officers were elucidated by the distinct impact that the aesthetic characteristics of street drinkers were thought to have on police officers in Italy and in Belgium. While in Italy police officers' penal decisions are said to be very much dependent on the outer appearances of people (Melossi, 2000; Quassoli, 2004; Parmigiani, 2008), in Belgium they are thought to rely on a combination of factors, which only partly have to do with people's aesthetic appearances (Snacken, 2007; Easton and Ponsaers, 2010). Therefore, it was hypothesised that aesthetic styles of people would have had a greater impact on police officers' representations and penal decisions in Italy, rather than in Belgium (for more on this point, see chapter five of this thesis).

In this second case study, the analysis of the data started early in time and, most notably, in the phase of data collection. For example, during the systematic observations I started to look for correspondences between the observed *reality* of the nuisance of public drunkenness in the two nightlife areas and what it was expected on the basis of the first formulated theoretical hypothesis (with respect to, for example, the types of drinks consumed, the frequency of consumption, the level of intoxication and of involvement in disorderly conduct). Alongside this, I also attended to different (cultural) drinking patterns established in the nightlife locations and tried to explain them through the insights provided by the people informally interviewed. The gathered data was also analysed when I converted the paper-based coding sheet into a pdf document and when I began to transcribe the field

notes and developed them into tick descriptions (which included the results of both the observations and of the informal interviews held during the observations). Likewise, I started to analyse the results of the interviews during the face-to-face interactions and gradually after each interview or group of interviews (when they were held subsequently)[28] in search for common patterns and themes, as well as through the second formulated hypotheses. The analysis was also performed during their transcription and, afterwards, on the transcribed interviews on the basis of the main topics addressed during the interviews with every interviewee.

As well as in the first case study, also in this second case study the two embedded "cases" or contexts (represented by the two nightlife location of Ghent and by the one of Trento) were comparatively analysed through analytic induction: on the basis of a deductive approach, the two theoretical (culturally-based) hypotheses were tested empirically. A more inductive approach was used during the gathering and the (simultaneous) analysis of the data: analytic insights, patterns or themes that were noticed during the observation, or that emerged through the face-to-face interactions with police officers, were noted down and subject to further analysis.

2.2.5 Third case study on the representation of regulated nuisance in the Flemish press

2.2.5.1 Unit(s) of analysis

The third case study was developed to answer the fourth research question, which focuses on the representations of *regulated nuisance* in the Flemish press (i.e., *How have the media represented regulated nuisance overtime, through the voices of whom, and have criminologists played any role in shaping such representations?*). More notably, the focus has been on understanding who were the actors who have participated in the press discourse on regulated incivilities, and on the content of their messages (or on the problems highlighted by them and on their proposed solutions). Among the actors,

[28] In the course of face-to-face interviews I also paid attention to the attitudes, the behaviour, and the body language of the interviewees. Not in all cases, however, I was able to note down my impressions and observations on their behaviour during the individual interactions with the respondents. The practical difficulty to simultaneously take notes on the verbal and non-verbal behaviour of the respondents has also been highlighted by the literature, which advises to take time immediately after the interactions with the respondents (when the memory of the interviewer is still fresh) to write down eventual notes (see, for example, Evers and de Boer, 2012). Therefore, to allow myself enough time after every interview to note down my impressions, I tried to schedule them during different days or moments of the day (e.g., one in the morning and one in the afternoon) or, when not possible, not subsequently after each other.

we also wanted to detect whether criminology and criminal justice experts played any role in shaping the public representation of regulated incivilities over time.

We decided to focus on the press, which is especially powerful in shaping public images of crime and punishment (Kidd-Hewitt, 2002), for different reasons. For example, press news, which is stored in databases and online archives, allows for longitudinal analyses that can be carried out through (long) periods of time. Choosing to focus on the press provided us, therefore, with the opportunity to inspect how regulated nuisance has been represented by groups of actors (including by crime and justice experts) through time, and whether such representation(s) changed along the years. The selection of the print media (over the electronic and the social media) allowed us, moreover, to be consistent with the studies that have been previously carried out in the field (for example, with Peršak (2007), who carried out a longitudinal study of the press representations of "anti-social" in the UK).

This case study takes into consideration *texts* (i.e., press items), or people's representations of problems and solutions connected to regulated incivilities through the print media, as units of analysis. It refers to the specific context of the Flemish press and, as such, relies on a single (holistic) case study design (Yin, 2014).

2.2.5.2 Methods of data collection

Documentary (media) sources

Documentary sources corresponded here with *print media sources*, as we based the study on the idea, recognised in criminological research, that public opinion on crime and punishment is much influenced by media representations (for a review, see for example Reiner (2002), Jewkes (2005), Newburn (2007)), and on the ontological and epistemological position that texts reflect the dominant visions on the underlying social reality (Mason, 2004).[29]

2.2.5.3 Methods of data analysis

The software NVivo has been used for the computer-assisted content analysis of the sampled press news. Content analysis is defined by Bauer (2000: 132) as "a technique for making inferences from a

[29] See chapter six of this thesis to learn more on the sampling of newspaper articles.

focal text to its social context in an objectified manner", where objectified "refers to systematic, procedurally explicit and replicable procedures". The coding process has been preceded by the writing of a codebook,[30] which has provided a definition of the main categories or content codes that have (deductively) been derived from the study's research questions (Franks, 1999; Bauer, 2000). According to Glaser (1978), the codes that are built on the theoretical concepts and notions available to the researcher at the outset of the research study, before starting with the data collection and analysis, are "theoretical codes" (Kelle, 2000). I developed sub-categories, or sub-codes that thematically belonged to the main categories or codes (and that are organised in a hierarchical structure), inductively on the "ground" (Glaser and Strauss, 1967) or, as Strauss and Corbin (1998) put it, through "open coding".

Since the software used for the content analysis (NVivo) provided for numerical data indicating the frequency in the occurrence of certain categories and sub-categories in the sample, the first level of content analysis has been quantitative (Riffe et al., 1998). The second level of content analysis was, by contrast, qualitative. Through the process of (inductive) ordering and analysing, I found (or "*discovered*", as Patton (2002: 453) put it) frequent and recurrent themes in the press articles. These themes were qualitatively content analysed in the following step of the research, where I described how different groups of actors represented the problems related to regulated nuisance and their solutions.[31]

Following the inductive analysis, in the final stage of the study the results of the quantitative and of the qualitative content analyses referring to the role of crime and justice experts in the press news were related back to theory, that is, the perspective of newsmaking criminology (Barak, 1988, 2007). In this case study, therefore, the data were analysed through the data themselves and, at least part of them, through theoretical propositions. Both these analytic strategies are considered to be common in case study research (Yin, 2014).

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[30] See the appendix two of this thesis for the codebook, containing the definitions of the main codes.

[31] The qualitative analysis was carried out on an "expanded" sample, which included not only the newspaper articles published on the topic of regulated nuisance in the months of inflated coverage (which were sampled and used for the quantitative content analysis), but also the articles where experts have been given voice on the topic during all months of the considered years. For the strategies used to sample newspaper items, see chapter six of this dissertation.

3 Structure of the thesis

Following this first introductory chapter, the central part of this thesis is represented by the five chapters stretching from two to six, which, in conformity with the guidelines on the submission of doctoral theses approved by the Law Faculty of Ghent University,[32] are based on articles that have been published or accepted for publication in internationally peer-reviewed Journals or books by international publishers.[33]

Chapters two to six are dedicated to answering the four research questions of this doctoral study. **Chapter two**,[34] which consists of a literature study, answers the first research question. This chapter reviews the theories and perspectives that have been elaborated or applied by criminologists overtime to explain the expanded trend in the penalisation of uncivil behaviour. In addition, it inspects the way these theories and perspectives have looked at and framed incivilities and their regulations.

Through this literature review, we found that criminological analyses addressing nuisance regulations have mostly focused on their excessive impact on marginalised societal groups. By contrast, they have rather under-investigated the presence of safeguards provided by criminal justice actors, such as by courts, to mitigate the excessive impact of (national and local) nuisance measures.

This literature gap has been addressed in **chapter three**[35] of this thesis, which answers the second research question. This chapter analyses nuisance regulations in England and Wales, Italy and

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[32] See Hoofdstuk IV, article 14 of the *Aanvullend facultair doctoraatsreglement* (http://www.ugent.be/re/nl/onderzoek/doctoreren/richtlijnen.htm).

[33] At the time when this doctoral thesis was submitted, two articles had been published (the ones included in chapter three and four), and two had been accepted for publication (chapter two and six). The remaining article (chapter five) has been re-submitted after revisions in an International Journal (*Crime, Law & Social Change*) and is currently in review.

[34] Di Ronco, A. (in press). Explaining incivility and the social reaction to it through different criminological perspectives. *GERN Research Paper Series.* Antwerp: Maklu.

[35] Di Ronco, A., and Peršak, N. (2014). Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers?. *International Journal of Law, Crime and Justice*, *42*(4), 340-365. According to the regulation of Ghent University (Hoofdstuk IV, article 14), an article that has been co-authored can be part of a doctoral dissertation based on a compilation of articles in so far as the Ph.D. student is the primary author of that publication. This is the case for this published article, where the first author (i.e., the Ph.D. student) has reviewed the relevant national doctrinal debates about the legality of the regulatory frameworks on incivilities in the selected three countries and carried out the

Belgium, through traditional principles of criminal law (i.e., the principle of legality and the principle of proportionality), as reflected in the national case law. Furthermore, it investigates whether courts, when negatively assessing the legality of (national and local) nuisance regulations and measures, have provided correctives to safeguard of individual's freedoms.

The literature review, which has been carried out at the outset of the doctoral research, also helped us to identify other gaps in the relevant criminological literature. By reviewing the criminological studies on nuisance and its regulation, we found that some criminological perspectives, namely the labelling perspective and cultural criminology, have analysed and explained the (local) processes of nuisance criminalisation by focusing on one specific context. However, they seemed not to have approached the study of nuisance and its regulation from a comparative perspective (or from different contexts). To explore (and, further, to explain through culture) how nuisance and its regulation are socially approached, and how they are seen and tackled by the authorities, in different cities and cities' areas, we carried out two case studies (the first two described above), which aim to answer the third research question set out in this thesis. While the first case study focuses on the nuisance of street prostitution (chapter four), the second addresses the nuisance brought about public drunkenness (chapter five).

The first case study, which is carried out in **chapter four,**[36] analyses the societal attitudes and enforcement responses to street prostitution in three different areas of three selected European cities (Birmingham, in the UK, The Brussels Capital Region, in Belgium, and Milan, in Italy) through Hayward's (2004) "culture of consumption" model. This model identifies three different urban spaces ("spaces of consumption and pleasure", "centripetal spaces" and "spaces of deprivation") that are characterised by, among others, different levels of societal tolerance towards incivilities. Chapter four aims to inspect whether the culture-of-consumption model contributes to explaining the societal attitudes and law enforcement responses to street prostitution across the urban areas of different cities. It also aims to explain the diversions from the model through the relevant (national and context-specific) cultural elements.

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comparative legal analysis of case law. The second author, Prof. Dr. Nina Peršak, had a role in co-writing the conclusive sections of the article and the introduction, which was based on her previous research.

[36] Di Ronco, A. (2014). Regulating street prostitution as a public nuisance in the 'culture of consumption': A comparative analysis between Birmingham, Brussels and Milan. In N. Peršak and G. Vermeulen (eds.) *Rethinking Prostitution: From Discourse To Description, From Moralisation To Normalisation?*, Antwerp: Maklu.

The second case study is carried out in **chapter five**.[37] This chapter explores the reality of the nuisance of public drunkenness in one nightlife area situated in the city of Ghent (in Belgium) and in one located in the city Trento (in Italy), and police officers' representations of, and law enforcement responses to, alcohol-related disorder in these same areas. It also attempts to provide an explanation for the (expected and) detected differences by empirically testing two culturally-based hypotheses.

The literature study carried out in chapter two of this thesis also helped us to identify a literature gap in the criminological studies concerned with the analysis of the media and (regulated) nuisance. What we found is that while these studies have mostly focused on the effects of media representations of uncivil behaviour, they have rather under-addressed the content of media news, or the way in which the media (by relying on the messages conveyed by certain categories of actors) have framed stories related to (regulated) nuisance. Furthermore, by reviewing the broader literature on media and crime and, particularly, on newsmaking criminology, we found that not much research has addressed criminologists' engagement with the media overtime, and detected whether they contributed to the long term shaping of media discourses on crime and punishment (and, therefore, also on nuisance and its regulation). The identification of these gaps in the relevant literature led us to the formulation of the fourth research question of this thesis. This question is answered in chapter six through the carrying out of a third case study, which is about the representations of regulated nuisance in the Flemish press.

More accurately, **chapter six**[38] inspects whose are the voices that have mostly been represented in a selection of Flemish newspapers through time, and analyses the way such actors have presented the problems and the solutions connected to regulated nuisance over the years. Against the theoretical backdrop of newsmaking criminology (Barak, 1988, 2007), this chapter also investigates whether experts in criminology and criminal justice have contributed to the shaping of public constructions of regulated nuisance over the years.

Conclusions are drawn in **chapter seven**, where answers are provided to the four research questions posed at the beginning of this doctoral study. This conclusive chapter also discusses the implications

[37] Di Ronco, A. (submitted to *Crime, Law & Social Change* and in review). Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy).

[38] Di Ronco, A. (in press). Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press. *Criminology & Criminal Justice*.

of the findings for academic research and for national and local policy-makers, and suggests directions for future criminological research on the topic.

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CHAPTER TWO: Explaining incivility and the social reaction to it through different criminological perspectives

Abstract

In response to growing levels of fear of crime and social insecurity, governments in many European countries have adopted punitive interventions against minor disorderly behaviour. In order to explain newly enacted incivility regulations, scholars have drawn on a wide repertoire of criminological theories and perspectives, stretching from the labelling perspective, left realism, right realism, environmental criminology, critical criminology, and cultural criminology. This paper aims to provide an overview of such criminological perspectives and theories and to inspect the way nuisance and its regulation have differently been viewed by and framed within such perspectives. It also indicates some directions for future research.

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1 Introduction

In the last decades, a trend to criminalise[1] nuisance[2] has emerged in many European countries (Burney, 2005; Edwards & Huges, 2005; Peršak, 2014). Such trend has been generated by the widespread anxieties and fears over issues of (personal and collective) security, which have been perceived to be a growing concern in many European countries (ADT Europe, 2006). Globalisation, global financial crisis, mass migration and multiculturalism have deeply affected our attitudes and life-styles in the past few decades. Such phenomena, coupled with the terroristic threat generated by the 9/11 attack, have also sparked movements of radicalisation and xenophobia, which have all impacted on our perceptions and assessments of risk to our (personal or collective) safety.

As contended by many contemporary social theorists (e.g., Wacquant, 2008), feelings of insecurity and fears of the other, which have led to an intensified penal intervention also in the area of public (dis)order, are linked to the profound changes that have happened in the late modern society (Young, 1973). Such changes have occurred, for example, at the level of society, through the altering of social relations and of the ways society exercises social control over its members; furthermore, they have also occurred at the level of the labour market, with growing unemployment rates and reduced availability of welfare programmes resulting into a heightened (social and economic) marginalization of the excluded (unwanted) minorities (see also Bauman, 1987).

The diffuse concerns about individual and social security, which have resulted from these changes, have led many European countries to intensify state intervention in the area of public order. To quickly respond to widespread fears and anxieties over the problem of safety and of (physical and psychological) integrity, which are often also amplified by the media reporting on certain crime-related events or issues (Reiner, 2002), politicians and policy makers in many countries have enacted

[1] The criminalization, or penalization, of individuals' (uncivil) behaviour is the process through which a certain behaviour is proscribed by the state. Further, it is also "a political, economic and ideological process through which individuals and identifiable groups are selectively policed and disciplined" (Chadwick & Scraton, 2012, p. 102).

[2] The notion of nuisance or of uncivil, anti-social, behaviour is much disputed. Different are the conducts that may fall within such a broad concept. Uncivil behaviour may, for example, consist of conduct that harms others and that, at least in some cases, is already punished by the criminal law proper (as it is for arson, serious environmental offences, vandalism, violent behaviour causing personal injuries etc.). However, it can also consists of minor forms of uncivil conduct, such as the hanging around of young people in public spaces, which are often harmless and may only engender an inconvenience to individuals or groups in a community.

punitive regulations against incivilities that deeply affect the exercise and enjoyment of individual rights and freedoms. According to Hömqvist (2004), in recent years a 'security mentality' has emerged at the level of the policy maker, which has resulted in a 'rupture' of the law 'upwards' and 'downwards.' In the latter meaning, this 'rupture' refers to the (legitimised) penalisation of minor disorderly and uncivil behaviour. In many cases, governments have pursued the security discourse through the adoption of hybrid measures, which (although being formally civil or administrative) are mostly criminal in nature (Crawford, 2009). Furthermore, the application of such measures to behaviour deemed to be causing nuisance at the local or at the community level, has usually relied on an assessment of insecurity made by the public (i.e., the actual or potential victim, as well as by the group holding decision-making power in a community) on the basis of its contingent sensitivities and on the time and the space when and where uncivil behaviour occurs (Burney, 2005, 2006; Millie, 2008; Peršak, 2014; Whitehead, Stockdale & Razzu, 2003). A confusion between what is criminal and what informs our 'perception of security', which has ultimately been attracted in the realm of the criminal law, seem to be present also at the level of the EU institutions, with the EU Council and the EU Commission including in their definitions of crime prevention also measures that impact on people's feelings of (in)security (European Commission, 2000; European Council, 2001).

Different criminological and sociological perspectives have been applied along the years to explain the raise in the penalisation of uncivil behaviour, stretching from the labelling perspective, left realism, right realism, critical criminology, environmental criminology and cultural criminology. This paper aims to provide an overview of the criminological theories and perspectives that have been applied over the years to explain the expanded regulation of incivilities, and to inspect the way nuisance and its regulation have differently been viewed by and framed within such perspectives. In its conclusive section, it also outlines some directions for future research.

2 Labelling perspective

From the 1960s onwards, criminological and sociological theorists have increasingly shown interest in the social processes that lead to the construction of deviance (Cohen, 1980; Young, 1973 etc.). Among social constructionist approaches, the labelling perspective (or social reaction theory) placed emphasis on the way the meaning of individual and collective behaviour is formed through and within social interaction, usually as a reflection of the values and beliefs of the individuals or groups holding decision-making power. Most notably, it drew attention on the effects of the social construction of

meaning, i.e., the labelling of certain individuals or groups as deviant and the subsequent criminalisation of their behaviour. Within the labelling perspective, deviant behaviour has been analysed through the two notions of 'folks devils' and of 'moral panics'.

2.1 Rule construction and application of labels to folks devils

Within the concept of 'folk devils', uncivil behaviour has been reconstructed as a conduct belonging to particular social groups identified as 'deviant stereotypes identifying the enemy, the source of threat, selfish, evil wrongdoers who are responsible for the trouble' (Goode & Ben-Yehuda, 1994, p. 156). The labelling of such individuals and groups as deviant has resulted from a (moral) judgement of their behaviour, which has been thought not fit in with the dominant moral codes, or with what Durkheim (2001) called the 'collective consciousness' of society. According to Howard S. Becker (1963), within the process of deviance construction a crucial role is played by particular social groups (or 'moral entrepreneurs'), who create the rules and apply them to certain categories of people labelled as 'outsiders'. In line with Becker's (1963) theorisation of deviance construction, also Matza (1969) viewed the process of building a deviant identity as dependent on the establishment of certain rules (or bans) by the state. Through the enactment of specific rules, the state identifies deviant acts and 'transforms' ('wrong minded' subjects or) evils into deviant individuals (Cullen & Wilcox, 2010, p. 585).

In recent times, the theoretical framework of social reaction theory has also been applied by scholars to inspect at the local level how groups with political capital have shaped definitions of behavioural acceptability and enacted incivility regulations against specific individuals or groups, who are deemed not to be conforming with their expectations (Dixon, Levine & McAuley, 2006; Millie, 2008, 2011).

2.2 Deviance amplification and moral panics

Deviance has also been analysed through the notion of 'moral panics' (Cohen, 1980, p. 9). This construct refers to cases where deviant behaviour is exaggerated and misrepresented by a number of different actors, such as the media. Goode and Ben Yehuda (1994) identified several criteria which define moral panics. First, panics are based on a high level of public *concern* over and *hostility* towards a certain behaviour or group of people, which conceals a widespread *consensus* over the assessment of individuals/groups as being a threat to society. Second, moral panics rely on a

disproportionate representation of the nature/extent of the risk and are based on a certain degree of *volatility*, in the meaning that they change often and in an unpredictable fashion. As a result of a moral panic, the label of 'deviant' is attached to a (risky/deviant) group. Scholars have acknowledged the creation of a moral panic, for example, in relation to the (assumed) problem of youth cultures (Cohen, 1980), of drug use (Young, 1973), and of mugging (Hall, Critcher, Jefferson, Clarke & Roberts, 1978). Also the significance and extent of the problem of anti-social behaviour (ASB) has developed into a moral panic. As contended by a number of authors (Burney, 2005; Millie, 2008; Pearson, 2006), the ASBO-system in the UK originated from widespread anxieties and pre-existing public concerns over the behaviour of certain people living in (mostly) deprived, run-down, neighbourhoods: the so-called 'neighbours from hell'. Here, the sensationalistic media coverage of certain episodes occurred in such neighbourhoods had the effect of inflating the social preoccupations attached to the (perceived) problem and, consequently, of encouraging policy makers to give a prompt (populist) response to disorder issues in such neighbourhoods. They did so through the 'vehicular idea' of ASB, which 'incorporates a multiplicity of diverse, low- and high-level deviant behaviours with a set of unconnected ideas about risk, crime and management underpinning it' (Carr and Cowan, 2006, p. 57). Furthermore, as noted by Pearson (1984, 2006), also concerns over football-related disorder and hooliganism evolved into a moral panic, ultimately leading to the introduction of Football Banning Orders (FBOs) by the Football Disorder Act 2000.

3 Left realism

Left, critical, or radical realism emerged in the UK in the mid-1980s. By opposing to the radical thought dominating in the UK in the late 1960s and early 1970s on the basis of its argued little policy-making relevance, left realism placed the focus of the criminological analysis on the *reality of crime* (Lea & Young, 1984; Young, 1986) or on the 'social context' (Young & Matthews, 1992, p. 18) where crime and deviance were thought to occur. In so doing, it showed equal interest in explaining crime as it did in inspecting the causes of deviance.

According to this theoretical approach, the presence of crime and deviance was to be reconnected to conditions of relative deprivation, social inequalities and marginalisation, which, at the time when it was elaborated, were extremely widespread in society. In his book *The Exclusive Society*, Jock Young (1999, p. 9) suggested that increased levels of crime and incivilities (as well as the intensified responses adopted against them) can be explained in light of 'dislocations' occurring both at the level

of the labour market and at the level of the working community. The market, for example, by denying to some individuals consumption opportunities (while simultaneously stimulating their needs) or by just partially including them, engendered frustrations or a feeling of 'relative deprivation'. Relative deprivation, however, did not only affect those deprived of (equal) opportunities and means to participate in the market economy. It impacted also on the included ones, who turned a 'troubled and anxious look toward the excluded of society' (Young, 1999, p. 9) and promoted the adoption of exclusionary policies targeting them.

Within left realism, crucial to the understanding of crime and incivilities (and to the identification of possible solutions to the crime/deviance problem) is the notion of *square of crime* (Young, 1992). In the square model, different 'lines of force' (Young & Matthews, 1992) are thought to play a role in the process of criminalisation: not only offenders and the state, but also victims and the public opinion contribute to the creation of crime and deviance. As crime and incivility are the result of the interactions between all these four elements, it logically infers that to effectively control crime and nuisance, action should be taken at all these four levels of the square. Most importantly, effort should be made at the level of the public to strengthen community ties and allow social inclusion through improved education and increased working opportunities.

Left realism has been extremely influential in the 1970s. However, as Matthews (2010) and Rock (2012) reported, it entered a crisis in the 1980s and has later evolved into critical studies of social control, which will be described later in the text.

4 Right realism

In opposition to left positions promoting a criminology based on social inclusion and democratic socialism, right realist authors regarded socialist and welfare policies as direct causes of crime (Bennett, DiIulio & Walters, 1996; Murray, 1984). From the 1970s onwards, as right-wing parties came into power, a new political era was initiated. Margaret Thatcher, in the UK, and Ronald Reagan, in the US, followed by their political successors, highly questioned the effectiveness of social welfare programmes adopted in the previous post-war period and promoted policies based on neo-liberalism (laissez faire) in economics. More interestingly for the purposes of this chapter, they couched policies based on a 'tough approach' on incivilities.

In 1982, Wilson and Kelling made a case for the adoption of 'zero tolerance policing' against incivilities on the basis of the (contented) link between disorder, fear and crime. In their famous article *The police and neighborhood safety: broken windows*, the two authors suggested that disorderly environments engender fear in the residents, who are thus encouraged to retreat from the public space and to decrease the level of informal social control exercised on public spaces, in this way increasing the opportunity for the commission of criminal acts. The two authors explained this link by using the metaphor of a broken window: if a broken window in a building is not quickly repaired and replaced, then other windows in adjacent premises will soon get broken, because one broken window is a 'signal that no one cares, and so breaking more windows costs nothing' (Wilson & Kelling, 1982, p. 2). Skogan (1992) took this perspective even further by underscoring the detrimental consequences of disorder for community cohesion and neighbourhood decline.

In recent years right realism has highly been disputed by academics in a number of studies, where they challenged the existence of a causal link between disorder, fear and criminality. For example, according to this body of evidence, urban areas showing thriving levels of criminal activity may not be characterised by high levels of fear of crime, which seems to be rather influenced by the level of perceived physical and social disorder (Innes, 2004; Innes et al., 2002). Partially in opposition with the latter research findings, some studies have also shown that the level of (perceived) disorder is mostly based on the racial, ethnic, and socio-economic characteristics of people, rather than on the (dilapidated) physical conditions of urban areas (Mackenzie, Bannister, Flint, Parr, Millie & Fleetwood, 2010; Sampson, 2009; Sampson & Raudenbusch, 2004).

5 Environmental criminology

Increasingly from the 1970s onwards, control theories (i.e., the family of theories from which environmental criminology originates) started to be especially influential in criminological research, as well as in policy-making circles. In opposition to sociological approaches which associated criminal and deviant activities with conditions of social and relative deprivation, they viewed crime as a matter of (perceived) favourable opportunities: it is committed by rational individuals when the perceived utility (which is likely to be gained through the criminal/deviant act) overcomes the profit gained from putting resources, time and money in licit activities (Becker, 1968). Such a conceptualisation of crime has been further developed by what Garland (1996, 2001) called administrative criminologies or the 'criminologies of everyday life', namely the rational choice theory (RCT), the routine activity theory

(RAT) and Situational Crime Prevention (SCP). All such perspectives[3] are understood as part of environmental criminology, which is a 'family of theories that share a common interest in criminal events and the immediate circumstances in which they occur' (Wortley & Mazerolle, 2013, p. 1). While their focus has initially been placed on the explanation (and reduction) of crime, such theories have later addressed also the problem of incivilities.

Among the perspectives belonging to family of environmental criminology, the RAT centred its analysis on the *situation* in which the criminal act takes place (Cohen & Felson, 1979). According to this perspective, crime is the result of the intersection in certain places and at certain times of motivated offenders, suitable targets and of the absence of capable guardians. To prevent the commission of crime, therefore, such theory emphasises the need to increase the risk of being caught and arrested, while reducing the rewards gained through the commission of crime (Clarke, 1992). Following such theoretical framework, SCP has aimed to design 'measures (1) directed at highly specific forms of crime (2) that involve the management, design, or manipulation of the immediate environment in as systematic and permanent a way as possible (3) so as to reduce the opportunities for crime and increase its risks as perceived by a wide range of offenders' (Clarke, 1983, p. 225). The SCP approach has later developed into ideas of crime prevention by design, that is, into approaches aimed to reduce the opportunities to crime and deviance by manipulating urban and environmental characteristics. Approaches as such are well synthetized in Newman's (1972) concept of 'defensible space', as well as in the notion of Crime Prevention Through Environmental Design (CPTED).

The interest of environmental criminology for incivilities only started later in time. For instance, fifteen years after *Social change and crime rate trends* (Cohen & Felson, 1979), Felson (1994) applied the theoretical framework of RAT to the analysis of vice (e.g., drug dealing and prostitution). Also SCP techniques have been only later applied to the reduction of nuisance, whose presence has been ascribed to the existence of favourable situational opportunities (Brantingham & Brantingham, 1990; Coleman, 1985). In spite of the limitations pointed out by some scholars (who argued that criminal and anti-social activities, rather than being 'resolved', are displaced and adapted to the altered set of opportunities[4]), such techniques have had quite a resonance on policy-making circles (Helms, 2012).

[3] SCP, as argued by Newburn (2007), is not itself an autonomous/self-standing perspective: it is rather considered as a development of the RCT and of the RAT.

[4] For a review on the critiques, see Eck (1993).

6 Critical criminology

In *The New Criminology*, Taylor and colleagues (1973) emphasised the need to study crime and criminalisation through the agencies, processes and structures within which social control is exercised at the central and local levels (McLaughlin & Muncie, 2013). On their account, especially starting from the end of the 19th century the task to maintain and wield social control has not only pertained to official law enforcement agencies. Social control has also been exercised by a number of local authorities and bodies, which have been entrusted with the capacity to penalise criminal behaviour. To study how crime and deviance have been managed by such institutions, critical criminologists have used different theoretical models, stretching, for example, from the Foucaldian notion of 'governance', Stan Cohen's (1985) 'dispersal of discipline' and other (more sociological) approaches.

6.1 The governmentality thesis

To (critically) understand and conceptualise new methods and practices of criminalisation emanating from non-traditional agencies of social control, some critical criminologists drew on the Marxist tradition and reworked it through the Foucauldian notion of governance (Garland, 1997, 2001; Melossi, 1990; O'Malley, 1996; Rose, 2000; Stenson, 2001 etc.), which focuses on the 'study of the nature and rationalities of particular social and political *practices*' (Newburn, 2007, p. 325, emphasis in the original). In 2001 David Garland provided an analysis of these 'new modes of control' (Hudson, 2002, p. 246) through the governmentality thesis. In his famous work *The Culture of Control*, the author argued that the explanation for rising crime rates, increasing feeling of insecurity and fear of crime led to the presence of a newly emerged 'reconfigured field of crime control' and criminal justice. Such new crime control complex relied (among others) on the (populist) politicisation of crime issues, on the re-emergence of punitive sanctions and on expressive justice, and was dependent on two strategies of crime and social control. The first strategy (the so-called *adaptive* strategy) was featured by community partnerships and rests on the devolution of criminal justice functions to informal institutions and to private citizens, thereby creating new systems of social control. The second strategy (the so-called *expressive* strategy) placed emphasis on coercive, punitive and exclusionary forms of control.

Especially in the past decade, the application of Garland's (2001) 'culture of control' model to the area of ASB had been quite popular among critical criminologists (Burney, 2005; Squires, 2006 etc.), who have framed ASBOs and some other mechanisms for the regulatory control of groups deemed to

behave uncivilly within Garland's two strategies[5]. Recently, however, it has undergone demise in criminological literature. In the UK, for example, Donoghue (2010, p. 154) challenged the idea of ASBOs being a part of a 'sinister, punitive agenda of control which deliberately seeks to marginalise and to exclude 'targeted populations'.' Also in Belgium and in The Netherlands, the applicability of such model has recently been disputed (Devroe, 2012; van der Leun & Koemans, 2013[6]).

6.2 Cohen's 'dispersal of discipline'

The expansion of decentralised forms of governance based on community action has also been explained against the backdrop of Stan Cohen's (1985) 'dispersal of discipline'. On Cohen's account, the proliferation of sources of power for social control at the level of the community has led to the 'widening of the net' and the 'thinning of the mesh' of the criminal justice system. According to such a conceptualisation, an increasing amount of interventions directed at certain groups of people have resulted in a soaring number of individuals being caught and retained in the 'net' of formal social and crime control systems. Cohen (1979) also argued that in the management and control of crime and deviance, community programmes and interventions blurred the boundaries between the deviant and the non-deviant, as well as between the private and the public spheres, leading to a 'correctional continuum' that makes the carceral system expand at the level of the community.

Among other critical criminologists (Crawford, 2009; Squires, 2006, 2008 etc.), in 2004 Brown applied Cohen's analysis of social control to explain the New Labour's ASB mechanisms. On her account, not only ASB instruments have managed to widen the net of the criminal justice system, especially by targeting (anti-)social housing tenants; they have also blurred different types of boundaries. To summarise her contention, such tools made the distinction between criminal law and civil law more obfuscate, as they attached a punishment to the circumstance that a civil injunction (rather than a criminal precept) had been breached. Moreover, they blurred the distinction between the public and the private spheres, by allowing private agencies and community partnerships to play a role in the management of social and crime control.

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[5] Many UK scholars have analysed the practices against ASB connected to social housing (Flint, 2002; Flint & Nixon, 2006 etc.) and the regulation of prostitution (Scoular & O'Neill, 2007; Sagar, 2007 etc.) in terms of Garland's (2001) *adaptive* and *expressive* strategies.

[6] Also the governmentality thesis has been criticised by criminological scholars with respect to its application to the governance of ASB (Matthews, 2010; Parr, 2009 etc.).

6.3 Furedi's 'culture of fear'

Critical accounts on the raise in punitive regulations against incivilities have also drawn on sociological literature. In the UK, for example, Waiton (2008a, 2008b) analysed the ASB regulation against the backdrop of Furedi's (1997) 'culture of fear'. According to such a perspective, the enactment in recent years of public reassurance initiatives has to be linked to a newly formed state of subjectivity, which Furedi (1997, 2004) understood as 'diminished humanity'. The author used such notion to describe the contemporary individual as a vulnerable subject, who fears the other and sees him as potential threat to his integrity and well-being. The conviction that subjects are vulnerable and powerless in front of other (dangerous and unpredictable) individuals, explains why individuals have given an over-significance to episodes of ASB: being a 'victim' of other people's rudeness provides a confirmation of the disrespectful attitude of other people and increases the fear of being potentially victimised by them. On their turn, widespread fears and anxieties over uncivil behaviour of others also translate into a public quest for a quick and effective governmental response to ASB.

7 Cultural criminology

As argued by Hayward and Young[7] (2012, p. 113), cultural criminology is the 'placing of crime and its control in the context of culture: that is, viewing both crime and the agencies of control as cultural products - as creative constructs. As such they must be read in terms of the meaning they carry'. As emerges from this quote, fundamental to the understanding of crime, deviance and their control mechanism, are for cultural criminologists the cultural changes that in the past few years have occurred in contemporary society (e.g., globalisation, multiculturalism, mass consumption etc.). Among those, there are the cultural reforms which took place at the level of the market, which have engendered new types of desires and frustrations among contemporary consumers. Cultural criminology scholars have used these new states of subjectivity as a backdrop against which to explain both the aetiology of deviance and the novel forms of criminalisation of subgroups.

[7] Jock Young is one of the most renowned scholars within the criminological perspective of left realism. In his later writings, however, he was also interested in cultural criminology.

7.1 The criminogenics of the market

In line with Jock Young's (1999) theorisations, also cultural criminologists refer to the market or, more accurately, to the frustrations that its practices engender to the consumer, as one of the main causes explaining crime and deviance in the consumer society. The contemporary individual is, indeed, described as a (narcissistic and hedonistic) consumer who heavily relies on the symbols and practices of consumerism to cope with his feelings of ontological uncertainty and be (at least, temporarily) integrated in the society (Campbell, 2004; Hayward, 2004; Jackson, Rowlands & Miller, 1998 etc.). Their social membership is, however, never unconditioned: it is recognised insofar as the consumer is able to continuously reconfirm their (perceived) identity and position in society via the possession of consumer items. It goes without saying that the individual is hardly capable of completely fulfil all the 'malady of infinite aspirations' (Durkheim in Hall, Simon & Craig, 2008, p. 10) that are propagated by contemporary material culture. Such unfulfilled desires may instigate in the individual feelings of frustration, which may lead them to engage in criminal activities.

The continuous search for social recognition not only contributes to explaining the commission of criminal activities. It also helps to elucidate why people engage in deviant and uncivil behaviour. To get socially accepted, in fact, narcissistic individuals increasingly seek for hedonistic, exciting and intense life experiences, which are seen as a way to reinforce and distinguish their personal identities (Hall et al., 2008[8]). The pursuance of individual pleasure leads people to take part in the contemporary leisure and (night) entertainment scene that offers venues and opportunities for (binge) drinking, drug consumption, sex services and so forth, which, besides being sometimes also criminal offences, tend to gravitate around, and be conducive to, a variety of uncivil and disorderly behaviour (e.g., littering, noise nuisance, public drunkenness etc.). Punitive nuisance regulations aimed to constrain the occurrence of anti-social behaviour in night-time areas and their enforcement mechanism have profusely been studied by a number of scholars working within cultural criminology (Hobbs, Hadfield, Lister & Winlow, 2005; Hayward & Hobbs, 2007 etc.).

7.2 Criminalising subcultures on the basis of their style

To explain how deviance can be constructed and contested in public spaces by different groups of people, Ferrell (1997) coined the notion of 'cultural space'. Different 'cultural spaces', or

[8] This, in line with Katz's (1988) idea of the 'seductions' exercised by crime on individuals.

constructions of meanings and identities, can co-exist (and opposed to) in public areas: alongside the mainstream culture (of adult, middle-class, people), sub-groups (or sub-cultures) of young people, homeless, graffiti writers, street gangs, ethnic minorities and other marginalised populations may be present. Such groups may have a different view on how spaces should be used (and on how people should behave within them) and have an uneven aesthetic style. Aesthetics, at least when compatible with the 'aesthetic of authority' (Ferrell, 1996, p. 32), or with the mainstream understanding of style, is viewed by individuals as an instrument to obtain social integration. By contrast, it is seen as a sign of deviance and as a catalyst of law enforcement responses when people's haircuts, styles in clothing, attitudes, jargon and even music taste do not conform with the socially approved ways of appearing and behaving in public spaces (Ferrell & Sanders, 1995; Ferrell, 1997). Similarly, individuals can be penalised and excluded also when they (visibly) consume in the deemed 'wrong' way: for example, when they have no means to consume but do it anyway (as in the case of the homeless person illustrated by Measham and Brain (2005)) or when they excessively consume "in ways deemed 'vulgar' and hence lacking in 'distinction' by superordinate classes" (Hayward & Yar, 2006, p. 14).

8 Conclusion

In response to growing levels of fear of crime and social insecurity, governments in some European countries have adopted punitive interventions against disorderly behaviour. In order to explain newly enacted incivility regulations and their local applications, scholars have drawn on a wide repertoire of criminological theories and perspectives, stretching from the labelling perspective (or social reaction theory), left realism, right realism, critical criminology, environmental criminology and cultural criminology. What can be seen is that not all these perspectives have been concerned with explaining incivility and its regulation at the time they had been first developed. Some of them have only recently focused or been applied and adapted to address nuisance or ASB. This is the case, for example, of both environmental and critical criminology.

Scholars writing in the area of environmental criminology have long drawn attention to the designing of the techniques aimed at reducing or preventing the occurrence of crime. They started paying particular attention to incivilities (and, notably, on decreasing the incidence of deviance and disorderly behaviour) only at a later stage, when deviance has started to be seen (in line with the developed vision of crime) as a product of situational (favourable) opportunities. Critical criminology scholars

have similarly focused on incivility regulation in their later writings and analysed it through a set of theoretical frameworks developed within critical criminology for the analysis of crime and social control, including (but not limited to) the governmentality thesis.

By contrast, since their inception, the labelling perspective, along with left realism, right realism and cultural criminology have all combined the study of nuisance with the analysis of crime. The concept of nuisance, however, has differently been termed and viewed by such perspectives: it has been analysed under the different labels of deviance, disorder, anti-social or uncivil behaviour. Within the social reaction theory, for example, *deviant* behaviour has been analysed within the framework of 'folks devils' and 'moral panics', and thus seen as a tool at the disposal of the powerful majorities to criminalise deviant conduct of marginalised minorities, usually as a result of a panic. Such perspective has been applied also to the area of ASB with scholars writing within this perspective highlighting how the local definition(s) of incivility and its regulation depend on dominant groups' behavioural and aesthetic expectations, which are usually shaped by context-specific factors.

Left realism has also shown interest in *incivilities* (as well as in crime proper) from the start. It did so by devising strategies aimed to reduce criminal and anti-social activity, which centred on the rebuilding of social and personal ties in the community. The link between *disorder,* fear of crime and criminality was made especially evident in right realism. Due to the substantial amount of empirical evidence de-validating its theoretical foundations, this perspective has experienced some decline in criminological scholarly research. Even more recently, cultural criminology has inspected the power of the majorities to criminalise the 'not in style' sub-cultures on the basis of their vision and interpretation of the notion of 'cultural space' (Ferrell, 1997), which defines what is aesthetically and behaviourally appropriate in the public space.

To summarise, this paper has aimed to provide an overview of how different criminological theories and perspectives have looked (when they did so) at the problem of nuisance along the years, and at the way such perspectives have later been applied by criminological scholars in order to explain the newly enacted or reinforced incivilities regulation. From the review above, it clearly emerges that nuisance and the social control mechanisms designed against it do not constitute a new emerging social phenomenon in criminological research. However, although incivility and its regulation has long been the subject of criminological attention, they have been given a new significance and prominence in policy circles and among public opinion, especially when applied to new forms of regulation. Such

renewed interest has led criminological scholars to make new applications of traditional criminological perspectives or to extend the focus of more recent theories (e.g., of cultural criminology) to encompass incivility and its regulation.

What also emerges from this literature study is that there are a number of gaps in the criminological knowledge on regulated nuisance. For example, although some of the illustrated criminological perspectives, such as the social control theory and cultural criminology, have addressed the context-specific character of incivilities and of their regulation (by attributing relevance to the (moral/aesthetic) values and expectations of groups with political capital in a given community), they have under-addressed the empirical analysis of the societal attitudes and approaches to uncivil behaviour in different social settings and, within them, in different urban areas. Comparative empirical research focusing on the local constructions of, and on the responses to, incivilities across different cities and, within them, across their areas, is therefore much needed in criminological research, as it would allow detecting and explaining, for example, not only the similarities, but also the differences of such approaches.

Furthermore, what also emerges from this literature study is that critical accounts of incivilities regulations have tended to problematize them on the basis of the excessive effects they have on certain marginalised individuals and groups. By contrast, they seem to have paid relatively less attention to investigating whether there are safeguards, applied in practice by criminal justice actors, to protect individuals' rights from excessive interferences of local actors.

Lastly, criminological studies focusing on the media reporting on incivilities, and on the social control mechanisms devised to target them, have tended to focus on its *effects* on the public and on policy makers, which have mainly been framed in terms of moral panic. By contrast, they have rather under-addressed the *content* of media news, or to investigate how the media have shaped public and political views on (regulated) incivilities by framing nuisance-related stories in certain ways.

Addressing these gaps in the criminological literature represents a challenge for future criminological research interested in comparatively investigating and explaining nuisance regulations, as well as the way they are socially constructed (also by the media) and enforced by the authorities.

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CHAPTER THREE: Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers?

Abstract

In recent years, the legislators in the UK, Italy and Belgium have progressively empowered local authorities to subject sometimes already criminalised and harmful, but also some relatively harmless uncivil conduct to intrusive and punitive measures deeply affecting individuals' rights. However, judicial action in these three countries has been recently trying to restrain the (illegitimate) use of penalising powers of local authorities by delivering interesting liberty-safeguarding decisions. This paper firstly describes the (expanded) regulation of incivilities in the three aforesaid European countries. Secondly, it focuses on two criteria that inform judicial review of legislative and administrative action, namely the principle of legality and the principle of proportionality. Thirdly, it examines the case law of English, Welsh and Scottish courts, along with Italian and Belgian courts, and shows how courts can safeguard the individual's rights and freedoms against (illegitimate) penalisation of conduct that is deemed anti-social or uncivil at the local level.

Keywords

Incivilities; Regulation; Public Order; Judicial Review; Legality; Proportionality

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1 Introduction

In recent years the regulation of incivility has undergone a significant (punitive) expansion. According to some scholars (Beck, 1992; Hollway and Jefferson, 1997; Taylor, 1999 etc.), the (extended) penalisation of uncivil or disorderly behaviour can be explained in light of increasing societal feelings of insecurity and fear of crime, which have been registered in a number of European countries of the late-modern society. Long-standing evidence on fear of crime has underscored the link between perceived (physical and social) disorder with the perceived risk or threat of being victimised (Burney, 2005; Sampson and Raudenbush, 2004). However, the perception of the risk of becoming a victim of a crime does not often correspond to the actual risk of crime (Bottoms and Wilson, 2004; Peršak, 2014 etc.). According to Mackenzie et al. (2010), moreover, such perceptions are just partly driven by direct and personal experiences or visual cues; they are also influenced by mechanisms of stereotype and metaphor. Through such mechanisms people learn to associate anti-social behaviour (henceforth: ASB) with, for example, the presence of certain groups of people on the streets, and as a tangible indicator of a wider social breakdown, poor formal/informal social control and general moral decline. Based on people's anxieties and widespread insecurities, policy-makers in both Europe and the US have adopted laws and regulations which respond to the problem of crime and crime control in (at least, partly) an emotional fashion, often adopting populist views, which serve the purpose of gathering political consensus and ensuring re-election.

Some types of uncivil behaviour, to be sure, may involve serious harm, persistent intimidation and harassment, resulting in serious consequences. As such, they are (in many countries) properly already criminalised. The definition of "uncivil" behaviour is in itself a very problematic or controversial issue. In general, we observe that the behaviour often defined as nuisance, incivility or anti-social behaviour is the sort of behaviour which offends, alarms or upsets individuals or communities. It can include physical and social disorder, which (when serious, intrusive and persistent) may result in a grave impairment of the quality of life of individuals and entire communities. However, it may also consist of relatively minor and occasional environmental disturbances (e.g., littering, fly-tipping, noise nuisance etc.) as well as harmless conduct, such as teenagers with hoods just "hanging about", who nevertheless seem to alarm some people. As many scholars contended (Ashworth et al., 1998; Burney, 2002, 2005; Cornford, 2012; Millie, 2008a, 2008b), the definition of uncivil behaviour is very much dependent on (social and individual) subjective interpretations. On Millie's (2008a, 2008b) account, what accounts as anti-social or uncivil varies very much in time and place, and is dependent on what he calls the 'behavioural and aesthetic expectations' of the (powerful) majorities. While the same

conduct may be celebrated and praised by some people in certain times and settings, it may be only tolerated or, worse, censured by others (or even by the same ones) when it occurs under different (time and space) conditions (see also Burney, 2006).

In his book 'The Culture of Control' (2001), Garland argues that in conditions of late modernity the discourse on crime and crime control has increasingly become expressive and instrumental, often leading to the enactment of measures deeply impacting on individuals' liberties and autonomy. This is especially the case for the regulation of incivilities, since local authorities have progressively been empowered to subject sometimes already criminalised and sometimes quite harmless and long tolerated conduct to intrusive and punitive constrains affecting individuals' rights and freedoms. According to criminal law scholarship (Feinberg, 1984; Simester and von Hirsch, 2006b; Peršak, 2007; etc.), behaviour ought not to be penalised unless it causes (wrongful) harm or, in some cases and under certain conditions, offence to others. However, the assessment on whether a conduct is harmful or sufficiently offensive to others in order to legitimate punitive intervention is not always a clear-cut exercise. In one of his recent works, Millie (2011) notes that the assessment of the acceptability of behaviour depends on the values underpinned by the individual or group holding decision-making power. Those who have sufficient political capital are in the position to assess whether certain behaviour will result in a perceived or actual harm or offence to them, and to impose such value judgments on other people. As a result of these assessments, relatively minor and occasional behaviour may be penalised by powerful majorities on the basis of their moral reasons or their conception of the quality of life. Not alone, the visibility of certain groups of people in public spaces is often attacked also on the basis of economic and aesthetic judgments of the mainstream culture, when the former do not (sufficiently) conform to the economic (consumerist) expectations and aesthetic canons of the majority. These value judgments may, however, have a detrimental impact on the enjoyment of individual rights.

In response to the widespread regulatory trend to steer people's lifestyles through the employment of punitive measures, judicial action in some European countries has recently kept a check on the (illegitimate and excessive) use of penalising powers of local authorities by delivering judgments aiming to safeguard individual rights and liberties. This article will firstly describe the (expanded) regulation of incivilities in three European countries, namely in the UK, Italy and Belgium. Secondly, it shall focus on two criteria that inform judicial review of legislative and administrative action, namely the principle of legality and the principle of proportionality. Thirdly and lastly, it will look into the case law of English, Welsh and Scottish courts, along with Italian and Belgian courts, to assess

whether (and how) judicial action can provide a 'safety net' to protect individual rights and freedoms against (illegitimate and disproportionate) penalisation of behaviour considered uncivil by (often local) authorities.

2 Incivility regulation in the UK, Italy and Belgium

2.1 The UK

A reinforced trend in the regulation of incivilities can be witnessed in several European countries. In the UK, the Magistrates' and County Courts, in England and Wales, and Sheriff Courts, in Scotland, have been since 1998 empowered to issue civil injunctions (Anti-Social Behaviour Orders or ASBOs), whose breach renders the offence criminal and may result in up to 5 years of imprisonment.[1] As Burney (2005: xi) put it, the ASBO legislation developed by New Labour in the 1990s is all about a 'right idea that went wrong from the start'. The right idea that triggered the enactment of such legislation was to deal with difficult situations affecting hard-to-manage neighbourhoods of social housing, whereby individuals 'were living daily with abuse, intimidation and disorder that seriously undermined their quality of life and that of their locality'. From the outset, however, the exercise of such (newly introduced) regulatory powers has been brought too far, as ASBOs have been applied to counter a broader spectrum of behaviour than what was originally intended. ASBOs, moreover, rely on punitive measures deeply affecting individual rights and freedoms (Burney, 2008; Crawford, 2009 etc.) and by placing emphasis on the expulsion of the anti-social from local communities pursue a 'selective social exclusion' (Squires, 2006: 162).

As noted by Donoghue (2007, 2010), courts have well contributed to increasing of the application of ASBOs. According to the 1998 Crime and Disorder Act (CDA), in fact, Magistrates' Courts, County and Sheriff Courts may apply ASBOs in the course of a civil proceeding upon request from local authorities, police forces, registered social landlords (RSLs), and housing action trusts (HATs). A two-stage test must be satisfied by the applicant authority in order to obtain the issuance of an ASBO. The

[1] During the submission procedure of this paper, the legislative framework on ASBOs has been changed. Currently, pursuant to the 2014 Anti-social Behaviour, Crime and Policing Act, only breaches of Criminal Behaviour Orders (previously CRASBOs) qualify as criminal offences.

first is that the defendant has behaved in an anti-social manner, that is, 'in a manner that caused or was likely to cause harassment, alarm or distress' (s. 1(1) (a)). The second-stage of the test requires the order to be necessary in order to protect persons from further anti-social behaviour of the offender (s. 1(1) (b)). As noted by the House of Lords in 2002 in its leading judgment *McCann*,[2] since no limits can be set to the prohibitions that may be imposed by courts as long as they are found to be necessary, ASBOs can rest on measures that may deeply 'interfere with the defendant's private life, his freedom to express either by words or conduct and his freedom to associate with people' (26).

Individual behaviour is then labelled as criminal and subjected to adjudication in a criminal proceeding when the order is breached by the offender. Pursuant to s. 1(10) CDA, a person who without reasonable excuse does anything which he or she is prohibited from doing by an ASBO, he or she is guilty of an offence and liable either (a) on summary conviction, to imprisonment for a term not exceeding six months and/or to a fine not exceeding the statutory maximum, or (b) on conviction on indictment, to imprisonment for a term not exceeding five years and/or to a fine. Clearly, both the definition of ASB and the range and type of punishment have been defined in quite elastic terms, thus giving the judiciary an ample degree of discretion when it comes to applying ASBOs as well as to determining the amount of punishment to be imposed on individual offenders.

Four different types of ASBOs have been introduced by the 2003 Anti-social Behaviour Act. 'Interim orders' can be issued by Magistrates' and County Courts on a temporary basis and in the case of danger to the public, while pending the determination of the main application. Magistrates' and County Courts can respectively impose 'stand-alone' ASBOs, which can be unrelated to any other pending legal proceeding, and 'County Courts orders', which may be connected to other proceedings or actions. Lastly, post-conviction Criminal ASBOs (or CRASBOs), may be made upon conviction in a criminal proceeding by County Courts, Magistrates' Courts and the Youth Court. These four types of ASBOs do not, however, exhaust the list of tools at the disposal of local authorities to penalise uncivil and disorderly behaviour. Other remedies include Acceptable Behaviour Contracts (ABCs), Anti-social Behaviour Notices (ASBNs), Penalty Notices for Disorder (PNDs), Sexual Offences Prevention Orders (SOPOs), along with parenting contracts, demoted tenancies etc. With a few exceptions, ASBOs (as well as the other similar remedies referred to above) are measures that tailor individual response to ASB to the personal circumstances of those subjected to regulation. Generalised

[2] *R. (on the application of McCann) v Manchester Crown Court* (2002 WL 31257284).

regulations have, however, also been adopted with local authorities setting out prohibitions that impact on the whole segments of the population. An example is the Dispersal Order, envisaged by s. 30 of the 2003 Anti-Social Behaviour Act, which entrusted local authorities to designate certain areas of heightened ASB concerns as 'dispersal order zones'. Within these zones, groups (especially of youths and drunk people, as reported in Millie (2008a)) may be dispersed by the police and community support officers when they have a reasonable ground to believe that their presence or behaviour has resulted, or is likely to result, in any member of the public being harassed, alarmed, or distressed. Refusal to cooperate by the concerned individuals or groups may result in them being arrested and summarily charged. The 2001 Criminal Justice and Police Act (in force since 1 September 2006), moreover, granted to local authorities the power to designate 'alcohol-free zones' through Designated Public Place Orders in an attempt to restrict anti-social behaviour connected to drinking in certain public spaces at nights.

The normative framework on the regulation of ASB has been altered in March 2014, as the Anti-Social Behaviour, Crime and Policing Act (Home Office, 2014) has entered into force. Among the changes brought about by the Act, the most striking one is the replacement of a number of existing ASBO tools (including "stand alone" ASBOs and Anti-Social Behaviour Injunctions) by the Injunction to Prevent Nuisance and Disorder (IPNA) (s. 1 (1)). As argued by several commentators (Home Affair Committee, 2013; Strickland et al., 2013), this new Act (and previously, the Anti-social Behaviour, Crime and Policing Bill) still contains some very problematic elements, despite re-framing ASBOs as a fully civil law mechanism.[3] In this Act CRASBOs are also replaced by Criminal Behaviour Orders, whose breach leads to a criminal proceeding. Other changes include (among others) the introduction of new powers for local authorities to deal with environmental anti-social conduct (i.e., public drunkenness, barking dogs, littering, the phenomena of graffiti and of fly tipping etc.), as well as the introduction of tools that aim to ensure a better protection of victims and communities (through, for example, the adoption of the Community Trigger and the Community Remedy).

[3] For a critical view on, for example, the newly introduced lower standard of proof and on the power to arrest following a breach, see Home Affair Committee (2013).

2.2 Italy

By evoking the need to 'appease the profound sense of insecurity and fear of local criminality highly widespread across the country' (Italian Council of Ministers, 2008b: 3), the Italian centre-right government designed in 2008 a normative framework that awarded mayors the possibility to issue orders[4] '*also* [italics added] contingent and urgent […] for the purpose of preventing and removing grave perils threatening public safety and urban security'.[5] The presence of the conjunction 'also' in the text of the statute allowed for an extensive interpretation of the confines of the public order mandate on the part of local authorities, which then on the regular basis issued orders *extra ordinem*, i.e. regardless of whether the requirements of urgency and necessity were actually met (Benvenuti et al., 2013; Parmigiani, 2008).[6] Any breach of such orders was, moreover, considered a contravention (criminal offence *lato sensu*) and led to a criminal proceeding potentially resulting in the imposition of criminal sanctions (article 650 of the criminal code).

At the local level, this extensive interpretation led to an arbitrary and uneven regulation of public order issues, resulting in a scattered regulatory scenario, where various types of conduct have been differently disciplined across the territory (Benvenuti et al., 2013; Capantini, 2011). Various phenomena have been regulated by mayors through administrative orders *extra ordinem*, stretching from harmless and long tolerated conduct (such as public drunkenness, soliciting of and procuring for prostitution, begging, littering, etc.) to behaviour already falling within the ambit of criminal or administrative law (e.g., vandalism, drug dealing etc.) (Campioni et al., 2009).

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[4] In Italy, orders (or ordinances) *extra ordinem* are administrative measures that can be taken by any public administration to deal with public order issues. Orders should be issued in situations of *urgency* and *necessity*, protect the 'tick' public interests of urban security and/or health, have a temporary effect etc. They can impose (positive and/or negative) obligations on individuals, and deviate from the general rules and ordinary procedures of the legal system.

[5] Art. 54 par. 4 of the legislative decree N. 167/2000, as amended by art. 6 of the decree N. 92 of 23 May 2008 reads as following: *Il sindaco, quale ufficiale del Governo, adotta con atto motivato provvedimenti anche contingibili e urgenti nel rispetto dei principi generali dell'ordinamento, al fine di prevenire e di eliminare gravi pericoli che minacciano l'incolumità pubblica e la sicurezza urbana.*

[6] After the enactment of the ministerial decree aimed to specify the jurisdiction of municipal authorities (Italian Council of Ministers, 2008b), the then Home Secretary Roberto Maroni urged mayors to be creative in designing administrative orders. A detailed list of bizarre orders can be found in Parmigiani (2008).

In Italy, this expanded regulatory trend has also been facilitated by a wavering jurisprudence, irresolute on whether to grant legitimacy to such measures.[7] To resolve the judicial dispute, the Constitutional Court in 2011 issued a judgment in which the exercise of local regulatory powers in the area of urban security has been re-connected to the situation of (strict) urgency and necessity.[8] Currently, however, in spite of the Constitutional Court's ruling, the issuance of orders *extra ordinem* to counter daily incivilities does not seem to be on the wane.[9] Recent judgments of courts, overturning mayors' decisions to issue administrative orders on the basis of the Constitutional Court's ruling, show a slightly reduced but still present trend to expand the traditional ambit of the public order mandate to counter daily (often, harmless) uncivil and disorderly behaviour.[10]

2.3 Belgium

In Belgium, from 1999 onwards municipalities have been delegated the power to impose administrative sanctions (the so-called 'Gemeentelijke Administratieve Sancties' or G.A.S.) on individuals that behave in a way that is considered uncivil. As pointed out by relevant scholars (Devroe, 2012; Meerschaut et al., 2008; Vander Beken and Vandeviver, 2014), the way to the adoption of the municipal system of administrative sanctions has been paved by a number of scandals that occurred in the country from the 1980s onwards, along with the burst of protests in some

[7] An example of judicial decision expressing its favour for the exercise of local powers is R.A.T. (Regional Administrative Tribunal of first instance) Lazio, Sect. II, 22 Dec. 2008, n. 12222. For an example of a restrictive interpretation of the provision see R.A.T. Toscana, Sect. II, 21 Jan. 2009, n. 71.

[8] Const. Court, 7 April 2011, n. 115.

[9] For instance, the mayor of Perugia has recently issued an administrative order prohibiting the soliciting of and procuring for prostitution. See http://www.umbria24.it/perugia-scatta-lordinanza-anti-prostituzione-inserite-anche-via-canali-e-via-campo-di-marte/169641.html, accessed on 22 September 2013.

[10] For some examples, see R.A.T. Piemonte Turin, Sect. II, 09-02-2012, n. 172; R.A.T. Sardegna Cagliari, Sect. I, 10-02-2012, n. 110; R.A.T. Calabria Catanzaro, Sect. I, 14-03-2012, n. 262; R.A.T. Puglia Lecce, Sect. I, 22-03-2012, n. 525; R.A.T. Campania Napoli, Sect. V, 24-05-2012, n. 2433; Council of State (C.S.), Sect. V, 25-05-2012, n. 3077; R.A.T. Liguria Genova, Sect. II, 13-07-2012, n. 1016; R.A.T. Toscana Firenze, Sect. III, 27-08-2012, n. 1484; R.A.T. Toscana Firenze, Sect. III, 27-08-2012, n. 1484; R.A.T. Lombardia Milan, Sect. III, 13-09-2012, n. 2308; C.S., Sect. V, 19-09-2012, n. 4968; R.A.T. Abruzzo Pescara, Sect. I, 02-10-2012, n. 396; R.A.T. Toscana Firenze, Sect. II, 19-10-2012, n. 1669; R.A.T. Lazio Latina, Sect. I, 22-10-2012, n. 792; C.S., Sect.. V, 06-03-2013, n. 1372; R.A.T. Campania Salerno, Sect. I, 15-05-2013, n. 1098; Supreme Court (civ.), Sect. VI - 2, 25-07-2013, n. 18073 etc..

municipalities of Brussels (Vorst, St. Gilles) and the electoral swing to the extreme right-wing party (*Vlaams Blok*) in 1991. All these factors have contributed to the raised feelings of insecurity related to nuisance, which in the years that preceded the enactment of the G.A.S. legislation reached alarming levels (Vander Beken and Vandeviver, 2014). To appease the fear of crime highly widespread across the country (Vander Beken and Vandeviver, 2014), the federal state enacted in 1999 the law on the implementation of municipal administrative penalties,[11] which empowered local authorities to punitively regulate behaviour defined as uncivil by imposing administrative fines. Competence to decide on the appeal against such fines has been allocated to criminal courts (*Politierechtbank*).

At the outset, the nuisance legislation proved to be an empty barrel for local administrations (Devroe, 2008; Vander Beken and Vandeviver, 2014), as it allowed municipalities to react only to conduct, which was not (already) regulated at the federal level or by regional Parliaments (on the basis of the principle of subsidiarity of local powers). Things changed during the years 2004 and 2005,[12] when the statutory framework on the regulation of nuisance was amended by the Federal Parliament and some (until then) criminal offences have been decriminalised. By allowing municipalities to regulate behaviour previously criminalised at the national level, the newly enacted regulatory framework has, in fact, broadened the original reach of the G.A.S. legislation. The two laws of 2004 and 2005, moreover, allocated new powers to local authorities in the area of the so-called 'mixed violations', which refer to conduct that qualifies both as a criminal offence and (potentially, if the municipality decides so) as a local incivility. In essence, under the heading of 'mixed violations', municipalities have been entitled to adopt the regulation that sanctions conduct already covered by (federal) criminal law offences and *in addition* to the criminal sanction imposed therein.[13] In the area of 'mixed violations', however, local sanctioning powers are not unlimited. Administrative fines can, in fact, be imposed when the prosecutorial body has either failed to communicate its positions on the case within one month after receiving the police report (this is the case for the so-called *lighter* 'mixed violations') or issued an official statement in which it devolves the matter to the competence of local authorities (i.e., when *more serious* forms of 'mixed violations' are concerned) (Devroe, 2008).

[11] Law on municipal administrative sanctions of 13 May 1999.

[12] Laws of 17 June 2004 and of 20 July 2005.

[13] The act of 2005, moreover, broadened the list of behaviour falling within the category of 'mixed violations' (including, for example, damage to goods and chattels, night time noise nuisance etc.).

Whilst seldom implemented up till 2006 (Ponsaers *et al*. in Devroe, 2008: 156), municipal nuisance regulations seem to be on the rise from 2008 onwards (Association of Flemish Cities and Municipalities, 2008).[14] Moreover, the regulation of incivilities in Belgium has recently been tightened as the Parliament has on 30 May 2013 passed a law which entrusts local authorities with the power to impose (a higher amount of) GAS fines on individuals aged 14 years or older (thus, lowering the age limit previously set to 16 years old), and to issue orders in case of urgency and necessity.[15]

2.4 Legal objections to (old and newly expanded) forms of incivility regulation

In all these countries, both (reinvigorated) regulatory powers and the (punitive) measures they rely on have been subjected to severe criticism. In the UK, ASBOs have been denoted as a means of 'indirect criminalisation' (Cornford, 2012: 17), which is deemed to evade the traditional due process requirements of criminal law. Simester and von Hirsch (2006b) described the ASBO system as a 'two-step prohibition', as the criminalisation of behaviour occurs in two steps: first, a certain conduct is defined as anti-social (for it causing (or likely to cause) harassment, alarm or distress) and subjected to prohibitions within a civil-law order; second, the breach of any of the conditions included in the order is criminal. As argued by the two authors, such mechanism of criminalisation is rather problematic, especially when it refers to a behaviour (defined as anti-social) that is perfectly legitimate (e.g., youths hanging about on the streets). In the words of Mr Alvaro-Gil Roberts, European Commissioner for Human Rights (2005: 34), such civil orders look like 'personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community'. ASBOs have also been criticised for the 'potentially arbitrary character of definitions of ASB' (Squires, 2006: 159), which has led some scholars to attempt to put forward sharper definitions of the notion of anti-social conduct (for examples, see Cornford, 2012 and Ramsay, 2009).[16]

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[14] Currently, the implementation of such regulations is quite widespread. As noted by Vander Beken and Vandeviver (2014), by clicking on the link http://www.vvsg.be/veiligheid/bestuurlijke%20handhaving/gas/Pages/WelkomGAS.aspx it is possible to observe the geographical application of G.A.S. regulations across municipalities in the Flemish region of Belgium at present times (municipalities that are green coloured are those that have implemented the local administrative sanction legislation).

[15] Law of 24 June 2013.

[16] A more recent positive assessment on the ASBO system can be found in Donoghue (2010).

In Italy, administrative orders have been challenged for creating 'micro legal systems' (Parmigiani, 2008: 149-150), which, by introducing unacceptable differentiations within the national territory, clash with the primary values of legal certainty and equality (Benvenuti et al., 2013; Carluccio and Finocchi Ghersi, 2011; Cosmai, 2012 etc.). Here, domestic doctrine has also questioned orders *extra ordinem* in light of the (excessive) effects they likely bring about in people's lives (Musolino, 2011).

In Belgium, the system of G.A.S. fines has been criticised for the excessive vagueness of the statutory category of 'public nuisance', whose hazy contours have prompted different interpretations of the notion at the local level (Cools, 2004; Peršak, 2014 etc.). As noted by Peršak (2014), the delegation of powers to local communities (upon conviction that they are best suited to deal with social and criminal phenomena bothering community's members) may have repercussions for legal certainty (particularly for people not ordinarily living in a certain local community/municipality), as the regulation of nuisance varies across municipalities, which also renders compliance with a patchwork of different rules more troublesome. Emblematic in this respect is the case of Brussels with its 19 municipalities, which provide different interpretations of the concept of nuisance and rely on various modalities for the application of G.A.S. fines (Meerschaut et al., 2008).[17]

Overall in the three concerned countries, mechanisms of regulatory control are deemed to blur the boundaries between the civil/administrative and the criminal spheres. Regardless of their formal label as civil or administrative, in fact, such measures operate in close combination with the criminal law, without, however, being encumbered by the traditional criminal law principles of legality, proportionality, last resort etc. Moreover, (both novel and reinforced) regulatory powers are based on vague legislative definitions, which grant local authorities a considerable amount of discretion when it comes to spelling out the parameters of the acceptable rules and the behaviour to which the individuals must conform. Since it is the failure to comply with civil/administrative directions which triggers individual criminalisation, the question arises as to whether incivility regulation conforms to the principle of legality. Furthermore, civil/administrative measures that rely on punitive constraints on individuals' autonomy pose the question of the proportionality of the punishment in relation to the

[17] The municipal plan to fight incivilities (which rests on both police and tax regulations) is available at http://www.brussels.be/artdet.cfm?id=4034&highlight=administrative%2Cfines, accessed on 20 September 2013. Six categories of incivilities are thereby spelled out, including the problematic category of 'other incivilities'. See also Peršak (2014).

seriousness of the offence committed, especially when the latter consists of minor, insignificant or harmless forms of behaviour.

3 (Principled) judicial review of legislative and administrative action

In modern democracies deeply grounded on the liberal idea of individual autonomy, the use of the criminal law as a means to deter and punish human behaviour has to be cautious and always justified. Criminal law is the most intrusive and condemnatory form of coercion exercised by the state, which deeply interferes with individuals' rights and freedoms (Ashworth, 2003; Peršak, 2007; Simester et al., 2013). Therefore, any attempt to constrain behaviour that involves the (direct or indirect) employment of the criminal law arsenal should be thoroughly examined from the outset by the legislator in order to determine whether the intervention is morally legitimate (Feinberg, 1984), or, put it another way, whether the targeted behaviour carries 'penal value' (Jareborg, 2004: 527). Moral or "substantive" (Peršak, 2007) reasons for criminalisation address the content of criminal law provisions, i.e. the question as to *what* behaviour the legislator can legitimately criminalise (Feinberg, 1984; Jareborg, 2004; Peršak, 2007, 2014; Simester and von Hirsch, 2006a, 2011 etc.),[18] as opposed to formal principles, which instruct the policy-maker on *how* to properly criminalise human behaviour (Peršak, 2007, 2014). Such formal principles are, for example, the principles of legality, proportionality, last resort, which often have independent constitutional significance in all western legal system.[19] Their adherence to both the legislative and the administrative levels can be questioned by courts through the (judicial) revision of their action.

[18] For example, the harm principle and the offence principle are currently the most accepted and recognised grounds for criminalisation.

[19] In some countries, general fundamental principles as such have been inferred by Supreme Courts from those that are explicitly enshrined in Constitutional Charters. In Italy, this is the case for the principle of proportionality, which has been inferred by the Constitutional Court from article 3 of the Constitution, which refers to the equality principle (Fiandaca and Musco, 2007; Manes, 2012 etc.). For the impact of such principles on the role of the judiciary in the UK after the enactment of the ECHR, see for instance Henham (2000), Jackson (2000), Nijboer (2000), Dine et al. (2006) etc..

3.1 The legality principle (legislative vagueness)

The legality principle is reflected in the maxim credited to Paul Johann Anselm von Feuerbach '*nullum crimen, nulla poena sine praevia lege poenali'* (transl.: no crime and no punishment without a pre-existing penal law), which imbues all western legal systems, their Constitutional Charters, and rule of law (Martyn et al., 2013). The first section of the maxim, no crime without a pre-existing penal law, assumes that a human conduct can be regarded as criminal only by way of a law enacted by parliamentary assemblies before its commission. Secondary legislation (e.g., ministerial decrees, as well as administrative regulations, orders etc.) can only discipline elements of the offence, which are already specified in their essential and constitutive elements by way of primary legislation.

Another component of the *nullum crimen* principle, the legal certainty, requires criminal law provisions to be stated clearly by the legislator in their essential elements in order to provide a fair warning to citizens.[20] If the criminal law is to deter individuals from behaving in a certain (harmful) way, it should contain (at least, a certain degree of) predictability and certainty. Only if individuals understand the law and its precepts, and are aware in advance of the risks of incurring criminal sanctions by their prospective actions, they are in the position to properly decide in which conduct to engage or not engage, or what "costs" await them in case they violate the law. All these components of the legality principle (i.e., the requirement of (primary) legislation and of legal certainty) inform the judicial revision of legislative provisions and of administrative measures.

3.2 The proportionality principle (excessive use of penalising powers)

The principle of proportionality, even though not always incorporated in the Constitution, is a widely recognised fundamental value in (modern democratic) legal systems. The European Court of Justice has given it the status of the general principle of law, which, according to Gény (in Harbo, 2010: 159) is 'an ideal of reason and/or of justice, which (accords with the permanent basis of human nature and) is presumed to form the basis of the very institution of law'.

The principle of proportionality assists the judge in inspecting the legality of legislative or administrative interventions restricting (fundamental) individual rights. Such interventions are to be

[20] Of course, certain terminological broadness is inherent in legislative texts and may sometimes be even advisable so that judges can exercise a certain margin of appreciation (see the next section).

confirmed insofar as the contested measure passes the threefold test of effectiveness, necessity and proportionality *stricto sensu* (Alexy, 2010; Barak, 2012; Harbo, 2010 etc.).[21] For our purposes, the third element of the test, i.e. the proportionality *stricto sensu* is of particular importance. This part of the test requires the judge to check whether the chosen (legislative/administrative) measure (albeit being suitable and necessary) imposes an excessive burden on individual's autonomy. According to Rivers (2006), the courts are during this assessment given a certain margin of appreciation, meaning that the level of judicial deference and restraint (which is usually higher in the former two tests) changes according to the degree of state intrusion into individual rights: the more pervasive and substantial the limitations to individual liberties, the more thorough the judicial review. In the words of the author, "[i]n the case of the most serious limitations of rights, the court's constitutional duty is to ensure to its own satisfaction that the decision is correct all things considered" (Rivers, 2006: 207).

The proportionality principle is also relevant in the judicial phase of sentencing, with the view to orienting the degree of discretion that judges can properly exercise in that stage. In the process of sentencing, the court may take into consideration a number of factors, such as the type of offence involved and its seriousness, the timing of any plea of guilty, the defendant's character and antecedents, including his/her criminal record, with a view to imposing a punishment whose severity reflects the seriousness of the offence committed. By contending that the severity of the punishment should be in proportion with the seriousness of the offence, the proportionality principle places limitations on the amount of coercion that may be properly exercised by the state (i.e., on the *amount* of punishment). On Ashworth's account (2003: 69), the core of this principle lays in the assumption

[21] More precisely, these three authors maintain that the judicial revision of legislative and administrative action constraining individuals' rights should be based on a threefold test of effectiveness (rationality and/or suitability), necessity (or subsidiarity) and proportionality *stricto sensu*. For example, in its book 'Proportionality: constitutional rights and their limitations' (2012), Aharon Barak named the three tests as 'rational connection', 'necessity', and 'proportionality *stricto sensu*' (or balancing). In short, they require judicial authorities to, first, check whether state intervention is based on measures that are suitable to effectively fulfil the legally valid aims they wish to pursue (*effectiveness*). Second, they impel judges to address the question on whether such measures are necessary to achieve the same relevant legal interests, in the meaning that the chosen measure is the least coercive and intrusive to individual rights and freedoms (*necessity*). In criminal law, necessity is closely related to the principle of *ultima ratio*, which maintains that criminal law offences should be used as a last resort. Third, they require courts to inquire whether the chosen measure imposes an excessive burden on individual's autonomy (*proportionality stricto sensu*). If judicial review is to follow these criteria, legislative and administrative action constraining individuals' autonomy is to be allowed to the extent that is suitable and needed to achieve the relevant legal objectives, under the condition that such measures have no excessive or disproportionate impact on the interests of persons.

that 'no individual, even an offender, should have his or her interests sacrificed except to the extent that it is both absolutely necessary and reasonably proportionate to the harm committed or threatened'.

4 Case law analysis

4.1 Criteria of analysis: legislative vagueness and excessive use of penalising powers

In order to describe and subsequently (comparatively) analyse the relevant case law on incivilities, the criteria of 'legislative vagueness' and of 'excessive use of penalising powers' will be utilised in this article. The first criterion of 'legislative vagueness' refers to judicial review of vague legislative definitions of either the behaviour that instigates the local (civil/administrative) regulatory response (e.g., *anti-social or uncivil behaviour*) or of the local regulatory competences (e.g., which have often been framed with the use of a vague terminology (*also*) or concepts (*public nuisance*)). The second criterion of 'excessive use of penalising powers', relates to judicial cases where the exercise of regulatory powers has been questioned regarding the extent (or amount) of coercion imposed on individual autonomy by way of civil/administrative measures and/or (in case of a breach) of criminal sanctions. In other words, while the first speaks about the legal (un)certainty of the behaviour that justifies the exercise of regulatory powers or the legality of such powers, the second criterion focuses on the (proportionate/disproportionate) effects of such powers on people's lives. In the description of the case law that will follow, only the most relevant cases will be mentioned.

4.2 Case law selection

To select the relevant case law in the UK, the database Westlaw has been used. Cases have been sorted under the keyword '*anti social behaviour ASBO'*, which has resulted in 112 hits. All these judgments have been reviewed in order to leave out those that did not question the merit of ASBOs (i.e., question the substantive requirements for an ASBO). This resulted in 82 cases, selected for the final analysis.[22] In Italy, the database Leggi d'Italia (Repertorio di Giurisprudenza) has been entered with the

[22] A total of 30 decisions were excluded: in 24 decisions courts did not assess ASBOs (or similar measures) into the merit, whereas in 6 of them judges addressed just their formal (and not substantive) requirements. The remaining judgments (82) were sorted under the two categories of 'legislative vagueness' (22) and of 'excessive use of penalising powers' (60).

keywords '*sindaco ordinanza sicurezza pubblica'* (transl.: mayor order public security), and resulted in 34 hits. In Belgium, the relevant case law has been retrieved through the database Jura, by using '*openbare orde overlast'* (transl.: public order nuisance) as keywords. That resulted in 13 hits. Moreover, to include in the case law analysis also decisions on the so-called G.A.S. fines, the database has been searched for the keywords '*gemeentelijke administratieve sanctie'* (transl.: administrative municipal fine), which resulted in 16 documents (i.e., total of 29 decisions).[23]

In all three cases, the selection of the case law has been limited to judgments issued in the 6 years stretching from 1 January 2008 to 1 September 2013 (in all, the number of hits reflect those available in the three databases on 30 September 2013).[24] The year 2008 has been selected as a starting point of the analysis for a number of different reasons. In England and Wales, national official statistics report a steady (and substantial) decrease in the number of issued ASBOs from 2006 up till 2011 (Home Office, 2011).[25] Notably, in 2008 the number of issued ASBOs (2027) halved the peak levels reached in 2005 (4122). In Italy, the year selection is justified in light of the enactment of the so-called 'Pacchetto Sicurezza' (transl.: 'Security Package') (Italian Council of Ministers, 2008b), which in 2008 expanded the law on public order mandate by empowering local authorities to adopt orders *extra ordinem* against incivilities on regular basis. In Belgium, although the G.A.S. legislation was enacted already in 1999, its implementation at the local level started to take place only from 2007-2008 onwards (Association of Flemish Cities and Municipalities, 2008).

5 Judicial action in the UK

5.1 Legislative vagueness

To reduce the vagueness of the legislative definition of ASB, (English, Welsh and Scottish) courts have in their judgments provided (narrower) interpretations of this notion. The first guidance regarding

[23] Just one decision was found to meet the requirements of both research entries (i.e., Const. Court, nr. 62 of 27 May 2010).

[24] This notwithstanding, references to preceding relevant or leading judgments have been made along the text.

[25] Similar documents referring to Scotland have not been found (for statistics referring to the three year period 2003-2006, see Annex 1 of the 'Use of Anti-social Behaviour Orders in Scotland' published in 2007 by the Scottish Government).

the content of the behaviour that qualifies for an ASBO was provided by the House of Lords in the leading judgment *McCann* in 2002, where it held that '[s]ection 1 is not meant to be used in cases of minor unacceptable behaviour but in the cases that satisfy the threshold of persistent and serious anti-social behaviour'. According to the court, 'persistent and serious' ASB occurs when the person has acted, since the relevant date, in such a way as to give reasonable cause to believe that an order under this section is necessary 'to protect the public from serious *harm* [italics added] from him' (11).[26] In this judgment, ASBOs have been recognised as 'quasi punitive' in nature: although the applying for an ASBO is a civil process, the consequences in case of the breach of an ASBO are criminal. Based on this consideration, the House of Lords made ASBO application an exception from the normal standard of proof in civil proceedings by requiring a heightened civil standard equivalent to the criminal standard of proof (Donoghue, 2010; Slapper and Kelly, 2013).

Starting from this judgment, courts have progressively devoted attention to the need to preserve individual rights against (illegitimate) interferences of local authorities, which tends to occur when little to no (caused or threatened) harm to others is involved.[27] In the recent case of *Perry*,[28] for example, the Court of Appeal held that the 'necessity test' should be applied when assessing the risk of further social harm that the person concretely poses and this risk weighed against the need to preserve (as much as possible) her rights and freedoms. The case concerned the postings made by Mr Perry on the blog 'Woldseyeview' about the residents of the community of Wetwang in Yorkshire, which included the publishing of unsubstantiated statements and photographs regarding community members, their residences and personal belongings. Accusations were directed at several members of the community, such as a former mayor, police officers, small entrepreneurs and a reverend. In first

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[26] This narrower definition of ASB can be found also in other previous judgments, such as in *The Queen on the Application of S M, J M, M M (Proceeding by their Mother and Litigation Friend M M) Applicants v Manchester Crown Court, The Chief Constable of Greater Manchester* (2001 WL 171972).

[27] The requirement of necessity has been specified in a number of cases, such as in *R v John Millwood* (2008 WL 4916185); *R v Lewis Colley* (2009 WL 4666944); *R v Charles Francis Boyce* (2009 WL 3805390); *R v Dwayne Worrall, Philasande Bunkwane Ngilana* (2009 WL 3171895); *R v Ian Andrew Clegg* (2009 WL 6043818); *R v Lewis Thomas Gilbertson* (2009 WL 2392208); *R v Sharon Briggs* (2009 WL 1949643); *Regina v "A", Brandon Adams* (2009 WL 635040); *F v Bolton Crown Court* (2009 WL 6146 *R v Constantine Brown* (2009 WL 4552908); *R v James Lima* (2010 WL 605806); *R v Richard Parsons* (2010 WL 3166695); *R v Kahdel Levon Robert Henry* (2011 WL 6329025); *R v Brzezinski* (2012 EWCA Crim 198); *R v Darren Pryce* (2011 WL 2748273); *R v* Tashan Akeen *Atkinson* (2013 EWCA Crim 1102) etc..

[28] *Perry* v *Chief Constable of Humberside Police* (2012 WL 4866945).

instance, the behaviour of Mr Perry was deemed anti-social in light of a number of actions (including a face to face threat, making phone calls and direct contact to people) that caused individuals to experience harassment, alarm or distress. To ground its decision, the court made a combined reference to *McCann*, as well as to the 'Guide to Anti-Social Behaviour Orders' published by the Home Office (Home Office, 2006), which emphasises that orders are to be directed only at serious (harmful) ASB. On this basis, the Court of Appeal found that the District Judge had been 'perfunctory and dismissive' (6) in his consideration of Mr Perry's right of freedom of expression under Article 10 of the European Convention of Human Rights (ECHR), and quashed the decision to impose a ten-year ASBO as the judge 'did not identify the particular risk of social harm which the appellant presented', neither did he 'go on to strike the balance between that need against the particular risks identified so as to ensure that any interference with his rights was necessary and proportionate to the risks which he presented' (6). In this judgment, therefore, the court acknowledged that the decision whether to impose an ASBO or not involves a balancing exercise, within which the judge weighs the 'pressing social need' to have individual rights limited against the need to preserve the same individual (fundamental) rights and freedoms. The balance's scale tilts in favour of the former whenever a serious risk of social harm may be foreseen in the actor's behavioural patterns, upon condition that the degree of dangerousness presented by the offender is proportionately reflected in the restrictions of his personal autonomy. By contrast, if the behaviour did not cause any harm, nor does it provide grounds to believe that severe harmful consequences will be brought about by the future behaviour of the actor, the imposition of limitations to the (lawful) exercise of individual fundamental rights should not be justified. In this case, as Lord Pitchford put it, despite the fact that the (defamatory and unsubstantiated) entries made in the blog by the defendant may well be regarded as both offensive, troublesome and even anti-social, they do not justify the imposition of ASBOs (but, perhaps, of other civil injunctions), as they 'could not reasonably have given rise to the suspicion that the appellant would resort to threats of violence or disorder' (6-7). Again, the court suggested that if not grounded on the need to prevent the particular risk of social harm that the person concretely poses, restrictions of defendants' fundamental freedoms cannot be validly invoked by local authorities.

This argument has been taken even further by the Sheriff Court in *Debidin.*[29] This recent case concerned an ASBO prohibiting a man from owing or keeping dogs on his property for the period of two years, issued as a response to the annoyance caused to the neighbours by the barking of his 46

[29] *The Moray Council v Andrew Deshwar Debidin* (2012 WL 4050220).

German shepherd dogs during daily hours and at night-time. After having ordered an expert noise measurement and arranged an on-site visit, the judge was satisfied that the noise episodes emanating from the pack of dogs did not cause any alarm (defined by the judge as fear or apprehension of danger) or distress (i.e., emotional reaction that involves some form of suffering beyond being upset, annoyed, irritated or a mere inconvenience), thus rejecting the applicants' claim that the conduct of Mr Debidin was anti-social. In its decision, moreover, the Sheriff Court asserted the importance of avoiding the use ASBOs to intrude on people's lifestyles by making overt reference to article 8 of the ECHR (right to respect for private and family life), unless it is grounded on serious (harmful) ASB whose restriction is necessary to prevent future harm posed by the actor. In its conclusions, the judge held that (18):

"The respondent's lifestyle choice is not "pro-social" in the sense that for the respondent his community is his pack of dogs. In my view, however, the respondent's lifestyle is deserving of respect whether or not it falls within the legal definition of "family life" and in my considered opinion, there is no justification for interference with the respondent's lifestyle. […] I cannot help but wonder not only whether the application was made without full and proper regard being had to the statutory framework but whether it was made as a device by which to try to remove from this jurisdiction one man and his dogs".

5.2 Excessive use of penalising powers

Judicial revision of ASBOs also investigated the question of whether behavioural restrictions have an excessive or disproportionate impact on the interests of the person.[30]

For example, in *Allan*,[31] a list of nine ASBO prohibitions was made against a young boy responsible for generally rowdy and anti-social behaviour related to congregating with a group of youths and to (unlawfully and dangerously) riding a scooter. One of these restrictions, which was aimed to prohibit the actor from associating with (a list of named) young men anywhere in a public place in the London

[30] Here, as Donoghue (2010) points out, the leading case for proportionality of the restrictions contained in the orders is *Boness* (R v Boness [2005] EWCA Crim 2395). In this decision, the Court of Appeal posited that any prohibitions included in orders must be necessary for the purpose of protecting persons from further anti-social acts by the defendant and proportionate to the ASB in question. The proportionality of the prescriptions has been dealt with also in *Shane Tony* (R v P (Shane Tony) [2004] EWCA Crim 287), *McGrath* (R v McGrath [2005] EWCA Crim 353) and *DPP* (W v DPP [2005] EWCA Civ 1333).

[31] *The Queen on the Application of Allan v London Borough of Croydon* (2013 WL 1563198).

Borough of Croydon (which covers an area of 87 km^2 and is the largest London borough by population), including meeting, going to meet or going around with any of them in Croydon or Bromley borough (par. H), was quashed by the Court of Appeal as it was found to be both unnecessary and disproportionate. As Mr Justice Simon put it (5), this prohibition was too broad, 'disproportionate to the offence and an insufficiently justified interference with his rights to a private life' (5).[32]

Also in *Williams*,[33] the court placed emphasis on the proportionality of ASBO's behavioural restrictions. Here, the case concerned an appeal against a Sexual Offences Prevention Order (SOPO), which prohibited a 21-year-old offender from possessing a computer or accessing the Internet unless supervised by a responsible adult. This restriction was quashed by the court as it 'deprive[s] the appellant of a standard means of communication and quite likely restrict[s] his ability to gain meaningful employment in the future' (3). As reflected in the court's reasoning, no matter however unacceptable and reprehensible the offences may be, any prohibition to individual behaviour should not be 'disproportionate in its effects' (3) and, thus, excessively affecting the exercise of individuals' rights.

Courts in the UK have applied the proportionality principle (as supplemented by the principle of totality) also in the judicial stage devoted to sentencing of the breach of ASBOs, in view to adapt the severity of the sanction to the degree of seriousness reflected in the offence committed.[34] In *Rose*,[35] *Savage*,[36] *Meade*,[37] as well as in a number of other cases,[38] the Courts of Appeal, after having regarded

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[32] In a number of cases, courts have held that ASBOs should be commensurate with the risk of social harm to be guarded against, and thus not be too wide or indeterminate. For some examples, see *The Queen on the Application of Joseph McGarrett v Kingston Crown Court* (2009 WL 1504458); *R v Gregg Avery, Heather Shirley Nicholson, Natasha Constance Avery, Gavin Matthew Medd-Hall* (2009 WL 4113898); *R v Ronald Nepean* (2009 WL 4113766); *Circle 33 Housing Trust Ltd v Kathirkmanathan* (2009 WL 1949608); *R v Julio Dyer* (2010 WL 3166729); *R v Kevin Douglas* (2011 WL 5105244); *R v Darren Paul West* (2013 WL 3810982) etc..

[33] *R v Damian Williams* (2009 WL 3197564).

[34] The 2008 definitive guideline of the Sentencing Guidelines Council, stipulates that the sentence for breach needs to be commensurate with the seriousness of the offence, being the requirement of seriousness determined by assessing the culpability of the (alleged) offender and any harm which the conduct has caused, was intended to cause or might foreseeably have caused.

[35] *R v Andrew James Rose* (2012 WL 5995853).

[36] *R v Gary Savage* (2012 WL 2065112).

the punishment imposed as being manifestly excessive, replaced it by imposing another, more lenient, sanctioning regime.[39] In *Rose*, for example, the court underscored the importance of reviewing the total amount of the sentence to be inflicted on the individual offender before issuing the order, with a view to ensuring that the punitive treatment is proportionate to the offending behaviour and properly balanced.

At this stage, the proportionality principle has also been applied by courts to select the *type* of punishment to be inflicted to individual offenders. In *Willoughby*,[40] for example, the Court of Appeal held that not every breach of ASBO deserves a custodial sentence, being this onerous penalty limited to conduct reflecting a higher degree of seriousness. In this case, the court challenged the decision taken by the judge in the preceding instance to impose a longer period of custodial sentence on a woman for her anti-social behaviour (i.e., excessive shouting, screaming and banging attributed to a volatile relations with a men) for the reasons of rehabilitation. The previous judge motivated the longer term of imprisonment on the circumstance that the appellant presented a history of heroin and alcoholic addiction, which could have been properly treated in custody within a rehabilitation programme. However, as argued in the appeal by the Lord Justice, the 'deprivation of liberty is the most serious sanction available to the court, and the appropriate period of custody is the *least* [italics added] period which the seriousness of the offender's breaches can properly justify' (5).

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[37] *R v Olive Meade* (2013 WL 3550365).

[38] E.g., *R v AR* (2011 WL 719496*); Kirk Jordan Barclay, Noah Ntuve, Francis Cowan, Trevor Junior Prince Campbell v R* (2011 WL 291587); *R v Durant Monfries* (2011 WL 664648); *R v Anthony Peters* (2011 WL 719524); *R v Amy Carter* (2011 WL 5077746); *R v Anthony Marshall* (2011 WL 4832453); *R v Mark Picton* (2011 WL 6329737); *Robbie Batchelor v Procurator Fiscal, Dundee* (2011 WL 5903092); *R v Tomaosz Adam Brzezinski* (2012 WL 382758); *R v Flaviano Silva* (2012 WL 1555408); *R v "R", Sam Winston Taylor* (2012 WL 1854414); *R v "G"* (2012 WL 1684789); *R v Iftikhar Aslam* (2012 WL 3491918); *R v Stuart McGhie* (2012 WL 3963741); *R v Stephen Christopher Bell* (2012 WL 4888722); *R v Amir Khan* (2012 WL 4888566); *R v Sharma Ahmed Younis* (2012 WL 6774745); *R v Daniel Lawrence Allen* (2013 WL 552339*); R v Liban Jama* (2013 WL 2628707) etc..

[39] In *Rose*, for example, the custodial sentence of 4 years and 6 months has been reduced to 2 years and 4 months. The judge, in fact, while keeping the custodial sentence for robbery (2 years and 3 months), quashed the sentences for the three thefts (12 months) and for the four breaches of the ASBO (12 months) in light of the principle of totality. The sentence of 3 months for breach of the community order was reduced to 1 month.

[40] *Willoughby v Solihull Metropolitan Borough Council* (2013 WL 2628745).

6 Judicial action in Italy

6.1 Legislative vagueness

As mentioned above, in 2011 the Italian Constitutional Court has been tasked with assessing the compatibility of the so-called 'Pacchetto Sicurezza' (Italian Council of Ministers, 2008a) with the fundamental principles informing the criminal justice system, and notably with the principles of legality, equality and impartiality of administrative action enshrined respectively in Art. 3, 23, and 97 of the Italian Constitution. The dispute remitted to the court invested, in the preceding instance, the legitimacy of an administrative order issued to thwart the phenomenon of begging in public places, which (at the national level) is referred to as a licit conduct unless it is aggressive, deceitful or involving minors (Art. 670 of the criminal code).

According to the court's reasoning, norms that provide for a general and not better defined competence of local authorities to deal with urban security issues are unconstitutional in light of the principle of legality.[41] In the judgment, the violation of the principle of legality has been associated with the circumstance that the proscribed conduct has been specified by way of secondary, rather than primary, legislation. Under the regency of the legality principle, in fact, it is not through delegated legislation, but rather via (pre-existing) law enacted by parliamentary assemblies that the requirement of 'law' is said to be fulfilled. Having a conduct proscribed at the legislative level with a certain degree of certainty also responds to the need of providing fair warning to citizens, who need to be aware in advance of the standard of conduct that is expected from them by regulatory authorities. Conversely, regulating situations of (social and physical) disorder according to the local and contingent sensitivities and tolerance levels produces a patchwork of prohibitions that may substantially differ from one municipality to another, ultimately rendering individual compliance with rules more troublesome.

[41] The court answered the question of the court of appeal in a negative way also from the viewpoint of the equality principle (Art. 3 of the Constitution). In the judgment, in fact, the court held that powers of mayors in the area of urban security clashed with the principle of equality, as a different legal treatment attached to the same pattern of behaviour (which might have been differently regarded as licit or illicit) on the mere basis of its geographical localisation. The legitimacy of such powers was questioned by the court also in light of the constitutional principle of independence and impartiality that governs the exercise of administrative powers and competences (Art. 97 Const.).

The maxim of this judgment aligns with the Court's jurisprudence on Art. 650 of the criminal code, which qualifies a contravention aimed to punish the non-fulfilment of administrative orders with the sanction of detention (up to three months or imprisonment) or with a pecuniary fine (up to EUR 206). Since the latter provision does not in itself identify the specific content of the conduct that is proscribed, but rather relies on local administrative orders and regulations for this purpose, its compatibility with the principle of legality had long been questioned by domestic jurisprudence and doctrine especially in the 60s and mid-70s (Bricola in Fiandaca and Musco, 2007: 58). The dispute was finally resolved in 1971 by the Constitutional Court, which affirmed the legitimacy of local regulations as 'conduct definers' insofar as the characteristics, preconditions, and limits of administrative powers and orders are to be thoroughly envisaged by law.[42] In this instance, notwithstanding the enactment of a ministerial decree aimed to specify the jurisdiction of municipal authorities in the exercise of their 'urban security' powers in 2008 (Italian Council of Ministers, 2008a), no instruction was given by way of primary legislation.

After a pivotal judgment of the Constitutional Court in 2011 and on the basis of further doctrinal elaboration (Capantini, 2011; Cosmai, 2012; Musolino, 2011 etc.), the power of mayors to issue orders *extra ordinem* within the framework of the public order mandate, as such (potentially) derogatory of conventional legal standards and procedures, has been reconnected to situations of strict urgency and necessity. Such power, therefore, can now be exercised in presence of unexpected situations of (effective and concrete) risk of harm to public security and safety (*urgency*), which cannot be averted through ordinary measures (*necessity*), providing that their effects are temporarily limited and the least detrimental to individual autonomy.

6.2 Excessive use of penalising powers

Courts have deemed the (local) exercise of the public order mandate to be (not just legitimate but also) proportionate as long as it is grounded on exceptional situations of *urgency* and *necessity*. This judicial stance clearly emerges, for example, in a decision of the Regional Administrative Court (R.A.T.) of Lombardia of 2010,[43] which inspected the legitimacy of an order imposing to the Roma community

[42] Const. Court, 8 July 1971, n. 168.

[43] R.A.T. Lombardia, sect. III, 6 April 2010, n. 981.

the obligation to clear out its camp from the municipal territory upon reasons of public safety. The order was motivated in light of the precarious sanitary conditions of the camp, which resulted in a risk of harm to the safety of the (entire) urban community. In this judgment, however, the court quashed the order as the mayor did not attentively substantiate in his motivation the risk of harm to public safety the act was aimed to prevent (*urgency*), as well as on the basis of the excessive effects on people's lives that such order brought about. In the same decision, moreover, the court also maintained that powers to issue orders *extra ordinem* cannot be exercised by localities as a means to (further) discriminate marginalised populations, but rather be attached to strict legal grounds attentively laid down in the motivation.

In a number of other judgments administrative courts have overruled orders adopted within the framework of the public order mandate on the basis of the deficiency (or inconsistency) of the requirements of urgency and necessity and/or of the unsubstantiated risk to public safety and security as pinpointed in the motivation.[44] Furthermore, judicial revision of administrative action has also criticised the unlimited temporary effects of such orders,[45] along with the private (rather than public) nature of the interest pursued by them.[46] In all, courts have held that restrictions to individual

[44] After the Constitutional Court's judgment: R.A.T. Calabria Catanzaro, Sect. I, 29-04-2011, n. 561; R.A.T. Lombardia Brescia, Sect. II, 18-05-2011, n. 739; R.A.T. Lombardia Milano, Sect. IV, 23-05-2011, n. 1290; R.A.T. Lombardia Milano Sect., IV, 23-05-2011, n. 1290; R.A.T. Veneto Venezia, Sect. III, 14-06-2011, n. 987; R.A.T. Sardegna Cagliari, Sect. I, 24-06-2011, n. 658; R.A.T. Calabria Catanzaro, Sect. I, 29-06-2011, n. 941; R.A.T. Calabria Catanzaro, Sect. II, 07-07-2011, n. 982; R.A.T. Lazio Roma, Sect. II ter, 26-07-2011, n. 6700; R.A.T. Abruzzo L'Aquila, Sect. I, 08-09-2011, n. 443; R.A.T. Sicilia Catania, Sect. I, 29-09-2011, n. 2371; R.A.T. Lazio Roma, Sect. II ter, 17-10-2011, n. 7991; R.A.T. Veneto Venezia, Sect. II, 11-11-2011, n. 1673; R.A.T. Piemonte Turin, Sect. II, 09-02-2012, n. 172; R.A.T. Sardegna Cagliari, Sect. I, 10-02-2012, n. 110; R.A.T. Calabria Catanzaro, Sect. I, 14-03-2012, n. 262; R.A.T. Puglia Lecce, Sect. I, 22-03-2012, n. 525; R.A.T. Friuli-Venezia Giulia Trieste, Sect. I, 03-05-2012, n. 153; R.A.T. Campania Napoli, Sect. V, 24-05-2012, n. 2433; C.S., Sect. V, 25-05-2012, n. 3077; R.A.T. Emilia-Romagna Bologna, Sect. II, 04-07-2012, n. 470; R.A.T. Liguria Genova, Sect. II, 13-07-2012, n. 1016; R.A.T. Toscana Firenze, Sect. III, 27-08-2012, n. 1484; R.A.T. Lombardia Milan, Sect. III, 13-09-2012, n. 2308; C.S., Sect. V, 19-09-2012, n. 4968; R.A.T. Abruzzo Pescara, Sect. I, 02-10-2012, n. 396; R.A.T. Toscana Firenze, Sect. II, 19-10-2012, n. 1669; R.A.T. Lazio Latina, Sect. I, 22-10-2012, n. 792; R.A.T. Toscana Firenze, Sect. II, 06-12-2012, n. 1973; R.A.T. Abruzzo L'Aquila, Sect. I, 10-01-2013, n. 8; C. S., Sect. V, 06-03-2013, n. 1372; R.A.T. Campania Salerno, Sect. I, 15-05-2013, n. 1098; Supreme Court (civ.), Sect. VI - 2, 25-07-2013, n. 18073 etc..

[45] For instance, see C.S., Sect. V, 30-06-2011, n. 3922; R.A.T. Toscana Firenze, Sect. II, 20-05-2010, n. 1542; R.A.T. Puglia Bari, Sect. I, 29-09-2009, n. 2142.

[46] R.A.T. Toscana Firenze, Sect. II, 03-09-2009, n. 1414; R.A.T. Toscana Firenze, Sect. II, 07-06-2010, n. 1704 etc..

behaviour need not to be disproportionate in their effects, and thus excessively affecting the exercise of individuals' rights. In a recent ruling, for instance, the R.A.T. of Potenza maintained that the protection of the public interest of security and safety should be pursued with adequate and effective measures, which should not excessively interfere with individual (fundamental) rights and freedoms.[47]

7 Judicial action in Belgium

7.1 Legislative vagueness

By amending article 135 par. 2 of the existing municipal law, article 7 of the 1999 G.A.S. legislation extended the municipal competences in the area of public order (or 'substantive public policy'). Pursuant to such provision, municipalities have been allowed to take 'all necessary measures, including police regulations, to counter *all forms of public nuisance* [italics added]'. Up till then, the exercise of substantive public policy powers by local authorities was subjected to the condition that risk for public peace, public security and public safety had arisen in some cases. As it reads in the explanatory memorandum of the bill (Belgian House of Representatives, 1999), disruption of public peace occurs together with episodes of disorder or disturbances in public spaces, whereas the notion of public security refers to the absence of dangerous (or harmful) situations for people and goods (the latter concept also encompasses the field of crime prevention and the aiding of people in danger). Public safety, conversely, relates to the absence of diseases and thus to issues of hygiene and environmental safety.

The need to thwart (highly disruptive) behaviour not falling within the three aforesaid categories of public order led the government to introduce the new concept of 'public nuisance'. Such notion, however, finds in the (bill and in the subsequent) law no precise definition. The vagueness of the category of 'public nuisance' and the problematic effects on the principle of legal certainty were

[47] R.A.T. Basilicata Potenza, Sect. I, 05-12-2012, n. 557, which questioned the legitimacy of an order *extra ordinem* aimed to close down a home for the elderly for reasons of an (unsubstantiated) risk for public safety.

carefully identified by the Council of State already in 1998,[48] when the latter was asked to issue an opinion on the bill on municipal administrative sanctions. Irrespective of the negative advice that was then given by the Council of State the bill (and its ambiguous category of 'public nuisance') was converted into law the year after. Again in the memorandum, proponents, albeit acknowledging that the utilisation of vague legislative notions is an exceptional practice in the country, argued that the broad category of 'public nuisance' served the purpose of leaving up to police and local authorities the duty to adjust its meaning to local concerns and issues.

The Ministerial circular of 2 May 2001 (Belgian Ministry of the Interior, 2001), which defined nuisance as 'largely individual, material behaviour that may disrupt the harmonious course of human activities and which may impede the quality of life of local residents in municipalities, quarters, streets, in a way that oversteps the normal pressures of social life' (as translated by Devroe, 2008: 149), makes the interpretation of the law by no means easier. The notion of nuisance found in this secondary act employs the (equally vague) concept of 'quality of life' of individuals and communities, which rather than reducing the reach of local powers seems to even broaden their scope. As a result, this category may encompass behaviour bearing a highly harmful potential (which is, as such, capable of being experienced by people as seriously disruptive), as well as conduct that may consist of a slight inconvenience, which does not seriously undermine people's quality of life. Albeit some studies carried out in the country have attempted to operationalize the concept of public nuisance (De Wree et al., 2006; Van Malderen and Vermeulen, 2007), the contours of the definition of public nuisance remain mostly unclear (Cools, 2004). Moreover, although the vagueness of the notion has been regarded as highly problematic and inconsistent with the principle of legality by the Constitutional Court in 2004,[49] the vagueness of this statutory category has so far not been modified by the Parliament.[50]

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[48] The Council of State is an advisory body (in legislative and statutory matters) and a judicial institution. It has the power to suspend and/or to annul administrative acts that are contrary to existing rules. It is also the Administrative Supreme Court, in charge for reviewing the legality (and not the factual issues, on which it has no jurisdiction) of the decisions of lower administrative courts.

[49] Const. Court, 20 October 2004, n. 158.

[50] In that occasion, in fact, the Court just incidentally dealt with the issue of the nebulous definition of nuisance as found in the G.A.S. legislation.

Notwithstanding a vague and lax statutory framework on public order mandate, in general, and on G.A.S. fines, in particular, courts have sought to limit the local exercise of regulatory powers aimed 'to counter all forms of public nuisance' by making use of the notion of 'material public order'. Such recent judicial action has found a leading 'precedent' in a decision issued in 1994 by the Council of State,[51] in which the court addressed the question of whether a municipal decision to close a disco pub upon reasons of 'moral public order' (i.e., moralistic grounds) was legitimate. The court answered the question negatively: moralistic reasons cannot be invoked as grounds for the exercise of powers in the area of urban security, unless the evidence of harm to individuals (the so-called 'material public order') can be provided by local authorities (Vander Beken, 1994; Vermeulen, 2004).

After the enactment of the G.A.S. legislation in 1999, the Council of State has increasingly resorted to the maxim contained in its judgment of 1994 to halt excessive interpretations of the public order mandate by local authorities.[52] For example, in a number of decisions the court questioned the legitimacy of municipal regulations prohibiting the selling of alcohol through automatic vending machines during night hours in particular urban areas.[53] In all, the court found that restrictions to the supply of alcoholic beverages were illegitimate, as no evidence of 'material behaviours which interrupt the harmonious course of human activity and which limit the quality of life of the inhabitants in way that exceeds the normal pressures of social life' (i.e., 'material public order') was provided.[54] Rather, prohibitions as such rested on the need to prevent alcohol abuse by youngsters, and thus on mere moralistic grounds. As clarified by the court in a judgment of 2010, the specific protection of 'moral public order' can, moreover, be pursued by municipalities only in the exceptional

[51] C.S., n. 50.082 of 8 November 1994.

[52] For some examples, see C.S., n. 181.416 of 20 March 2008; C.S., n. 183.739 of 2 June 2008; C.S., n. 187.998 of 17 November 2008; C.S., n. 202.037 of 18 March 2010; C.S., n. 206.209 of 1 July 2010; C.S., n. 217.843 of 9 February 2012 etc..

[53] For example, see C.S., n. 183.739 of 2 June 2008; C.S. (12 Ch.), n. 206.209 of 1 July 2010; C.S., n. 214.699 of 19 July 2011; C.S. (12 Ch.), n. 202.037 of 18 March 2010 etc.

[54] C.S., 206.209 of 1 July 2010, p. 5: "[..] *materiële gedragingen die het harmonieuze verloop van de menselijke activiteiten verstoren en de levenskwaliteit van de inwoners beperken op een manier dat het de normale druk van het sociale leven overschrijdt*".

circumstances when moral concerns are substantiated by states of physical disorder (which, again, recalls the notion of 'material public order').[55]

7.2 Excessive use of penalising powers

The contested provisions of municipal regulations enacted on the basis of mere moralistic grounds have been found by the Council of State to be also in breach of the proportionality principle. As pointed out by the court in 2009,[56] enacting and enforcing (local) regulations, which have an impact on individuals' autonomy, involve a balancing exercise, where public policy concerns are weighed against the need to shelter individual rights and freedoms. Even when the former prevail, municipalities should avoid the employment of measures that have an excessive impact on individuals' autonomy.[57] For example, in a 2010 case, questioning the restrictions to the supply of alcoholic beverages, the Council of State held that the freedom of trade and commerce is not an absolute one and can therefore be subjected to limitations through the administrative action.[58] However, by contending that any restraint on individual's liberties should not be disproportionate, the court scrapped the contested provision of the municipal regulation as the restriction on the sale of alcoholic beverages was not just unlawful but also excessively interfered with the freedom of trade and commerce retained by the owners of such shops.

The proportionality principle has been invoked by the court also in a recent decision of 2012,[59] which addressed the question of the legitimacy of the municipal regulation provision banning people from riding squad bikes within the communal confines. In this decision, the Council of State clarified that municipalities, in order to envisage general and permanent prohibitions within the scope of article 135 par. 2 of the G.A.S. legislation, should provide circumstantial evidence of the actual (noise) nuisance (and risks for urban safety caused by squads) produced in the community. In the absence of evidence

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[55] C.S. (12 Ch.), n. 202.037 of 18 March 2010, p. 11.

[56] C.S. (12 Ch.), n. 192.904 of 30 April 2009, p. 6: "[…] *de maatregel voorkomt als het resultaat van een afweging, met zin voor maat, van alle betrokken gegevens en belangen. Die afweging moet in de formele motivering van de sluitingsmaatregel tot uiting gebracht worden*".

[57] For some examples, see C.S., n. 181.416 of 20 March 2008; and C.S., n. 214.699 of 19 July 2011.

[58] C.S., 206.209 of 1 July 2010, p. 3.

[59] C.S., decision n. 217.843 of 9 February 2012.

of disruption of the 'material public order', interferences with individual rights are (not just illegitimate but also) unnecessary and, as such, disproportionate.

8 Comparative analysis of judicial action

Normative frameworks awarding local authorities reinforced regulatory powers to penalise uncivil and disorderly behaviour have been recently re-framed by courts in the UK, Italy and Belgium.[60] In the UK, judges have approved the use of ASBOs insofar as they are directed to serious ASB, which refers to the conduct that caused (or was likely to cause) serious harm to others. Here, the proportionality principle has mostly been applied in the phase of sentencing (in case of breach of ASBOs), as the severity of the punishment has been tailored to match the seriousness (i.e., amount of harm) of the offence committed.

Comparable judicial developments can be witnessed in Italy and Belgium, where similar legal arguments have been used to inspect the legality and proportionality of incivility regulation. In Italy, the Constitutional Court in 2011 invalidated (a part of) the law on public order mandate by making overt reference to the constitutional principle of legality. Notably, the vagueness of the formulation of such normative framework was found in violation of the component of the legality principle, which requires the proscribed conduct to be regulated by primary legislation. According to the Court's reasoning, the secondary legislation should only specify non-essential elements of the offence, while its constitutive components should have attentively been laid down by primary legislation. Additionally, the exercise of public order powers, which can also involve a diversion from ordinary measures and procedures, has been re-connected to situations of (strict) necessity and urgency, where the requirement of 'urgency' refers to episodes of (effective and concrete) risk of harm to public security and safety. The legal argument based on proportionality here is that if exceptional public

[60] Interesting developments in terms of judicial action can be found also in Spain, where the Supreme Court has recently declared the unconstitutionality of an order issued by the municipality of Lleida (Catalonia) prohibiting the use of the Islamic burqa upon reasons of public security. The court based its judgment on both principles of legality of sanctions (which stipulates that municipal authorities can impose just the types of sanctions the law allows them) and of proportionality (which is breached when the legislative or administrative authority imposes a disproportionate and discriminatory measure) (Supreme Court, n. 42 of 14 February 2013).

order measures do not meet all the established legal requirements, they are not just unlawful but also disproportionate in that they excessively interfere with individuals' rights and freedoms.

In Belgium, both the Council of State and the Constitutional Court have regarded the category of 'public nuisance' as being too broad and inconsistent with the (constitutional) principle of legality.[61] Moreover, according to the consistent jurisprudence of the Council of State, municipalities are entrusted with competences in the area of public order (or substantive public policy) as long as evidence of (risk of) harm to public peace, safety, and security can be provided by the local body. In this legal system (as well as in Italy), the argument of the legality of public order measures is deeply interrelated with the argument of proportionality. In fact, if such measures are not grounded on relevant (legal) requirements and on (substantiated) evidence of harm, they are regarded both as unlawful and as disproportionate.

The circumstance that in the UK the statutory vagueness of the definition of ASB has been "improved" via evolving jurisprudence does not come as a surprise. In the common law legal tradition, the legislative branch as well as judiciary play a role in the (criminal) law-making process. The judiciary thus substantially contributes to shaping of the content of criminal law (Dine et al., 2006; Malleson, 1999). By contrast, in the Italian and Belgian legal systems (as well as in other systems belonging to the civil law legal tradition), prominent role has traditionally been assigned to the Parliament as the (exclusive) law-maker, entrusted with the duty to (politically) select the interests and values that warrant penal protection. Conversely, the task of the judicial branch has conventionally been limited to the mere application and interpretation of statutes and regulations. Progressively, however, as the case of incivility regulation illustrates, judgments emanating from high-ranked or Supreme Courts have increasingly become more relevant in shaping the content of the criminal law, and of legislative provisions, in general (Alvizatos, 1995). This is especially the case when high-level courts are tasked with assessing the compatibility of legislative provisions and administrative action with supra-legislative (i.e., general principles inferred from the legal system) and/or (expressed or tacit) constitutional principles. In judicial daily practice, maxims or principles of law enshrined in the ruling of Constitutional and Supreme Courts are complied with by any court of lower level, even if they are not considered as precedents or sources of law, as they are in common law legal traditions (Marinucci and Dolcini, 2012; Van den Wyngaert, 2003).

[61] Articles 12 par. 2 and 14 of the Belgian Constitution.

In light of these trends of judicial action emerging from the abovementioned European countries, the question arises as to whether judicial intervention is capable of providing individuals with a 'safety net' that guarantees their fundamental rights and freedoms against illegitimate interferences of local authorities. The case law described in the three preceding sections may indicate that this may be the case. In the UK, for example, judges are empowered to decide on any application for ASBOs. Here, therefore, the protection of individuals' rights and liberties against abusive penalisation may (and, indeed, has proven to) be quite prompt and immediate. Evidence of a trend towards a limited application of ASBOs among English and Welsh courts is provided by the statistics published in 2011 by the Home Office (Home Office, 2011), recording the application of ASBOs in England and Wales during the twelve-year period stretching from 1999 to 2011.[62] According to the report, the application of ASBOs, which has been very moderate (although slightly increasing) in the four-year period stretching from 1999 to 2003, soared in the following triennium (with a peak registered in 2005 when 4122 ASBOs were imposed). From 2006 onwards, however, the number of issued ASBOs has substantially and systematically decreased, with the lower level registered in 2011 (the number of imposed ASBOs during this year almost aligned with that of 2003).

In Italy, a number of judicial pronouncements issued after the Constitutional Court's judgment of 2011 (overturning mayors' decisions to adopt orders *extra ordinem* in the dearth of the relevant legal requirements), suggests that in this country also judicial action may be effective in the safeguarding of fundamental rights and freedoms. Illegitimate restriction of individual liberties can be questioned by courts upon condition that individuals appeal against the administrative fine. In addition, the power to inspect the legality of administrative action in the context of the public order mandate has recently been devolved to criminal courts, which have been tasked with inspecting the merit of administrative orders when ascertaining their breach.[63] As a result, judicial review of administrative action has now been broadened and may potentially lead criminal courts to play a more powerful role when it comes to the protection of individual's autonomy.

In Belgium, progressively after the enactment of the GAS legislation, an increasing number of decisions have been issued by the Council of State aimed to halt the excessive interpretation of the

[62] As mentioned above, similar documents referring to Scotland have not been found (for statistics referring to the three year period 2003-2006, see Annex 1 of the 'Use of Anti-social Behaviour Orders in Scotland' published in 2007 by the Scottish Government).

[63] Supreme Court, Sect. I, judgment of 8 Feb. 2012, n. 9157.

confines of the law on public order mandate operated by local authorities. More specifically, the issuance of these judgments, which was relatively low in the 8-year period stretching from January 1999 to December 2006, triplicated during the time span from January 2007 to September 2013.[64] Additionally, starting from January 2014, when the new enacted law amending the G.A.S. legislation has come into force, the jurisdiction of criminal courts will be expanded so as to include the revision of not just police and municipal (incivility) regulations, but also of 'nuisance orders'.[65] Depending on the impact that the new law will bring about at the local level, Belgian courts can begin to play an even more prominent role in the protection of individuals' liberties.[66]

To sum up, in the UK, Italy and Belgium, judges, by questioning the vagueness of legislative definitions and the disproportionate interferences with individual rights and freedoms by an excessive exercise of local regulatory powers, may well be regarded as being fundamental to the safeguarding of individual rights and freedoms.

9 A concluding thought

Diversities in the historical and legal contexts of these three countries explain the different dynamics in the exercise of their judicial powers. However, a trend of judicial intervention can be evidenced in all of these three jurisdictions. Generally, in, both, the Anglo-American and Continental legal traditions judges act not only as legal interpreters and mere mouthpieces of the Parliament but also as

[64] The search engine Jura has been entered the keywords *openbare orde overlast* (transl.: public order nuisance) and resulted into 20 hits referring to the 14-year period stretching from January 1999 to September 2013. While just five decisions refer to the 8-year period ranging from Jan. 1999 to Jan. 2007, 15 judgments have been issued from Jan. 2007 to Sept. 2013.

[65] Orders (or ordinances) in Belgium are measures taken by the municipality in case of urgency or emergency.

[66] As emerges from the case law analysis, the Council of State has been the most active judicial body revising G.A.S. fines in light of both their substantive and formal requirements. Recently, however, Police Courts have also started to question G.A.S. fines with respect to their merit. For example, in three decisions of 22 March 2013, the Police Court of Antwerp rejected the application of G.A.S. sanctions as some procedural guarantees had not been complied with by police authorities in the notification phase (i.e., the right of defence in both oral and written form was not observed) (Police Court of Antwerp, decisions n. 789/790/791 of 21 March 2013). In September 2013, moreover, the Police Court of Vilvoorde stressed the criminal nature of G.A.S. fines and stipulated that article 6 ECHR (right to fair trial) applies to the notified person (Flachet, 2013).

powerful law-making actors able to correct (illegitimate and disproportionate) legislative and administrative action, ultimately shaping the content of the criminal law and of other relevant (legislative/administrative) provisions. However, despite their importance in correcting the (excessive) use local powers in the regulation of nuisance, their judicial decisions can help only partly in solving the issue of criminalised incivilities. Both, the legality and the proportionality principles cannot provide us with the reasons *for* criminalisation. Rather, these principles provide the legislator with a procedural guide on how to properly criminalise and judges with instructions on their judicial revision of legislative/administrative action. What is also required is a deeper understanding of the substantive grounds for criminalisation at the level of the policy maker (Peršak, 2014), in order to avoid prohibiting relatively minor uncivil conduct, which may only temporarily offend the sensitivities of some people and may therefore be illegitimate to prohibit or punitively interfere with individuals' rights and liberties. The task of inspecting the legitimate grounds for the regulation of social phenomena pertains primarily to the legislator, who is the rightful institution, which should be concerned with selecting the substantive grounds for criminalisation. However, the process of sentencing also bears important implications for the contours of the criminal law (Ashworth, 2003), both in the Anglo-American and Continental legal traditions. Particularly in light of the prevailing legislative "inertia" regarding the articulation of the substantive grounds for criminalisation in this area, the role of courts to define the limits of the criminal law can be considered fundamental to the ultimate safeguarding of individual rights and freedoms.

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CHAPTER FOUR: Regulating street prostitution as a public nuisance in the "culture of consumption:" A comparative analysis between Birmingham, Brussels and Milan

Abstract

In recent years, legislators in a number of European countries have progressively enacted reinvigorated public order regulations to penalise (harmful as well as harmless) behaviour deemed uncivil and disorderly at the local level, ultimately targeting individuals and groups that are considered 'a risk' for society. Prostitutes and their clients figure among the targets of such punitive interventions, as their (mere) presence, especially on some urban areas (e.g., city centres), has increasingly been regarded as causing nuisance and annoyance to individuals and communities.

In the UK, different societal attitudes and enforcement responses against crime and disorder (including street prostitution and kerb-crawling) in different areas of the city have been explained in light of the cultural changes brought about in the late (or post-) modern society by what Hayward (2004) called the 'culture of consumption'. If Hayward's 'culture of consumption' model can well explain societal attitudes to, and social control mechanisms against, the nuisance of street prostitution in the different cities' areas in the UK, can the same perspective be applied (or be equally applied) also to explain people's attitudes and law enforcement responses to it in urban spaces of other European countries?

By drawing on relevant literature and reports of national/international organisations, as well as on the findings of interviews carried out with, and surveys administered to, national experts, this paper shall, firstly, comparatively examine the regulation of street prostitution in selected urban areas of Birmingham (in the UK), The Brussels Capital Region (in Belgium) and Milan (in Italy) through the culture-of-consumption model. Secondly, it shall explain the (eventual) differences that underlie the regulation of street prostitution in such cities' areas through the relevant country- or context-specific cultural factors.

Keywords

Street prostitution, nuisance, culture of consumption, societal attitudes, law enforcement

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1 Introduction

In the majority of European member states, while the selling of sex by a prostitute is rarely criminalised, a number of related activities (e.g., soliciting in a public place, kerb-crawling, owning or managing a brothel, pimping and pandering etc.) qualify as a criminal offence. In recent years, however, a trend to locally penalise the nuisance behaviour of prostitutes (and clients) has increasingly gained foothold in some European cities (or, more properly, in some of their areas). Under these new local regulatory frameworks, while the sale and purchase of sex is generally tolerated, any visible evidence that such an exchange takes place is less so, for the nuisance and affront that visible prostitution is presumed to cause to individuals and communities.

A widespread trend at the local level to criminalise behaviour equally regarded as *anti-social*, *nuisance* or *uncivil* has been explained in criminological literature from different perspectives. For its frequent application in criminological literature (Burney, 2002, 2005; Scoular and O'Neill, 2007; Devroe, 2012; van der Leun and Koemans, 2013 etc.), David Garland's (2001) "culture of control" perspective is considered one of the most influential. In his book, the author contended that in the historical epoch known as "late modernity," rising crime rates, an increasing feeling of insecurity and fear of crime have determined the emergence of a "reconfigured field of crime control" (Garland, 2001, p. 6), which has increasingly relied on punitive and expressive practices and measures. Punitive mechanisms have also been applied to curb uncivil behaviour, which (even when consisting of minor disturbances) has been deemed to engender societal and individual insecurities and a fear of being victimised (Burney, 2005; Sampson and Raudenbush, 2004; Bottoms and Wilson, 2004; Peršak, 2014 etc.).

Notwithstanding the relevance of Garland's "culture of control" in explaining the rise in punitive regulations at the level of some (central/local) governments, this theoretical perspective has under-addressed the problem of the urban spatial location of crime and deviance within the same urban context. Across city areas, in fact, uneven attitudes to criminal and anti-social behaviour may lead to a specific spatial distribution of deviant conduct, that is, to its concentration in certain zones to the benefit of others.

A theoretical model that may contribute to the criminological understanding of the urban spatial location of crime and deviance is Hayward's (2004) "culture of consumption." In his book "City limits: crime, consumer culture and the urban experience," Hayward offers an explanation of the aetiology of crime and deviance based on the "culture of consumption" model. What the author

suggests in his book is that consumer culture is a "cultural ethos" which is "propagating new (and often destructive) emotional states, feelings and desires that contribute to the crime problem in a number of new and novel ways" (p. 158). Such new emotional states, however, vary very much across the urban territory and notably in what the author identifies as "spaces of consumption and pleasure," "centripetal spaces," and "spaces of deprivation."

This paper will attempt, first, to detect the presence of "spaces of consumption and pleasure," "centripetal spaces" and "spaces of deprivation" in three selected cities: Birmingham (UK), the Brussels Capital Region (Belgium) and Milan (Italy). Secondly, it will inspect whether the chosen model may help to explain the attitudes to and geographical distribution of street prostitution, i.e., the nuisance behaviour selected for this paper. To this end, the current local approach to, and spatial location of, street sex work [1] is analysed against the backdrop of socio-economic, urban, and architectural changes that have occurred in the past two/three decades in the three selected European cities, drawing also on relevant literature and reports of national/international organisations, as well as on the findings of interviews carried out with, and/or surveys administered to, national experts.

2 The (gentrified) post-industrial urban space

As argued by Atkinson and Helms (2007), in the late 1970s and early 1980s a rising fear of crime and social appeals for governmental (punitive) interventions against criminal and uncivil behaviour intersected with the revitalising programmes directed to contrast the blight and decline of deindustrialised downtowns and inner-cities. As a result of this urban re-planning, cities were transformed into "consumer playgrounds for the urban middle class" (Hayward, 2004, p. 82) or, as Zurkin (in Taylor, 1999) put it, into "places of residence and urban fantasy for the new professional middle classes." Regeneration programmes, however, have also promoted a process of 'gentrification' which, by extoling the needs and living standards of the wealthier, have excluded the poorer residents of the community.

As Young (1999, p. 22) contended, regeneration programmes have succeeded in establishing "barriers" in public spaces, and in forming an "actuarial cordon sanitaire which separates the world of the losers from that of the winners." Barriers in urban space are exemplified by the presence of

[1] In this paper, the broader notion of "sex work" is used as a synonym for prostitution.

shopping malls, private parks, leisure facilities, railways, and airports - all systematically monitored by guards, security patrols and surveillance cameras. In the same fashion, Bannister et al. (2006, p. 924) argued that the "respectable" city, based on the adoption of zero-tolerance policies towards uncivil and anti-social behaviour, and the physical remodelling of urban spaces, has led to the exclusion of any individual whose consumption practices do not sufficiently conform to those of the "consuming majority."

In his book, Hayward (2004) analyses the novel (criminogenic) forms of subjectivity engendered by contemporary consumerism against the backdrop of the re-shaped post-industrial urban space. By recalling the binary categorisation of the "seduced" and "repressed" of Zygmunt Bauman (1987), the author identifies three areas of the contemporary city in which the borders between the spaces of consumption and hedonism of the integrated consuming majority, and the more marginalised spaces of thriving crime and deviance of the (increasingly marginalised) minority, are geographically demarcated. While the former regenerated areas are known as "spaces of consumption and pleasure" and as "centripetal spaces," the latter (left untouched by the aforesaid redevelopment projects) are called "spaces of deprivation."

2.1 Spaces of consumption and pleasure

The first (inner-city) urban zone referred to in Hayward's work is encircled within the so-called "spaces of consumption and pleasure." Public places as such have been the direct product of the urban renaissance projects implemented during the second half of the 19th century in a number of European (and North American) cities. Here, regeneration programmes have been spelled out with a view to transforming run-down city areas into revitalised places of consumption for middle and upper classes. As contended by the author, shops and, more notably, the shopping mall, can be regarded as the most powerful symbols of this first (regenerated, postmodern) urban area.

"Spaces of consumption and pleasure," however, do not only entail shopping arcades and centres. Referring to the work of Zukin (1998), Hayward (2004, pp. 190-191) also notes that in such areas a new "prototype entertainment store" can recently be found, that is, a "more vibrant, *ad hoc* environment[s] in which to consume, play with risk and explore the nature of transgression." In such

areas, the quest for hedonistic experiences is especially encouraged and satisfied, for example, through the offer of night-life entertainment and sex services, available both indoors and outdoors.[2]

In this paper, "spaces of consumption and pleasure" will be identified in newly regenerated high-end areas of the city, which, during daily hours, are characterised by buzzing shopping and other economic activities, and, in the evening, by a vivid night-life environment. Within these spaces, the presence of outdoor prostitution will also be investigated.

2.2 Centripetal spaces

Located in urban (revitalised) town/city centres, "centripetal spaces" are the residential and shopping places of the urban middle-classes. As Hayward contended (2004, p. 185), in these inner-city areas, which have historically been recognised by (mostly, homogeneous and intolerant) residents as a "prodigious locus of criminality," techniques of Situational Crime Prevention (SCP) have consistently been employed for the control and reduction of crime.

Although Hayward does not mention any SCP technique other than auto-surveillance of closed-circuit television (CCTV), in Chapter 3, when he talks about environmental and administrative criminology (and their applications to urban inner-city spaces in an effort to reduce/prevent crime) he refers to other SCP measures which are based on both physical security and on private/public forms of surveillance. Despite Hayward's focus on CCTV surveillance systems when addressing and describing "centripetal spaces," in this paper the broader definition of SCP found in Chapter 3 will be used. This allows us to inspect in "centripetal spaces" the presence of both physical security measures (CCTV) and of public forms of surveillance (e.g. community vigilantes and police agents picketing and patrolling the streets).

[2] In the section dedicated to "spaces of consumption and pleasure," Hayward (2004, p. 192) cites the example of London, where "today's cutting-edge urban sensation-seeker is more likely to be found in places like Shoreditch, Brick Lane or Brixon, which are places where drugs and prostitution are ready available." These streets are then contrasted with the areas of Leicester Square or Piccadilly Circus, where CCTV cameras have been installed. It is our contention that, while referring to the presence of sex work in the former area (devoid of CCTV and other physical surveillance systems), the author referred to both indoor and outdoor prostitution.

2.3 Spaces of deprivation

A last urban substrata enclosing (most) crime and deviance are the so-called "spaces of deprivation." The concentration of crime and deviance in these zones is explained by the author in light of the social and economic exclusion suffered by the people living there. Here, in fact, (unfulfilled) desires propagated by mainstream consumer culture bear criminogenic pressures: they can push the individual to engage in criminal and/or deviant activities in the attempt to acquire (or reinforce) a sense of identity, as well as a feeling of control over their life (e.g. through engagement in "edgework," or in "risk-laden practices on the metaphorical edge" (Hayward, 2004, p. 166)).

Together with elements of socio-economic deprivation (which are to be operationalized in this paper by reference to the levels of ethnical/cultural diversity and to resident's unemployment), such areas are also represented by urban physical degeneration – an indicator which refers to the presence of poor housing and urban environmental conditions. As crime and deviance are said to be thriving, the presence of street prostitutes will also be investigated in these areas.

3 City selection

The regulation of street prostitution has proven to be very context-specific, varying substantially in time and space according to local sensitivities and tolerance levels (Burney, 2005; Huisman and Koemans, 2007; Millie, 2008a, 2008b, 2011; Peršak, 2014 etc.). For this reason, the focus of the research has been cast on three cities, namely Birmingham (in the UK), the Brussels Capital Region (in Belgium), and Milan (in Italy). A number of criteria have been taken into consideration in the selection of these three cities. Among them are demographic indicators (which refer to ethnic and religious diversity, along with the mobility of resident populations) and indicators of governance (which relate to the liberal or conservative bent of the political party running the city).[3]

[3] According to official reports (ULB-IGEAT, 2010; Birmingham City Council, 2011a, 2011b; City of Milan, 2011a, 2012a; ORIM, 2013; ONS, 2011), in all three selected cities the number of residents amounts to approximately 1 million. Such cities are all highly ethnically mixed (due to the high number of ethnic minorities), and culturally very diverse. For example, among the religions embraced by the residents, there are Christian (Catholic, Protestant and Orthodox) and also Muslim beliefs. All these cities are also characterised by high mobility rates, both in terms of short-term and long-terms residence. In terms of governance, they are all run by parties embracing a liberal ideology. Birmingham City Council, for example, has been run by a Labour administration since 2012, as has Milan, which since 2011 has been administered by a left wing party (Partito

After acknowledging the presence of shared characteristics between the three cities, it has then been possible to compare them, and, thus, to address the question of whether Hayward's (2004) model is applicable to explain the attitudes towards, and urban spatial distribution of, street sex work in these urban contexts.[4] In the conclusions, we will try to identify other factors that may explain eventual diversions from the aforesaid model.

4 Birmingham

In England and Wales, while both (*inter alia*) soliciting of, and procuring for, prostitution are considered criminal offences,[5] uncivil or disorderly behaviour of sex workers and clients is addressed by local authorities through the use of Anti-Social Behaviour Orders (or ASBOs) and other measures.[6] ASBOs are civil injunctions which prevent individuals from engaging in a certain behaviour deemed to be alarming or threatening to other people. Although the order has been designed as a civil law mechanism, its breach qualifies as criminal and may result in up to five years of imprisonment.[7] Because of its (indirect) link with the criminal law and its severe limitations to individuals rights and freedoms, many UK scholars have hardly criticised the ASBO system (Burney, 2002, 2005; Squires,

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Democratico or PD). More complex is the case of the Brussels Capital Region. While in Ixelles and the City of Brussels (as well as in the majority of the other 19 municipalities) the mayor belongs to a central-left political party, in Shaerbeek the mayor (Bernard Clefayt) is affiliated with a right-wing party (FDF or Fédéralistes Démocrates Francophones). However, the programme of the party for the five-year mandate 2012-2018 reads as rather liberal, especially when it comes to social assistance and welfare (see http://www.liste-bourgmestre.be/).

[4] The selection of the city areas has followed different steps. First, we have looked at the areas that have recently been subjected to major architectural changes. Secondly, we have tried to identify those presenting SCP techniques. Thirdly, areas have been selected that register the highest levels of (socio-economic and environmental) deprived conditions. After having identified urban areas according to these characteristics, we have enquired about the presence/absence of street prostitutes.

[5] 1956 Sexual Offences Act, 1959 Street Offences Act, and 1985 Sexual Offences Bill.

[6] ASBOs were introduced in the 1998 Crime and Disorder Act, which was later amended by the 2003 Anti Social Behaviour Act. Other measures include Public Nuisance Injunctions (PNIs).

[7] This system has recently been modified by the Anti-Social Behaviour, Crime and Policing Act (Home Office, 2014).

2006, 2008; Simester and von Hirsch, 2006; Cornford, 2012).[8] The problematic use of ASBOs in the field of prostitution, however, was partially mitigated by the Home Office in 2006, when it published a document entitled *A Coordinated Prostitution Strategy* (Home Office, 2006). Such a policy framework, which was fully implemented in Birmingham,[9] entails an increased policing of clients and the promotion of multi-agency work designed to help workers quit street sex work. While Matthews (2005) positively assessed such newly enacted regulation in light of its welfare-based approach, Scoular and O'Neill (2007) strongly criticised it. According to their account, in fact, these new responses to street sex work disguise more "expansive forms of control" (Scoular and O'Neill, 2007, p. 764): social inclusion is granted only to those who responsibly exit prostitution, while those who persist in it are further excluded and criminalised.

4.1 Spaces of consumption and pleasure

Ladywood[10]

From the mid-1990s onwards, following the successful development of the International Convention Centre and the regeneration of the Broad Street area, the Ladywood ward has been buzzing with hotels, bar, restaurants, convention avenues, and shopping malls (such as the Bull Ring shopping centre). Today, the district is considered a major entertainment and leisure location, attracting both

[8] On the use of ASBOs against street sex work, see Sagar (2007, 2010).

[9] According to the LPUs of Edgbaston (which is separated from the Ladywood by Hagley Road) and Lozells, street prostitutes are mainly viewed as victims of crime (i.e., of drug-related offences and trafficking of human beings for reasons of sexual exploitation). While the local police strategy regarding street prostitutes mainly relies on the issuance of warnings and on offering assistance and alternative "life pathways," actions and initiatives against kerb-crawlers appear much more repressive here. Through the organisation of regular uniformed and plain clothes patrols and the installation of CCTV cameras, in fact, police agents are able to identify men approaching women and procuring them for sex. After being arrested, clients are referred by the police to attend a day course on the negative aspects of kerb-crawling and are given insight into the phenomenon of prostitution (i.e., the crimes that are connected to it). According to the LPU of Lozells, this course is "very impactive and one that they must take an active part in so as to be passed and only receive a police caution. This course also costs the Kerb Crawler to which a percentage of the money returns to then be used directly in the community that the offence took place, i.e. food bags for homeless/elderly/vulnerable."

[10] In the Ladywood ward there is less ethnic and religious diversity as compared to other wards (ONG, 2011). In 2008, the rate of unemployed people scored below the level registered by the city. Among those economically active, people were predominantly employed in high level jobs and possessed a level 4 qualification or above (almost double the city average) (Birmingham City Council, 2008)

business people and tourists. Due to the presence of a number of lap-dancing clubs and nightclubs supplying indoor sex work, as well as the presence of street prostitutes, it is currently regarded as the new 'Red-Light District' (RLD). While soliciting of and procuring for prostitution takes place in the southern streets nearest to Hagley Road (the new regenerated nightlife and entertainment strip), transactions mainly occur in the northern areas of the ward, around Summerfield Park and the Reservoir (Hubbard and Sanders, 2003; West Midlands Police and Crime Commissioner, 2013).[11] In light of these characteristics, the areas of Hagley Road and Broad Street seem to perfectly match the description of "spaces of consumption and pleasure" made by Hayward (2004).

4.2 Centripetal spaces

Balsall Heath[12]

Until the mid-1990s, street prostitution in Birmingham was traditionally limited to one notorious deprived inner-city residential district located one mile south of the urban centre, known as Balsall Heath. The area was a mix of low-rise council estates and private housing developments, and was characterised by a high proportion of transient and immigrant populations (Hubbard and Sanders, 2003). Here (at least, at first) street prostitution was usually tolerated by the local community and enforcement authorities, who were used to turning a blind eye to public manifestations of sex work in the area. However, starting with the community actions of the mid-1990s, different strategies of SCP have been put into place in an effort to eradicate street prostitution from the district.

Among the physical security interventions that were adopted in the area in the early 1990s, Hubbard and Sanders (2003) enlisted additional street lighting, road blockades and CCTV surveillance systems. In more recent times, the area has been undergoing substantial urban re-planning, and currently new

[11] Also according to the LPU of Birmingham South, "street prostitution is a continuing problem on the Hagley Road and roads off. Prostitution attracts kerb crawlers and other associated anti-social behavior" (West Midland Police, 2014).

[12] The ward of Sparkbrook is characterised by high ethnical and cultural diversity. The rate of unemployment is above the city average. People are here mostly employed in low skilled labour and possess either no qualifications or a level 1 qualification (Birmingham City Council, 2010). Notwithstanding the presence in the ward of widespread social-economic and urban physical deprived conditions, the neighbourhood of Balsall Heath currently features long shopping streets (Fenton et al., 2010) and has recently been targeted by a multitude of regeneration plans (LEPUS, 2012; Balsall Heath Neighbourhood Planning Forum, 2013).

spatial interventions are in the pipeline (LEPUS, 2012; Balsall Heath Neighbourhood Planning Forum, 2013). Such urban re-modelling has also been fostered by the Balsall Heath Neighbourhood Forum which was established in the 1990s to change the image of the area. Physical and environmental interventions promoted by the Forum have included the restoring of old buildings, the creation of green areas, and, *inter alia*, the installation of 15 CCTV cameras which interlink and are monitored by resident volunteers from the local police station.[13]

Forms of public surveillance have also been employed in the area in an attempt to curb the phenomenon of street prostitution. Since the community protests of the early 1990s, in fact, community members have started to patrol and picket the streets, with a view to making it easier for police authorities to identify and prosecute clients. Community involvement in patrolling the streets also continues today, as five neighbourhood warden posts have recently been established. Moreover, according to the website of the Forum, a group of volunteer residents also staff the front desk of the police station and answer enquiries regarding the security and safety of the neighbourhood.

A reduced tolerance towards the phenomenon of street prostitution in this area is also confirmed by an increased utilisation of punitive measures by enforcement agencies along the years. As contended by Hubbard (1998), starting with the community protests of 1994, police forces made a substantial use of the punitive instruments already available to them (but not used until then, because of the tolerant/lenient approach adopted towards street prostitution). Currently, according to the Local Police Unit (LPU) of Sparkbrook,[14] street prostitution "has not been highlighted as an issue to Officers in Sparkbrook and therefore there are currently no measures in place to deal with prostitution other than general patrols." This statement also argues in favour of the effectiveness of SCP measures in reducing street sex work.

4.3 Spaces of deprivation

Soho and Lozells

[13] See http://www.balsallheathforum.org.uk/start.htm.

[14] Email received on 20/2/2014.

According to Birmingham City Council (2010), deprivation in the urban context is concentrated in a ring around the city centre. According to police reports, among the most deprived neighbourhoods, the ones which register the presence of street prostitutes are the wards of Soho and Lozells.[15] Such wards score very highly in the Index of Multiple Deprivation (Birmingham City Council, 2010a, 2010b), both in terms of resident's social-economic conditions and of urban physical deprivation.

Diversity and socio-economic deprivation: The wards of Soho and Lozells are densely populated by Asian, white and black ethnic groups (ONG, 2011). The main religious beliefs are Christian and Muslim. Here, the number of unemployed residents is above the city average. Among those with an occupation, a significant number are employed in low skilled labour (e.g. the manufacture sector, wholesale and retail trade, repair of motor vehicles and motor cycles etc.) (Birmingham City Council, 2008). The majority of residents also have no qualifications or possess a level 1 qualification, and only a minority of residents have a level 4 qualification and above (Birmingham City Council, 2008).

Urban physical deprivation: Within the Index of Multiple Deprivation (Birmingham City Council, 2010a, 2010b), the Living Environment Deprivation domain inspects the quality of an individual's immediate surroundings both in terms of quality of housing and of quality of the "outdoor" environment (e.g. air quality and road traffic accidents involving pedestrians or cyclists). Under this indicator, both these wards are listed among the top 5% most deprived areas in England.

For the presence of street sex work, along with socio-economic deprivation and urban environmental degeneration, the two wards fall within the definition of "spaces of deprivation."

4.4 Summary

The three selected urban spaces resemble the traits of Hayward's (2004) model. The Ladywood ward, in fact, mirrors Hayward's conceptualisation of "spaces of consumption and pleasure." Balsall Heath falls within the definition of "centripetal spaces," whereas the two wards of Soho and Lozells match the description of "spaces of deprivation."

[15] To identify such spaces, the research relied on information regarding the existence/extent of street prostitution made available by the official website of the West Midland Police (http://www.west-midlands.police.uk/). After having identified the wards in which street sex work was said to be present, an email was then forwarded to the LPUs. They all acknowledged street prostitution as an issue in the ward.

5 The Brussels Capital Region

In Belgium, although the soliciting of, and procuring for, prostitution are both targets of penal intervention, they can be formally tolerated by municipalities and confined to the so-called "tolerance zones" (Vermeulen et al., 2007). In such zones (or RLD), although street sex work is not allowed, window prostitution can be exercised, insofar as certain standards and rules posed by the municipality are observed. In RLD as well as in other urban areas, nuisance caused by prostitutes and clients can be addressed by police agents (and other civil servants) by way of administrative fines (the so-called Gemeentelijke Administratieve Sancties or G.A.S. fines). Since 1999, in fact, municipalities have been entitled to enact police regulations to deal with different kind of behaviour equally falling under the broad term of *nuisance* ("incivilité" or "overlast"). [16]

Pursuant to such regulatory framework, municipalities have in some instances penalised the nuisance caused by street prostitutes. This is the case, for example, in the City of Brussels, one of the nineteen (normatively autonomous) municipalities of the Brussels Capital Region, which has adopted a clear-cut policy against street sex work. Although other municipalities have not enacted police regulations targeting behaviour of prostitutes and clients loitering on the streets (and are, therefore, not allowed to apply GAS fines), they have increasingly relied on the imposition of other forms of (equally punitive) measures to penalise sex worker's uncivil behaviour. [17]

5.1 Spaces of consumption and pleasure

Avenue Louise[18]

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[16] Law on municipal administrative sanctions of 13 May 1999, Laws of 17 June 2004 and of 20 July 2005, and Law of 24 June 2013.

[17] In light of an interview carried out with a senior officer of the VVSG (Vereniging van Vlaamse Steden en Gemeenten), other measures that municipalities can (and have) utilise(d) against window prostitution include the imposition of taxes and the refusal/withdrawal of a business license. Taxes are imposed on sex workers behaving in a uncivil/prohibited way and/or on bar owners for the behavior of employees. The issuance of a business license can be denied or withdrawn in an attempt to close down a "sex bar" situated outside the RLD.

[18] Although the majority of residents in Ixelles are of Belgian nationality, 42% are non-Belgians (among whom 72% are from one of the EU member states). The high number of non-Belgian citizens can also be connected to the proximity of the municipality to the EU district (situated in Etterbeek). The commune is also characterised by a population of diverse socio-economic profiles, stretching from the working classes to middle and upper classes. It registers a higher income and lower level of unemployment in comparison to the average of the region. Those

One of the inner-city "hot spots" where street prostitution is found is Avenue Louise, situated in the municipality of Ixelles (van den Hazel et al., 2008). After the regeneration project of 1930-1970, Avenue Louise was converted into a major site of "consumption and pleasure".[19] Currently, it is the place where most of the expensive boutiques and the great names of international fashion can be found, as well as famous shopping galleries (e.g. the Louise Gallery). While fashion design boutiques are concentrated in the upper section of the street (especially in the area around Porte de Namur and Toison d'or which is filled with high-end stores and big brands), the rest of the street is occupied by numerous embassies and the headquarters of international companies. A number of famous disco pubs are also to be found in the area (stretching from the Louise Gallery Event Hall and the iU Galerie Louise, to Studio 44 and Le Baron Livourne).

In light of the significant presence of sites of consumption, night entertainment venues and street sex workers, Avenue Louise matches the description of "spaces of consumption and pleasure" made by Hayward.

5.2 Centripetal spaces

Alhambra quarter[20]

Located between the streets of Rue de Laeken, Arduinkaai, Quai du Commerce, Boulevard d'Anvers, Boulevard Emile Jacqmain and Rue des Hirondelles, the so-called "Alhambra quarter" is a neighbourhood of the central municipality of Ville de Bruxelles (City of Brussels). The area is situated in the inner-city centre, 1 km north from the Grand Place and adjacent to Rue Neuve, one of the most famous shopping streets. As well as being a very well-known commercial and shopping area, it is also a residential neighbourhood. Here, community protests arising in the past few years have impelled the

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occupied are employed in the private sector, or are self-employed or entrepreneurs (Municipality of Ixelles, 2010).

[19] For a description of the architecture and urbanism of Avenue Louise, see Douillet, and Schaack (2005).

[20] While the majority of people residing in the municipality of the City of Brussels are of Belgian nationality, 30% of the population living here are non-Belgians. The social and economic profile of the residents is much diversified, stretching from low (in the areas west to the pentagon and Laeken) to middle classes (mostly residing in the area of the pentagon). While issues of social and economic deprivation arise mostly at the level of the "popular quarters" (which present social housing and estates), they are less pronounced in the affluent neighbourhoods of the city centre (City of Brussels, 2010).

municipality to adopt a number of SCP initiatives in order to remove/displace street sex work from the area.

Police cameras (not indicated by signs) have been placed at the level of Boulevard d'Anvers and Rue des Commerçants since 2007.[21] The improvement of the urban environmental conditions of the area, moreover, has recently been put under the spotlight by a citizen committee established in 1999 with the express purpose of halting the phenomenon of street prostitution in the area, i.e. the *Comité Alhambra*.

The neighbourhood has also been subjected to an intensified public surveillance. To respond to increased resident complaints on the annoyance caused by the presence of street prostitutes, the central municipality of the City of Brussels (in partnership with relevant citizen's organisations and the BRAVVO association) has recently designed a project with the aim of displacing street prostitution from the Alhambra district to the northern zone of the RLD (in the nearby municipality of Schaerbeek). According to the press report (City of Brussels, 2013), such a goal is to be achieved through intensified police patrols and the systematic presence of third-sector associations monitoring the health conditions of street sex workers. [22]

The aforesaid initiative has been carried out within the framework of the "Plan Intégré Communal d'Encadrement de la Prostitution" (PICEP), promoted by the mayor Freddy Thielemans at the end of 2012 (BRAVVO, 2013). In the same year, the municipality also adopted a punitive regulation against prostitution in the Alhambra district (City of Brussels, 2012). In this regulation, the Alhambra area is described as being blighted by a massive presence of street sex workers and "carrousel drivers" (kerb crawlers) which generate nuisance to residents. To effectively contrast and reduce such nuisance, the municipality has set out provisions prohibiting prostitutes from soliciting clients, and thus from using words, gestures, signs, or behaviours that make it evident that sexual acts are being offered in the Alhambra quarter. In Article 3, moreover, the regulation also prevents clients from procuring sex from a prostitute, and notably from approaching and conversing with street sex workers, offering money to them, along with repeatedly (carrousel) driving around the neighbourhood, ultimately attracting the

[21] See http://users.skynet.be/fb436043/fr/nouvelles/camera.htm.

[22] According to the public peace manager of the City of Brussels, actions to reduce nuisance also include an increased presence of "gardiens de la paix" (i.e. civic or town guards aim to fight incivilities), who are responsible for increasing the feeling of safety of the citizens and for preventing disorder and crime (see http://www.brussels.be/artdet.cfm?id=4068&).

attention of pedestrians through signs, gestures and sounds. Any breach of such a regulation is punished through the imposition of administrative fines (G.A.S. fines), amounting to 250 EUR. Kerb-crawlers have also been sanctioned through fines for traffic-related infractions in this area.

Community actions, together with (punitive) municipal regulations and practices, suggest that this inner-city area is characterised by a marked intolerance towards the phenomenon of street prostitution, thus fitting Hayward's description of "centripetal spaces."

5.3 Spaces of deprivation

Boulevard du Roi Albert II

The municipality of Schaerbeek is a site where both window and street prostitution can be found. Prostitutes mostly occupy Boulevard du Roi Albert II and the area of the RLD (which, for the most part, is situated in Rue d'Aerschot, Rue de la Prairie, Rue des Plantes, Rue Linné, Rue Verte and Rue de Brabant, adjacent to the Gare Bruxelles-Nord railway station) (van den Hazel et al., 2008).

Diversity and social-economic deprivation: According to the report issued by the municipality of Schaerbeek in 2008, 30% of the total population residing in the neighbourhood is non-Belgian (predominantly, they are Moroccan and Turkish). As figures show, population growth in the area has substantially increased in the last years due to substantial migration flows (Municipality of Schaerbeek, 2010). Currently, the population living in the area is highly transient and, especially in the north half of the commune, in precarious financial conditions. The area, in fact, registers very high unemployment rates compared with the levels attributed to Brussels Capital Region (Municipality of Schaerbeek, 2008).

Urban physical deprivation: As van Kempen et al. (2007) contended, particularly in its northern half, this neighbourhood is characterised by degenerated areas of social housing and by poor quality housing. The area is also generally affected by a decreased quality of life due to the high density of (heterogeneous) population and the heightened sense of insecurity felt among residents (Municipality of Schaerbeek, 2008).

According to the presence of outdoor prostitution, precarious socio-economic conditions and urban physical deprivation, the municipality resembles the characteristics of "spaces of derivation" indicated by Hayward (2004).

5.4 Summary

In the Brussels Capital Region, the three selected municipalities present the characteristics of Hayward's (2004) model. While Avenue Louise in Ixelles matches the description of "spaces of consumption and pleasure," Alhambra in the City of Brussels resembles "centripetal spaces" and Boulevard de Roi Albert II in Schaerbeek "spaces of deprivation."

6 Milan

In Italy, after the enactment of the so-called 'Legge Merlin' (Law N. 75 of 1958) criminalising the activity of pimping, both outdoor and indoor prostitution are neither prohibited nor regulated by law.[23] In spite of the official regulatory void, the phenomenon of outdoor prostitution has been subject to punitive local regulations since the early 1990s. As Danna (2004) reported, administrative orders (the so-called "ordinanze sindacali") addressing the clothing as well as the behaviour of street prostitutes have been progressively issued by mayors in view to ensure public viability and urban security. From the year 2008 onwards, moreover, the (administrative) sanctioning of street prostitutes in the country has also been expanded through the so-called "Security Package" (Italian Council of Ministers, 2008) - a normative framework which awarded mayors more powers over urban safety and security.[24]

According to Parmigiani (2008), orders targeting street prostitutes have been adopted in many Italian cities. Among others, the anti-prostitution policy enacted by the city of Milan in 2008 is especially well-known (City of Milan, 2008).[25] Here, in fact, police authorities have been empowered to fine sex workers and clients caught, respectively, soliciting or procuring for prostitution in all nine urban "zones." According to the municipal order, soliciting is intended not only when the sex worker directly negotiates sex transactions in a public space, but also when her behaviour, attitude or dress code suggest so. The action of procuring can be inferred by police authorities from the mere

[23] Law N. 228 of 2003 has in fact introduced amendments to the penal code, in view of criminalising trafficking in human beings.

[24] This, at least, until the judgment of the Constitutional Court, which re-framed the local regulatory power in the area of urban security (Const. Court, 7 April 2011, n. 115). See Di Ronco and Peršak (2014).

[25] Order n. 29 of 4 November 2008. According to Maluccelli and Martini (in Campioni et al., 2009), the city of Milan had already started to adopt administrative orders against street prostitution in 1998.

circumstance of a vehicle having stopped beside a sex worker. As read in the order, the soliciting of and procuring for prostitution are prohibited activities as they generate situations of "disturbance of public peace, of offence to common decency […], of hygienic and urban decay, which undermine the conditions of normal liveability in the concerned areas, and engender, to the detriment of residents, exasperating and continuous tensions." On the basis of this regulatory framework, administrative fines (amounting to 500 EUR) have been issued against prostitutes (and clients) in the whole municipal territory, with a prevalence in the areas surrounding the city centre (City of Milan, 2010).

6.1 Spaces of consumption and pleasure

Porta Nuova[26]

The area known as "Porta Nuova" (which includes the Centro Direzionale/Varesine/Porta Garibaldi/Isola neighbourhoods) is located 1.5 km north of the core centre of Milan, and lies between the two railway stations, Garibaldi and Central. Although it had degenerated greatly before the 1990s, in recent years the district has been subjected to a major planning revision. Currently, the Porta Nuova neighbourhood is a major site of business, offices and retail services. Among other things, it is the place where the Porta Nuova Business District Varesine (composed of three high-performing, efficient and sustainable buildings) is found. The area also encloses the Business District Garibaldi (made of the three towers of glass and steel, such as the "Unicredit Tower" in square Gae Aulenti) and the eco-sustainable business area of Porta Nuova Isola. It is also the site where "Palazzo Lombardia" is found, hosting the regional governmental offices. The district is also one of the most famous shopping areas, enclosing major fashion and design shops, as well as numerous spaces for up-scale and boutique retail. Especially in Corso Como, it includes attractive "late-night venues" for the elite. A variety of disco clubs (e.g., the Hollywood Milano, Loolapaloosa, Executive Lounge Milano, Shocking Club, as well as the Tocqueville, Eleven and Lotus) and other lounge bars are present in this area.

Here, although indoor and outdoor prostitution seems to be (almost completely) absent, research reports the presence of escorts in the clubs of the area (Bernieri, 2011).[27] More "traditional" forms of

[26] In 2012, within zone n. 8 only 18% have been counted as non-Italian residents. Here, as well as in other zones of Milan, no data is made available (or was provided by the Office of Statistics of the City of Milan) regarding the rate of unemployment in the urban areas. Data is available only for the city of Milan in general (not for the specific zones) (ORIM, 2013; City of Milan, 2011b, 2013).

indoor prostitution (i.e., massage centres and parlours) are found in the "Chinatown" area (or "Quartiere Paolo Sarpi") very close by, as well as in the degenerated district surrounding the Central Railway Station. By contrast, the presence of street prostitution is concentrated in the area of the Central Railway Station (and notably, in Loreto and Buenos Aires neighbourhoods, approximately 2 km east of Porta Nuova).

The absence of (outdoor and indoor) prostitution make the district divergent from Hayward's conceptualisation of "spaces of consumption and pleasure."

6.2 Centripetal spaces

Ticinese – San Lorenzo[28]

The "Ticinese - San Lorenzo" is a neighbourhood of 8000 inhabitants located in the historical centre of the city of Milan. It is mostly a residential area, and one of its main shopping venues. The western area of the district, known as "Navigli," is one the major nightlife areas of the city. Here, night-time noise nuisance, signs of physical disorder (mainly glass bottles in the streets), vandalism, public drunkenness, and the presence of street sex workers in the surrounding streets[29] have all engendered a high level of conflict among local relevant stakeholders (e.g. residents, pubs and clubs managers, city government and people who wish to enjoy the nightlife in the area).

A number of SCP strategies have been put into place in order to mitigate the blight of the area of Navigli. Firstly, surveillance systems (CCTV) were installed in July 2013 (at the "entrances" of via Paoli, via Borsi, via Magolfa, Ripa di Porta Ticinese and Alzaia Naviglio Pavese). Electronic barriers were also erected to stop and limit the road traffic in the area. Pursuant to a municipal order (City of

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[27] Moreover, recent media reports indicate the presence of escorts in the most famous discos of the area, who are very often (previous) models employed in the fashion industry, later dragged into prostitution.

[28] In zone 1, according to the City of Milan (2012a), just 14% of the resident population come from foreign countries.

[29] Street prostitution is found also around this "protected" area in Porta Romana, Piazza Trento, Ripa di Porta Ticinese etc. In the past, the area was regarded as thriving criminality and prostitution (see Bovone (1999) for an account of Vicolo Calusca). According to the Ticinese Committee, street prostitution is currently present between piazza Belfanti and Viale Romolo. The hot spot is the park found between Via Argelati and Via dei Crollalanza.

Milan, 2012b), for example, motor vehicles have been prevented from entering the area at nights (from 22.00 to 7.00), unless holding a residential plate. A specific area (localized within the streets of Ripa di Porta Milanese, via Magolfa, via Fusetti, via Argelati, via Gola, via Borsi, and via Pichi) has also been made a pedestrian precinct, impracticable for kerb-crawlers.[30] Along with the installation of surveillance systems and of traffic barriers, the urban physical environment of Navigli has also been improved with a new lightning system (especially in the area of Saint Eustorgio).

Public surveillance systems have also been adopted in the district. Mostly, they focus on an intensified police presence and police interventions against disorder.[31]

A general intolerance towards the phenomenon of street sex work is here testified by the number of complaints stemming from local residents and community committees (known as *Ticinese* and *La Cittadella*).[32] With the presence of SCP techniques and of street prostitution, the district fits in with Hayward's (2004) description of "centripetal spaces."

6.3 Spaces of deprivation

Loreto and Buenos Aires

According to the document known as "Patto per una Milano Sicura" (transl.: "Agreement on a secure Milan") issued by the local Prefecture and the City of Milan in 2007, both indoor and outdoor prostitution in the city particularly flourishes around the central railway station, and more notably in the deprived neighbourhoods of Loreto and Buenos Aires.[33]

[30] Through another (punitive) order (City of Milan, order of 31 May 2013), the mayor has also prohibited the selling and purchasing of alcoholic beverages from 22 to 6 and imposed the closure of clubs and bars selling those beverages for the same time span. The administrative fine that applies in case of transgression amounts to 450 EUR.

[31] See for example http://notizie.tiscali.it/regioni/lombardia/articoli/13/07/09/navigli_milano_videosorveglianza.html.

[32] Information provided via email by the Ticinese Committee.

[33] "Hot spots" for prostitution are to be found in Viale Porpora, Abruzzi, Piccinni and Paganini.

Diversity and social-economic deprivation: Since the 1980s, due to their proximity to work places (within the service sector or in the houses of the neighbourhood) and the readily available (cheap and deteriorated) apartments in precarious sanitary conditions, the neighbourhoods of Loreto and Buenos Aires have become the residences of an increasing number of incoming immigrants (Motta, 2005). Even today, the area is characterised by a significant population of non-Italian origins: they amount to 26% in Loreto and to 10% in Buenos Aires (City of Milan, 2011a).[34]

Urban physical deprivation: The area comprising the neighbourhood of Loreto is characterised by poor housing conditions and, more generally, by a situation of urban physical degeneration. Here, the bad (or very bad) conditions of a substantial number of buildings clearly explains the low value of the rents and of the real estates, and thus also the (massive) presence of incoming immigrants in the past as well as in more recent times (Novak, 2006). In the neighbourhood of Buenos Aires, conditions of urban physical deprivation coexist with a flourishing of commercial activities, which in recent years have succeeded in (at least, partially) regenerating the area (Motta, 2005; Novak, 2006).

The presence of outdoor prostitution in (socio-economically and physically) deprived areas means these two neighbourhoods match with Hayward's (2004) conceptualisation of "spaces of deprivation."

6.4 Summary

With the exception of the neighbourhood of Porta Nuova which does not mirror the description of "spaces of consumption and pleasure," the other selected urban areas fall within the definition of "centripetal spaces" and "spaces of deprivation." More precisely, the Ticinese district presents the characteristics of "centripetal spaces," whereas Loreto and Buenos Aires resemble the "spaces of deprivation." The Porta Nuova district, by contrast, diverges from the description of "spaces of consumption and pleasure" for the (almost complete) absence of street prostitution. Here, in fact, prostitution is to be found mainly in the form of indoor escorts, supplying sex to elite/top-level people.

[34] Available data on resident economic conditions refers only to the City of Milan (see footnote N. 26).

7 Explaining the difference: cultural factors

Hayward's (2004) model applies to the selected wards and municipalities of Birmingham and the Brussels Capital Region, however, it does not explain why, in the Porta Nuova district of Milan, the presence of outdoor prostitutes is lacking. The fact that in Milan street sex workers are not to be found in regenerated and high-end areas of the city may suggest that a heightened level of intolerance towards the phenomenon may exist here. Such a hypothesis has been confirmed by the third-sector association "Fondazione Padri Somaschi – Servizio Bassasoglia".[35] According to this association, while individual attitudes (of residents and law enforcement agents) may vary greatly according to subjective/personal sensitivities, resident's organisations in Milan strongly oppose street sex work, which is deemed to undermine people's quality of life and the liveability of public spaces.

Such negative attitudes have also been reflected (at least, until 2011)[36] in the municipal regulation of the phenomenon of street prostitution. According to the text of the 2008 "anti-prostitution order" (City of Milan, 2008), administrative sanctions are to be issued against outdoor sex workers on the mere basis of their presence on the public streets. According to Parmigiani (2008), such an order (as do many similar orders issued in Italy to contrast the phenomenon of street sex work) relies on the "presumption" that any woman standing on the street and displaying a specific attitude, clothing style, and/or behaviour is a prostitute. In Birmingham, by contrast, punitive interventions mainly target the demand side of the phenomenon, rather than addressing prostitutes selling sex.[37] Similarly, in Belgium one of the main focuses of law enforcement intervention is the nuisance brought about by the clients of prostitutes.[38]

What may also contribute to explain the existence, in Milan, of heightened feelings of intolerance towards the phenomenon of street sex work are country-specific attitudes to gender, sex and

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[35] The association has submitted a semi-structured questionnaire, which also included questions on personal, societal and law enforcement attitudes towards the phenomenon of street sex work.

[36] Since then, according to the "Fondazione Padri Somaschi," the newly appointed mayor (Giuliano Pisapia, PD) has neither issued any such punitive regulation, nor has he shown any willingness to proactively address the phenomenon of street prostitution and its causes.

[37] See footnote N. 9.

[38] In light of an interview carried out with a VVSG senior officer, police authorities in some municipalities have recently been applying GAS and taxes only against the nuisance caused by clients.

sexuality.[39] According to a survey carried out by Eurobarometer in 2012 in fact, in Italy the perception of discrimination (outside the working life) on the basis of gender, gender identity and sexual orientation scores highly.[40] For example, discrimination on the basis of gender is perceived to be very widespread, as opposed to countries such as the UK and Belgium, where the respondents seemed to regard such discrimination as quite rare. In Italy, moreover, a low tolerance to issues of gender identity (i.e., being transgender or transsexual) and sexual orientation (i.e.. being gay, lesbian or bisexual) is also quite widespread. Lower levels of (perceived) discrimination have been registered in Belgium and the UK, where (almost) half of the respondents considered such types of discrimination as occasional. Similar results have been published by the European Union Agency for Fundamental Rights (FRA) in 2012. While the level of perceived discrimination on the basis of gender is at its highest in Italy, it is considered fairly limited both in the UK and in Belgium.[41] Discrimination on the basis of sexual orientation is very widespread in Italy. Here, in fact, offensive language and casual jokes about lesbian, gay, bisexual and/or transgender are perceived to be quite widespread (including in political discourse), as well as expressions of hatred and aversion, assault and harassment against them (FRA, 2012). By contrast, in both UK and Belgium discrimination based on sexual orientation registers a level below average in EU member states.

High levels of discrimination against women, homosexual couples, and transgender people may be explained in Italy by reference to the notion of "traditional Italian family" (Crowhurst, 2012, p. 230)[42]

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[39] Ideally, to accurately explain the differences in attitudes to street prostitution in the three selected municipal contexts, prevalence should be given to the analysis of city-specific cultural factors. Due to the dearth of responses (or the partiality of the ones that we received) of relevant authorities, we have not been able to fully reconstruct the municipal attitudes to sex work (and, more generally, to sex and sexuality). Notwithstanding this lack of data, a useful link can be made here to the attitudes existing at the national level. Although responses and attitudes embraced at the national level may not be fully reflected at the local level, they may in some instances be useful to explain the responses adopted by municipalities.

[40] In recent years, (centre-right) coalitions have pursued a restrictive approach to sexual and reproductive rights (Bernini, 2010). For example, in spite of the numerous bills filed (and still pending) before Parliament, no legal rights have yet been recognised for homosexual couples (who cannot legally marry or adopt children), and heavy restrictions have been imposed on in vitro fertilisation (medically assisted procreation) by the "Legge 40" (Law N. 40 of 19 February 2004). Such limitations, however, have recently been checked by way of judicial action (see Const. Court, judgement of 9 April 2014).

[41] See http://fra.europa.eu/DVS/DVT/lgbt.php.

[42] The importance of the family in southern countries like Italy and Spain has been highlighted (among other authors) by Jurado Guerrero and Naldini (1996), who contend that the degree of institutionalisation of the

– an idea which embodies the core traditional (middle-class) values very widespread among the Italian population. The image of the family in this country is based on the union of an heterosexual couple and on a vision of the woman as "respectable," that is having a "respectable" occupation and being dedicated to her children.[43] The hold of the two notions of "traditional family" and of "respectable woman," however, are both said to be undermined by disruptive signs of moral decadence posed by prostitutes occupying public streets – especially when those streets are situated in the residential and shopping areas of middle and upper classes. Ultimately, normative pressures to protect families from such morally unacceptable presences (Quassoli, 2010; Crowhurst, 2012), may explain why street sex workers in Italian cities (and, in this case, in Milan) are more likely to be found in marginalised and run-down areas, rather than in regenerated, high-end urban districts.

8 Conclusion

Despite the fact that Milan's areas identified as presenting the traits of "spaces of consumption and pleasure" divert from Hayward's (2004) conceptualisation, his model contributes to an understanding of the current attitude towards, and spatial location of, street prostitution in "centripetal spaces" and "spaces of deprivation" in all three selected cities. Firstly, this model clearly explains why, in shopping and residential spaces, the visible presence of undesirable individuals and groups is (usually) not socially tolerated and cleansed away through the employment of SCP and other punitive techniques. Such initiatives, in fact, are aimed to remove and exclude those "others" whose presence in public spaces undermines the dominant values of the middle classes and threatens their (safe and homogeneous) consumption modalities (Hayward, 2004). Secondly, this model also helps to understand the reasons why, in more deprived urban areas, the presence of street prostitutes may be more tolerated by both resident communities and enforcement authorities. In these spaces people are said to be over-exposed to consumerist desires which, if unfulfilled, may engender criminogenic pressures and lead to a heightened engagement in deviant and criminal activities (Hayward, 2004;

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relationships within the family, gender, generation, and relatives is higher than in other Western European countries. On the role of the family in Italy, see also Naldini (2002), Bernini (2010) etc.

[43] This specific role of women in the Italian society has been recently confirmed by the National Institute of Statistics (Istat). In a study of 2013, in fact, Istat pointed out that, in the course of their lives, a greater number of women than men have given up a job, a career opportunity or, more generally, reduced their job expectations to look after the house and the family.

Hayward and Yar, 2006). Since the thriving presence of crime and deviance in these areas may lead community action groups and enforcement agencies to focus their priorities for intervention on the most serious/harmful forms of criminal behaviour, it infers that the nuisance behaviour of street prostitutes may here be addressed in a more lenient fashion.

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CHAPTER FIVE: Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy)

Abstract

This article explores the reality of the nuisance of public drunkenness in one nightlife location of Ghent (Belgium) and in one of Trento (Italy) and inspects the way alcohol-related disorder is viewed and tackled by police officers there. Drawing on the literature arguing for the existence of different "cultures of drinking" in western and southern European countries, a distinct reality of the nuisance of public drunkenness was hypothesized to be present in these two cities. Against the backdrop of cultural criminology scholarship and of the national literature on policing practices, it was expected that the physical/aesthetic appearance of street drinkers would differently impact on the way police officers there represent alcohol-related disorder and enforce national and local nuisance regulations. The gathered data indicate that while drinking patterns and connected disorderly behavior do not significantly vary in Ghent and in Trento, the aesthetic/physical characteristics of certain groups of people play a role in shaping the representations of some police officers in Trento. The study concludes that cultural and context-specific factors, including those linked to the cultures of drinking and to aesthetics, should be considered in criminological research to more fully understand and explain the different policing views on and attitudes to alcohol-related disorder in inner-city nightlife areas. In its conclusions, the article also highlights some directions for future research.

Keywords

Incivilities; alcohol; intoxication; drunken people; drinking cultures; aesthetics; police representations; police practices; Belgium; Italy

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1 Introduction

Alcohol plays a fundamental social and cultural role in all European societies. When used in moderation, it often facilitates social interaction and reinforces community ties (Anderson and Baumberg, 2006). Such roles, however, may have been shaped differently across countries (Mandelbaum, 1965) or, more accurately, within different sociocultural contexts (Gordon et al., 2012). In different cultures, the *symbolic meanings* that are associated with the activity of drinking may vary according to a number of factors: the *type* of alcoholic beverage that is consumed, the *time and space* within which consumption takes place, along with the *level of intoxication* and the *purpose* (if any) of consumption (e.g., getting drunk, as opposed to drinking with friends in casual venues). Furthermore, specific societal expectations (Heath, 1995) that shape the way people are supposed to behave and appear in public places, contribute to identifying socially acceptable drinking, as opposed to drunken behaviour. As suggested by some authors (MacAndrew and Edgerton, 1969; Heath, 1998; Room, 2001), drunken behaviour is, indeed, a notion whose definition may vary from one culture to another.

According to the Oxford Dictionaries, a *drunk* is a person "affected by alcohol to the extent of losing control of one's faculties or behaviour". *Drunk* connected to *disorderly*, moreover, refers to the activity of "[c]reating a public disturbance under the influence of alcohol",[1] where *disturbance* is understood as the "interruption of a settled and peaceful condition".[2] The (short-term) effects of excessive alcohol consumption may be several and affect an individual both physically and behaviourally.[3] They include headache, nausea, vomiting, lack of coordination, loss of inhibition, intense moods and so forth.[4] Such effects may be viewed differently by people depending on the socio-economic context they are living in: by some individuals and cultures they may be regarded as

[1] See http://www.oxforddictionaries.com/us/definition/american_english/drunk.

[2] See http://www.oxforddictionaries.com/definition/english/disturbance.

[3] Such affects are usually measured in terms of units of consumption. According to Jayne and colleagues (2012: 829), however, such units fail to (among others) attend to the "emotional, embodied and affective geographies" of alcohol drinking and drunkenness, which are also thought to play a role in the individuals' engagement in alcohol-related violence and disorder (Jayne and Valentine, 2016). Such units, moreover, seem to also be relatively neglected by drinkers in their personal assessment of alcoholic consumption and intoxication (Jayne et al., 2012). For a critical account of the use of units to measure individuals' levels of intoxication, see Jayne et al. (2012).

[4] See http://www.drinkwise.org.au/you-alcohol/alcohol-and-your-health/effects-of-alcohol/.

disorderly and anti-social, by some others they may be understood as a normal and tolerated behaviour (at least, when it occurs in certain times and spatial settings).

Societal attitudes to public drinking and drunkenness may also vary according to the urban areas where they occur. In the UK, the inner-city areas where licensing venues are concentrated are often associated in the literature on the Night-Time Economy (NTE) with the occurrence of episodes of violence and aggression (Hobbs, 2003; Hobbs et al., 2003, 2005; Graham and Homel, 2008) and, more generally, of social and physical disorder. For the production of disorderly behaviour, street drinking has often been described as a contested activity in such urban areas, leading sometimes local policy-makers to adopt punitive law, enforced by agencies of formal control.[5] The attitudes of drinkers, the public, and of law enforcers to public drinking in inner-city nightlife locations may, however, vary (and be more positive) in different sociocultural settings (Demant and Landolt, 2013).[6]

Depending on the roles that the activity of drinking plays in different cultures and on the way public drinking and drunkenness in nightlife locations are viewed by populations, a different (formal and informal) response to public drunkenness may also be adopted (Mandelbaum, 1965; MacAndrew and Edgerton, 1969; Jayne et al., 2008b). To investigate and explain differences (along with similarities) in the practices and processes of drinking in urban public spaces across localities, regions and countries, and in the meanings assigned to urban drinking by different societal groups, Jayne and colleagues (2006) have emphasized the importance of using ethnographic research methods.

Through an ethnographic comparative study, this article aims, firstly, to explore the nuisance of public drunkenness in two nightlife locations of Ghent (Belgium) and of Trento (Italy). To identify the public spaces, time-frames, and situational circumstances that make public drinking a nuisance in these two cities, it will rely on the results of semi-structured interviews with police officers and on systematic observations carried out in two of the cities' nightlife locations. Secondly, based on interviews with local police officers, this article will inspect the way public drunkenness is viewed by law enforcement actors and the degree to which local nuisance regulations are enforced by them. Thirdly, an attempt

[5] Research in the NTE has also critically addressed the policies adopted in the UK and in many UK cities aimed at the control of alcohol-related disorder. See (among others) Chatterton and Hollands (2003), Hobbs et al. (2003), Hayward and Hobbs (2007) and Crawford and Flint (2009).

[6] In their research on youth drinking in Zurich (Switzerland), Demant and Landolt (2013: 2) found that street drinking is more "accepted" in areas surrounded by bars and clubs rather than in places where such venues are absent.

will be made to explain eventual differences in the representations and enforcement of the nuisance of public drunkenness in light of some country- or city-specific cultural factors.

2 Methodology

The present ethnographic study is based on the "immersion" of the researcher in a specific "socio-cultural context" (Travers et al., 2013: 463), which in the study corresponds to two nightlife locations situated in two cities, one located in Belgium (Ghent) and one in Italy (Trento). It has an exploratory character as it aims is to explore, through observations in these particular settings, the drinking practices adopted, and the significance assigned to them, by people there. Furthermore, it also aims to explore how police officers see and tackle the nuisance of public drunkenness in those areas through the carrying out of interviews with them.[7] As put it by Tedlock (2003: 190), "by entering into first-hand interaction with people in their everyday lives, ethnographers can reach a better understanding of the beliefs, motivations, and behaviour of their subjects than they can by using any other method".

This ethnographic research also aims to fulfil explanatory purposes. By empirically testing two hypotheses, which have deductively been derived from theory at the outset of the study, it attempts to provide an explanation for (expected) different *realities* of alcohol-related disorder in two cities' nightlife locations and for (expected) different *police representations* of, and *enforcement responses* to, it in the same areas. However, in light of its (main) exploratory nature, the study also relies on an inductive approach, which, during the phases of data collection and of data analysis, allows to be open to, and to capture, new or rival sources of explanation for the social phenomena under study.[8]

[7] Although in the study we focused on police officers' representations (which were captured through the holding of interviews with them), we were not only interested in their views on, and enforcement attitudes to, drinking and drunkenness in night-time locations. The research focus was also (indirectly) on the dominant societal meanings assigned to drinking and drunkenness, as reflected in the views of police agents. Furthermore, we also investigated dominant societal views on drinking and drunkenness in the selected night-life locations by inquiring, during the systematic observations, bar owners, passers-by, and street drinkers through informal interviews (see the section of this article dedicated to "Results").

[8] The combination of deductive and inductive approaches in qualitative research has been regarded by Patton (2002: 493-4) as "analytic induction".

2.1 Hypotheses

It is firstly hypothesised that a different reality of the nuisance of public drunkenness exists in Ghent (Belgium) and Trento (Italy), and that such a difference can be explained against the backdrop of a different "cultures of drinking", which are assumed to vary in four elements (see below). Secondly, it is hypothesised that the aesthetic characteristics of certain individuals and groups differently impact on police officers' representations of the nuisance of public drunkenness, and on their enforcement responses to it, in the two selected cities' nightlife locations.

Culture of drinking

In the literature on the topic, the drinking behaviours and habits of southern Europeans are usually opposed to those adopted by people living in "the rest" (Järvinen and Room, 2007: 2) of Europe, meaning in western, eastern and northern European countries. First, drinking patterns differ in the type of alcoholic beverages that are mostly consumed: while in middle[9] parts of Europe people are said to prefer to drink beer, in the southern parts of the region wine appears to be the most widespread type of beverage (Järvinen and Room, 2007).[10] Second, drinking customs differ in their modes and frequency: in the "dry" cultures of the north and central parts of Europe, a low frequency in the consumption of alcoholic drinks is often associated with heavy states of intoxication, whereas in the "wet" cultures of the south the consumption of alcohol, although being regular, is usually considered as moderated (Plant and Miller, 2001; Anderson and Baumberg, 2006; Calafat et al., 2010).[11]

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[9] Järvinen and Room (2007) speak about "beer cultures" when referring to the drinking habits of both Western and Central European countries. They oppose such cultures to the so-called "spirit cultures" widespread in the area of the North Baltic and in Eastern Europe, and to the "wine cultures" of the south of Europe.

[10] Anderson and Baumberg (2006) argued for a homogenisation in students' drinking preferences in some parts of Europe. Conflicting evidence has, however, been provided by Mäkelä and colleagues (2006), who confirmed the regional differences in beverage-specific frequency of drinking.

[11] A number of studies have questioned the validity of the distinction between "dry" and "wet" cultures, suggesting that there has been an homogenisation in the drinking patterns of Europeans (Room and Mäkelä, 2000; Anderson and Baumberg, 2006; Mäkelä et al., 2006; Gordon et al., 2012). Research in the UK also indicates that the differences between the "British binge drinking" and what is perceived to be the "European", "continental", or "Mediterranean" more "civilized" way of drinking (which have informed national and local policies aimed at the reduction of alcohol-related disorder), has recently started to fade (Jayne et al., 2008a). As argued by Jayne and colleagues (2008a), for example, British drinkers have a complex understanding of their drinking behaviour, which is sometimes thought to fall within the British way of (binge) drinking and sometimes within the "European" (civilised) way (when the purpose of drinking is socialisation, rather than drunkenness). A

Traditionally, binge drinking is said to be more prevalent among adolescents and youngsters living in the "dry" cultures of the north and eastern parts of Europe (Kuntsche et al., 2004; Landberg, 2012), who are also more prone to engage in violent and problematic behaviour when inebriated from alcohol (Room and Rossow, 2001; Felson et al., 2011). Although Felson et al. (2011) evidenced that the link between alcohol and violence is less prominent in central[12] Europe than in Nordic and eastern countries, such an effect is higher there than in the Mediterranean countries (where drinking is found to have a spurious effect on adolescent violence). High levels of intoxication have also been associated with the adoption of disorderly behaviour (Richardson and Budd, 2003).

It is hypothesised that different cultures of drinking are present in cities situated in western European countries, such as in Belgium, and in cities located in the countries in the southern part of the region, like Italy. The existence of different drinking cultures in two cities adhering, the first, to the "dry" drinking culture, and, the second, to the "wet" drinking culture, is to be tested by taking into consideration four different elements of the "wet-dry" dichotomy (Room and Mäkelä, 2000): 1) the frequency and duration of consumption; 2) the type of drink consumed; 3) the level of alcoholic intoxication; and 4) the adoption of violent and disorderly behaviour. On the basis of these four elements, it is hypothesised that in Ghent the consumption of beer (despite being occasional) involves long(er) consumption times, as well as high levels of intoxication and of disorderly behaviour. In Trento, by contrast, a regular-type of drinking is expected to occur in the hours preceding midnight and to involve the moderate consumption of wine.

Aesthetic culture

In 1997, Ferrell explained that the definition of deviance may result from social conflicting views on the notion of "cultural space", which identifies the ways in which different societal groups interpret the use of public spaces and shape their presence within them. Powerful majorities often take the lead in defining what is considered an appropriate behaviour and an agreeable aesthetics in public spaces, and coercively impose their values on marginalised populations. A number of studies have been conducted by cultural criminologists to investigate the construction of urban subcultures as deviant

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few studies also argued for an overall increase in drunkenness in Europe, with people in the southern countries adopting a "Nordic" type of (binge) drinking (Järvinen and Room, 2007; Gilligan et al., 2012). However, despite reporting increasing levels of alcohol consumption in southern countries like Spain, research has also shown that people there tend to reach only moderate levels of intoxication (see Huges et al., 2011).

[12] In this study Belgium has been considered to be part of central Europe.

and the processes of criminalisation applied to them (Ferrell, 1995a, 1995b; Ferrell and Sanders, 1995; Lyng and Bracey, 1995; Hayward and Yar, 2006 etc.), also with respect to street drinkers (Jayne et al., 2006; Galloway et al., 2007).

As postmodern consumers, street drinkers may have a specific taste in clothing or outer appearance and adopt a certain specific aesthetic style (Featherstone, 2007).[13] Their aesthetic appearance may in turn have an impact on law enforcement agents' representation of and response to the nuisance in which street drinkers participate. Such an effect may, however, vary in uneven socio-cultural contexts: enforcement practices may be influenced by specific aesthetic expectations and preferences, which may very much depend on the specific socio-cultural context in which they are embedded (Jordan, 2000; Masuda et al., 2008; Millie, 2008).

In Italy, exclusive policies and (penal or administrative) practices directed to categories of people who are considered as "aesthetically different" (e.g., immigrants, homeless, Roma, prostitutes etc.) have been described and analysed along the years by a number of scholars (Melossi, 2000; Quassoli, 2004, 2013; Parmigiani, 2008; Carbonaro and Quassoli, 2013; Colombo, 2013; Di Ronco, 2014 etc.), which may suggest that personal or group style is considered a particularly important factor when addressing certain groups in Italy.

In Belgium, by contrast, aesthetic appearances of individuals and groups may have a more reduced impact on penal actors. Although Belgian scholars have attributed a role to factors like ethnicity and conditions of social and economic deprivation in determining the perceptions, decisions and practices of penal actors, these factors have been found to have an impact only when occurring in conjunction (Snacken et al., 1999; Snacken, 2007) or in combination with other elements (Easton and Ponsaers, 2010).[14]

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[13] Feathersone (2007) highlighted the importance of style in postmodern society and the existence of (postmodern) consumer lifestyles in urban city centres, which are based on the acquisition and display of consumer products and on the individual engagement in hedonistic and playful activities. Despite recognising the existence of different lifestyle tastes within social groups or classes, Featherstone (by referring to the work of Bourdieu) argued that specific social classes (and, especially, the "new" middle classes) tend to impose their specific tastes as the "legitimate" ones.

[14] Easton and Ponsaers (2010), for example, found that police representation of and reactions to problematic populations in multicultural neighbourhoods is based on ethnicity and immigration as much as on an array of other factors (e.g., age, gender, situation of marginality, poor socio-economic and cultural capital etc.).

Drawing on this theoretical background, it is hypothesised that physical appearance or style of street drinkers, especially when clashing with the aesthetics of police officers as "aesthetics of authority" (Ferrell, 1995b), plays a more powerful role in shaping police officers' views on the nuisance of public drunkenness and their enforcement practices in Trento than in Ghent.

2.2 City selection criteria and methods of data collection

The present research focuses on two cities: Ghent, situated in the Flemish Region of Belgium, and Trento, located in the northeast part of Italy.[15] The decision to focus on the study of cities rather than of countries has been taken in view to allow city-specific cultural factors to emerge. In a country, different and multiple cultures may be present, thus potentially leading to different visions of and approaches to drinking and public drunkenness (Anderson and Baumberg, 2006). Also within cities, however, different drinking cultures may arise from the drinking practices of specific socio-economic groups attending uneven nightlife locations. Notwithstanding the presence of a variety of youth (sub)cultures showing different drinking habits, studies have found that in many cities in the UK the "mainstream" (Hollands, 2002: 153) type of identity and its consumption patterns tend to dominate the nightlife scene (see also Chatterton and Hollands, 2002), in this way suggesting that drinking patterns within a city (and its nightlife locations) may not vary that much.

Ghent and Trento have been selected for them presenting a number of similar characteristics. For example, they are not capital cities but provincial centres highly populated by students. Many colleges' and universities' campuses are present in Ghent (Universiteit Gent, Gent Hogeschool and Arteveldehogeschool) and in Trento (Universitá degli Studi di Trento). In both of them, moreover,

[15] One of the two hypotheses that are to be tested in this paper refers to the specific cultural differences that exist between Western European countries and the southern countries of the region. Any pair of cities situated in these two areas would have served the purpose of the exercise. Ghent and Trento have been selected also based on the author's previous (in Trento) and current (in Ghent) living experience in these two cities.

local policy-makers have enacted a regulatory framework that punishes both individuals[16] and licensing premises[17] for a variety of uncivil behaviour connected to public drunkenness.

Semi-structured interviews have been carried out with local police officers patrolling the areas that are mostly concerned with alcohol-related disorder. Interviews have been held with the *Lokale Politie*, in Ghent, and the *Polizia Locale*, in Trento, which are competent to apply both contraventions for public drunkenness and administrative fines for the nuisance behaviour connected with it.

Interviewees have been selected according to purposive or purposeful sampling (Dantzker and Hunter, 2006), which allowed for the selection of the police officers based on their competences and powers to enforce regulations on public drunkenness. Interviews have been held with 8 police officers, in Ghent, and with 9 agents, in Trento. The interviews have been semi-structured and involved the use of a checklist, containing the list of main themes and topics to be discussed with the interviewees. Police officers have been interviewed until the level of saturation was reached, that is, when the information that was gathered did no longer add value to the data already collected (McLaughlin and Muncie, 2005). Interviews have been transcribed, coded and anonymised.

To explore the nuisance of public drunkenness, the research has relied on systematic observations (Mastrofski et al., 2010), which are based on the observation of social phenomena and activities occurring in their natural settings according to specific rules that permit replication (Reiss, 1971). Observations took place, in Ghent, during the last week of August (from 22 to 28 August 2014) and, in Trento, during the first week of September (from 2 to 8 September 2014).[18] Observations have been

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[16] In Ghent, a number of individual uncivil behaviour that may be also connected to public drunkenness has been penalised by way of administrative fines by the *Police Regulation on Public Peace and Safety* of 19 January 1998. In Trento, they are sanctioned by art. 85 of the *Urban Policing Regulation*.

[17] Administrative fines have also been envisaged by local regulations to sanction bars and clubs' owners. In Ghent, to limit and control the noise nuisance emanating from liquor licensed premises a new regulation (*Vlarem*) has recently entered into force (see http://www.gent.be/eCache/THE/4/216.cmVjPTE0NzYzMg.html). Also the opening of new night shops and the selling of alcoholic beverages by them has been limited by way of local regulations (see local regulation of 26 June 2012). In Trento, bars of the city centre need to comply with rigid limits in the levels of noise emissions (see the *Acoustic classification plan* available at http://www.comune.trento.it/Aree-tematiche/Ambiente-e-territorio/Rumore-e-elettromagnetismo/Rumore-ambientale/Classificazione-acustica).

[18] In such a period of time, the presence of college students in both cities is rather limited due to the academic summer break. In this study, however, the presence of students has only accounted as a criterion for the city selection, not as an element informing the decision on the period of the observations. Rather than focusing solely

carried out from 22.00 to 1.00[19] consecutively during seven evenings in selected spaces of the city centre that are well-known for their vivid nightlife. Such sites have been identified by police agents during the interviews and have been described by them as hot spots for the nuisance behaviour connected with public drunkenness. Those spaces are, in Ghent, the area of the Vlasmarkt, and, in Trento, the zone encircled within Santa Maria Maggiore Square (henceforth: SMMS). In Ghent, to inspect the nuisance behaviour of drunken people in the late hours of the weekend's nights, observations have been carried out also in the close-by area of the Oude Beestenmarkt, which is crammed with clubs and bars open until 5.00-6.00. Also in Trento the spaces of observations have shifted from SMMS and via San Giovanni to via Roma, via delle Orfane and vicolo Colico after midnight. Increasingly after 23.00, people left the area of SMMS and moved to the bars of the surrounding streets. The area was left deserted at midnight, when the bar and the night shop situated in via San Giovanni shut.[20]

Drawing on the coding instrument developed by Weisburd and colleagues (2012), observations have been carried out through the utilisation of a coding sheet, which has been compiled with written field notes and with other techniques for collecting data (e.g., taping, recording and photographing). Through field notes, both the observed elements and the researcher's experiences have been noted down (Hale et al., 2005; Nelken, 2012). Elements that have been observed included: (1) the number of people present in the area per time-span; (2) the average age/gender of people; (3) the amount of alcohol purchased per capita; (4) the level of intoxication; (5) the presence and/or interventions of law enforcement agents and of place managers; and (6) the number of violent and disorderly behaviour. Nuisance behaviour of drunken people has been measured by taking into consideration the action of

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on the drunken behaviour of students and young people, this research includes the analysis of the drinking habits and disorderly conduct of any person present in the selected location.

[19] In some cases, the ending-point has been extended or postponed according to specific situational circumstances emerging during the observations. During weekends, for example, the time-span of the observations has been prolonged due to the large presence of people in both selected areas. In one occasion (on Saturday evening in Ghent), the starting point of the observations has also been postponed. This has been done on advice of a number of bartenders working in the cafes of the Vlasmarkt, who associated the occurrence of nuisance behaviour with the late hours of the night. The observations, therefore, have started at midnight and have been carried on until 5.00. This, to allow the researcher to grasp the nuisance behaviours happening late in the night.

[20] Also in the areas surrounding SMMS, bars normally close not later than 2.00-2.30. This has probably to do with the municipal regulation on noise emissions with which bars and clubs located in the city centre need to comply.

people: (a) littering; (b) urinating; (c) causing loud noise; (d) yelling; (e) loudly disputing; (f) physically assaulting others; and (g) engaging in vandalism (including graffiti and tags).

To check whether there are similarities or differences in the representation of, and enforcement against, the nuisance of public drunkenness in the two selected cities, the gathered empirical data have comparatively been analysed.

3 Results

3.1 Observations

Ghent

From the observations in Ghent, it emerged that the drinking modes and practices of people very much varied in the weekend and during week days. In early hours of Friday's and Saturday's evenings, drinking mostly occurred inside bars and involved the consumption of both beer and spirits, for men, and of cocktails, wine and non-alcoholic beverages, for women. In Belgium, beer may have a different alcoholic concentration (ranging from 3% in standard beer to 9,5-10% in strong beer or *Trappist*) and is rather cheap, as its price stretches from 2 to approx.. 4 EUR. According to the bartenders of the clubs of the Vlasmarkt (where bars normally shut at around 2.00-3.00)[21], during weekends people are used to drinking approximately 7 to 8 drinks each and to mostly consume all types of beer, as well as cocktails made from rum and gin. The age range of people found there was also very wide: they were both youngsters (around 18-year-old) and older people (up to 40-50 years old).

After midnight the number of people in the Vlasmarkt started to decrease, whereas it increased outside the bars of the Oude Beestenmarkt (to up to 130 people). Here, men and women (whose age range stretched from 25 to 30 years old) were to be found both outside and inside bars, predominantly consuming standard beer. The bartenders indicated that the level of alcohol consumption in the Oude Beestenmarkt is rather high during the weekend: both men and women drink from 15 to 20 standard beers per night, or an elevated number of strong beer and of cocktails made from gin, rum and whiskey.

[21] With the exception of the *Charlaton*, which shuts at around 6.00-7.00. Such a club, however, was closed up for holidays during all the 7-nights of observations.

In the weekend, nuisance behaviour connected with public drinking and drunkenness mainly occurred after midnight and was observed until earlier hours of the morning, with prevalence during the time-span from 1.00 to 3.30-4.00. On Friday evening, cases of verbal disorder (4), littering (5), urinating (3), public drunkenness (4), loud noise or music (6) were observed. Also an episode of physical aggression was noticed. The incident involved two young men, who were first verbally disputing, and then physically fighting approx. 20 meters from the bars of the Oude Beestenmarkt. The fight was quickly brought to an end by one of the two quarrellers, who managed to run away. Not only there was no requested[22] police intervention to deal with the fight, but police presence in the area on Friday was also limited to four police cars occasionally passing by the main road and heading either to the city centre or to the police station situated close by.

On Saturday, a higher frequency of nuisance behaviour was recorded. In the selected night life location, people were yelling (16), littering (19) and urinating (7) next to the bars' front doors (in the Vlasmarkt) and next to the river bank (in the Oude Beestenmarkt). The level of intoxication of people was also quite high in comparison with the other days, as I observed 12 cases of people vomiting, swaying, and falling down. Cases of loud noise and music were also noted down (11), as well as the presence of five police car passing by. No reactions were noticed on the part of the residents, or of the people passing by the observed area, who did not pay much attention to the behaviour of drunks and to the presence of people drinking outside bars.

During weekdays, the drinking habits and behaviour of people in the selected area were rather varied. On Sunday, Monday and Tuesday evenings, for example, little to no people were observed outside bars both in the Vlasmarkt and in the Oude Beestenmarkt, and only a few of them were sitting inside cafes. This, at least partly, may be connected with the bad weather conditions of the aforesaid days, which included heavy showers, moist and low temperatures. According to a number of bartenders, a lower or limited presence of people during weekdays in the cafes of the area is a quite usual circumstance and quite normal in that period of the year.

On Wednesday and Thursday, by contrast, a higher amount of people was observed in the selected nigh-life location, mostly consuming beer in the external terraces of bars. An exception was represented by a group of approximately 20 young people (around 18 to 20-year-old), who were

[22] As the bartenders pointed out to the researcher, nobody from the bars called the police to report this episode of violence, nor did they receive any complaint from the costumers. It was then assumed that nobody called the police.

standing or sitting in a small parking lot in the middle of the Vlasmarkt on Thursday evening. This group reached the spot at around 23.00, already inebriated from the consumption of alcohol and quite euphoric. After drinking the beer that they had with them, I observed them buying new cans from the *frituur* (a typical fast food) present in the area, which sells very cheap drinks. Overall on Thursday evening, there were 11 episodes of littering, 4 of loud noise or music, 28 of verbal disorder and one case of a person urinating. There were also a loud dispute and nine cases of drunkenness.

Trento

In Trento the patterns of drinking did not substantially vary from the weekend to the weekdays. In almost all days of the observations, the presence of people in SMMS was conspicuous and higher in earlier hours of the evening (from 70 to almost 200 people), whereas it started to decline around 23.00-23.30, when the observations were moved to the close-by via delle Orfane and vicolo Colico (where the number of people ranged from 60 to 100). Only on Sunday evening there was barely anyone in the observed area. During all the other days when the observations were carried out, young people (from approximately 18 to 23 years old)[23] were spotted sitting in a little square and drinking predominantly beer, which in Italy has a low alcohol concentration (2.5%). Mostly, they were cans or bottles bought in the night shop in via San Giovanni, which sells very cheap beer (1 EUR). In some instances, I also observed people taking beer from bags showing the logo of popular supermarkets. Only a limited number of people were drinking beer and aperol spritz[24] purchased in the bar, where drinks are more expensive (beer cost 2 EUR, whereas aperol sprits cost 2.50 EUR) and are served in plastic glasses. According to the owner of the bar situated in SMMS, people only order 2 to 3 drinks at the bar's counter and prefer to purchase cheaper drinks in the close-by night-shop or to bring them

[23] The great majority of people present in SMMS during the observations were Italian college students. However, there were also people from the north of Africa (mostly refugees), and a small number of (middle-aged) homeless (5), all drinking beer in cans or bottles. According to a north African man, who was informally interviewed during the observations, there are differences between the drinking patterns of people from the north-African region and the ones of Italians present in the night-time area: in opposition to young Italians (who tend to behave uncivilly by mostly leaving litter in the area, urinating and yelling), people from the countries of the north of Africa, when drunk, tend to engage in fights and violent behavior, as they are not used to drinking alcohol in their home countries due to religious prohibitions. An indication of the violent behavior adopted by this latter group of people when intoxicated by alcohol can be found below in the text, where I describe the physical attack that was carried out by a young north African man against one Italian during the Saturday evening in SMMS.

[24] This is a typical aperitif of the north-east area of Italy, made from aperol, Prosecco and soda.

from home. Among the drinks that are mostly consumed by people at the bar, there is beer, aperol spritz and spirits, which are often ordered by youngsters (18 to 20-year-old) "*who want to get drunk very quickly*". The age profile and drinking habits of people changed when the observations were moved to via delle Orfane and vicolo Colico, where individuals were aged around 25 to 30-year-old and were ordering beer, wine, cocktails and spirits at the bars (both women and men).

Not only people in Trento started to drink early in the evening, they also adopted disorderly behaviour quite early in time. Episodes of people yelling, littering, and urinating were observed since 22.00 during six of the seven evenings. Generally speaking, cases of nuisance were quite recurrent in the selected nightlife location. On Tuesday, for example, 39 cases of littering were noticed, alongside 6 episodes of loud noise or music and 29 of verbal disorder. On Saturday, 9 cases of people littering were recorded, along with 6 episodes of loud noise, 12 of verbal disorder and one loud dispute. In 11 cases, people were observed urinating in the small alley of SMMS. There were also a high number of drunken people, who were swaying or sleeping on the ground (9).

On Saturday in front of the bar in via San Giovanni, a verbal dispute between two young man, one Italian and one from the north of Africa (Tunisia), resulted in a physical aggression carried out by the latter (who, according to the witnesses, was drunk). Shortly after the fight, an ambulance got to the area to help the injured man, together with four agents of the *Polizia di Stato*, who questioned the witnesses about the fight and the assailant (who immediately left after the attack). Later the same night, I also observed two officers of the *Polizia di Stato* dealing with two cases of public drunkenness in via Roma. The intervention of the police was requested by the costumers of a bar, who were bothered by the conduct of two drunks who were yelling and starting to become aggressive. With the support of the bar owner, the two police officers encouraged the drunks to leave the place and applied no sanction to them. The same evening, I noticed a resident walking through the area and being visibly disappointed with, and frowning at, a few people dealing drugs. The person seemed to pay conversely less attention to the presence of young people drinking there. More confrontational was the attitude of two other persons on Monday, who checked the conditions of the area and engaged with a few intoxicated people, asking questions about the frequency of their presence in the area, the quantity and type of substances used etc. They were the police superintendent and one assistant in their civilian clothes, wanting to have a check on the issues of the area after the case of violence happened on Saturday.[25]

[25] The presence of the police chief was pointed out to the researcher in an informal conversation with a person who deals drugs in the area, who emphasized that his presence there is not an unusual circumstance. Quite the

3.2 Semi-structured interviews

Ghent

The Ghent police officers described the nuisance of public drunkenness as any *behaviour* of drunken people which *irritates* others and associated it with loud noises, vandalism, violence and sometimes also with litter. Except in one case, it has not been linked up with the mere presence of a drunken person sleeping in a public space (on benches, on the sidewalk etc.). The definition of nuisance (in Dutch, *overlast*) has also coincided with the legal definition of *public drunkenness*[26] or with that of *public disorder*[27], which are two contraventions punished with administrative fines. According to police officers, the first category (*public drunkenness*) includes the case of a drunk and disorderly person who is annoying other people, as well as the case of a person who, without bothering anyone, is excessively intoxicated from alcohol and may be a danger to her- or himself or to others. The second category (*public disorder*) encompasses cases of drunken people who are violent and aggressive. In both cases, the drunk is fined administratively and detained up to 12 hours at the police station. Measures against *public drunkenness* and *public disorder* are applied by police agents only when strictly necessary and after having pursued a sort of mediation with the drunk person (what they called the "*middenweg*" (transl.: midway) approach).

Despite the given definition of nuisance, police officers said to only rarely apply administrative fines targeting incivilities of drunken people. Public drinking and drunkenness have been understood to be two very common phenomena in the locality, especially when associated with the presence of young people and students, which are a segment of the population who since long has been involved in the

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opposite, the police chief is often seen in the area after the occurrence of grave episodes of physical aggression (like the one occurred on Saturday). This, as pointed out by frequent visitors of the area in informal conversations, has to be reconnected with the raising complaints of the residents, which challenge the action of the local law enforcement also through the local press. Although I did not seek for a direct contact with the police superintendent, I had informal conversations with his interlocutors.

[26] *Public drunkenness* is sanctioned by the Belgian Law of 14 November 1939, where it is stipulated that: "*The person who is found in a state of intoxication in a public place is punished:* [...] *with a fine of 15 francs* [0.40 EUR] *to 25 francs* [0.60 EUR] [...] *if the offender causes disorder, scandal, or danger to another person or to himself, he can be detained in the municipal house of detention or in the security room of the gendarmerie for a minimum of two up to a maximum of twelve hours"*.

[27] *Public disorder* is an offence envisaged by art. 31 par. 2 of the Law on Police Services of 5 August 1992, which allows police officers, "*in cases of absolute necessity",* to arrest "*a person who disturbs the public peace"*.

nightlife scene of the area. According to two respondents, interventions against the nuisance of public drunkenness are carried out as long as they are strictly necessary. Otherwise, as they said, "*you would have all the student population in jail",* or *"there will be the prison full of students …every night 50 students down here … and that is not workable*".

To explain this lenient police enforcement, respondents made reference to the (socially recognised) role that the activity of drinking plays in the local culture. As some of them pointed out, in Ghent there is "*quite a culture of bars and cafes"*, in the meaning that the consumption of alcoholic drinks mostly occurs at the bar and only rarely at home, for instance, during meals. Respondents also regarded the activity of drinking with friends (at the bar) and with family members (at family parties and celebrations) as a very common and widespread habit. As suggested by a few of them, although drinking in public spaces may not be accepted by every member of society, it is overall tolerated. What is socially not tolerated is the behaviour of people who "*cross the line"* and bother or threaten others. As one of the interviewees explained: "*there is no problem in being drunk, not even in drinking during the day, as long as the rules are respected: people cannot run across the streets, ignore red lights, they should walk properly .. In short, they need to act normal*".

According to the Ghent police officers, also residents living in the Vlasmarkt and in the Oude Beestenmarkt are rather tolerant when it comes to addressing the nuisance behaviour of people drinking and drunk: they rarely call the police to complain about episodes of disorder happening in the area. As police agents put it, "*they knew it before*" (that the area was one of the city hot-spots for parties) and they need to have a "*ticker skin"*. As three interviewees added, a factor that may explain the high tolerance of residents towards drunkenness and alcohol-related disorder may also be related to the low level of police reaction to such cases. Since public drunkenness does not constitute a priority for the local policing strategy, "*residents know that they may wait also quite some time before any action is taken by the police"* in response to their complaints.

Trento

The Trento police officers imputed the nuisance and disorderly behaviour of people drinking and drunk to the *presence* in the selected nightlife location of three groups of people: firstly, of students and young people drinking during happy hours; secondly, of punks, members of the anti-globalization and anarchic movements drinking in squares and in other public spaces; and, thirdly, of groups of "*foreigners*" or of "*illegal immigrants*" drinking and getting rowdy.

When talking about young people and students, three respondents pointed out that drinking in the city and, more generally, in the region (Trentino) is very much widespread and has a prominent social (and commercial)[28] role. In the words of one police officer: "*the average-person in Trentino drinks a lot. People here drink at home during meals, at the bar with friends and also at public celebrations and manifestations. During happy hours students drink. But here they drink at all ages. During public manifestations, for example, you can see 15 or 16-year-old people drinking alcohol, as well as people who are 70*". As this fragment points out, drinking alcohol, also when pursued by young people, is socially accepted. What is not tolerated (and has been defined as nuisance by police officers) is the presence in the selected nightlife location of large groups of young people at night, which has often been associated with certain types of uncivil behaviour (e.g., yelling, littering and urinating).

Nuisance behaviour has also been linked to the presence in the area of punks, members of anti-globalization and of anarchic movements, who are said to have a specific dressing style and lifestyle. As one of the police officers clarified, "*you can spot them from the way they are dressed… they are the rebellious, those from the anarchic centres, who do not have a job... they are many!* […] *The leaders (if we may call them like that but anyway there is a hierarchical structure) who organise the rallies etc. are the sons of politicians, entrepreneurs... they are those who when get tired of playing the rebellious have their backs covered... and then leave behind a trail of others who are left empty-handed (they don't go to school etc.)... they protest because they know that even if they make a mess they are left unpunished*". According to another police officer, punks and members of anarchic movements "*create confusion*" and "*degrade*" with their presence "*the beauty of the historical monuments located in the area*".

Alcohol-related disorder has also been attributed by police officers to "*foreigners*" coming from the eastern parts of Europe, where people are normally "*very much used to drinking*". As one of the respondents clarified, you "*recognise*" the people who create disorder "*from their different nationality* […] *I speak about certain nationalities because - I don't want to be racist - some, like the ones from east Europe, have the habit to drink all since very young... By them that is the norm*". A representation of this group of people based on the outer appearance of its members was offered by respondent N. 7, who described disorderly immigrants in the following terms: "*they participated in the war… you can spot them from the attitudes they have, from their large, broad and strong build... they are mostly from*

[28] A few interviewees also made reference to the importance of alcohol for the local economy. One of the interviewees, for example, referred to the strong influence exerted by the "*powerful lobby of bar keepers"* in the local policy-making.

eastern Europe and former-Yugoslavia […] *but they can also have other nationalities*". Police officers attributed disorder also to "*illegal*" immigrants coming from the countries of the north of Africa, where drinking is said not to be allowed due to religious dictates. The effects of excessive drinking are viewed similarly for both groups, as they are said to likely engage in fights.

An exception in the representation of the nuisance of public drunkenness was made by the second and the third interviewees, who associated it with the presence of drunken homeless sleeping on benches or on the sidewalk. For the other respondents, by contrast, the presence of a drunken homeless (despite creating "*discomfort*", as one of the respondents clarified) is socially tolerated and does not account as disorder. According to respondent N. 3, moreover, disorder had a strong connection with the outer/aesthetic characteristic of a certain group of people: only drunken individuals who are "*shabbily dressed*" are said to create nuisance.

The Trento police officers have mostly associated their responsive interventions with cases of violent and aggressive behaviour of drunken people.[29] However, especially when drunken "*foreigners"* engage in fights, police intervention is said to be rather difficult to pursue due to the speed of such accidents. When police officers reach the spot (normally, within 5-6 minutes), the fight is often already over and they do not manage to identify the people who were involved in it.

Sanctioning uncivil behaviour of drunk young people has also been viewed as a difficult task to accomplish, especially when incivilities happen not in isolation but inside (or close to) a large group of individuals. In such cases, police intervention is hindered by concerns about the operators' personal security, which may be jeopardised by retaliations and acts of violence pursued against them. Such a limited policing capacity has also been linked with the reduced number of agents of the *Polizia Locale* working during the night shift (only two).

Also illegal immigrants adopting uncivil behaviour (e.g., littering, urinating, yelling etc.) are seldom sanctioned by police officers. Again, the explanation of such a policing attitude has been connected by police officers with (mere) pragmatic considerations. As respondents clarified, such a category of people "*almost never"* pays the fine. Imposing a sanction on them is, therefore, considered as "*useless"* and *"time-consuming"*.

[29] Here, the contravention envisaged at art. 688 of the Italian Criminal Code applies: "*Anyone who is caught in a state of obvious intoxication in a public place* [...] *shall be punished with the administrative fine from 50 to 309 EUR".*

Despite these practical concerns and difficulties, a police intervention is said to always quickly follow a complaint of public drunkenness or of disorderly behaviour. Especially when the call comes from the residents of the area, police agents strive to "*do something*" about the problem being complained about. For example, uncivil behaviour is sometimes sanctioned indirectly by the police, that is, by way of an administrative fine imposed to the bar around which incivilities occur. When uncivil behaviour does not happen in connection with a bar, police action is limited to patrolling and monitoring the area where disorderly behaviours are adopted. This, mainly, to avoid (or to reduce) residents' negative reaction to and dissatisfaction with police action, which is also very much reflected in the media.

Societal tolerance in SMMS is viewed by police officers as being rather low. The residents of the area have been described as being particularly hostile against young people consuming alcohol during happy hours, especially with respect to the noise and to the practice of urinating against the front doors of the buildings. As they put it, residents call "*very often"*, "*always*", "*also for no reason"*, "*even in anticipation"*, and "*anyway too much"*. The intolerance of residents and, more generally, of citizens is seen as a product of long standing media campaigns, which have succeeded to amplify societal and individual concerns about the level of (physical and social) disorder in the area (or to create a "*collective phobia*", as one of the interviewees suggested), and to enhance their perception of insecurity. Police agents explained citizens' conservative mentality through diverse factors. Among others, there is the quick expansion of the university, which only in recent years has led to a significant growth in the number of students and, therefore, to the introduction of specific entertainment opportunities for them. Happy hours, for example, have only recently been introduced in the city, causing intense community protests and initiatives aimed to counter the blight of the area.[30]

4 Discussion

From the review of the data gathered through the systematic observations, it emerges that the hypothesised different culture of drinking only partly explains the drinking patterns and behaviours of people in Ghent and in Trento.

Drawing on the "wet-dry" dichotomy (Room and Mäkelä, 2000), it was firstly hypothesised that drinking in Ghent was infrequent and that it occurred during a long(er) span of time, whereas in Trento

[30] See Comitato Torre Vanga https://www.facebook.com/groups/236481156509302/?fref=ts.

it was regular and happened in the early hours of the evening. This first part of the hypothesis was confirmed during the observations. In Ghent, a very limited presence of people was observed in the selected area on Sunday, Monday and Tuesday, both outside and inside bars. During weekend, when the presence of people was more substantial, individuals were observed drinking alcohol until very late (also due to the longer opening hours of clubs and bars). In contrast, drinking started early in the evening in Trento, where a consistent number of people was observed consuming alcohol during 6 of the 7 days. A lower frequency in the consumption of alcoholic drinks in Ghent has also been confirmed by the interviewed police officers, who have mostly associated the consumption of alcohol with (semi-)public venues like bars and cafes, rather than with private places and homes.

Secondly, it was hypothesised that people in Ghent mostly drank beer, while in Trento they consumed wine in moderate amounts. This second segment of the hypothesis was not confirmed through the observations. Generally speaking, in both cities beer seemed to be the most popular drink consumed by alcohol users. The type of alcoholic beverage drank by people in Ghent and Trento, however, varied according to the time-span, the street segment, the age and the gender of alcohol users. Before midnight in the Vlasmarkt, for example, both young and older people consumed a wide variety of drinks: while men were observed drinking beer and spirits, women drank wine, cocktails and non-alcoholic drinks. After midnight in the Oude Beestenmarkt, 25 to 30-year-old people drank standard beer. In Trento, youngsters (from 18 to 23 years old) in SMMS predominantly consumed beer and, only the bar's customers, aperol spritz. After midnight in vicolo Colico, 25 to 30-year-old people were observed drinking beer, as well as wine, cocktails and spirits. Informal conversations with bartenders also underscored the popularity of cocktails made from gin, rum and whiskey, in Ghent, and of spirits among youngsters, in Trento.

Thirdly, it was expected that the quantity of alcohol consumed per capita was higher in Ghent than in Trento. In contrast to the expectations, the number of drunken people did not significantly vary in these two cities: while in Ghent there were 26, there were 22 in Trento. Also the information gathered in informal conversations with bartenders (who attributed higher alcohol consumption to the people in Ghent) does not help in this respect. Bartenders in Trento have clarified that their information about individual alcohol consumption is very limited, as people there tend to purchase cheap drinks in supermarkets or in night-shops (rather than in bars). It is therefore difficult to establish the precise amount of drinks purchased and consumed by people in Trento every evening.

Lastly, it was assumed that disorderly and violent behaviours were more prevalent in Ghent than in Trento, due to a higher level of alcoholic intoxication reached by people in the former city. This third part of the hypothesis found no support in the data gathered during the field work, which indicates that the level of disorderly behaviour does not vary that much in these two cities. While in Trento 85 episodes of littering were noted down, alongside 87 cases of verbal disorder, 4 of loud dispute and 16 cases of people urinating; there were 36 (littering), 63 (verbal disorder), 2 (loud dispute) and 11 (urinating) in Ghent. In both cities, one case of physical aggression was observed. Also the cases of loud noise and music did not substantially differ in Ghent (36) and in Trento (27).

In short, if the difference between the "wet" and the "dry" cultures contributes to explaining the uneven time/duration of alcohol use in Ghent and Trento, it does not explain the similar type of beverage selection (beer), as well as the similar level of intoxication and of disorderly behaviour. As such, the results seem to align with the studies that argue for a homogenization in the drinking patterns of Europeans (Room and Mäkelä, 2000; Anderson and Baumberg, 2006; Mäkelä et al., 2006; Gordon et al., 2012). A high level of alcohol consumption and of nuisance behaviour in the nightlife location of the Italian city of Trento may be explained in light of the recent change that occurred in the drinking habits of people attending the area. An indication of this recent change can be found in the *perceived* negative societal attitudes that residents have towards public drinking and drunkenness in the concerned nightlife location (as opposed to the perceived tolerance of the dwellers of the selected night-time area of Ghent). As police officers suggested during the interviews, the recent expansion of the university has led to a rise in the number of college students and to the organisation of entertainment opportunities for them. The increased consumption of alcohol, however, does not only happen in combination with happy hours. As the observations showed, from early hours of the evening until late in the night people in SMMS were sitting among groups of friends and drinking cheap drinks. In a few cases, also very high states of intoxication were reached by people, in this way resembling the phenomenon of "el botellón" widespread among Spanish youngsters (Gual, 2006; Järvinen and Room, 2007).

From the review of the results of the interviews with police officers in Ghent and Trento, a different representation of the nuisance of public drunkenness has emerged. In Trento, police agents associated alcohol-related disorder with the *presence* in the selected nightlife location of specific groups of people, who are students, punks and members of anarchic movements, immigrants and homeless. Furthermore, three police officers pointed at the specific *outer/aesthetic* characteristics of punks, immigrants and homeless. By contrast, a more *normative* approach has been evidenced in Ghent,

where nuisance behaviour connected with public drinking and drunkenness coincided with the *conduct* of drunken people who *bother* others and/or with situations where the intoxicated person constitutes a *danger* to him- or herself or to others, that is, with any behaviour that is considered to move away from the "normal", or the socially accepted, standard of drinking.

The fact that only in Trento police representation of nuisance has referred to the description of the outer appearances and looks of specific groups may provide an indication of the role that aesthetic or physical characteristics may play in shaping police representations of and attitudes to nuisance there. However, since a clear reference to the aesthetic characteristics of certain groups of people was only made by 3 of the 9 agents interviewed (which may not be representative of the sample of police officers in Trento, not even of the Polizia Locale), such a reference may also be explained through other elements. For example, the responses of the agents mentioning aesthetics as a factor may have been influenced by their personal biases and stereotypes towards particular groups of people, by their capacity to speak with property, or to use the language in a correct way. Police officers may also have given answers that were affected by the social desirability bias, that is, by an attitude to give answers that are thought to be viewed positively by other people.

In spite of a different representation of the nuisance of public drunkenness, police officers in Ghent and in Trento apply a similar (and low) level of enforcement of national and local regulations on public drunkenness and related nuisance behaviour. They do so, however, in light of different arguments. As the Trento police agents pointed out, they rarely *proactively* sanction students, punks, members of the anti-globalisation movement and anarchic people drinking and getting drunk in public places. This, in light of mere *pragmatic* reasons: the reduced number of police officers at nights prevents them from effectively addressing and sanctioning a great number of drunk and disorderly people, lest being targeted of aggressions and violence.

The same set of arguments was employed by respondents to describe their enforcement attitudes to the disorderly behaviour adopted by "*foreigners"* getting drunk and rowdy. In these cases, sanctions are not applied by the Trento police officers due to their often late intervention (in case of fights) or to the perceived absence of any deterring effect carried by the sanction (in case they adopt other types of uncivil behaviour).[31] In other words, sanctions are not applied by police officers because *it is difficult*

[31] The two cases of public drunkenness observed on Saturday evening have not been considered in this part of analysis, as the intervention was pursued by agents of the *Polizia di Stato*, rather than by the *Polizia Locale* (on which this paper is focused).

or useless to do so, rather than because of a permissive policing attitude to public drunkenness and related disorderly conduct. Some evidence of such a police trend may be found in the official statistics of the *Polizia Locale*, which since 2010 have registered only 18 cases of public drunkenness in the city centre.[32]

Despite the reduced number of sanctions, the Trento police agents seem to consider public drinking and drunkenness and, above all, the nuisance behaviours that are connected with it, as a priority of intervention. They have explained this attitude in light of the perceived high social intolerance of residents (and their committee) and of the elevated media coverage of the episodes of disorder that happened in the area. As police officers put it, a *reactive* intervention always quickly follows a complaint of the residents and may result into a sanction issued to the bars, which are deemed to be responsible for the uncivil behaviour of their clients. When nuisance does not happen in connection with a bar, police intervention is limited to patrolling the area and to monitoring the situation.

Context-specific cultural factors such as the recent increase in the number of college students and the introduction of happy hours may help to explain such a (perceived) negative attitude of residents to the nuisance of public drunkenness in Trento. As police officers suggested, new drinking patterns of students in the night-life location may have opposed to the traditionally recognised and tolerated practices and sparked residents' (and citizens') intolerance. Although the observations did not directly show any such a negative attitude on the part of residents, they did so indirectly and, notably, through the observed presence of the police superintendent in the selected zone. Such a presence was regarded by a few frequent visitors of the area as a response to the pressures exercised upon law enforcement agencies and the municipality by both the residents and the local press.[33]

Also the Ghent police officers rarely sanction public drunkenness and connected nuisance behaviour.[34] Different (and, mostly, *normative*) arguments have, however, been provided by them to justify such a similar policing strategy: police intervention is carried out only when strictly necessary and, mostly, for cases of *public drunkenness* and of *public disorder*. Such cases, however, are not considered to be

[32] Local police statistics rely on aggregated data, which refer to the time-span stretching from January 2010 to October 2014.

[33] For a media news published in the last day of the observations (6 September 2014), see http://www.ladige.it/articoli/2014/09/08/portela-ultimatum-vigili-privati.

[34] The reluctance of law enforcers to intervene against alcohol-related disorder has also been observed with respect to the UK by Jayne, Holloway and Valentine (2006) and by Jayne and Valentine (2016).

a priority in the local policing strategy. Interventions of police agents have been described as being predominantly reactive and, thus, to follow a phone call of annoyed costumers. Police presence in the area is, in fact, only eventual and connected with its particular location within the city (which is situated halfway between the closer police station and the city centre). The Ghent police officers connected the permissive law enforcement approach to public drunkenness and related nuisance behaviour with the high frequency of cases of drunkenness registered in the area and, more generally, in the city. According to the local police statistics, the number of accidents of public drunkenness in Ghent has been quite steady in the past two years and five months: they were 329 in 2012, 298 in 2013 and 112 until May 2014 (in line with the cases reported until May of the previous two years). In the Vlasmarkt, 54 accidents of public drunkenness have been reported in this time span, whereas they were only 4 in the Oude Beestenmarkt.

Police officers linked such a permissive law enforcement approach also with the high level of tolerance of citizens and residents towards the activity of drinking and, to a certain extent, also towards the state of public drunkenness. Such a tolerant societal attitude has been explained through the socially recognised role that drinking (both in bars and in public spaces) has in the local culture and, by a few of them, also through citizens' awareness of the late and eventual police reaction to cases of public drunkenness. A neutral (if not positive) societal attitude was also observed in practice, with passers-by and residents paying little to no attention to the presence of people drinking and adopting nuisance behaviour.[35]

5 Limitations

In this article systematic observations have been carried out by one researcher only for seven consecutive evenings. Although observations during such a time-span have allowed the research to cover the drinking habits and practices of people during both weekend and weekdays (an element that was required to test the frequency of alcohol consumption), they may have led to results that may be specific for that particular week. Drinking patterns and alcohol-related disorder may, indeed, vary in other periods of the year. In this study, for example, the observations have been carried out during a period of time when a reduced number of students was present in the two cities. During other periods

[35] In practice, residents may well have called the police. However, it has here been assumed that no complaint was filed, as no (even late) police intervention followed.

of the year when the presence of young people in the two localities may be more substantial, drinking patterns and connected disorderly behaviour of this category of people may alter the observed elements and, perhaps, lead to different results. Drinking habits and alcohol-related disorder may also vary according to the season or to the specific weather conditions of the locality. To reduce the impact of some of these limitations, the week(s) selection has been based on days when no special events and celebrations were organised.

In this study only the common symptoms of heavy episodic drinking were taken into consideration to measure the state of public drunkenness, that is, lack of coordination, vomiting, fainting, reaching states of unconsciousness and so forth. In some individuals, however, high levels of inebriation may also translate into feelings of euphoria, excitement and other intense moods which, in practice, may be rather difficult to observe and measure.

With respect to the interviews, they have been carried out only with police agents belonging to two specific police bodies: the *Lokale Politie*, in Ghent, and the *Polizia Locale*, in Trento. They are in charge for issuing sanctions for both public drunkenness and for the nuisance behaviour connected with it. Other bodies like the *gemeenschapswachten*, in Ghent, and the *Polizia di Stato* and the *Carabinieri*, in Trento, have only partial sanctioning powers and, therefore, have not been taken into consideration in this paper. Such bodies may also have a different policing approach to public drinking and drunkenness than the one adopted by the two selected law enforcement agencies.

In this study, we have attempted to explain or analyse the differences in law enforcement representations of and practices against the nuisance of public drunkenness in the two selected socio-cultural settings in light of the different impact that the aesthetic characteristics or outer appearance/style of individuals and groups were thought to have on police officers there. Other cultural variables not included in this research (like the specific policing cultures, as well as the policing models and practices adopted) may also contribute to explaining the different policing attitudes to the nuisance of public drunkenness in the two selected cities. Moreover, as the number of officers mentioning aesthetic aspects as a factor was limited, we may not exclude the possibility that this aesthetic consideration may not really be representative for the Trento police (not even for Trento *Polizia Locale*) but rather reflecting some individual biases on the part of the interviewed police officers.

6 Conclusions

As the data gathered in this comparative research show, the *reality* of the nuisance of public drunkenness does not significantly vary in the two nightlife locations of Ghent and Trento, especially not when it comes to considering the levels of intoxication and of disorderly behaviour of drunken people there. What changes is the way in which enforcement actors in these two cities look at public drinking and drunkenness occurring in the selected nightlife areas: while in Ghent they are understood as a rather normal phenomenon (as long as it does not involve the adoption of behaviour that *bothers* or *threatens* others) and are overall tolerated by police officers, in Trento they have been regarded as uncivil and attached to the presence of specific groups of people who are differently dressed (e.g., punks, members of the anarchic movements, immigrants and homeless). Specific *cultural factors* like the importance of *aesthetics* or of *aesthetic styles* have been found to play a role in shaping the representation of the nuisance of public drunkenness of some police officers in Trento.

The results of this study also suggest that even when local (punitive) regulations are enacted by municipalities, they may not be enforced in practice or not in all cases. In spite of a different representation of nuisance, police officers in Ghent and Trento apply a similar level of enforcement of local and national regulations against uncivil behaviour (at least, in their *proactive* interventions). They do so, however, on the basis of a different set of arguments that, depending on *context-specific factors*, may be *normative* (as in the case of Ghent) or *pragmatic* (as in the case of Trento). In Ghent, for example, a low level of police enforcement has been explained by officers in light of their *normative* attitude to the nuisance of public drunkenness: proactive interventions only target the behaviour that is considered to diverge from the "*normal*", or from the considered accepted standard of drinking. In Trento, by contrast, police officers have justified their reduced (proactive) interventions on the basis of mere *pragmatic* reasons and constraints.

What the example of Trento also shows is that *reactive* policing strategies are (at least, partly) influenced by the *attitudes* that *people* are perceived to have with respect to a certain phenomenon. More accurately, on the basis of the perceived intolerance of residents, police officers have adopted different strategies for the control of uncivil behaviour in the selected night-time area of Trento (e.g., the application of fines to licensing premises for the uncivil behaviour of their clients).

Societal expectations and attitudes to public drinking (Demant and Landolt, 2013) and, more in general, to uncivil behaviour (Di Ronco, 2014) tend to vary in different areas of the city. Future comparative empirical research should, therefore, also focus on policing strategies towards alcohol-

related disorder in different city areas, and inspect whether they are shaped by the perceived (different) attitudes and expectations of people in those areas.

In addition, individual and societal negative attitudes may be learnt by police officers via different channels of communication and, not least, through the media, which may play a crucial role in the construction of incivilities as a "problem". Inspecting the way the media represent the phenomenon of incivilities and its regulation is particularly needed, as it may go a long way in increasing our understanding of the practices of enforcing nuisance regulations in specific social settings.

In conclusion, this comparative research highlights that public drinking and drunkenness (despite in reality not substantially differing between the two cites) may not be always disputed in nightlife locations of different sociocultural settings. They may be seen as a normal phenomenon, which may be very much tolerated by police officers (as the case of Ghent shows), or be considered by them as a deeply problematic activity (as in the case of Trento). The *cultural* and *context-specific factors*, including those linked to the cultures of drinking and aesthetics, should therefore also be considered in future (comparative) empirical research to more fully understand and explain the different policing attitudes and responses to alcohol-related disorder in inner-city nightlife areas.

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CHAPTER SIX: Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press

Abstract

This article analyses the representations of regulated nuisance in a section of Flemish newspapers overtime. It identifies the groups of people who have been successful in conveying messages in and through Flemish press news, and explores the way they have represented problems of, and suggested solutions to, regulated incivilities over the years. Furthermore, against the backdrop of newsmaking criminology (Barak, 1988), it considers whether and how crime and justice experts have contributed to shaping the Flemish media discourse on regulated incivilities overtime. Overall the analysis of press news has found that the press, by giving coverage to the voices of local institutional actors, has promoted the criminalisation of nuisance and, especially, of physical incivilities. The views of criminological experts, by contrast, have remained marginal. The article concludes by suggesting how such findings present a new set of empirical and conceptual challenges for newsmaking criminology, and more generally, for public criminology.

Keywords

Regulated incivilities, media representations, media analysis, newsmaking criminology, Flanders (Belgium)

Di Ronco, A. (in press). Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press. *Criminology & Criminal Justice.*

1 Introduction

Over the past two decades many European countries have enacted regulations aimed at sanctioning uncivil, as opposed to criminal, behaviour. This growing interest of national policy-makers in regulating incivilities has been explained in the (especially UK-based) literature through reference to rising societal concerns over issues of crime and disorder (Burney, 2005; Squires, 2008). Feelings of insecurity about petty crimes and incivilities have also led the legislature of Belgium to adopt a system of '*gemeentelijke administratieve sancties'* (transl.: municipal administrative sanctions) or GAS fines in 1999 (Devroe, 2012).[1]

Research has analysed understandings of incivilities, as well as change in dominant societal attitudes and trends about incivilities as mirrored in media outlets. A study by Peršak (2007) has, among others, shown how representations of the 'anti-social' in the British press have changed through time. Societal attitudes towards the Belgian system of local administrative sanctions as reflected in the Flemish press have also been analysed in a recent study, which found that the perceived legitimacy of sanctions also changed over time (Vander Beken and Vandeviver, 2014).

The media play a crucial role in the construction of crime, and through this suggest solutions to it (Hall, 1982). More recently, the media have facilitated the construction of anti-social behaviour as a problem. In England and Wales, for example, sensationalistic media coverage of anti-social behaviour has been a factor in labelling certain marginalised populations as deviant (Burney, 2005; Squires, 2008). As the cases of football hooliganism (Pearson, 1984) and anti-social behaviour connected to social housing (Burney, 2005; Flint and Nixon, 2006) show, societal preoccupations surrounding incivilities have been amplified by the media and have led to the adoption of punitive legislation.

Media representations of crime and crime control often rely (or rely more substantially) on the words of institutional actors, whose opinions are usually more present in the news than those of other categories of speakers (Reiner, 2002). The media may present, however, distorted and biased versions of these views (Barak, 1988). Furthermore, Barak (1988, 1994) has argued that the prevalence of biased representations in the mediated discourse on crime and crime control can (at least, partly) be connected to the relative absence of the voices of criminologists and criminal justice experts, which

[1] The GAS system (introduced by the Law of 13 May 1999) was later amended by the Laws of 7 May 2004, of 20 July 2005, and of 24 June 2013.

are crucial for the critical analysis and de-construction of misinterpreted images of crime, deviance and their enforcement responses. To encourage criminologists to participate more actively and, ultimately, to correct distorted mediated images of crime and crime control, Barak (1988) introduced the 'practice' of newsmaking criminology.

Studies in newsmaking criminology have addressed criminologists' efforts to manipulate the mediated discourse on crime and crime control. However, they have done so mostly by describing criminologists' own interventions in the media (Barak, 2007b; Fox and Levin, 1993; Greek, 1994; Henry, 1994), which tend to relate to specific, time-limited crime events or issues (Barak, 1988, 1999, 2007a; Mopas and Moore, 2012). In other words, the newsmaking criminological literature seems to have under-investigated whether experts in criminology and criminal justice participate in crime-related media debates *over time,* in this way potentially contributing to longer term shaping of mediated discourses on crime and responses to crime.

This paper draws together interest in the regulation of incivilities, the media role in defining this as a problem and the importance of particular actors in gaining a voice and thereby influencing message shaping, and through this aims to take newsmaking criminology in a new direction. It does so, firstly, by identifying the groups of people who have been successful in conveying their message in and through Flemish press news, and explores the way they have represented problems of, and suggested solutions to, regulated incivilities overtime. Secondly, against the backdrop of newsmaking criminology (Barak, 1988), it considers whether and how crime and justice experts have contributed to shaping the Flemish media discourse on regulated incivilities over the years. Overall the analysis of press news has found that the press, by giving coverage to the voices of local institutional actors, has promoted the criminalisation of nuisance and, especially, of physical incivilities. The views of criminological experts, by contrast, have remained marginal. The article concludes by suggesting how such findings present a new set of empirical and conceptual challenges for newsmaking criminology, and more generally, for public criminology.

2 Newsmaking criminology

Recent reflections over the public role of criminologists have led to calls for, or at least growing debate about, a 'public criminology', that entails active involvement of academics in shaping public and political discourses of crime and punishment. For its focus on the public role of criminologists in

the media, newsmaking criminology has also been recognised as one of the perspectives that fall within the 'idea' (Loader and Sparks, 2010: 18) of public criminology (Ruggiero, 2012; Turner, 2012).

Introduced by Barak in 1988, newsmaking criminology has been defined in Barak's later writings as the 'processes whereby criminologists use mass communication for the purposes of interpreting, informing and altering the images of crime and justice, crime and punishment, and criminals and victims' (Barak, 2001: 190). Within this criminological 'practice' (Barak, 1988), newsmaking scholars in criminology and criminal justice learn how the media operate and how to get access to them (for example, by establishing lasting relationships with journalists and media providers), as well as the communicative techniques that allow them to compete with other established actors in the process of news-making (see also Groombridge, 2007). Such techniques rely, for example, on developing journalistic and otherwise accessible skills of communication (Barak, 1988) and, in the context of television or radio news (Barak, 2007b), on understanding and advancing particular 'narrative frames'.

Newsmaking criminologists usually adopt these communicative methods to convey messages that, by providing facts or rational commentaries, radically oppose established cultural representations of crime and justice (Barak, 2007a). Edwards (2013: 212) identified four main characteristics of Barak's (2007a) newsmaking criminology: newsmaking criminological knowledge *reacts* to already identified newsworthy issues; de-constructs media images of crime and crime control by *critically* challenging the harmfulness of deemed serious crimes; *sceptically* approaches the capacity of the criminal justice system to effectively counter the crime problem; and is *partisan* in that it takes a side in the public debate in favour of, for example, the victims of particular types of crimes or of specific social movements. Criminological messages having these characteristics may well serve progressive ends, or the purpose of shaping public representations of, and policy approaches to, crime by empowering powerless groups (Barak, 2007a); however, they can also pursue more conservative or reactionary purposes (Edwards, 2013).

Whatever the purpose of criminologists' messages, they have not always been effective in producing alternative media discourses (see, for example, Mopas and Moore, 2012). The variable ability of those practicing newsmaking criminology to shape public discourses and policy has also been pointed out by Barak (2007a: 194), who noted that when successful, newsmaking efforts have usually involved the individual criminologist's 'appreciation for the particular format, frame and genre of specific media'. Notwithstanding its recognised limitations, this perspective seems to be based on the idea, so far relatively unchallenged in the relevant literature, that criminologists stand an actual chance of

correcting distorted media images of crime and crime control, at least once they have obtained access to the media and learnt how to effectively communicate through them. Such an idea, however, underestimates the powerful role that the media have in the selection of (deemed) news-worthy stories and messages, and in their framing.

3 Methods

The study is divided in two parts. In the first part, the article presents a quantitative content analysis of media news published in a selection of Flemish newspapers (or newspapers that are circulated in Flanders, the northern Dutch-speaking region of Belgium, as opposed to those distributed in the southern French-speaking Region of Wallonia) between 1 January 1998 through 31 October 2014, sampling the months with the highest number of newspaper items published on the topics of regulated incivilities (which includes regulation, incidences, perceived causes as well as proposed solutions). This quantitative analysis leads to descriptive numerical data, which provide an indication of how many times certain actors, problems and solutions appear in the press news on regulated nuisance.

In the second part, I present a qualitative analysis of how different groups of actors have represented the problems related to the regulation of incivilities and their solutions, informed by recurrent themes extrapolated from the quantitative part of the analysis. In this second part the sample described above has been supplemented with articles that appeared outside periods of 'inflated' coverage (the months when news stories on regulated nuisance were most frequent) to include articles containing experts' opinions.

The year 1998 as the starting point of the analysis allows the study to cover the media debate preceding the adoption of the GAS legislation (enacted 13 May 1999). Newspapers were purposively selected on the basis of having the highest daily circulation and the availability of articles in the database GoPress.[2] The final selection of newspapers, included quality broadsheets *De Standaard* (DS)

[2] *De Standaard, De Morgen, De Tijd, Gazet van Antwerpen, Het Belang van Limburg* and *Het Nieuwsblad* have been indexed in GoPress Academic without interruption since the inception of the GAS legislation. Although *Het Laatste Nieuws* has been indexed starting only from 1999, it has been included in the newspapers' selection since it is the most read newspaper in Flanders since 2007. *De Tijd* has been omitted due to its low rate of circulation. See http://www.cim.be/.

and *De Morgen* (DM), and more popular[3] titles *Gazet van Antwerpen* (GVA), *Het Belang van Limburg* (HBVL), *Het Nieuwsblad* (HN) and *Het Laatste Nieuws* (HLN). Other newspapers not included in the study may well have offered a different representation of nuisance related problems and of their solutions. This limitation has, however, been reduced by including in the selection press titles that show the higher levels of regional circulation and that are, therefore, more likely to have an influence on the audience.

The following keywords were used in the search: (*GAS* OR *administrative*) AND (*fine* OR *fines* OR *sanction* OR *sanctions*).[4] A search strategy focused on sanctions has the advantage of allowing the research to gather all the sets of 'problems' that are associated by those who speak regarding the aforesaid regulatory measures. Newspaper articles were not included in the sample when they referred to the system of administrative fines by using keywords not utilised in this study. Through a pilot reading through newspaper articles, however, the keywords used in this research proved to be among the most widespread in articles covering problems related to regulated incivilities and their solutions.

The search resulted in 14,837 items, reduced through consecutive-unit (or day) sampling (Riffe et al., 2014) over a period of one month and deletion of identically titled articles and doubles to 1,747 items. This strategy allowed the study to capture the continuous media debate over specific 'hot topics' and incivility-related episodes, which has facilitated the identification of similarities and differences in the actors' discourses in the second qualitative part of the research. The method of sampling months with inflated amounts of relevant coverage carries, however, the risk of representing information on specific topics and events, which may be specific for that month and not be representative for the remaining years' months.

The retrieved articles were then screened for relevance and substantive data for analysis (e.g. eliminating results comprising only bullets or headlines) resulting in a final sample of 444 newspaper articles used in the quantitative content analysis.

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[3] For a distinction between Flemish broadsheets and popular newspapers, see Raeymaeckers (2005). Velders et al. (2013: 110) emphasised that the characterisation of 'popular newspaper' (given in the study to HLN) resembles the one of the 'midmarket' dailies, rather than that of tabloids.

[4] It was decided not to include in the search the broad notion of 'nuisance' (overlast) added to the existing keyword search, as it would have substantially reduced the number of items retrieved (to 2,822).

A second keyword search was performed with the aim of identifying newspaper articles where criminologists and criminal justice experts (referred to hereafter as 'experts') were quoted, which were then added to the initial sample. 'Experts' includes researchers in the field of criminology and criminal justice working in academia, as well as those working for independent research institutions.[5] Employing the other search terms as above in a string with 'AND (*criminologist* OR *professor* OR *researcher*)', the same time period of sampling and screening for relevance and substantive content, produced a combined result of 479 items used in the qualitative analysis.[6]

4 What and how much of a problem: Results of the quantitative content analysis

This section describes the results of the content analysis (n=444) which establishes the basis for identifying and analysing the key issues of the qualitative analysis: What is represented as a problem? Who is at fault? What should be done? And, finally, who has a voice in answering these questions?

4.1 Newspapers

The popular titles *Het Laatste Nieuws* (142) and *Het Nieuwsblad* (119) provide the highest number of newspaper items where the topic of regulated incivilities were discussed, followed by *Gazet van Antwerpen* (61). An equal number of 60 items was collected in both the quality broadsheets *De Morgen* and *De Standaard*. The topic of regulated incivilities is covered only slightly by *Het Belang van Limburg*, which contained only 15 news items.

[5] According to Barak (1988: 576), criminologists that do (or should do) newsmaking are scholars who have a 'professional knowledge' of crime and justice. Since such a professional knowledge (also) derives from the carrying out of independent research, in this study we considered the pursuance of research activities as the main criterion for the identification of 'experts'.

[6] The codes used in the computer-assisted content analysis (carried out through the software Nvivo), and illustrated in a coding frame, were 'Newspaper', 'Year', 'Who', 'Problem'(which is based on the sub-codes 'What', 'Problem People', and 'Other'), and 'Solution'. 10% of the sample (or 44 syntactical units of text) was coded by two coders with the three codes 'Who', 'Problem' and 'Solution', leading to a level of intercoder agreement, calculated through Cohen's *kappa*, of 65% (64.7) (or 0.647).

4.2 Problem

What. Included among the problems that are described in the items, are noise nuisance (63); illegal dumping (55) and littering (53); violent and aggressive behaviour (54); theft and burglaries (45); parking offences (41); urinating (35); public drinking, drunkenness and abuse of drugs (25); vandalism (including graffiti and tags) (24); animal waste (23) and animal misbehaviour (11); traffic offences (20) and traffic accidents (7); posting or taping flyers and other promotional material (15); verbal disorder and abuse (8); the nuisance brought about by people procuring for and soliciting of prostitution (5); vomiting (5); feeding animals (3); fire setting (2); etc.

Problem people. Young people are referred to as a problem in 108 items, or nearly one-quarter of the news sample. Limited coverage is given to other 'problematic people' like street prostitutes (11), immigrants, asylum seekers and refugees (11), clients of prostitutes (8), activists and protesters (7), homeless (4), and football hooligans (3).

Other. Other types of problems have also been fleshed out in the news. Although the adoption and application of administrative sanctions is viewed as the preferred solution to the problem of nuisance (see below), in a number of articles they are also described as problematic. For example, the proposed or present application of administrative sanctions (including of GAS and alternative sanctions), as well as the proposed adoption or present implementation of administrative measures (which are based on the intensified controls through patrolling or CCTV cameras etc.), are seen as a problem in 163 articles. Furthermore, the adoption or expansion in the scope of local GAS regulations, and their (already approved and, for example, unclear or absurd) rules, are described as problematic in 65 items. Also the adoption of the GAS law and of its amendments are problematised (56).

Other problems highlighted in the news sample reflect the particular perspectives of local institutional actors. These speakers criticised, for example, cases dismissed by the public prosecutor and thus left to local authorities to handle through administrative sanctioning (52). Problems are also associated with the limited resources available to, and the technical or practical problems experienced by, public bodies (mostly, by municipalities and the police) in their enforcement capacities (49).

4.3 Solutions

In the majority of the sampled items, the proposed solution coincides either with the application of administrative fines (266) to problematic individuals or behaviour, or with the adoption of other types of administrative controls against them (122). In 107 items, moreover, the offered solution consists of extending the application of GAS fines to new types of behaviours or to different categories of individuals that were previously not subject to administrative sanctioning. The adoption of regulations enforced through administrative sanctions is seen as a solution in 96 items. These quantitative data suggest that by framing the solution(s) to nuisance in terms of its regulation, overall media messages are supportive of penalising uncivil behaviour.[7]

Other solutions, which are, however, lower in number, include preventive measures (94); agreement and teamwork between different public authorities (74); the adoption of local projects not envisaging a sanctioning response (32); the recruitment of extra or new personnel (22); the filing of an administrative appeal or of a judicial case (17); etc. In a number of items the adoption and implementation of the GAS law (14) and of its amendments (33) were also seen as a solution.

4.4 Who is given voice

In the sample, the voices of local institutional actors and authorities are dominant. Mayors, for example, are given a voice in 174 newspaper articles, whereas aldermen and police officials speak in 68 and 62 articles respectively. Among other local actors, there are members of the local council and of local consulting bodies (28), people in charge of running city services, departments, bodies of the municipality (26), and local public servants with (18) and without (23) sanctioning powers. Other conventional institutional actors that were given a voice included local and national politicians (49), members of the national government (45) and parliament (20), of the association of Flemish cities and municipalities (the VVSG) and of other public bodies (17).

Less present in the debate are the voices of private individuals, including of residents and their committees (18), those who have received a sanction (14), and laymen or people on the street who are

[7] However, this finding may also be the result of the specific keyword search used in this study, which is based on sanctions.

asked to give an opinion (12). The opinions of students or young people and their committees also are relatively rarely heard, especially given the extensive framing of incivilities as linked to their own behaviour. They are directly given voice in only nine items, and their parents speak in five. Youth associations and the Children Rights Commissioner express their opinions in 14 and seven news items, respectively.

Lastly, and significantly given this article's focus, the voices of experts are almost never heard, cited in only eight items published from 2006 onwards (in the 444 sample).

5 Who says: Results of the qualitative analysis

Further analysis revealed two more regular and frequent narratives, namely 'getting tough on polluting behaviour' and 'setting limits to the excessive GAS system and finding alternatives', whose discourse is analysed in more depth. Focusing on these narratives allows us to check whether (and if so, how) criminologists and criminal justice experts represent problems and solutions. The two themes also allow for a sustained content analysis of the role of experts' views over time (in the 479 item sample). While the first narrative or theme is recurrent along all the considered years' inflated months, the second can be observed mostly in the inflated months of the last four selected years (i.e. from 2011 to 2014).

5.1 Getting tough on polluting behaviour

Problem: dirty cities and neighbourhoods

Local authorities were especially successful in conveying messages about the problem of the dirtiness of cities and neighbourhoods. Such authorities include mayors, the aldermen and the members of local councils, as well as public servants working in the offices of a municipality or for one of its bodies (such as the municipal garbage collection service) in Flanders. They mostly identify the problem in the behaviour of people who throw (or leave, as in the case of animal waste) litter on the street, who dump garbage in areas where it is not allowed, who place garbage bags outside their houses irrespective of the garbage collection schedule, who fail to rightly recycle, and so forth.

Polluting behaviour is represented by them as a problem that is difficult to resolve, partly in light of the limited capacities of the municipal garbage collection services. The extent of the problem is reflected in the following representative fragment, where such difficulties are presented by a street sweeper:

> 'They clean all the streets inside the Singel at least once per day. And still it looks like the three hundred of street sweepers of Antwerp should start from zero every morning. Look, the first bit of the street is now done. But in an hour there will be garbage here again. You will see' (DS, 10 Oct. 2012).

The political representatives of municipalities (mayors, aldermen and councilmen), moreover, also tend to associate the problem of the dirtiness of cities and neighbourhoods with the complaints that citizens and residents raise in that respect. In their representations, the local dwellers not only complain about the presence of garbage on the streets, but also about the lenient sanctioning approach usually adopted by local authorities and other enforcement bodies in the fight against polluting behaviour. Societal expectations for the cleanliness of public places and for the punishment of minor environmental offenses mostly translate into a new set of actions or interventions taken (or proposed to be taken) by the political representatives of the municipality. One typical example is provided in the fragment below, where a councilman says:

> A recent survey of the population in Tongeren shows that it [animal waste, ed.] is by far the greatest source of annoyance. 'Sixty percent of the respondents place it on top of the list. While just 20% gets worried about noise nuisance. The problem of animal waste is very sensitive and as a city we want to do something about it' (HBVL, 21 Apr. 2009).

As reflected in this last fragment, the negative attitudes that citizens and residents are perceived to have with respect to dirtiness in cities and neighbourhoods are also seen to be part of the problem. Such negative attitudes are also confirmed in the fragments where citizens or residents are interviewed, where they mostly provide an image of cities and neighbourhoods as dirty and made unliveable by the presence and misbehaviour of groups of young people. As exemplified in the fragment below, in doing so residents often use sensationalistic rhetoric:

> 'To stay in a square in the middle of a residential district until 3 in the night shouting and yelling, screaming girls, time after time leaving behind a heap of gunge and empty bottles, vomit against your front door: this is nuisance. No, "a bit" is not under discussion. Whole

> neighbourhoods are dominated, held awake and made filthy by careless young people' *(*HLN, 12 Oct. 2012).

Solutions: repressive measures

Solutions to the problem of dirty cities and neighbourhoods are mostly provided by mayors, as well as by aldermen, councilmen, public servants and police officers. Although in the last four-year period the Flemish press debate focuses on the constraints to be set to the GAS system, the imposition of such limits does not refer to the punishment of polluting behaviour, which continues to attract repressive responses. Except for mayors, the other dominant voices mainly dwell on the description of preventive and repressive actions taken by the municipality to tackle polluting behaviour. Preventive measures usually refer to the dissemination of information to residents and citizens through educational campaigns, and to the setting up of improved systems of garbage collection and sorting. Repressive interventions, by contrast, rest on the adoption of local regulations and sanctions, on an intensified police presence and surveillance in the city (or in some particular problematic urban areas), and on the establishment of new (or the reinforcement of the already existing) enforcement bodies tasked with sanctioning polluters. Although in most of the news fragments, aldermen, councilmen, public servants and police officers indicate preventive and repressive measures as a combined set of solutions, repressive interventions are usually given prominence in the mediatized narration. This is exemplified well in the following fragment, where one alderman speaks:

> In eleven years' time the municipality of Molenbeek has become a lot cleaner. Following Christian Magerus (PS), the aldermen for the environment, sensitising and hard action are the keywords: 'In the past we couldn't sanction the people because there were no facilities [for the garbage collection], now there are 241 rubbish bins on the municipal ground. Also illegal dumpers are harshly approached. […] 'They have paid the costs of the removal of the garbage and on top of it received a sanction. Only in this way can the problems be limited' (HN, 12 Oct. 2004).

A special focus on the need to adopt or reinforce already existing repressive measures appears commonly in the fragments where mayors are given voice. In such fragments, mayors give prominence to repressive interventions by emphasising the ineffectiveness of the preventive measures adopted in the past years, whose efforts to change the habits of the population were unsuccessful. As

the following two representative fragments show, mayors mainly emphasise the uselessness of preventive measures by using sensationalistic rhetoric:

> 'But sensitising yields evidently too little, therefore we intervene repressively. […] We will do anything to hunt down the offender' (HLN, 4 Mar. 2008).

> 'You should force behaviour to change the mentality. Waste on the streets is a good example. For too long we have tried in Antwerp in a naive way to persuade people that it is better not to throw anything on the ground, in the hope that they would also not do it anymore. […] This proves that you should also sanction' (DS and HN, 13 Feb. 2010).

5.2 Setting limits to the excessive GAS system and finding alternatives

Problems: excessive GAS system

From 2011, and increasingly from 2012 onwards, the GAS system has been challenged for its excessive application and for its proposed expansion.

Among the groups who are given substantial presence in the media debate over the proposed (and later approved)[8] legislative changes to the GAS framework, are members of political opposition parties (and, mostly, of the Green party), youth organisations, and the Children Rights Commissioner. They problematise the GAS system by pointing at the excessive competences and powers available to local authorities, which can autonomously (and, on their account, arbitrarily) decide what is punishable as uncivil behaviour. Such discretionary powers, which are broadened by the new GAS bill, are seen to be conducive to abuses and excesses ('Often also normal forms of behaviour of young people, like hanging about with friends in a square, are bombarded as a problematic behaviour' DM, 4 Oct. 2012; 'In Hasselt and Zonhoven for example they consider already young people who sit on the edge of a bench as nuisance, elsewhere it can be that one is fined for biking without hands' HLN, 4 Oct. 2012).

The arbitrariness of the system is also emphasised by laymen and by sanctioned people whose stories are covered in the news. By mostly using sensationalistic rhetoric ('With bad will everything can be considered as disturbing behaviour' HLN, 6 Oct. 2012; 'mayors have become their own judges and

[8] The Law was passed on 23 May 2013 and entered into force on 24 June 2013.

find all sorts of asocial rules to facilitate discrimination' HLN, 30 May 2013), they associate the problem with the excessive exercise of powers by local authorities and their sanctioning bodies (like, for example, by police officers and other sanctioning public officials).

A different representation of the problem is offered by mayors of small towns and cities, whose voices are substantially present in the news. They identify the problem in the proposed expansion of their powers, which is put forward not only by the proponents of the new GAS legislative framework, but also by public prosecutors, who at different points in time express the intention to transfer some of their competences to the local authorities.

To describe the problems connected with the extension of their powers, mayors of small towns and cities use a different set of arguments. When an expansion of their competences is foreseen by a legislative act, they mostly view such changes as not necessary to enhance their daily fight against incivilities. By contrast, when the proposal to increase their competences is put forward by public prosecutors, mayors mostly make reference to the limited means and capacities at their disposal ('Such offences belong to the competence of the judicial authorities. They have the right instruments for it' DM and HLN, 3 Oct. 2014).

Especially in the last two years of the news sample (2013 and 2014), mayors increasingly tend to associate the problem with the existence of absurd rules in local regulations ('absurd restraints', HLN, 31 May 2013; 'The provisions are indeed not of this time', HLN, 31 May 2013), which have led to excessive applications of GAS fines.

Although the voices of crime and justice experts are only present in a limited number of fragments (i.e. in 15 articles, of which six are included in the years' most inflated months, whereas nine appeared in the other months) and are mostly inserted in short quotes (only two of them are commentary articles), they also participate in the media debate on the excesses of the GAS system. Experts started to generally challenge the GAS system from 2006 and, progressively in the last four considered years, when their voices have mostly appeared in the press, they have directed their critical analyses towards the legislative proposal to extend the application of GAS fines to people younger than 16 years old. By referring to research results ('Our research shows' GVA, 7 July 2006), official statistics ('the police statistics show that' DS, 31 May 2013), assessment studies ('From evaluations of the current system' DM, 4 Oct. 2012), law and juridical principles ('This conflicts with the right to assembly', 'This is contrary to article 6 of the European Convention of Human Rights' HLN, 5 Nov. 2013), experts establish a view that legislative change is not necessary or is problematic.

Solution: setting limits to the system and finding alternatives

In the last four years of the sampled period (2011-2014), mayors and other representatives of small cities and towns are especially successful in getting across messages about solutions to the problem of excessive applications of the GAS system. Such solutions rely on the limited application of GAS fines, which are to be imposed only in cases of (harmful, serious) nuisance such as littering and physical disorder. This message is well exemplified in the news published on the day when the changes to the GAS law were passed by the Belgian Parliament (on 31 May 2013). In the fragments below it is possible to see how local authorities try to reassure the public by making clear that cases of abuse will not happen in the future and that GAS fines are to be applied only in a reduced (and principled) fashion:

> 'We want to use the fines overall to penalize minor criminality', says the mayor of Waregem. 'We will not issue ridiculous fines. We set a list of what can and cannot [be fined]. In this way there will be no confusion' (HN, 31 May 2013).

> 'Yet we don't want excesses', clarifies Mayor Steve Vandenberghe (sp.a.). 'We intervene especially strongly against animal waste because it is a persistent problem. Strong action is especially taken against illegal dumping, but also against the illegal posting of bills and urinating in public. It seems unlikely to have any nonsensical fines whatsoever' (HLN, 31 May 2013).

A solution to the problematic introduction of new competences is also identified by mayors of small towns and cities in the non-implementation (or in the limited implementation) of the new legislative changes to the GAS framework, which are thought to be beneficial only for large-sized cities. This is reflected in the representative fragment included below:

> 'In our police regulation we have especially provided sanctions for vandalism, noise nuisance and for the illegal occupation of the public domain', says Mayor François Saeys. 'But an increase of the sanctions will not occur. We are not a big city and the social controls in our city already work well. More severe interventions are thus not under discussion' (HLN, 5 Oct. 2012).

Although municipalities can freely decide whether or not to implement the new powers conferred by the national GAS law at local level, they do not have the same degree of discretion when enforcement

burdens are transferred from public prosecutors to the locality. In the latter cases, mayors offer a different set of solutions to the problem: on the one hand, they mostly argue for the preservation of the status quo (where prosecutors keep and use their own competencies), on the other hand, they are not willing to allow impunity at local level. Such a discourse is exemplified in the following fragment, where a mayor (Simon Lagrange) speaks:

> 'We are now placed in a difficult position, because no one wants impunity in his municipality' (HLN, 7 Oct. 2014).

To resolve the perceived problem of local authorities being burdened with excessive enforcement responsibilities and powers, which had led to absurd applications of fines at local level, opposition parties, youth sections of the parties that put forward the changes to the GAS framework (sp.a. and CD&V) [9], youth organisations and human rights bodies (like UNICEF, the Children Rights Commissioner and the League for Human Rights) are given voice in news mostly to support rejection of the GAS bill by members of the Parliament (e.g., 'The GAS fines already led to absurd situations, like the sanctioning of the throwing of snowballs or of ringing and running' HLN, 30 May 2013).

In the last four years of the study period, criminological experts, though much less frequently than other actors, were called upon also to provide solutions to the problem of the enlargement of the GAS framework to young(er) people. In line with the anti-GAS expansion message conveyed by other groups, experts mainly contributed to media messages that would support rejection of the new proposed amendments. The difference in the discourses of these two groups of people lies in the way they substantiate their proposed solutions: while the former group does so by mostly referring to the cases where GAS fines have been excessively applied to young people, the latter mainly draws on legal arguments and research data. This scientific knowledge is not only used by experts to support the rejection of the GAS bill. It is also utilised to suggest need for the substantial revision of the existing system, as well as to offer other types of normative solutions to the presented problem. The presence of these two sets of solutions is exemplified in the two snippets included below, which show how experts (in this case, criminologist Stefaan Pleysier and criminal justice scholar Bernard Tilleman) support the revision of the GAS system by proposing normative solutions alternative to its expansion to people younger than 16 years old:

[9] The sp.a. is a socialist party, whereas CD&V is a Christian democratic party.

> ‘That is why Pleysier thinks that is absurd to expand GAS fines to young people from 14 years old, without questioning the system itself. ‘Especially because the nuisance fines for minors have seldom been used in practice, because [it would be] too time-consuming. There is a whole procedure, including the mediation with the parents. Who will start that, for urinating in public? It’s up to the public prosecutor to prosecute youth criminality. Wouldn't it make more sense to invest in better support for the youth prosecutor?’’ (DM, 24 Jan. 2012).

> ‘For this reason the dean considers this as also his task, and the one of the experts of his faculty, to thoroughly scrutinise the GAS legislation. ‘We should see what we as Law Faculty can do against these excesses. Perhaps we could check which GAS fines are experienced as fair and introduce them in all Flanders. So that the unpredictability per municipality is halted. And obviously we should examine how we could prevent GAS fines to be incompatible with legal principles. Our professor of juvenile law and juvenile criminology Johan Put will take this on. Hopefully all this will lead to a better system’’ (HLN, 5 Nov. 2013).

Furthermore, experts also emphasise the role that prevention and social policy (rather than repressive sanctions) play in deterring young people from engaging in criminal and deviant behaviour. Such a role, however, is not always seen to be incompatible with the GAS system. Preventive measures can also operate in combination with, or as an alternative to, punitive sanctions at local level. An example of such a discourse is offered by the following fragment, where a criminologist (Elke Devroe) speaks:

> ‘In this way the GAS in Antwerp is used as a lever for social policy. The young people are addressed and the fine is used as a last resort, as the young person does not live up to the mediation. Via mediation education is offered, leisure activities are provided, social projects are launched, partly financed by the city’ (DM, 5 Oct. 2012).

6 Conclusion

The results of the quantitative content analysis show that representations of regulated incivilities in the Flemish press, mainly provided by more popular press outlets like *Het Laatste Nieuws* and *Het Nieuwsblad*, have been dominated by the voices of local institutional actors, with the voices of crime and justice experts remaining marginal. Press representations of the problem have mainly referred to the nuisance brought about by polluting behaviour and by noise emissions, and identified young

people as the category of individuals who are responsible for posing the most of the nuisance-related problems. Furthermore, despite the adoption, application and expansion of the GAS system at local level being problematised in the news, they have mostly been presented as the main solutions to the presented problems.

The two main themes showed changing recurrence and frequency throughout the years sampled. Consistently since the inception of the GAS system, the press, by relying on the voices of local actors and authorities, has framed polluting behaviour as a problem and promoted its criminalisation. Local actors and authorities, in particular, have described physical incivilities as a growing source of concern, and offered solutions that are based on prevention and, mostly, on repression. Political representatives of the municipality (like mayors, aldermen and councilmen) have also added some elements to the described problem by associating it with the perceived negative attitudes of the public. In order to answer the perceived pressures exercised on them by citizens and residents, mayors have especially emphasised the importance of adopting repressive interventions targeting polluting behaviour.

In the last four years, however, press news has increasingly focused on the excesses of the GAS system, producing messages about the limits that ought to be posed to such a system. Such sanctioning limits, however, are only directed at uncivil conduct other than polluting behaviour. In contrast, and also during the last four years of the study period, polluting behaviour has hardened as the exemplary case of nuisance behaviour that ought to be subject to administrative sanctioning.

This study also has shown how different groups of actors have participated in the debate. Mayors of small towns and cities have problematised the proposed expansion of their competences on the basis of a lack of a practical need or of their limited local capacities. They mainly identified their intention *not* to exercise their new powers, or to do so only when strictly needed (for example, to avoid impunity).

Other groups have appeared in media coverage to convey and consolidate opposition to extending and expanding local sanctioning powers to young people. These groups included opposition parties, human rights bodies and youth associations.

The role of crime and justice experts was much more limited, at least in regard to the number of articles where they have appeared. In some ways, expert media messages in the last four years of the study period (when they have mostly been given coverage in the press) largely supported the perspectives of other groups in problematizing the expansion of the GAS system to younger people. In

this, they fulfilled Edwards (2013) criteria of reacting critically and sceptically, as well as taking a partisan stance. Furthermore, experts in the last four considered years also seemed to use the opportunity of commenting on proposals of expanding GAS to raise more fundamental questions about regulation of incivilities and of justice in general. Alongside rejection of the GAS bill, they proposed (and ultimately hoped for) grounded, thorough, analyses of the existing system that might lead to its substantial revision. They connected the GAS framework to fundamental legal principles and to individuals' exercise of rights, and identified other strategies aimed at effectively addressing uncivil behaviour of young people.

In conclusion, the results of this study have shown that the press has tended to select the messages of local institutional actors, and to frame stories of nuisance behaviour according to points of view mainly been centred on the criminalisation of uncivil (and, especially, of polluting) behaviour. By contrast, the research has found only minimal coverage of experts' critical opinions, which have relatively been absent in the press until 2006 and have been very limited even in the last four years of the study period, when the press began to problematize the system of administrative fines. In essence, what these findings suggest is that experts' newsmaking messages, which tend to challenge the system of administrative sanctions, may be incompatible with the press's way of news-making on this topic, which has been mainly based on the promotion of mechanisms of nuisance criminalisation. As a consequence, the results seem to challenge the idea, on which newsmaking criminology is premised, that experts can have a public role in the media and manipulate their representations of crime and punishment by learning specific communicative methods and techniques: regardless of *how* they do that, it is perhaps *what* they say that may, at times, be irreconcilable with the media framing on certain crime-related topics. However, this research also shows that when experts are given a voice in news coverage (as in the last four considered years) they have tended to develop frames that connect issues like anti-social behaviour to wider and deeper questions of justice and social control. It may be useful for newsmaking criminological research to begin exploring expert media engagement over time and across issues to consider whether this offers a route of impact.

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CHAPTER SEVEN: Conclusion

At the outset of this doctoral study, we reviewed the relevant criminological literature on nuisance and its regulation. This literature study has been carried out on the basis of the first research question of this doctoral thesis, which inspects which are the criminological theories and perspectives that have been elaborated or applied along the years to explain the raise in the regulation of incivilities and how nuisance and its regulation have been viewed by and framed within them. The literature review helped us to identify a number of knowledge gaps in the relevant criminological literature written on the topic. These gaps have informed the formulation of the subsequent three research questions of this doctoral study, which aimed to comparatively address the regulation, representation and enforcement of nuisance.

The second research question is concerned with the *regulation* of nuisance, and investigates whether courts in some selected European countries have examined the legality of nuisance regulations through fundamental principles of criminal law and whether (when needed) they have provided correctives to safeguard individual's freedoms. The third question addresses both the *representation* of nuisance and its *enforcement* and examines which are the societal attitudes towards uncivil behaviour, and how nuisance is seen and tackled by the authorities, in different cities and cities' areas (and whether cultural factors can contribute to explaining eventual differences in its representation and enforcement). The fourth research question focuses on the *representation* of regulated nuisance in the Flemish press and inspects how the (print) media have represented regulated nuisance overtime, through the voices of whom, and whether criminologists have played any role in shaping such representations.

To answer these four research questions, five articles were written and published, accepted for publication, or submitted, in international journals or in books by international publishers. The five articles have been included in chapters two through six of this thesis. With the exception of the third research question, which has been answered in both chapter four and chapter five, the other research questions are all answered in one chapter of this thesis (i.e., the first research question is answered in chapter two, whereas the second and the fourth questions are answered in chapters three and six respectively).

1 Findings

This section is dedicated to illustrating the findings of the doctoral research. The results of the research activities will be described with respect to the four research questions, which were identified at the beginning of the doctoral study.

1.1 First research question

Which criminological theories and perspectives have been elaborated or applied along the years to explain the raise in the regulation of incivilities and how has nuisance and its regulation been viewed by and framed within them?

The first research question has been answered in an article "*Explaining incivility and the social reaction to it through different criminological perspectives*", which has been included in chapter two of this thesis. In the literature study carried out in this article, we reviewed a number of perspectives, which entailed the labelling perspective, left and right realism, environmental criminology, critical criminology and especially cultural criminology. What we found is that the labelling perspective, left and right realism, and cultural criminology, have all engaged with the study of incivilities and their regulations from their outset. While the labelling perspective, left and right realism, have viewed nuisance as deviant, uncivil, or disorderly behaviour, cultural criminology has associated it with the behaviour of "not in style" groups. Other criminological perspectives, by contrast, including environmental criminology and critical criminology, have started to focus on this topic only later in time and, more notably, in the late 1980s and early 1990s. We concluded that the considerable interest that incivilities and their regulations have sparked in the public opinion and in policy-makers in the past three decades has led criminologists and theorists of social control to devise new criminological applications of established theoretical frameworks (as in the case of critical criminology) and to extend the research focus of more recent criminological perspectives (such as the one of cultural criminology) to include uncivil behaviour and its sanctioning mechanisms.

The literature review also helped us to detect the presence of a number of knowledge gaps in the criminological literature on nuisance and its regulation, which informed the formulation of the following three research questions of this doctoral dissertation (for the answers to these questions, see below in this section). By reviewing the relevant criminological literature, we found, for example, that critical criminological accounts of incivilities regulations have mainly problematized their excessive

impact on marginalised societal groups (including homeless, prostitutes, young people etc.). By contrast, they seem not to have paid an equal degree of attention to the eventual adoption, by criminal justice actors such as courts, of remedies aimed to counterbalance the excessive and discriminatory effects produced by these regulations.

Furthermore, we also concluded that criminological studies, in particular those carried out within the labelling perspective and within cultural criminology, have attended to the context-specific character of nuisance representations and enforcement. This notwithstanding, they have tended to focus on one specific societal context, thus rather neglecting to *compare* how nuisance is seen and tackled in different societal contexts.

The literature review also led to the identification of a gap in the criminological literature on (regulated) nuisance and the media, which seemed to have mostly focused on the *effects* that media reporting (especially when sensationalistic) has on the public opinion and on policy-makers. However, it has not so much addressed the *content* of media news (or what the media say and through the voices of whom), which is also relevant to (fully) understand its effects on the public.

1.2 Second research question

Have courts in some selected European countries examined the legality of nuisance regulations through fundamental principles of criminal law and have them (when needed) provided correctives to safeguard individual's freedoms?

The second research question has been addressed and answered in chapter three of this doctoral thesis, entitled *"Regulation of incivilities in the UK, Italy and Belgium: Courts as potential safeguards against legislative vagueness and excessive use of penalising powers?"*. In this chapter, we found that in England and Wales, Italy and Belgium, courts have examined the legality of nuisance regulations through the principle of legality and the principle of proportionality, and that, when they found these regulations to be incompatible with these two fundamental principles of criminal law, they have provided remedies to the safeguard of individual's autonomy.

In this chapter, we firstly reviewed the national regulatory frameworks on incivilities enacted in England and Wales, Italy and Belgium, and, by drawing on the relevant national scholarly debates, we highlighted the normative issues present in them. Through this review, we found that the problematic elements of national regulatory frameworks were mainly related to the vagueness of the legislative

definitions of uncivil behaviour (which translated into uneven local articulations of these definitions), and to the excessive effects that local public order measures were thought to have on people's (lawful) exercise of fundamental rights and freedoms. Secondly, we examined national case law to investigate whether courts informed their judicial review of legislative and administrative actions on the legality principle (which was considered in its two components of *primary legislation* and of *legal certainty*) and of the proportionality principle (which, in its criterion of proportionality stricto sensu, permits judges to check whether legislative or administrative regulations, or administrative sanctions, impose an excessive limitation on individual's autonomy).

What we found is that courts in England and Wales, Italy and Belgium, have all regarded legislative definitions of uncivil behaviour as being too vague. These broad legislative formulations have also been found by Constitutional Courts in Italy and Belgium to violate the constitutional principle of legality. To limit the scope of such definitions, courts conditioned the valid sanctioning of nuisance at the local level to the circumstance that the behaviour at issue posed a serious *harm*, or risk of harm, to others (or, more generally, to the hold of the peaceful and safe living).

Courts in Italy and Belgium, moreover, also regarded the exercise of local public order powers as disproportionate, and quashed their adopted local administrative orders, when not justified by the (actual and urgent) need to prevent the occurrence of harmful consequences to people. On the basis of their excessive interferences with individual's exercise of fundamental rights, local civil orders were also quashed by judges in England and Wales, or were "corrected" by them, in the sense that the amount of imposed sanction was reduced to match the amount of harm caused (or likely to be caused) on people by the person deemed to behave uncivilly. We therefore concluded that courts in these three jurisdictions acted as powerful correctives and as safeguards of individual's liberties.

1.3 Third research question

Which are the societal attitudes towards nuisance and its regulation, and how is nuisance seen and tackled by the authorities, in different cities and cities' areas (and can cultural factors contribute to explaining eventual differences in its representation and enforcement)?

The third research question has been answered through two case studies, which have been carried out in chapter four and in chapter five of this doctoral thesis respectively. While the first case refers to the nuisance of street prostitution (chapter four), the second centres on the study of the nuisance of public

drunkenness (chapter five). What we found in these two case studies is that in uneven cities and cities' areas there are similarities, along with differences, in the dominant societal attitudes towards nuisance, and in the way police officers look at, and react to, uncivil conduct. To the analytic purpose of explaining the different representations of and enforcement responses to nuisance, we also found that cultural values can be very relevant and useful.

In chapter four, "*Regulating street prostitution as a public nuisance in the "culture of consumption:" A comparative analysis between Birmingham, Brussels and Milan*", we developed the first case study. We relied on a theoretical model, the culture-of-consumption model, that associated specific physical characteristics, socio-economic compositions and societal attitudes to three urban areas of the contemporary city, which Hayward (2004) regarded as "spaces of consumption and pleasure", "centripetal spaces" and "spaces of deprivation". By testing the culture-of-consumption model in the identified three spaces of the three selected cities of Birmingham, in the UK, The Brussels Capital Region, in Belgium, and of Milan, in Italy, we established that one specific area of Milan, known as *Porta Nuova,* diverted from the chosen theoretical model.

Porta Nuova is a high-end area of shopping and business during daily hours, and a vivid entertainment zone at nights. As such, it presented the characteristics of Hayward's (2004) described "spaces of consumption and pleasure". However, it diverted from the model in that it did not present two defining elements of "spaces of consumption and pleasure": *Porta Nuova* is not featured by the presence of street prostitution, nor it is not characterised by tolerant attitudes towards the nuisance brought about by it at nights.

To explain the negative societal attitudes towards street prostitution in this regenerated area of Milan, which were more negative there than in the other "spaces of consumption and pleasure" of Birmingham and of The Brussels Capital Region, we drew on contextual cultural elements and, especially (due to the limited data provided by the local requested actors), on national cultural factors. Context-specific cultural factors explaining the high intolerance to street prostitution in well-off areas of Milan were inferred, for example, from the answers provided to an open-ended questionnaire by a third sector association, the Fondazione Padri Somaschi – Servizio Bassasoglia, which suggested that people in Milan tend to look at street prostitution as something that undermines their life quality and the liveability of spaces. Other contextual elements referred to the local importance of prostitutes' aesthetic appearances, which we derived from the specific provisions of the "anti-prostitution order" in force in Milan until 2011, which penalised prostitutes on the basis of their dress code (City of Milan,

2008). Cultural elements embedded at the country level were extracted from the literature describing the specific role that the "respectable woman" is seen to have in the Italian society (Quassoli, 2004; Crowhurst, 2012) as well as from surveys, where Italians reported their (perceived) negative attitudes to gender, sex and sexuality (Eurobarometer, 2012; FRA, 2012).

In chapter five, "*Public drunkenness as a nuisance in Ghent (Belgium) and Trento (Italy)*", we carried out the second case study. Through two culture-based hypotheses, we wanted to explore and, further, to explain different realities of the nuisance of public drunkenness in one selected nightlife area of the city of Ghent (in Belgium) and in one located in the city of Trento (in Italy), and the different representations of, and enforcement attitudes to, alcohol-related disorder of police officers there. The results showed that the nuisance of public drunkenness, as occurring in the two selected nightlife areas, did not substantially vary. What changed instead, and was subject in the article to a culture-based explanation, was the way police officers looked at public drinking and drunkenness in these areas: while in Ghent police agents viewed alcohol-related disorder as normal (in so far as it did not involve behaviour that bothered, harmed or endangered other people), in Trento agents looked at the phenomenon of public drinking and drunkenness as problematic and linked it with the presence of certain groups of people (including punks, immigrants and homeless), which, at least according to some of them, had certain recognised outer or aesthetic characteristics. Cultural elements like the importance of aesthetic styles for penal actors in Italy also appeared to contribute to the understanding of how some police officers in Trento look at the nuisance of public drunkenness.

The results of the study also showed that different police representations of alcohol-related disorder did not correspond to distinct levels of enforcement of (national and local) nuisance regulations. Both the Ghent and the Trento police officers only exceptionally (proactively) sanctioned alcohol-related uncivil conduct. However, the interviewed police agents justified their limited interventions on the basis of two different reasons: in Ghent, disorderly behaviour connected to the consumption of alcohol was mostly tolerated by agents and was sanctioned by them only when considered to exceed the norm of acceptable public drinking (that is, when the behaviour was regarded as bothering, or harmful to, others); in Trento, by contrast, it was scarcely punished by police agents on the basis of mere pragmatic reasons, which related to the limited availability of police officers at nights (and, therefore, to the difficulties of carrying out any intervention under safety conditions).

The enforcement practices of the Trento police officers changed, however, and were said to be more responsive, when an intervention was (reactively) requested by the annoyed residents living in the

considered nightlife area. The negative attitudes that the residents were perceived to have with respect to alcohol-related disorder occurring in the area (which were explained by police officers through context-specific factors, such as the limited presence of night entertainment opportunities for students in previous years) also led police agents in Trento to envisage alternative sanctioning strategies, which targeted the bars of the nightlife location, rather than the individual clients adopting uncivil behaviour.

The results of these two case studies indicate the importance of considering cultural elements, which can either be embedded at the macro-level of the country or at the micro-level of the city or city area, to understand different societal attitudes to, and law enforcers' representations of, disorderly behaviour in uneven settings. They also indicate the importance of asking police officers about their responses to nuisance, which, as showed in the second case study on the nuisance of public drunkenness, can be influenced by the attitudes that people with policy-making influence[1] are perceived to have with respect to uncivil behaviour.

1.4 Fourth research question

How have the media represented regulated nuisance overtime, through the voices of whom, and have criminologists played any role in shaping such representations?

The fourth research question has been answered through the carrying out of a third case study, which has been included in chapter six of this thesis. In "*Media representation of regulated incivilities: Relevant actors, problems, solutions and the role played by experts in the Flemish press"* we found that the press, by giving voice to local actors and authorities, has mostly promoted the criminalisation of uncivil (and, especially, of polluting) behaviour. We also found that the messages of crime and justice experts, which have critically challenged the system of administrative fines and, in the last four years of the study period, have linked it with questions of justice and social control, have seldom appeared in the media debate on regulated nuisance, therefore unlikely contributing to its framing.

More accurately, through the quantitative content analysis we found that popular newspapers, more than quality broadsheets, covered the topic of regulated nuisance. All types of newspapers tended to mostly give voice to local authorities and actors, over other categories of actors. The types of uncivil

[1] In this case study, the interviewed police officers considered the residents living in the well-off area of the historical city centre (where the nightlife location is situated) as powerful social groups, which influence the shaping of the local urban safety policies.

behaviour that were mostly problematized by them were polluting behaviour and noise nuisance, and the problematic people (or the individuals or groups who were thought to be the problem) were mainly young people. The application and expansion of the system of administrative fines (or GAS-fines), although problematized in the more recent news, was mostly seen as the solution to the presented problems.

We analysed the content of the messages of the groups of actors speaking in the news in the qualitative content analysis, through the identification of two main (recurrent and frequent) themes on the topic of regulated nuisance. The first theme, which referred to sanctioning polluting behaviour, was observed as frequent and recurrent throughout time. Within this theme, we observed that the dominant voices were the ones of local actors: the elected and administrative members of the municipality presented physical incivilities (e.g., littering, illegal dumping etc.) as a problem, and proposed preventive and, especially, repressive types of solutions to solve them. We also observed that the political representatives of the municipalities, in their representations of nuisance as a "problem", tended to refer to the perceived negative attitudes of people and that mayors, in their proposed solutions, placed emphasis on the adoption of repressive interventions.

The second theme, which is recurrent only in the last four years of the study period (2011-2014), identified the system of GAS fines as a problem and centred the proposed solutions on the identification of limits and alternatives to such a sanctioning system. These solutions, however, only refer to uncivil behaviour other than polluting conduct, which also in the last four considered years has been considered as a typical case of uncivil behaviour subject of administrative sanctioning.

Different types of actors participated in the media debate focused on the identification of limits and constraints to the GAS system. Mayors of small cities and municipalities, for example, viewed the (proposed) expansion of their local competences as a problem and indicated as a solution the non-implementation, or the limited implementation, of their new competences (if approved). Different messages were conveyed by minority parties, human rights bodies and associations of young people: they problematized the arbitrary and excessive local exercise of administrative powers against young people, and urged the Parliament not to pass a new proposed legislation, which aimed to reduce the age-limit for administrative sanctions from 16 to 14 years old.

Within this second theme, also the voices of experts in criminology and criminal justice were heard, although only in a very limited number of newspaper articles. Drawing on research results and on legal principles, experts represented the (proposed and later approved) reduction of the punishable age

as a problem. More broadly, in the last four years of the study period they seemed to comment on the proposed expansion of the GAS system to raise more fundamental questions about the regulation of uncivil behaviour and of justice in general. By suggesting the need for a thorough review of the GAS system (which was viewed by them as incompatible with fundamental legal principles and as excessively intrusive into individual's autonomy), they proposed different kind of normative solutions to the problem of the early engagement in deviant behaviour.

In essence, we concluded that the press, by relying on the messages of local institutional actors, has mostly promoted the criminalisation of uncivil (and, more accurately, of polluting) behaviour. By contrast, it has relatively neglected the messages of experts, which have been found to be rather incompatible in their content with the dominant media framing on the topic (as they ultimately challenge the system of administrative sanctions). This incompatibility, we argued, may challenge the idea, on which newsmaking criminology is premised, that criminologists stand an actual chance of altering media images of crime and punishment, once they have obtained access to them and learnt how to properly communicate through them. However, by investigating experts' media engagement through time we showed that, in the last four considered years (when their voices have mostly been represented in the press), criminologists have developed frames that link uncivil behaviour and its regulation to deeper questions of justice and social control. Therefore, we highlighted the relevance for future newsmaking criminological research to also investigate how experts have engaged with the media over the years, which is an activity that may offer to them important venues to impact on the media.

2 Impact on academic research

This doctoral dissertation has approached the study of regulated nuisance from different angles, which correspond to its *regulation*, *representation* and *enforcement*. Within these angles or areas of inquiry, we addressed specific knowledge gaps, which we detected in the relevant literature at the beginning of the doctoral study. The findings of this study have, therefore, different implications for the academic research concerned with investigating the regulation, representation and enforcement of uncivil behaviour.

This doctoral research has advanced the previously established critical criminological knowledge on nuisance regulations by focusing on the remedies provided by criminal justice actors (by courts, in our

case) to the illegitimate and excessive exercise of public order powers, which is something that has been under-investigated in criminological research. More accurately, the study has shown that notwithstanding the presence of (illegitimate and excessive) nuisance regulations, courts in these jurisdictions have, in practice, provided correctives by neutralising or reducing their excessive or disproportionate effects onto people's rights.

In the doctoral study we also addressed the *representation* and *enforcement* of nuisance and its regulation in a comparative perspective. This comparative exercise has brought new insights into the criminological literature, especially to the one written within the framework of cultural criminology (and, within it, of the Night-time Economy)[2], which, when addressing the context-specific character of nuisance, and of the social control mechanisms devised to target it, has mainly focused on one specific context. The findings of the study have suggested that, in different cities and cities' areas, nuisance can be differently approached by dominant majorities, and that it can be differently seen and tackled by the authorities. The research has also shown that, in order to understand and explain the differences in such societal contexts, context-specific or national cultural factors can play a very important role and should be considered (at least, alongside other relevant elements) in future empirical research concerned with the comparative study of nuisance and its regulation.

The doctoral research also contributes to further the criminological knowledge on media *representation* of regulated nuisance. It has done so by focusing on the *content* of press representations, that is, on the represented problems and solutions connected to regulated nuisance in the Flemish press and on the categories of actors who contribute to such press representations. This area of inquiry has so far been under-addressed in the relevant criminological literature, which has conversely tended to focus on the *effects* that media messages have (or are thought to have) on the public opinion and on policy-makers. Furthermore, by inspecting the extent to which criminologists have participated in the public discourse on regulated nuisance *through time*, this doctoral study has also contributed to the newsmaking criminological literature, which has under-investigated their role in shaping the public views on crime and punishment over the years.

[2] For more on this literature, see chapter five of this thesis.

3 Suggestions for future research on regulated nuisance

The findings of the doctoral study on the regulation, representation and enforcement of nuisance lead to a number of research avenues and areas of inquiry, which ought to be explored in further research carried out in the area.

A first research path has to do with the regulation of incivilities. When we investigated the regulation of nuisance in England and Wales, Italy and Belgium, we found that regulations and local regulatory practices, especially when targeting harmless behaviour or simply people's "alternative" (not socially "accepted" or "approved") lifestyle, can have an excessive impact on individual's freedoms and rights. For the potential disproportionate limitations that these regulatory systems may impose on the exercise of people's fundamental rights, we consider it important for academic research to engage in the analysis of regulations of uncivil behaviour, also through classic principles of criminal law, in other European countries.

The research findings have also the potential to benefit future empirical criminological research concerned with understanding and explaining *societal attitudes* towards uncivil behaviour and their regulations in local contexts. Before developing this point further, we should, however, clearly point out that this doctoral research has only *indirectly* addressed the societal attitudes of dominant social groups, which were reflected in the views of other inquired actors (e.g., local experts, residents' committees, police officers etc.). In essence, we did not directly inquire from individuals (belonging, for example, to majority groups) about their attitudes towards uncivil behaviour. The undertaking of such a research activity should, however, feature future empirical research on the topic, as it will allow researchers to obtain direct insights into people's perceptions of uncivil behaviour and lead, perhaps, to better tailored local responses to it.

Scholars have long emphasised how the definitions of what accounts as "unacceptable" and disorderly behaviour, as opposed to "acceptable" conduct, are context-specific: they vary depending on the time and the space when and where they occur, and are overall reliant on the local contextual sensitivities (Whitehead et al., 2003; Burney, 2006; Millie, 2008a, 2008b; Peršak, 2014). Our comparative research expanded this existing body of knowledge by showing that, along with differences, there are also similarities in the ways incivilities are socially seen and tackled in urban areas across different European cities. It also, and most notably, showed the importance of looking at culture, or at cultural elements embedded in the country as well as at the local level, to understand the differences in the societal attitudes towards incivilities across cities and their urban areas. Cultural elements should,

therefore, be taken into account by scholars (at least, among other relevant factors) when investigating societal representations of incivilities at the local level.

As this research has shown, an important research method that helps to capture relevant national or contextual cultural elements is the *comparative study*. By comparing attitudes and enforcement practices to nuisance in uneven cities and, within them, across their areas, in this doctoral study we were able to detect local differences, and to explain such differences through culture. Comparative research, however, can also be fruitful to investigate the representations and law enforcement of incivilities at the broader level of the region or of the country. For example, it may be interesting for criminological research to comparatively investigate how the (regional or national) mass media[3] have represented particular types of uncivil behaviour, and to do so across a number of regions or countries. Finding eventual differences in how the media present nuisance (as a problem, or, by contrast, as relatively unproblematic) in different countries, or regions within a country, may lead to unpack relevant cultural elements embedded at these levels, which may also represent valuable sources of analytic explanation.

Considering national or local cultural elements for analytic purposes, moreover, may enhance our understanding of the representations of, and enforcement responses to, incivilities in specific urban areas also in a number of other ways, which have not been taken into account and explored in this doctoral research. These "ways" refer, for example, to the manner in which the cultural values of majority groups interrelate with their perceptions of the urban *space* and its architectures, or of the areas where they live (and want to live) and pass by. Investigating how different societal groups *culturally* perceive[4] the urban space and whether this representation has an impact on the way they perceive and construct incivilities (as problematic or, by contrast, as tolerated or even celebrated forms of behaviour) can also be beneficial to the study of incivilities and of their regulations at the local level.

Culture, we argue, is a much useful element to understand how incivilities are socially seen and tackled in cities and in their specific urban areas. Relevant cultural factors and dynamics, as we

[3] Research may not only focus on the print and the electronic media, but also on the social media, which have been recognised a crucial role in shaping how public views on crime and crime control are formed and circulated (Jewkes, 2005).

[4] On the need for cultural criminology and, more broadly, for criminological research to focus on cultural representations of space in the study of crime and crime control, see Hayward (2012).

illustrated above, do not only refer to the established national values and beliefs; they also emerge from (and are embedded in) the region or the province, or from the specific local *context* where the research is set. For this reason, we consider it important for future research, interested in the empirical investigation of regulated incivilities, to focus as much as possible on the micro level of the city and, within it, of the city area, neighbourhood, and street. The attention to the micro level has, in fact, the potential to allow the researcher to capture the relevant cultural factors that provide explanations for how majority groups look at, and react to, disorderly behaviour in that city segment.[5]

The results of this doctoral study have also implications for future research addressing the law enforcement of incivilities. Once again, we need to underline the importance of culture (and, perhaps, of the interrelation between culture and space) to understand and explain police representations of, and policing strategies towards, disorderly behaviour at the local level. In other words, when focusing on the attitudes towards uncivil behaviour and "uncivil people" of agencies of formal control, criminological research should also take into account their embedded values and norms, as well as the *perceived* values and norms of people with policy-making influence in a given community.

Another important direction for future research covers the topic of crime prevention at the European level. Since the beginning of the last decade, the European institutions have included in their crime prevention strategies a broad definition of crime, which entails not only proper crime, but also sub-criminal forms of behaviour, such as disorderly and uncivil conduct, which engender insecurity and fear in the community (see, for example, European Commission (2000) and European Council (2001)). In light of the results of this doctoral thesis, it would be interesting for future research to inspect whether the EU institutions (in the person of relevant policy actors) have a view on the often excessive local exercise of crime prevention powers to the detriment of people's rights and have envisaged an approach (which, due to the EU limited competences in the field of crime prevention, can only be based on soft-law mechanisms) to "counteract" such disproportionate interferences into individual's autonomy.

Finally, research should perhaps also focus on "new" types of incivilities, emerging as a problem in our contemporary society. As mentioned in many sections of this thesis, what accounts as uncivil behaviour is not "fixed" in space and time: it changes according to the dominant societal sensitivities

[5] A similar invitation for critical criminologists to focus their analytic efforts on the micro level of the city segment, and to the cultural elements and societal sensitivities present there, was also put forward by Loader and Sparks (2002).

and to the (national or contextual) cultural values of people. These sensitivities may also be influenced by the media, which have a relevant role to play when it comes to shaping our views on the social phenomena surrounding us. By reading the news, my impression is that new examples of problematic, uncivil, people may have been created in response to recent "panics", or fears and anxieties over contemporary social phenomena happening in our society. An example may be represented by the case of refugees.

Due to the presence of sanguinary civil wars and of religious and separatist conflicts afflicting several countries in the Middle East and of the north of Africa, in the past few months many European countries, and especially the countries in its southern region, have started to daily receive increasing numbers of refugees. Their "distribution" or relocation from the southern countries to the other European member states has often raised concerns in the receiving countries and sparked the protests of the conservative parties and sections of the population there. The presence of refugees in the southern European countries has similarly been problematized: also in Italy, many right-wing political parties have raised concerns over their presence in the country and, more specifically, in the Italian cities.[6] From my personal reading through Italian newspaper articles, I found many examples of news reporting the local adoption of tough approaches on people, who have mainly been identified as refugees,[7] found begging on the streets, selling counterfeit goods in wealthy city centres, or simply thought to "adopt conducts that are prejudicial to the urban decorum".[8] Such repressive approaches have also included the adoption of public place bans, which prohibit certain groups to enter and be in certain wealthy areas of the city.[9]

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[6] See, for example, the Lega Nord, a right-winged Italian political party http://www.leganord.org/notizie/le-news/13932-immigrazione-salvini-stop-invasione-esposto-contro-governo-per-favoreggiamento-clandestini, or http://www.leggo.it/NEWS/MILANO/milano_corteo_contro_immigrati_lega_forza_nuova_sabato/notizie/956262.shtml (accessed on 10 December 2015).

[7] Refugees, in turn, have often been denoted as "clandestino" or "illegal", "irregular" immigrant and, less often, neutrally called as "immigrants" or "migrants". For insights into the political ideological connotation of the term and on its effects on the police in Italy, see Quassoli (2013).

[8] See http://www.ilmessaggero.it/pay/edicola/mendicanti_e_abusivi_ecco_la_stretta_off_limits_le_zone_di_pregio/notizie/1574788.shtml (accessed 10 December 2015).

[9] In the case of Rome, for example, a regulation has recently been enacted to ban "immigrants" from the area of the historical city centre. The target groups are penalised on different grounds: they are thought to contribute

Although the case of refugees just illustrated is only an example, which resulted from my own speculation developed from mere anecdotal evidence, I think it would be very relevant for future scholarly research to focus on the "new" socially constructed cases of uncivil behaviour or of uncivil, problematic, groups, and to explore, describe, analyse, and, therefore, understand and explain how (and why) they are socially viewed as a problem, also by using spatial and cultural levels of analysis.

4 Impact on (national and local) policy-makers and on local authorities

The research findings also lead to a number of policy implications. Firstly, they inform the national policy-maker in the design of national safety policies. As explained in chapter three of this thesis, the national legislator, after carefully considering *what* conduct to criminalise, or the content of criminal norms,[10] should pay heed to *how* it does it. Formal requirements, such as the principle of legality and the principle of proportionality, also inform the criminalisation process. They require that national legislations having a punitive character contain clear(er) definitions of the behaviour to be penalised at the local level (preceded, as above, by a thorough reflection on the content of the criminal law), and that they do not rely on measures that disproportionately constrain individual's autonomy.

Secondly, the results of this doctoral dissertation have also an impact on local policy-makers. The often excessive use of local regulatory powers to the detriment of individual's rights should encourage local authorities to only make a limited use of their sanctioning powers. Having said this, we should also recognise that, given the often broad competences attributed to municipalities by the central government, local authorities can find it hard to better define the object of their regulatory powers (i.e., the deemed uncivil conduct). Such difficulties may likely arise also when clear(er) definitions of the punishable conduct would be provided by the national legislator. Even in this case, in fact, local authorities would still be afforded a certain margin of appreciation, which may lead to measures that,

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(with their mere presence) to deteriorating the urban order, to engage in minor crimes and to cause safety-related issues. See, for an example, http://it.blastingnews.com/cronaca/2015/09/roma-stop-ad-abusivi-e-mendicanti-per-loro-le-zone-di-pregio-saranno-off-limits-00566993.html.

[10] It is outside the scope of this doctoral dissertation to speak about the so-called substantive reason for criminalisation, which are the legal grounds that justify criminalisation (e.g., the harm principle, the offence principle etc.). We refer to the relevant literature and, for example, to von Hirsch and Simester (2006) and Peršak (2014), for insights into the doctrinal debate around the grounds for criminalisation applied to the case of the regulation of incivilities.

by targeting (minor, harmless) uncivil behaviour, have the potential to excessively impact on individual's rights.

As a general rule of thumb, local authorities should carefully think of what behaviour they want to penalise through nuisance regulations. According to the relevant literature, a case can (only) be made for the local sanctioning of seriously harmful and disruptive (despite not properly criminal) forms of behaviour, which have the potential to exacerbate and seriously impair the living conditions of many individuals and communities (see, for example, Burney (2006), Duff and Marshall (2006), Roberts (2006)). In order to focus their interventions on serious types of disorderly conduct (and leave outside minor harmless incivilities), we believe, local authorities should strive to better define the local definitions of punishable conduct, for instance, by providing a number of examples of the considered punishable conduct.[11] These examples are important as they not only make it clear(er) to sanctioning officials which *type* of behaviour is subject of punishment at the local (or at the provincial, regional or national) level(s). They also inform local competent sanctioning bodies and officials on the (minimum level of) *gravity* or severity of such cases of incivility. Therefore, even if a certain behaviour would be considered as uncivil within a local context (e.g., noise nuisance), by giving examples the municipality would make sure that only the gravest forms of it would qualify for the local sanctioning (e.g., loud, intrusive, repetitive and long emissions of sound from neighbouring houses). The formulation of the (local, provincial, regional) guidelines, moreover, should ideally also be accompanied by training and dissemination activities, which are aimed to guarantee that the competent sanctioning officials know, understand and correctly apply the given norms.

[11] Local authorities can do that, for example, by extrapolating a list of uncivil behaviour from the conduct that is perceived to be problematic by the community of reference. To this end, they can rely on several sources (including research studies, perception surveys etc.), alongside their personal perceptions (which, in small towns, may the only available means of getting to know (dominant) societal attitudes towards uncivil behaviour). Cities and municipalities can do so individually, in their own regulations, or collectively, for example, within the framework of larger institutional agreements, which, to allow for some sort of homogeneity across the territory, may involve other neighbouring cities, as well as provinces and regions.

To conclude

This doctoral dissertation has focused on the *regulation, representation* and *enforcement* of uncivil behaviour.

The findings of the research have shown that national incivilities regulations in the UK, Italy and Belgium are incompatible with fundamental principles of criminal law and that many local measures often excessively intrude into people's exercise of fundamental rights. This notwithstanding, courts in these jurisdictions have acted as safeguards of individual's autonomy by neutralising or reducing the impact on people's freedoms of illegitimate and excessive nuisance regulations and measures.

By comparing the social attitudes towards nuisance and its regulation, and the way law enforcers see and tackle incivilities, in different societal contexts, the doctoral research has also highlighted the presence of similarities, as well as of differences, in the representation and enforcement of nuisance. It has also suggested that, in order to enhance our understanding of the differences in such contexts, national and contextual cultural elements are important and should be taken into account in future comparative empirical research addressing the representation and enforcement of uncivil behaviour.

Finally, the findings have also provided insights into the ways the print media have represented the problems and solutions connected to regulated nuisance overtime. They have suggested that the press, by relying on the voices of local actors and authorities, has promoted the criminalisation of nuisance and, more specifically, of physical incivilities. By contrast, the voices of criminology and criminal justice experts, which have challenged the sanctioning system and (in the last four years of the study period) have raised more general and fundamental concerns about social control and justice, have remained marginal.

In conclusion, this doctoral research has provided additional empirical data on the regulation, representation and enforcement of incivilities, which are important topics within which empirical research is much needed. The results of this doctoral research will hopefully stimulate future research avenues and, for example, lead to the formulation of new empirical research questions and to the identification of novel areas of inquiry, which will help to further advance our knowledge and understanding of the societal attitudes towards nuisance and its regulation, and of the ways uncivil conduct is seen and tackled by the authorities.

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APPENDIXES

APPENDIX ONE

APPENDIX ONE: List of topics addressed in the interviews with police officers

Research on the nuisance of public drunkenness in Ghent (Belgium) and Trento (Italy)[1]

I. Brief overview of the study and aim of the interviews

The doctoral research aims to comparatively analyse the nuisance (*overlast, incivilité*) of public drunkenness in two European cities, which are Ghent (in Belgium) and Trento (in Italy). In order to inspect how the nuisance of public drunkenness is (differently or similarly) viewed in these two cities, the research methodology relies on systematic observations as well as on interviews with law enforcement agents.

By interviewing police officers in [Ghent/Trento], the research aims to inspect the situational circumstances under which the phenomenon of public drinking is regarded as a nuisance by them.

Moreover, the research also aims to detect the attitudes of the general public in respect to the nuisance of public drunkenness and the extent to which local nuisance regulations are enforced by police agents.

The interviews will cover these three main topics, which are further described in the section below.

II. Interviews with local police officers. List of topics:

1. Views of local police officers on the nuisance of public drunkenness

The first part of the query aims to identify the situational circumstances that render public drinking a nuisance for police officers. These circumstances may refer, for example, to the presence of people drinking in certain time-space settings, and/or to the particular behaviour adopted by alcohol users.

2. Public concern over the nuisance of public drunkenness

[1] The following document entitled "List of topics" has been sent to the Ghent police (and, particularly, to the office "*contactpunt studenten*") and, once translated in Italian, to the central secretariat of the Trento *Polizia Locale*.

In the second part of the interviews with police officers, citizen's perceived views on the nuisance of public drunkenness are to be addressed. Such attitudes may be reflected, for example, in the type and frequency of individual complaints to the local police, in the social and individual reaction to drunks etc.

3. Level of police enforcement of local regulations

This part of the interview aims to identify the circumstances in which police agents usually take action against the nuisance of public drunkenness and the measures that are taken by them.

APPENDIX TWO: Category system for the coding of newspaper articles

Coding frame or category system

1) Year

Code the year when the newspaper item has been published.

2) Newspaper

Code the name of the newspaper where the newspaper article has been published.

3) Who

Code the function of the person(s) who is given voice, also indirectly, in the article (e.g., burgemeester, politie agent, ambtenaar, etc.). Code only the function when it is first mentioned. If the same category of people speaks many times in the article, code his/her function only the first time.

4) Problem

Code any problem(s) referred to in the news item. It can refer to behaviour (What), to certain people (PP), to the regulation and so forth (Other).

- **What**

Code the main problematic behaviour referred to in the news item, over which there is debate or concern. If the article is about one particular type of nuisance, code it when it is first mentioned in the text.

In general, code the first mention of the problematic behaviour unless subsequent sentences are better (more detailed/clear/described with several words).

If the focus is on a specific type of nuisance behaviour ("*overlast*" in Dutch), code that. If the focus is half on the specific type of *overlast* and half on *overlast* in general, then code both/all.

- **Problem people**

Code the individuals or groups referred to in the newspaper article that are associated with a specific anti-social/uncivil behaviour.
In general, code the problematic people when they are first mentioned in the text unless subsequent sentences are better (more detailed/clear/described with several words).

5) Solutions

Code the solutions that are offered/proposed to specific problems discussed in the article. They may refer to (but not be limited to) the problematic behaviour being discussed in the item (What), its regulation or the implementation/enforcement of local incivility regulations (Other). Code the sentence(s) or paragraph(s) where the solutions are described.