A swelling culture of control?
The genesis and the application of the law on incivilities in Belgium

Summary

The theme of governing antisocial behaviour and incivilities in the public space became more important on the research agenda over the last twenty years. Citizens complained about disturbing behaviour, local police forces asked for government's attention for anti-social behaviour, local authorities were putting the fight against it on the political agenda and criminologists tried to offer theories and practices that could work. Problems of everyday life like incivilities became an important item in society, for both the governing institutions as the citizens. The 'quality of life' discourse gained more interest, with the focus on commercial benefits and economic perspectives (Crawford, 2002a). The United Kingdom promoted a real 'politics of behaviour' over the last thirty years (Field, 2003). Incivilities can be defined as problems of 'regulatory crime' because of the regulatory-disciplinary approach of crime prevention (Bruinsma & Huisman, 2006). Skogan (1992) distinguished the physical, the social and the criminal incivilities. Physical incivilities give an indication of a disorderly environment (*'untended property'*) (Lagrange, Ferraro & Supancic, 1999, p. 313). Examples are vandalism, tagging, litter, dog excrements, noise, destruction of street furniture etc…deterioration of the neighbourhood. Criminal incivilities are minor offences against the penal law and social incivilities are acts of nonconformist behaviour within a certain context. Social incivilities are called "incivilities of public disorder" or "antisocial behaviour". Examples are conflicts between neighbours, street fights, drunkenness, harassment, hanging together on streets and open spaces, begging, insulting and offending passengers, etc…The concept of incivilities rests very nebulous and is at any rate broad enough to cover most, if not all, offensive conduct that might plausibly be targeted for criminalisation (Burney, 2006). Governance of problems of public disorder and incivilities is in the United Kingdom, the Netherlands and in Belgium very closely intertwined. Antisocial behaviour is defined in this dissertation as '*tangible behaviour in the public space that can cause material or moral inconvenience amongst citizens (inhabitants and visitors) of a city in which both the individual citizen as society can be victimised'.* In order to be included in the research subject, the antisocial behaviour has to take place in the public space.

In this dissertation "incivility" issues are studied in a broader context of contemporary crime control and its organizing patterns. The development of the politics of behaviour can be explained by different characteristics of the period referred to as the "late modernity" (Beck, 1992; Garland, 2001; Young, 2007). A period that can be described as '*a society of the elsewhere, a society where culture and space separate, where anxiety, hope and aspiration have reference points global in their reach, where virtual realities mediate an already complex quilt of cultures and experiences in the everyday urban reality'* (Young, 2007, p. 197). This period knows distinctive features as the rising of crime rates, the increasing feelings of insecurity and fear, the privatisation of former public tasks (private prison, private policing, gated communities, technical crime prevention tools as CCTV, etc..), the modernisation of the working process, the collapse of the social institutions and the welfare state, new liberal management and marked principles entering governance creating gaps between the wealthy and the poor, the 'normal' and the 'dangerous other' with consequences as economic and social exclusion of different vulnerable groups in society.

The definition of the issue in this dissertation is the question whether or not *the new security discourse led to a larger control by the government and the exclusion of the well-being of meaningful groups of the population.* To study this issue we first analysed the characteristics of the late modern society as explained by many authors (Bauman, 2007; Beck, 1992; Braithwaite, Cohen, 1979,

Boutellier, 2003, 2007; Cachet, 2008; Crawford, 2004; Giddens, 1990, 1992; Hughes, 2007; Johnston & Shearing, 2003; Young, 2007, Wacquant, 2006). These scientific analyses provide insights in the social, cultural and political forces that gave rise to different aspects of the late modern society. The designations used for this period are diverse: 'new punitiveness', 'populism of sanctioning', the desire to punish', 'security utopia', 'risk management', 'reflexive modernisation', 'new times', 'post-fordism', 'post-welfarism', 'globalisation',' information age', 'network society', 'neo-liberalism', 'new penology', 'liquid modernity', 'radicalized modernity', 'penal regression' 'pénalisation du social' and 'l'État sécuritaire'.

The study seeks for an answer to the central research question, namely: *"Was the law on incivilities in Belgium conceptualised and applied as a new instrument of control, the central theme in the 'Culture of Control' of Garland?"* This question refers to the title of this dissertation 'a swelling culture of control?' In order to study the main research question, this dissertation is split up in two different parts, each with their own chapters.

A *theoretical part* on the one hand delivers a literature study of the characteristics, the causes, the assumptions and the discourses behind the late modern society in general and the contemporary crime control in particular. This analysis provides insights in the strategies of preventive and control policies and the institutions responsible for governing incivilities in some countries. The analysis reveals a complex set of social reaction of different institutions towards crime and disorder, also named tackling or 'governance' of antisocial behaviour. In particular the connection between uncertainties and anxieties in the new age and the urging for security leading to control and exclusion are unravelled.

The study of the work of David Garland comprises the main theoretical framework in this dissertation. Garland has pointed out the structural properties of the field of the culture of control and identified the recurring social and cultural dynamics that produce them. As an important reference in this matter, he provided criminology with an exposing theory, the theory of the *"culture of control"* in his analysis of criminal justice & crime control in The United Kingdom and The United States(Garland, 2001). According to him, the crime control field is characterized by two interlocking and mutually conditioning patterns of action: (1) the informal social controls that are embedded in the everyday activities and interactions of civil society (2) the formal controls exercised by the state's criminal justice agencies. Explaining the first pattern, he developed a study of the so-called 'crime complex', or a *'semi-institutionalized cultural formation'* (Garland, 2006), a formation characterized by a cluster of attitudes, beliefs and assumptions of citizens (Garland, 2001, p. 105). He stipulates that a reconfigured field of crime control involves more than just a change in society's response to crime. It also entails new practices of controlling behaviour and doing justice, revised conceptions of social order and social control, and altered ways of maintaining social cohesion and managing group relations (Garland, 2001, p. 6). The established institutional field is remodelled, different objectives and priorities came up and the appearance of new ideas about the nature and the causes of crime and criminals suggest shifts in the cultural underpinnings of these institutions. In his analysis, the broad organizing principles that structure the contemporary ways of thinking and acting in crime control are described.

His theory played an important role in the development of the analysis of the risk society, and was chosen to be our guide in composing the research questions for the study of the Belgian governance of incivilities. Statements Garland made about the crime control policy in the United States and in the United Kingdom based on historical analyses are enlarged in this dissertation with a upcoming phenomenon Garland rarely reported on in the 'culture of control': the governance of disorder and incivilities in big cities. Our own descriptive analysis on the governance of incivilities in the United Kingdom can be used to replenish this study domain. In order to offer a framework for the Belgian study, the governance of incivilities in the United Kingdom and in the Netherlands are analysed in this first theoretical part.

The second part of this dissertation contains the *empirical part*. An empirical study has to elucidate the meaning of Garlands theory for the Belgian governing of incivilities, where similarities, differences and gaps between The United States and The United Kingdom can be detected. In order to study some statements Garland made for the United States and the United Kingdom, five research questions were elaborated and hypotheses were formulated. It is relevant for criminology to compare Garlands findings to the Belgian situation as the social, cultural and political differences between The United States and The United Kingdom on the one hand and a *continental* country like Belgium on the other hand, can be analysed based on empirical data.

The Belgium law on incivilities (1999) exists 10 years, as in The United Kingdom. To compare some aspects of the analysis Garland made for the United Kingdom, it is useful that some practice of governing incivilities is already present. The empirical study was accomplished in three different research settings.

Methodologically we choose the case study with multi-method approach. The ambition of the case study is the presentation of the visions of the persons involved (Tellis, 1997). The benefit of this method is that different sources can be consulted in order to reach a balanced and complete picture of the object of study (Flick, 1998). The case study can provide us with enough information to get an insight in the 'how's' and the 'why's' of a problem (Orum & Feagin, 1991). In this study it is important to reveal the mechanisms that played a role in the historical development of the law on incivilities. The methods of in-depth interviewing and document-analysis are used. In total we held 73 in-depth interviews with privileged witnesses in the setting of the research subjects, at their work place and in their own routines and surroundings. The interviews can be called 'elite-interviews' (Aberbach & Rockman, 2002) as the respondents are all experts like ministers (or ex), members of parliament during the legislative process, authors of preparative documents, experts (or ex-) working in the government, governors etc…We gathered significant information about the perception of the respondents and on how they came to certain assumptions, suppositions, motivations, basic principles, hypotheses, statements and acts. Because an open style of interviewing can gather a diversity of significant answers on a more improved level, we choose the open questionnaire instead of a more standardized model. Complex matters, such as the governing of incivilities, could be better questioned in rather open face-to-face interviews (Bijleveld, 2005). Through non-structured interviews, complex behaviour of policy makers can be cleared up (Fontana & Frey, 2000). The second method used was a document analysis that provided us with background information. We analysed a pile of different official documents (law, preparative legislative documents, policy plans, action plans, agenda settings Mayor, security monitor on a national level and on the city level, crime statistics and statistics on insecurity and on incivilities, etc). Thanks to the elite interviews, we were able to gather a lot of complementary political confidential material that wasn't revealed before, such as reports of meetings in parliamentary committees, letters of ministers, reports of the city Council, etc…

Our first case-study (study A) was conducted on a *federal level* and contained the genesis of the law on incivilities in Belgium. Specific research questions were formulated to discover whether or not the law on incivilities was set up and politically motivated to install a "swelling culture of control". The federal political reaction on incivilities and the coming about of the law were the research subjects in this first case study, nevertheless embedded in the broader historical context of societal and governmental changes in security policy over the last twenty years (1985-2005). As the law on incivilities dates from 1999, the study of the genesis of the law finds itself in this research period.

Five *research questions* were studied on the federal level. They are:

Research question (1) "What was the societal and political context of the law on incivilities?"

In this research question we wanted to seek for the context of the law. Garland stipulated that a great feeling of insecurity characterised modern society. In Belgium the context was influenced by a great number of incidents as well as increased levels of crime rates. For the first time a Security Monitor showed feelings of insecurity among citizens. The attention for the victim became more important, as the government directed the policy towards a more client driven angle. Formal as well as informal levels of control decreased, and migration became a mayor problem.

Research question (2) "What were the criminological theories underpinning the security policy?" This research question searched for scientific theories. Garlands analysis showed that the 'criminologies of every day life' shaped governance in the late modern society. Our own empirical data illustrated a total lack of theoretical assumptions in the conceptualization of the incivility law. Some policy makers mentioned the 'broken windows theory' and the opportunity theory, but this wasn't clearly connected to the law on incivilities.

Research question (3) "Who were the advocates of the law in incivilities?"
Our analysis in Belgium showed that administrators, policy makers and Mayors of big cities were skakeholders, and not big reform programmes neither scientific experts. As Garlands analysis pointed out that experts in governmental institutions were the moral entrepreneurs, not the ideological programmes of the reformers.

Research question (4) "What were the objectives of the law on incivilities?"
In contradiction to what Garland wrote namely that the major objectives of the new policy of security was risk management, in Belgium the objectives were more of a practical matter. As the law enforcement agencies of justice offices couldn't keep up with the increasing rates of small delinquency, there was no penal sanction at all. The main objective of the law on incivilities was to provide a quick reaction (fine) towards persistent disorder, so that a warning to behave more properly could be given on a regular bases.

Research question (5)*:* "Was there scientific research involved in the genesis of the law on incivilities"? As we stipulated in research question (1) there was no evidence found that scientific research was used to be of guide in the conceptualisation of the law on incivilities. After ten years of government investment in prevention programs, the government tried to find a way to get back on track those persistent offenders that didn't change with the prevention programs. The sanction was used as a final warning, an 'ultimum remedium' when prevention failed. Garland stipulates that in the late modernity 'public opinion and populism gained priority over scientific expertise'.

The second **(B)** and third **(C)** case studies were conducted in two big cities, Antwerp (Dutch speaking city) and Liège (French speaking city), each with their own autonomous communal policies within their own regional legislative and administrative system. It is a surplus value to study the application and the concrete strategies behind the governance of incivilities on a city level. The incivility law broadened the competences of the Mayor and the city council especially in the completion of antisocial behaviour and public disorder problems in his/her municipality. Instead of being dealt with on a traditional judicial way by the police magistrate, the Mayor can, by this law; himself lay on fines until maximum 250 euro. The objective in these second set of case-studies was to reveal the set of social reactions of local institutions of control in detail. This punitive sanction became a locally assigned matter, which means that one municipality differs from another in their 'incivility policy'. Due to the split up of competences of the Belgian state arrangements of 1988, these two cities find themselves framed in different political and organisational executive realities. The consequences of the more or less autonomous governmental authority of each language community (Dutch and French speaking) are observed in the policy of each city. We focused upon particular institutions, which are responsible for the *shaping* and *conceptualisation* of the antisocial behaviour strategies (policy makers) on the one hand and the responsible persons for units that execute the policy on the

other hand. This approach led us both to preventative partners as to punishing and controlling institutions of law enforcement (police, justice). In each city we held 23 in-dept interviews with Majors, chiefs of police and chief commissioners, social workers, wardens in public transport, city units responsible for the prosecution of incivilities, members of the local council (college of Alderman), city wardens, city coachers, street corner workers, pilots of neighbourhood projects, public prosecutors, etc… In these two cities, a last research question was analysed, namely:

Research question **(6)** *"Which different incivility measures were taken and how were they implemented?"* In this research question we tried to seek an answer on the analysis Garland made, namely that measures of expulsion and exclusion go hand in hand with the development of a network of preventative partnerships and the elaboration of internal control within the community.

In Antwerp we noticed a very creative application of this federal law. The law was immediately welcomed as a strong opportunity to govern the city with extra tools for the Mayor to execute his objectives. The police codex was completely rewritten with administrative sanctions for many minor offences, not by means of punishing more, but with the objective of creating an enjoyable public space where every citizen and tourist behaves properly. As the original spirit of the federal law proscribed, writing out fines was seen as a last resort, only to apply when all other arrangements of prevention and social welfare programs failed. By means of the mediation, youngsters are given reports by the police and led to the mediation office. The objectives are to change their attitude and behaviour by providing all kinds of programs (educational programs, contra-aggression programs, sport facilities, assistance at school, etc...) in order to avoid punishment (fine). If the young offender follows the program, a sanction can be avoided. In fact, this policy is situated within a broader integral policy vision, and can be called in line with the (initial) federal objectives.

In Liège we detected a completely different appreciation of the federal law. As the policy orientations are lined up with the Canadian ones, the belief in strong and present community oriented policemen is primordial. In Liège, city wardens can't give fines, they only assist the police in pointing out signals of disorder. The policy assumptions show the opinion that 'a well known and legal justice system is already in place to punish offences, so why create a kind of 'communal justice system? ' in the view of the Mayor, the chief of police and many other experts responsible for incivility governance, warnings (oral or written) from the police force are the best remedy against recidivism; the need for extra fines is not really accepted. Another astonishing fact was the total disbelief in mediation as a tool to avoid fines. Once a case is registered and proven, a fine is given, even after a (successful) mediation. Comparing to Antwerp, the law of 1999 is rarely applied, the police codex wasn't profoundly adapted, the punishment of incivilities stayed as they were before (by the classical law enforcement agencies police and justice).

The aim of the central research question was to examine whether the Belgian incivilities policy can be regarded as an example of a '*swelling culture of control'* or not. The federal results pointed out that the law on incivilities of 1999 wasn't conceptualised as a new instrument of control, but as the "final piece" of an ongoing effort in prevention from the early 90s. Before 1990 there was no interest for minor criminal offences as vandalism, tagging, minor theft, insult, throwing litter on the streets, noise etc...as the organised crime was the top priority of the government. With the protests in some city suburbs in Brussels (Vorst, St. Gilles) and the electoral swing to the extreme right-wing party (Vlaams Blok) in 1991, the policy had to change. For the first time complaints of citizens were heard about dirty streets, migration problems, abandoned houses, feelings of insecurity ...and the minister of the Interior launched a enormous amount of money in prevention contracts with cities. Prevention strategies in the cities (situational, but also social) became the key word in tackling crime and feelings of insecurity. Many social projects as special programmes for drug addiction and street corner workers were financed by the government. There was strong belief by the policymakers at that time that punitive answers to minor crime problems can only make things worse. The answer to the quality of

life problems were not strong politics of behaviour, as in the United Kingdom, but politics of prevention. Anyhow, after ten years some behaviour in the public space persisted and couldn't be solved with prevention and social work. The federal law on the incivilities of 1999 has, according to the empirical data, to be regarded as a final 'last warning' answer to this persistent behaviour, where prevention failed. Application of this law had to remain an 'ultimum remedium' only to be used when prevention strategies failed. For persistent recidivists anyhow this answer had to come quickly after the offence was committed. That is the mean reason why the incivility law of 1999 took the punishment out of the hands of Justice and handed it over to the Mayor and the Alderman. The punishment of incivilities became an issue of administrative law. As incivility problems in the public space are very closely connected to public order issues in Belgium, the communal law of 1988 was enlarged with more possibilities of sanctioning for the Mayor (closing down bars and discotheques, withdrawal of licences, writing out fines, etc...). Offenders of incivilities older than 16 years old could get a fine (125 euro for minors, 250 euro for adults). Mediation for youngsters (16 – 18) is obliged. The application of this federal law on incivilities became a communal competence, and could diverse from city to city. For that reason, a second case-study in two big cities was necessary.

The conclusions of the empirical study on a federal level as well at the city level showed no indications of a swelling culture of control by means of the incivility law of 1999. No particular evidence was found for net widening, as the offences mentioned in the police codex were already punishable before (by the justice system). The data showed that the application of the law in giving fines to citizens has to stay an 'ultimum remedium' when (other) strategies of prevention and social welfare failed. Only for persistent offenders, the law can be applied rapidly after the offence occurred as a lesson that the behaviour was inacceptable. The respondents were clear about the fact that the punishment foreseen by the law on incivilities has to stay a 'last option', and that sanctioning always had to be accompanied by other measures of a preventive and social nature. The incivilities law was embedded by the socialist politicians in an 'inclusive' policy spirit rather than in an 'exclusive' one. But we are well aware of the fact that an inclusive policy can, because of financial shortcuts, easily be transformed into a purely repressive and punitive arrangement, a danger we always have to keep in mind.