



DOI: 10.2478/abcsj-2019-0025

American, British and Canadian Studies, Volume 33, December 2019

Issa Kohler-Hausmann. *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing*. New Jersey: Princeton UP, 2018. (\$24 hardcover). Pp. xii+308. ISBN 978-0-691-17430-3.

Informed by both a descriptive and an explanatory investigation of the lower criminal courts' overall activities in New York City and the personal experience of an inside professional working as a criminal defense attorney, Issa Kohler-Hausmann's work *Misdemeanorland* is a trans-disciplinary introspection of the meaning, the functions and duties of the lower criminal courts in the United States, of why they pursue certain strategic actions, and how they conduct their work by enforcing specific tools and procedures. Beyond the illustrative quantitative data about arrest, criminal procedures and court administrative practices, what is methodologically instructive for the neophyte is the – purportedly non-partisan – way of 'translating' juridical technicalities into sound social and cultural arguments about the goals and reasons behind the actions of criminal judicial institutions in the United States over the past two decades, at the turn of the 21st century.

One of the central theses Kohler-Hausmann formulates is that much of the academic and public critical stances have focused on the forcible reactions of the police to minor crimes rather than on the way courts have handled such/these issues. The brief methodological section and the overview of the study (Kohler-Hausmann 16-22) cautiously notify the reader as regards the author's main thesis, i.e., to the fact that the lower criminal courts first and foremost act strategically, as institutions of social control and purposefully enforce certain mechanisms and decisions to that end.

The book attempts to provide answers to how and why inferior courts in the United States have come to serve as the most powerful instruments of social control and have ultimately originated in deep-rooted cultural stereotypes and prejudices about ingenious ways of settling race and class discriminations. The title is less of a metaphor and more of

a referential mirror of the book: the term ‘misdemeanorland’ stands for both a spatial and a substantive reference to minor criminality; criminal courts are the actors, social control is the strategic goal and the Broken Windows policy its legal instrument of enforcement.

To begin with, ‘misdemeanorland’ is a vernacular term familiar to those working in the field of subfelony criminal justice, dealing with cases of minor delinquency, such as the possession of marijuana, minor assaults, theft of services, larceny, trespass, minor weapon possession and driving while intoxicated (107-108). Not entirely limiting its scope to these minor crimes, ‘misdemeanorland’ is colloquially defined as the “jurisdictional and physical space where these cases are processed” (3). In the eyes of the critics, ‘misdemeanorland’ is the realm of weaknesses in confronting the discretionary use of police power, of corruption and disregard for Constitutional values and criminal law, of derision towards considering the legal rights of the people secured by the Fourth Amendment and the due process clause (256). Unmistakably, it is the most appropriate space for the enforcement of misdemeanor justice which does not circumscribe serious cases of crimes and felonies, but misdemeanors: minor crimes, subfelonies or, using the insiders’ jargon, ‘junk cases.’ This does not testify for the worthlessness and pettiness of the object of justice itself; rather, it speaks of a tactical role of the courts which generally convert trials into alternative offers and accusations into processes of monitoring the defendant in the future (123); the impact of misdemeanor justice on society should be more or less conceived in equivalent terms with the role of ‘court fines and fees in municipal finances’ (2), in the sense that this approach to justice envisions a stronger sentiment of social security, similar to the perception according to which fines and fees consolidate the budget of the municipality.

In line with such an approach, the decisions of urban lower/misdemeanor courts in the United States are: dismissals – in most of the cases – in the forms of declining to prosecute, adjournment in contemplation of dismissal and speedy trial dismissal; noncriminal violation convictions in the form of disorderly conduct, and misdemeanor criminal convictions in the form of conditional discharge (67-69). It is precisely these types of conditioning that are denounced and criticized as

concealed forms and tools of social control. The main features of misdemeanor justice are thus castigated as mechanical, rapid and impressionistic (66), ultimately as plainly consistent with “the violence of police officers, the indifference of corrections officers, the inattention and incompetence of defense attorneys, or, as the case may be, the unreasonableness and ineptitude of judges” (197). Within an usually muddled process, ranging from humiliating arrest procedures of the police (30-33, 186-187, 193) to camouflaged modes of social control dispositions of the courts, the misdemeanor justice could be easily associated with deviating mechanisms of adjudication and punishment, obscure institutional arrangements, procedures and overtly bureaucratic and administrative interpretations of justice.

The development of the legal tradition in the second half of the twentieth century in the United States, in the context of the counter-cultural and civil rights movements of the mid 1960s, can help explain how and why misdemeanor justice have come to be identified with specific provisions, characteristics and procedures markedly distinguishable from traditional criminal justice.

In many ways, the reformist trends of the 1960s and beyond started to shake and discredit the phenomenon of mass incarceration which did not operate based on substantial distinctions between felony crimes and mere misdemeanors. According to the paradigmatic norms of mass incarceration, prison was the rule and the dominant form of social control (9), and the judicial dispositions were oriented towards ascertaining the guilty status and deciding for a (severe) punishment. Facing harsh criticism as regards how this approach of criminal justice was constantly guided by racism, ethnicity, class and spatial prejudices, reformers of the legal system at large have started to think about introducing legal affirmative action by identifying those guilty of serious crimes “from the merely socially despised” (63). This move proved consistent with the emergence of misdemeanor justice – the first step towards the implementation of the Broken Windows policing in the 1990s.

The fact that legal reformers found it inappropriate to impose incarceration for minor felonies and disorderly conduct, for reasons of constitutional inadequacy and equivocal intentionality, made them push

for certain landmark decisions of the US Supreme Court, decisively influencing the orientation of state courts for the future. In 1961, in *Mapp v. Ohio*, the Supreme Court judges found it reasonable to require state criminal courts to reject unconstitutional evidence obtained through searches and seizures; then, in 1972, they firmly stood for the rights of misdemeanor defendants to counsel, in situations requiring prison time dispositions, in *Argersinger v. Hamlin* (64).

However, these landmark legal decisions did not lead to a decrease in the number of felony arrests by sorting out subfelonies. In New York City, this happened only after 1994 when the New York Police Department (NYPD) put to work a series of strategic and tactical reforms in order to grant a proper status to minor crimes, distinct from outright felony crimes. Conventionally known as the Broken Windows policing – “the order maintenance or quality-of-life policing” (2), and incorporated in the document entitled *Police Strategy No. 5: Reclaiming the Public Spaces of New York*, the new police agenda envisioned that infractions such as noise complaints, illegal double parking, blocking traffic, prostitution, illegal graffiti, loud clubs or public drunkenness, albeit offensive to pre-established societal morals and values, should be dealt with in a distinct manner in comparison to explicit criminality. This tactical move did not only lead to a decline in incarceration numbers, but also made room for certain peculiar actions susceptible of generating further refined forms of social control (25-29). This police strategy of substituting the goal of fighting crime with something akin to prevention has in fact become an encompassing umbrella strategy for the collection of data and information about minor crimes and people, enforceable through accosting individuals, issuing summonses and arresting people on even less than mere suspicion; logistically, the resulting data have been organized by CompStat (computer statistics), an internal reform functioning “on the same logic as Broken Windows policing” (38-41). The factual result in terms of courts activity has been tantamount to what I would call the iron law of Broken Windows policy: the more misdemeanor arrests, the less the rate of criminal convictions (4).

Ultimately, what fundamentally differentiated the substantive traditional criminal justice from misdemeanor justice had less to do with a

normative reform in the field of criminal justice, than with a strategic change in views regarding the most effective operational and procedural ways in dealing with varieties of criminal infractions. According to this new strategic orientation which eventually generated the Broken Windows policing in New York City, the adjudicative model of doing justice was substituted by the managerial model of judicial surveillance. Under the adjudicative model, criminal courts proceed, in order, by receiving, examining and evaluating data of evidence about facts, then by reaching a decision based on arguments and reasons grounded on the normative law of criminal procedure, and finally by sending the convicted to jail – the institutional site for executing the punishment (61, 72). Also, the managerial model overturns the procedural logic of the adjudicative justice in many respects: first, courts do not necessarily proceed to the examination of evidence in order to establish guilt or innocence, but, under the ‘presumption of need for social control,’ they act ‘uncourtlike’ by attempting to supervise people over time. Second, lower criminal courts do not reach verdicts based on legal constraints, but rather by following certain practical reasons derived from administrative assessments and indications of guilt. Third, they do not seek for a real form of social control, such as imprisonment, but rather use certain techniques “beyond conviction and custodial control,” such as marking people, procedural hassles over them and careful observation of their future performance (61, 73, 76-77).

While the enforcing logic of the adjudicative model is consistent with establishing guilt based on the correspondence between fact-finding and some corrective form of punishment, the managerial logic of misdemeanor justice entails “sorting, testing and monitoring” people in order to determine their governability and responsibility, is future-oriented rather than backward-looking, and relies on previous administrative marks, “such as prior police contacts, records of timely court appearances, community service performance, or strength of family or employment ties,” than on predetermined legal doctrines, in order to ascertain their criminal status (72-73, 88-90). There are conditional practical circumstances that support the managerial model, such as the considerable volume of misdemeanor cases, time constraints and limited court

resources (110-113), and one could invoke these deficiencies as solid reasons for the absence of lengthy trials in dealing with misdemeanor cases. Instead, effective practices and procedures are used, such as adjournments in contemplation of dismissal, declines to prosecute or other forms of dismissals, arraignments and minor misdemeanor criminal convictions in terms of disorderly conduct ('dis con'). Generally, arraignments are the apex of misdemeanor cases, and they could terminate in a plea (accepting the offer of the prosecutor), dismissal without conditions, conditional dismissals (orders of protection, educational or therapeutic programs, restitutions, community services, bails) (133-135, 146-148, 153).

However, these legal mechanisms and procedures to solve misdemeanor cases are, at best, the object of secondary criticism based on exemplified technical shortcomings and professional discontent. It is the main statement of the book according to which misdemeanor justice is a perverse form of social control which is 'under fire.' More precisely, it is not the technical procedures which should be dismantled, but the tools the courts use to enforce social control that should be blacklisted as psychologically humiliating and professionally predatory. According to the author, three are the instrumental approaches used by the courts (in New York City and not only) in order to properly manage social control. The first is *marking*, a kind of 'degradation ceremony' residing in putting labels on criminal statuses and behaviors and classifying people into 'provisional and conditional statuses'; subfelony marks are mostly visible in the so-called rap sheets (past criminal records) and point at prior arrests, convictions and bench warrant history (144-145, 162). The second is the penal technique of *procedural hassles* which encompasses courts powers and specific rituals of constructing the statuses of defendants, starting with the arrest experience and police custody, up to court appearances and case processing, and involving waiting and delaying, engaging and compelling the defendant to conform to various collateral costs all these sordid procedures inflict upon his/ her real world responsibilities (183-184, 214, 217). Finally, the criterion of *performance* is a kind of a feed-back mechanism referring to the follow-ups as far as the governability, responsibility, rule following and reintegration of the

defendant are concerned; relevant examples of performance expectations are respecting a duty or an assignment, following a program activity or a form of therapy, and/ or conforming to certain behavioral requirements (221-222, 230-231).

The misdemeanor justice which has been effected through the Broken Windows policing and regulated by the managerial model through the three above-mentioned strategic tools serves the preeminent purpose of social control. In fact, the demonstrative quantitative numbers, the statistical data and the explanatory qualitative interpretations and interviews are employed to epitomize the main thesis of the book according to which the reorganization of the criminal justice system in the United States in the past two decades has been focused on bolstering up and perfecting the state capabilities of social control.

Following the prevailing state-of-the-art approach of the concept in sociology, Issa Kohler-Hausmann defines social control as a set of strategies and modalities of “maintaining social order, facilitating coordination, and reinforcing shared norms and communal cohesion” (5). In misdemeanorland, in the author’s view, social control works based on i) the managerial and strategic assumption that nonconviction dispositions coupled with testing and monitoring legally-deviant people would lead to their smooth reintegration, and ii) the culturally-biased prejudice that certain people are in need of social control (85, 265).

It is exactly the second role of social control that raises fundamental issues about race and class inequities in the United States and which ultimately calls for rethinking present-time cultural standards, conventions and presuppositions. To put it plainly, the author depicts “the criminal justice system as an instrument of social control and its role in reproducing class and racial inequality in the United States” (11).

In contrast with the wide perception in popular culture that criminal courts are institutions for the punishment of illegalities, Broken Windows misdemeanorland classifies, sorts, selects, constructs and reproduces social statuses in line with administrative and managerial strategies of surveillance. Interestingly enough, although the author’s work starts with postulating and criticizing the main thesis of managerial justice’s social control in blunt and radical statements, it ends with a more reflective

posture and rather moderate conclusions. However, in my opinion, there are four questioning objections: first, if the author herself is not culturally biased in her approach to the topic; second, why misdemeanorland social control is worse than the standard imprisonment form of social control; third, if both forms of enforcing criminal justice are essentially erroneous, what is the culturally non-discriminatory and legally effective alternative, and, fourth, if the author really believes that communitarian order, cohesion, harmony and mutual respect are possible in the absence of exerting one practice of social control or another. Ultimately, criminality is a contingent reality and, unfortunately, idealism is not a viable response to it.

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