

Jaywalking to Jail: Capitalism, mass incarceration and social control on the streets of Vancouver

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In the Downtown Eastside of Vancouver, the Vancouver Area Network of Drug Users (VANDU) is waging a dogged, multi-year campaign against the Vancouver Police Department's practice of using bylaw tickets—particularly for jaywalking, 'street vending', public urination and defecation, and smoking—to criminalize the very poor. Recent freedom of information requests show that 95% of all vending tickets, and 75% of all jaywalking tickets for the entire City of Vancouver are handed out in the Downtown Eastside—evidence of direct targeting of the community's residents.¹

While this article focuses on the Downtown Eastside, the processes of criminalization of poverty and mass incarceration are not particular to the DTES or to Vancouver. In Toronto, police handed out more than fifteen thousand tickets under the 'Safe Streets Act'; despite declines in panhandling and squeegeeing Toronto police ticketing for these offenses increased at an exponential rate—a 20 fold increase in the past 10 years.² Last year a homeless man died in Toronto with more than \$30,000 in outstanding tickets.³ Montreal has gone down

¹ Overt physical police violence and murder is also a huge issue in the Downtown Eastside and something VANDU has worked on extensively, but this article focuses on the structural violence embodied in police harassment, ticketing and criminalization of poor people in the neighbourhood.

² <http://www.homelesshub.ca/caniseeyourID/>

³ http://www.thestar.com/news/gta/2012/09/14/homeless_man_died_owing_more_than_30000_in_fines.html

the same road of ‘proactive’ policing and in Victoria, police are now charging people gathering returnables from recycling bins with theft.

The criminalization of the poor is supported at the municipal level by police budgets that continue to rise rapidly despite a falling ‘crime rate’; at the provincial level by an expansion of prison capacity across the country and increasing numbers of people in remand, especially on ‘administration of justice’ and drug related charges; and at the federal level by ‘tough on crime’ mandatory minimum legislation. It is one component of a broad strategy of mass incarceration⁴ and social control aimed at the poor, Indigenous people, im/migrant and refugee communities of colour, and labour, environmental, anti-war and anti-capitalist organizers who challenge the system.

There is an urgent need to link the local resistance to these policies of criminalization in different Canadian cities and to build a cross-country network of organizations capable of exposing and opposing them, and linking them to the underlying system of capitalist exploitation and oppression.

COMMUNITY IN THE CROSSHAIRS

It is worth describing in detail how the targeted police harassment of the Downtown Eastside impacts poor people living in this community because people who haven’t experienced this level of surveillance, harassment and targeting often don’t believe it’s real and therefore the tag ‘police occupation’ seems like hyperbole. But for people who are poor, or Indigenous, or just live in the neighbourhood and don’t look like they are ‘service providers’, it’s really not that much of a stretch. And for the thousands of poor people who use drugs—many of them Indigenous people—avoiding, negotiating and suffering police interference is a grinding daily reality.

In addition to a disproportionate share of the patrol cars policing as part of VPD District 2, and drug and vice unit enforcement, the DTES is also subjected to its own neighbourhood police, the ‘Beat Enforcement Team’ (BET). This is a force of 66 police, whose job is to patrol the Downtown East-

⁴ <http://basicsnews.ca/2011/12/the-mass-incarceration-agenda-in-canada-the-view-from-vancouver/>

side on foot, all day, everyday. The VPD's 2009 draft business plan bragged that these BETs would conduct 4 'street checks per cop, per block'. The language of street checks was changed in response to outrage from civil libertarians, so the enforcement of bylaw infractions has become the excuse to stop people, search them, and run their name for warrants.

Here's how it works:

You might come on the police radar because you are engaged in some kind of criminalized survival activity like vending or prostitution, because you are 'known to police' or because you fit the profile of the 'type' of person they are used to policing—especially drug users and low level drug sellers.⁵ Because bylaw 'offenses' are often poorly defined, even if you are not actively vending or jaywalking, it isn't difficult for police to identify some infraction by the person they want to target: for example (and these are just some cases I know of) 'leaving the curb unsafely', smoking a cigarette outside of closed business or in an alley, spitting into the street, or transporting goods for sale in a shopping cart.

The bylaw ticket can then be used as a justification to ask for identification and run your name for a warrant for an outstanding criminal, immigration or bylaw issue. This could mean that you go straight to jail, for example for an outstanding drug charge, but more likely for a 'procedural' crime such as a breach of a condition of release. These are conditions that are given out by police based on an arrest and do not require a finding of 'guilt' in court. For example, a VANDU member who is addicted to heroin was recently arrested with 1/10 of 1 gram of heroin. As a condition of his release he was given a 'red zone' (no go) that covers a large part of the Downtown Eastside including the INSITE supervised injection site and areas where he would regularly go to score and shoot drugs, as well as a stipulation that he not be in possession of the drugs, even though he is addicted to heroin and going through withdrawal

⁵ The retail drug trade is mostly done by people who are addicted to the drugs that they are selling and are paid in drugs, not cash ("sell five rock, get one free"). It's the worst kind of work situation imaginable—these workers are underpaid, have very little back up or support and face violence from both police and bosses (higher up dealers who may be connected to organized crime gangs).

could be life threatening. Thus, even though the possession charge will likely be dropped if and when it ever comes to court, now, if he is stopped by police, he will be arrested and likely charged with a breach—a charge that is much more likely to get him jail time than the original drug charge.⁶

If you haven't already accumulated a warrant you are now in danger of getting one as a result of your ticket. If you do not pay your \$250 ticket (and that is more than an entire month's disposable income for someone on the starvation welfare rates in B.C.), you could receive a summons to appear in court. If you receive a summons (or don't receive it, but one is sent to you) and do not appear in court, you could get a warrant for failure to appear, and the next time you interact with the police you'll be charged for this procedural crime that the courts 'take very seriously'.

In a case right in front of VANDU last Summer a VANDU member was 'jacked' up by police in a cruiser that rode right up onto the sidewalk. The police proceeded to have him open his backpack and lay out all his stuff on the ground—lots because he was homeless and staying in a shelter at the time. Having come up with nothing for the search or by running his name the police proceeded to write him a \$250 ticket for spitting on the street. He planned on challenging the ticket because he had a number of witnesses to the whole interaction, including me, but he died before he had the chance.

It's impossible to quantify the health impact of the ticketing, the harassment and the repeated interaction with the cops on individuals. It starts with the anger, humiliation and frustration of being targeted for vending when you are poor, or peeing in the alley when you are homeless or don't have access to a toilet in your SRO (single room occupancy) hotel, or jaywalking on your own block like everyone in the world does. It continues to the stress and anxiety of accumulating debts you will never be able to pay, and extends to trying to keep track of summons and potentially a string of court dates if you want to challenge the

⁶ Administration of justice charges now make up 42% of all court cases in B.C. and accounted for upwards of 20% of admissions to remand (jail) nationally in 2008-2009. The steady growth in this category of charges is the reason that the number of people in prison is increasing even though the crime rate and the crime severity index are decreasing.

ticket. Some folks will actually go to jail on a warrant generated by a bylaw ticket. For others, a series of failure to appear or breach charges can be used to justify being held for months in remand if they are picked up on a more serious charge.⁷

And jail is very bad for your health, especially if you are poor, especially if you are a woman with children, especially if you are addicted to drugs or at risk of becoming addicted. In addition to potentially destroying relationships, plans, and housing arrangements, in addition to the deleterious effects on general mental and physical health, incarceration vastly increases your likelihood of contracting hepatitis C and HIV.

Poor and marginalized women have an added vulnerability resulting from this criminalization. A woman who has an outstanding warrant, even one generated from a vending or jaywalking ticket, is much less likely to approach police about a violent husband or boyfriend, or after experiencing violence or threats in the course of selling sex—a reality that was recognized even in Wally Opal's Missing Women Commission of Inquiry.

VENDING

Several blocks of East Hastings are lined by a *de-facto* vendors market where very poor people sell small collections of assorted items on small blankets, or directly on the sidewalk. Most of the items are salvaged by 'binners' (people who go through garbage bins looking for returnables and usable/ saleable items). Probably some of what is sold is boosted or stolen in residential b&e's but a fairly small proportion since a really skilled booster or b&e artist would likely have better channels for moving their goods than camping out on Hastings Street, selling to other poor people.

There is a kind of dance-like quality as the police walk down the block with the vendors rapidly packing up and disappearing into the crowds ten feet ahead of them and then reappearing and redeploying their displays ten feet behind. But the

⁷ I recently spoke to a guy who had just been released after spending 3 months in remand awaiting a trial for a charge on which he was acquitted. A significant majority of incarceration in Canada is of people who have not actually been convicted of the crime for which they are being jailed!

poetry of it ends as you watch a cop towering over a native elder (two of the VANDU members launching a constitutional challenge to the city's bylaw are native grandmothers) chastising her and giving her a \$250 ticket for 'displaying merchandise on the sidewalk'. While the police regularly go on about 'stolen goods' as justification for this criminalization and harassment in the media, they are not actually charging people with theft or possession of stolen property.

In response to the harassment for vending, VANDU, in collaboration with the Downtown Eastside Neighbourhood Council established a weekly vendors market at Pigeon Park in the heart of the DTES. This has become a vibrant community event every Sunday that creates a well organized and community controlled space for the vendors and draws in shoppers from around the neighbourhood and across the city. Despite harassment from the police, supposedly acting on the concerns of recently arrived 'neighbours' living in adjacent gentrified condos, the Pidgeon Park Street Market is thriving and surviving. The demand from VANDU is for the city to redirect funding from police handing out jaywalking tickets (and all the wasteful administrative work associated with the practice) to the community controlled street market, which would allow them to pay a small stipend for volunteers, provide tables to vendors and supply adequate amenities for the vendors and their customers (toilets, water station).

JAYWALKING

Just like most other neighbourhoods there is a lot of jaywalking in the Downtown Eastside. Unlike in other neighbourhoods, if you are poor or look like a drug user you are likely to be criminalized for simply crossing the street. Seventy-five percent of all jaywalking tickets for the entire city of Vancouver are given to poor and oppressed residents of the Downtown Eastside.

Pedestrian safety is actually a huge issue in the Downtown Eastside—not surprising for a community that has a very high proportion of people with disabilities, seniors, people who do not own a car and people who are users of illicit drugs. VANDU has been very concerned about cars striking and killing community members, particularly on Hastings street. VANDU

therefore, worked with the City to develop a very good pedestrian safety plan for the neighbourhood, elements of which have been implemented, including a 6 block 30km/hour zone on Hastings.⁸

The Vancouver Police Department took a public position against the 30k zone and have refused to enforce it. Instead they persist on handing out jaywalking tickets, claiming that this is a public safety intervention. Of course, they have no evidence (there is none) that bylaw ticketing either discourages jaywalking or increases pedestrian safety. Rather, the paternalistic pretense covers the real reason for the enforcement which is the chance to check IDs and run names for warrants, to target and harass individuals who are considered ‘undesirables’, and to generate a perpetually criminalized population, since non-payment of a jaywalking ticket can result in a summons to court and warrant for failure to appear.

MINING THE DOWNTOWN EASTSIDE FOR CRIME

Why do the police so single-mindedly and doggedly pursue this punitive policing approach using bylaw tickets and attack and sabotage any alternative approach to dealing with the ‘street disorder’ that so offends them?

The VPD characterizes their occupation of the Downtown Eastside as ‘proactive’ policing and point to supposed success in New York and other jurisdictions as its justification. The proactive (or ‘broken windows’ model of policing) theorizes that by proactively and aggressively pursuing ‘minor’ crime and street disorder, police undermine the conditions for criminality and more major crimes. Since it’s ascendance in the 1990s the theory has largely been debunked, but what isn’t bunk is that poor people, indigenous people, people of colour and people who use illicit drugs, are unfairly and disproportionately targeted under these proactive policing schemes.

Despite being discredited in the research literature, the ‘proactive’ policing approach remains standard practice within the ranks of the VPD. That’s because it fits so well with the institutional interest and self interest of the VPD, its leadership

⁸ http://www.vandu.org/documents/WereAllPedestrians_EXECUTIVE_SUMMARY.pdf

and individual cops. Policing in Vancouver is big money, and the police budget continues to rise, topping \$200 million, or 20% of the total City of Vancouver budget in 2012. Over 650 individual VPD police took home over \$100,000 in 2011 and VPD Chief Jim Chu topped \$300,000.

VANDU has characterized the police approach in the DTES as ‘mining our neighbourhood for crime’. ‘Crime’ has become the resource on which this \$200 million enterprise is built. The top brass and managers can go to the city and demand constantly rising budgets by pointing to ‘criminality’, ‘street disorder’ and ‘the drug trade’. Individual cops advance their careers and prestige by posting high arrest numbers even if its based on arresting desperately poor and addicted people for crimes like breach of an undertaking or failure to appear in court for a vending ticket.

Outside of TV Drama, the real world of policing in Canada was described by (former Toronto Mayor) John Sewell in his open letter to (current Toronto Mayor) Rob Ford, as “Lots of gravy in bloated police budget”.⁹ Toronto Police on average respond to one call every two shifts, and make only seven or eight arrests **per year**, only one of which would be for a serious violent crime. In that context police justify their existence (and massive budgets) by ‘proactive policing’ in areas identified as high crime (i.e. lots of poor people), a self-fulfilling label if you are criminalizing survival activities like vending or street-level drug dealing and repeatedly checking the same people you criminalized last week for outstanding warrants, violations of conditions of release, or failure to appear.

So police constitute a built-in lobby for ‘tough on crime’ policies at the local level. An industry lobby that relies on the myths of ‘inner city crime’, of drugs and the drug trade as a ‘plague’ in our cities and of poor people as scary, ‘disorderly’, violent and irrational. They don’t want to look at involvement in the drug trade and other criminalized activities as a rational response to limited economic opportunities; to drug addiction as a response to trauma, social violence and despair; and to poor communities as functioning, complex and dynamic social networks built on a particular economic base (and in some ways

⁹ http://www.thestar.com/opinion/editorialopinion/2011/01/05/lots_of_gravy_in_bloated_police_budget.html

less dysfunctional and alienated than the ‘mainstream’ social order from which they are marginalized).

THE MASS INCARCERATION AGENDA

Across the country there is a huge boom in prison renovation and construction—according to the National Post the largest expansion of prison building ‘since the 1930s’.¹⁰ The federal government is adding 2,700 new prison ‘beds’ and the provinces are adding another 7,000 spaces across the country.¹¹ The federal expenditure for prisons has ballooned to \$2.98 billion this year (a more than 80% increase) and is expected to rise to \$3.98 billion next year. When you include the provincial expenditure on prisons the current annual cost is \$4.4 billion, expected to rise to \$9.5 billion by 2015.

In Alberta, the newly constructed Edmonton Remand Centre is a \$586 million, 16-hectare facility that has space for up to 2,800 prisoners. The Toronto South Detention Centre, to replace the Don Jail, carries a price tag of over \$1 billion and is being built as a “Public-Private-Partnership” (P3) with a private company to build, design and operate the 1650 bed facility for 30 years.

In British Columbia the Provincial Government is in the process of building a 216-cell, \$185 million remand centre in Surrey and has budgeted for an even larger facility (more than 500 cells) in the Okanagan. Both facilities are being built on a ‘Private-Public-Partnership’ (P3) model. The contract to ‘design-build-operate’ the Surrey facility has already been awarded to Brookfield Properties Management, a subsidiary of Brookfield Asset Management, a gigantic Canadian real estate corporation that manages \$150 billion in assets globally. This company will profit off the incarceration of the poor for the 30 year period of the contract.

The cost of incarceration is about \$57,000 per year in a provincial jail and more than \$88,000 a year in the federal system. So if you get a mandatory minimum of 1 year for selling drugs,

¹⁰ <http://news.nationalpost.com/2011/09/24/the-largest-expansion-of-prison-building-since-the-1930s/>

¹¹ <http://news.nationalpost.com/2011/09/24/by-the-numbers-how-many-new-prison-beds-are-coming-to-your-part-of-canada/>

probably one that you are addicted to, the State will spend \$57,000 on you, but if you are unemployed and have to rely on welfare you'll get \$7320 per year (\$610/ month—the regular welfare rate in B.C.). Since you can't survive on \$610, and because welfare will claw back any income you declare, dollar for dollar, you will have to resort to some kind of crime. As much as this policy seems to absurdly defy the logic of all the rightwing politicians getting elected through their tax cuts rhetoric and austerity programs, the truth becomes apparent that the tens of thousands spent on prisoners goes to line the pockets of big developers, construction firms, and prison management companies.

The jails are clogged with people who are in jail mainly because they are poor, addicted, and/or Native. Of charges that came to court in Canada in 2008-2009 about 21% were for administrative 'crimes' such as failure to appear in court, breach of probation (missing an appointment with your probation officer), or failure to comply with an order such as a no-go in a certain area. These charges are often generated as a consequence of drug charges, especially possession charges, that are later dropped because they are unlikely to result in any serious sanction. They are crimes that someone with the resources to keep track of court appointments, get to court and have representation would never do time for. Another 7% are drug possession and trafficking charges with no suggestion of violent behaviour, basically prohibition charges. And another 23% are for crimes against property, again with no suggestion of violence. From survival shoplifting to break-and-enter to auto theft, these are mainly crimes of economic survival generated by the gross inequality and poverty of our society. Only 12% of reported crimes in Canada are considered violent. A 1988 report on young offenders in custody in Manitoba shows that 45% were incarcerated for property crimes, 7.6% for 'crimes against themselves' such as drug use, sexual immorality or public drunkenness and fully 26.5% were in jail for victimless crimes like failure to appear in court.¹²

¹² For a longer analysis, including mass incarceration as a successor system to residential schools, see my article *The Mass Incarceration Agenda* at <http://basicnews.ca/2011/12/the-mass-incarceration-agenda-in-canada-the-view-from-vancouver/>

THE NEW REGIME OF SOCIAL CONTROL

While the institutional influence of the police and the profit takers from the Prison Industrial Complex are certainly factors in shaping the current trend toward criminalization and mass incarceration of the poor, it would be a mistake to view these as the decisive factors. This shift, like neoliberalism itself, is not a policy of any particular politician or government, but rather a set of ideologies, policies and practices linked to the political consensus within the ruling class about how to maximize the rate of exploitation and manage the smooth-running of the system.

The transition from the 'welfare state' regime of social control (through integrative, redistributive and indoctrination programs) to the neoliberal regime of social control (through criminalization, police and prisons) has been cleverly described as the capitalist state shifting from its left hand to its right. This description is apt in the sense that it insists on the continuity of the capitalist state and identifies the regime of social control as instrumental—a strategy for maintaining the dominances of the capitalist ruling class and maximizing profit within a particular context. What is important to keep in mind, and what the metaphor doesn't necessarily expose, is that the context is shaped by class struggle—and decisively by revolutionary class struggle and the threat to the capitalist system as a whole. Militant class struggles in Canada, Europe and the U.S. won important concessions from capital including the economic and political 'rights' that became the basis for the welfare state. But more importantly, it was the workers and peasants of Russia and China who, by making revolution and expropriating the capitalists in their countries, and who (given growing communist-led people's struggles across the world) created the global political context for a 'kinder, gentler' capitalism in the core capitalist countries. Absent the threat of revolution and a concrete alternative social system, and faced with its own crisis of overproduction, neoliberalism is decisively the strategy of the capitalist ruling class, and no amount of liberal hand wringing, pointing to its irrationality or even mass reformist social movements are likely to change that.

Punishing the poor is the weapon that the ruling class uses to justify it's current policy regime, to solidify its control over the 'middle class' in a time of instability and shrinking economic prospects for the 'middle strata' (by fostering fear, creating an enemy) and to encourage a compliant working class by making the prospect of economic failure more scary and thus the desire for economic stability/security—even if wages and working conditions are worsening—all the more urgent.

PICK A BIGGER WEAPON...

The resistance that we build to police harassment and violence and to mass incarceration in our communities is important. And there is a great deal to be learned from the VANDU campaign which has been dogged in exposing and opposing the Vancouver Police Department and in fighting for reforms that redistribute both wealth and power away from the police and to our communities. But while community campaigns can make small gains and give us glimpses of an alternative to the police/mass incarceration state, they will not turn the tide in this global context of economic, environmental, and social crisis.

A cross-country campaign against criminalization and mass incarceration could be an important next step. This would give us a chance to share information about the similarities and differences of how this agenda is being implemented in poor communities across Canada and could amplify our voice in exposing and opposing these policies at the level of the federal government.

But we shouldn't harbour any illusions that this is a democratic process, or that the ruling class will (or *can*, for that matter) retreat from these policies just because we make a fuss. Ultimately we need to "pick a bigger weapon", and challenge the whole system if we are ever going to achieve respect, justice and dignity for poor people and our communities.

