

## Penal Boundaries: Banishment and the Expansion of Punishment

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*We use this article to argue for greater recognition of legally imposed spatial exclusion—banishment—as a (re)emerging and consequential social control practice. Although the new social control techniques that entail banishment are buttressed by a blend of civil, administrative, and criminal law, they are best understood as punitive in nature. This argument is supported by two empirical findings. First, interviews with the banished indicate that spatial exclusion often has significant negative consequences akin to those identified by Sykes (1958) in his seminal account of the pains of imprisonment. Second, court data show that the growing use of civil and administrative banishment has increased the number of criminal cases involving allegations of noncompliance. These findings suggest that analysts of punishment might usefully broaden their focus to include phenomena that combine civil, criminal, and legal authority, and are not defined as punishment by their advocates.*

The deepest meaning of spatial separation was the banning or suspension of communication, and so the forcible perpetuation of estrangement.

Bauman (2000, 208)

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## INTRODUCTION

Spatial regulation is a key component of efforts to maintain order and exercise social control (Kedar 1996; Herbert 1997; Bauman 2000; Foucault 2003). Indeed, governments have long relied upon territorial strategies such as banishment, quarantine, transportation, deportation, and incarceration to respond to the threats of disease, migration, disorder, and crime. Theorists of social control have identified two main modalities through which spatial control is exercised: expulsion and containment. Control strategies aimed at expulsion take many forms but generally involve the forced removal of specified individuals or groups from a designated territory (Kedar 1996; Bauman 2000; Foucault 2003). Banishment, for example, was employed in ancient Babylon, Greece, and Rome, as well as by British authorities throughout the British colonial empire (Armstrong 1963; Snider 1998; Borrelli 2002–2003).

With the important exception of deportation, control strategies that rely upon spatial exclusion from sovereign territories have been largely replaced by tactics that rely instead upon containment or confinement. Indeed, “modernist” control institutions such as mental hospitals and prisons seek primarily to enclose, capture, and contain (Ewick 1998, 50; Simon 1993; Rhodes 2004). Although the roots of this control strategy arguably lie in the management of the plague (Foucault 2003), containment grew to become most closely associated with prison and other incarcerative institutions. Containment is also used by city officials as a strategy for dealing with problem populations such as the homeless (Davis 1992).

Recently, however, social control strategies aimed primarily at spatial exclusion have enjoyed a surprising renaissance. Although the massive expansion of US prisons and jails is understandably the focus of much attention, analysts also call attention to new architectural forms of sociospatial exclusion, the expansion of privatized spaces of consumption and leisure, and the contraction of public spaces. Fences, gates, walls, and armed security personnel are increasingly used to channel the socially undesirable away from sites of luxury living in cities from São Paulo to London to Los Angeles (Davis 1992; Caldeira 2000; Lynch 2001; Harcourt 2005; Crawford 2008).<sup>1</sup>

Moreover, new legal tools that entail spatial exclusion are now employed in municipalities across the United States (Davis 1992; Kelling and Coles 1996; Sanchez 2001; American Prosecutors Research Institute 2004; National Coalition for the Homeless 2006). As we describe below, these

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1. As this example suggests, the juxtaposition of exclusion and containment is somewhat misleading; they are, arguably, two sides of the same coin. The exile is both excluded and contained: an incarcerated person may be said to be contained but is also excluded (Bauman 2000). Nonetheless, the juxtaposition of exclusion and containment provides a useful way of conceptualizing changes in the spatial objectives associated with various social control strategies.

techniques are distinguished by their capacity to spatially exclude the unwanted over time and by their legally hybrid nature. Specifically, these tools banish their targets from contested urban spaces for extended periods of time and rest on an innovative blend of civil, criminal, and administrative law. Similar measures are in use in many other cities of the global north, particularly in Western Europe and Canada.<sup>2</sup>

The return of control strategies that seek explicitly and primarily to exclude the socially undesirable marks a significant, if inadequately understood, development, one that underscores the centrality of territoriality to social control efforts. Most such exclusionary control strategies fell into disrepute and disuse in previous centuries. The use of transportation as a criminal sentence, for example, was abandoned by the mid-nineteenth century (Garland 1990). Banishment, too, came to be seen as an archaic and outdated practice. As one legal scholar put it, banishment “would seem more appropriate to *Romeo and Juliet* or *Great Expectations* than to the solution of problems in a modern society” (Armstrong 1963, 758), and most US states now prohibit interstate banishment (Snider 1998). Similarly, the US Supreme Court’s invalidation of vagrancy and loitering laws in the 1960s and 1970s was predicated, in part, on the Court’s recognition that these laws were used to regulate access to and movement through space, particularly by people with marginalized social statuses.<sup>3</sup>

Yet the decline of interstate banishment and the invalidation of the vagrancy and loitering statutes did not mean that efforts to control the spatial mobility of the socially undesirable ceased. Instead, municipalities across the country developed a variety of new social control tactics oriented toward spatial exclusion. As a result of their legal hybridity, these new tools are less vulnerable to constitutional challenge than the vagrancy and loitering laws they arguably replace (Beckett and Herbert 2008). Examples include civil commitment laws (Scheingold, Olson, and Pershing 1994), civil gang injunctions (Maxson, Hennigan, and Sloane 2005; Stewart 1998), no-contact orders (Suk 2006), and off-limits orders and innovations in trespass law that authorize officials to spatially exclude those perceived as disorderly from urban spaces (Beckett and Herbert 2008).

These new social control strategies are largely ignored by students of punishment, who typically limit their attention to “the legal process whereby violators of the criminal law are condemned and sanctioned in accordance with specified legal categories and procedures” (Garland 1990, 17). Given

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2. On the United Kingdom, see Raco (2003), Flint and Nixon (2006), Millie (2008), and Ramsay (2008). On Germany, see von Mahs (2005) and Belina (2007). On France, see Dikec (2006). On Canada, see Hermer and Mosher (2002).

3. In these decisions (including *Papachristou v. Jacksonville* 1972, *Robinson v. California* 1962, and *Powell v. Texas* 1968) the Supreme Court ruled that penalizing people for behaviors over which they had no control—that were, in legal terms, based on status—was unconstitutional (see Ellickson 1996; Kelling and Coles 1996).

#### 4 LAW & SOCIAL INQUIRY

the importance of criminal law for generating punishment—particularly in the contemporary United States—it is understandable why scholars would focus there. Nonetheless, this focus on legal punishment administered to those convicted of criminal law violation has been the subject of several important critiques.

First, critics argue that restricting scholarly focus in this manner obscures the changing and multifaceted nature of the sanctioning process (Freiberg 1987) and omits penalties, such as lynchings, administered by civilians (see Godoy 2006). In addition, limiting scholarly attention to those convicted of criminal law violations ignores the process by which issues and behaviors are variously defined as the object of civil, administrative, or criminal law (Freiberg and O'Malley 1984; Greenspan 1994; Braithewaite 2003). As Freiberg (1987) notes, this process is political and often contested, and may have important implications for both the distribution of power and the allocation of rights.<sup>4</sup> Finally, a limited focus on the criminal law process ignores the ways in which civil, criminal, and administrative law are increasingly blurred (Freiberg and O'Malley 1984; Freiberg 1987; Greenspan 1994; Beckett and Herbert 2008). As one advocate of Seattle's parks exclusion law put it, "Unfortunately, the wheels of (criminal) justice turn slowly . . . civil law must fill in these gaps."<sup>5</sup>

Indeed, legally hybrid techniques that blend elements of civil and criminal law often shift the burden of proof and restrict rights in ways that benefit the state (Freiberg and O'Malley 1984). This is certainly true of the new social control techniques highlighted here. As a result of their legal hybridity, these new social control mechanisms provide minimal avenues for contestation, thereby diminishing the rights-bearing capacity of their targets. As Cheh (1991) notes,

Police and prosecutors have embraced civil strategies not only because they expand the arsenal of weapons available to reach antisocial behavior, but also because officials believe that civil remedies offer speedy solutions that are unencumbered by the rigorous constitutional protections associated with criminal trials. . . . A persistent question remains regarding the use of civil remedies to check antisocial behavior: what constitutional limits constrain their use? (1327)

We use this article to argue for greater recognition of spatial exclusion—banishment. Imposed through such legally hybrid control tools, banishment is a (re)emerging and consequential social control practice. Drawing on case study materials from Seattle, Washington, we also argue that the new social

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4. For example, persons under correctional supervision are subject to administrative rather than criminal legal authority, a pattern that has important consequences for the nature and strength of the rights protections possessed by probationers and parolees (see Greenspan 1994).

5. Letter from Harry Ferguson (Ferguson 1998).

control techniques that entail banishment are best understood as punitive in nature, their legal hybridity notwithstanding. Indeed, this hybridity strengthens the state's capacity to punish. This argument is based on three interrelated claims. First, we argue that many of the new urban control tools are aimed explicitly, and primarily, at spatial exclusion; by compelling their targets to "quit" a place, they entail banishment, a practice that is widely recognized as punishment. Second, we draw on interviews with the banished to show that the pains triggered by banishment are qualitatively similar to those caused by imprisonment. Finally, we use police and court data to show that the employment of the techniques that entail banishment often leads to arrest and conviction. In addition to inflicting many of the pains associated with confinement, banishment makes traditional punishment—criminal justice sanction—possible when it would not otherwise be.

In the first section of the article, we provide an overview of the nature and use of newly innovated social control tools utilized in Seattle and an increasing number of other cities. The following section describes the data and methods used to analyze the consequences of these control tactics for their targets and for the criminal justice system. The final section summarizes the empirical findings and offers reflections on their theoretical and political significance.

## BANISHMENT'S RETURN

In an attempt to restore order and civility to urban landscapes increasingly populated by the unhoused, many municipalities, including Seattle, adopted "civility" codes in the 1990s (Kelling and Coles 1996; Body-Gendrot 2000; Taylor 2000; Harcourt 2001; Herbert 2001; Snow and Mulcahy 2001; Gowan 2002; Hermer and Mosher 2002; Feldman 2004; Gibson 2004; von Mahs 2005; Herbert and Brown 2006). These laws criminalized many of the behaviors associated with homelessness, such as panhandling, sitting and lying on sidewalks, and camping, if not homelessness itself (Harcourt 2001; Hermer and Mosher 2002; Mitchell 2003). Since that time, many cities innovated and adopted more broadly applicable and legally hybrid social control tools aimed at eradicating disorder (Sanchez 2001; Beckett and Herbert 2008; Crawford 2008; Ramsay 2008).<sup>6</sup> Seattle appears to be at the cutting edge of this trend toward increased use of banishment.

In the common law tradition, banishment is defined as "a punishment inflicted upon criminals, by compelling them to quit a city, place or country

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6. For example, the Anti-Social Behavioral Ordinance adopted by the British government allows authorities to grant Civil Protection Orders (CPOs) in civil or administrative proceedings. The terms of the prohibitions these orders entail may be broad and include spatial restrictions. A breach of a CPO is a criminal offense (Ramsay 2008).

for a specified period of time” (Black 1951). Some of the spaces from which people are banned in Seattle are, admittedly, comparatively small scale. And, as previously noted, the courts have generally not considered exclusion from a neighborhood or area within a city to constitute banishment.<sup>7</sup> It is thus perhaps better to use the term “exclusion” to describe the practices we evaluate.

Nonetheless, we argue that the new techniques entail banishment for three reasons. First, we seek here to emphasize the central role of the state’s coercive power in the exercise of this form of spatial segregation. The term “exclusion” is often used in a flexible way and frequently connotes less formal practices, such as shunning by one’s peers. By contrast, “banishment” implies a strong sense of overt state policy, a practice that emerges by dint of “official decree.”<sup>8</sup> This is as true if it occurs through civil or administrative law as through criminal law. Second, banishment seems best to describe what its targets say they experience. As our interviews illustrate, the banished describe their spatial ostracism in strong terms, as more than a simple complication to their daily patterns but as an expulsion from the body politic. Finally, we use the term “banishment” to emphasize the degree to which the zoning logic it entails is expansionary. Although individual sites of exclusion are each typically small, many are not. Further, many citizens are subjected to multiple exclusion orders, such that much of the city becomes a “no go” area for them, and their mobility through the city is thus extremely limited.

In short, we argue that banishment is back. Several new tools are responsible for its return in Seattle. These include parks exclusion orders, innovations in trespass law, and “off-limits” orders, each of which is described below.

### Parks Exclusion Orders

One of the most important social control innovations has been the adoption (in Seattle, Washington; Portland, Oregon; and many other municipalities) of “parks exclusion” laws.<sup>9</sup> Prior to the adoption of these laws, individuals could be removed from public parks (arrested) only if there was probable cause that they had committed a criminal offense. More minor rule violations, such as being in the park after closing time, resulted in a citation.

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7. Indeed, despite official proclamations against banishment, those arrested for vagrancy were often given the option of leaving town in lieu of jail time, a modified version of granting pardon to those willing to submit to banishment (Foote 1956; Armstrong 1963; Snider 1998; Borrelli 2002–2003).

8. The American Heritage Dictionary’s (1969) first definition of banishment is “To force to leave a country or place by *official decree*” (emphasis added).

9. For a partial list of other Washington State municipalities that have similar laws, see <http://www.mrsc.org/Subjects/Parks/adminpg.aspx#Enforce> (accessed July 30, 2009).

Parks exclusion laws authorize police and parks officials to ban persons alleged to have committed minor infractions (such as being present after hours, having an unleashed pet, camping, urinating, littering, or possessing an open container of alcohol) from one, some, or all city parks for up to one year (depending on the number and type of violation).<sup>10</sup> Although the parks exclusion ordinance is defined as civil and remedial rather than criminal and punitive in nature, a violation of one is typically a misdemeanor criminal offense (in Seattle, unofficially known as “Trespass in the Parks”).

The Seattle ordinance<sup>11</sup> authorizes the police and parks officials to exclude an alleged rule violator without providing any evidence of wrongdoing. Based on a four-month sample of all parks exclusion notices, we estimate that the Seattle Police Department (SPD) issued over two thousand parks exclusion notices in 2005. Technically, those who are excluded for more than seven days have the right to appeal their exclusion. Yet there are several important barriers to submitting an appeal.<sup>12</sup> Proponents of the law insist that this diminution of due process rights is appropriate because “[u]nder the ordinance individuals are excluded from a park, not arrested. Thus, due process is—and should be—less than for a criminal arrest.”<sup>13</sup> In addition, advocates stress that, unlike arrest, the exclusion from a park or park zone is a “relative minor” sanction.<sup>14</sup> This emphasis on the noncriminal nature of the exclusion itself obscured the fact that the ordinance created a new crime (Trespass in the Parks): being present in a park in violation of exclusion order.

### Innovations in Trespass Law

In Seattle, police officers may also issue “trespass admonishments” that prohibit a person from being on a certain property or group of properties for an extended period of time, typically one year. Officers are granted this authority via a contract with property owners. The contract essentially transfers the property owners’ trespass authority to the police. Officers are thus able to issue trespass admonishments whenever they see an individual “without legitimate purpose” on properties that are normally open to the public. In many cities, including Seattle, police officers and others issuing these

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10. For a provocative consideration of the regulation of large-scale, national parks, see Hermer (2002).

11. The formal title of the Seattle ordinance is the Parks Enhanced Code Enforcement Ordinance.

12. For example, the accused does not have the right to legal representation, and the written appeal must be postmarked within one week of the exclusion order. According to Parks Security, only ten to twelve of the thousands of people who have been excluded from city parks in the past decade have appealed their exclusion. In two of these cases the appeal was successful (Larry Campbell, Director, Seattle City Parks Security, phone call, June 6, 2007).

13. Letter from Harry Ferguson (Ferguson 1998).

14. Letter from Mark Sidran (Sidran 1999).



“civil” trespass admonishments are not required to record the reason for the exclusion. The “no legitimate purpose” standard does not require evidence of criminal conduct. Nor does the banished person have an opportunity to contest his or her exclusion. A violation of these “civil” exclusion orders is a criminal offense: Criminal Trespass.

Like parks exclusion orders, trespass admonishments are used to limit access to other kinds of properties that are otherwise open to the public in Seattle. Our review of admonishments issued by the SPD during a four-month sample period from 2005 suggests that the SPD alone issues nearly ten thousand trespass admonishments each year. Analysis of these data also indicates that people are routinely “trespass admonished” from Seattle libraries and recreation centers, the public transportation system, college campuses, hospitals, religious institutions, social service agencies, and commercial establishments.

In municipalities across the country, public housing authorities increasingly employ trespass law in an attempt to reduce crime. Where this is the case, streets located within public housing facilities may be conveyed to public housing authorities to endow those agencies with the right to exclude certain individuals from those formerly public streets (Mitchell 2005). In other cases, public housing authorities are endowed by statutory law with the same right to exclude as private property owners. Some public housing trespass programs ban those who have been arrested for or convicted of particular crimes from public housing buildings and grounds; this can even include residents. Other no-trespass policies ban nearly all nonresidents. Still others allow law enforcement officers wide discretion in deciding whom to exclude and whom to arrest for violating their exclusion order (Goldstein 2003; Mitchell 2005). In New York City, the increased use of trespass laws in public housing facilities and private apartment complexes has triggered a sharp rise in trespass arrests (Adame 2004; Fernandez 2007; Parascandola 2007; Tabachnick 2007).

Unlike the parks exclusion ordinance, criminal trespass programs do not appear to be based on an explicit enabling statute, but rather upon a new interpretation of administrative/civil law. As a result, challenging their validity may be particularly difficult. In New York City, for example, a recent executive order authorizes housing authorities and police officers to permanently exclude people from public housing property for a variety of reasons. Although the city’s Operation Safe Housing program specifies that those arrested for selling drugs on public housing property may be excluded indefinitely, others may be excluded as well (Goldstein 2003; Adame 2004).

As a result of a second major initiative undertaken by the SPD and community prosecutors at the Seattle City Attorney’s office, the size of some of the physical spaces from which people are banned is now larger. Dubbed “Trespass Programs,” these initiatives group similar and geographically



proximate businesses together. For example, the West Precinct Parking Lot Trespass Program includes 320 downtown parking lots.<sup>15</sup> A similar program admonishes individuals from 25 northside motels. With these programs, if one is banned from one of the grouped locations, one is banned from all of them.

### Off-Limits Orders

In Seattle and many other municipalities, judges, police officers, and/or correctional officers increasingly require those convicted of certain offenses to stay out of particular sections of the city as a condition of their community supervision sentence (Sanchez 1997; Flanagan 2003; Hill 2005). Because probationers and parolees are largely governed by administrative rather than criminal law (Greenspan 1994), persons on correctional supervision alleged to have violated their Stay Out of Drug Area (SODA) or Stay Out of Areas of Prostitution (SOAP) order are not entitled to the panoply of rights that attend, at least in theory, to the criminal process. In some cases, off-limits orders are also imposed on defendants who are not convicted of a crime. In Portland, Oregon, for example, orders to remain outside “drug-free zones” and “prostitution-free zones” may be imposed by police officers at the time of arrest or in lieu of arrest. These orders remain in effect even if the banished person is not convicted of a drug or prostitution-related offense (Sanchez 2001; Sewell 2005).<sup>16</sup> In Seattle, SODA and SOAP orders can be imposed on those arrested, but not convicted, as a condition of a deferred prosecution.

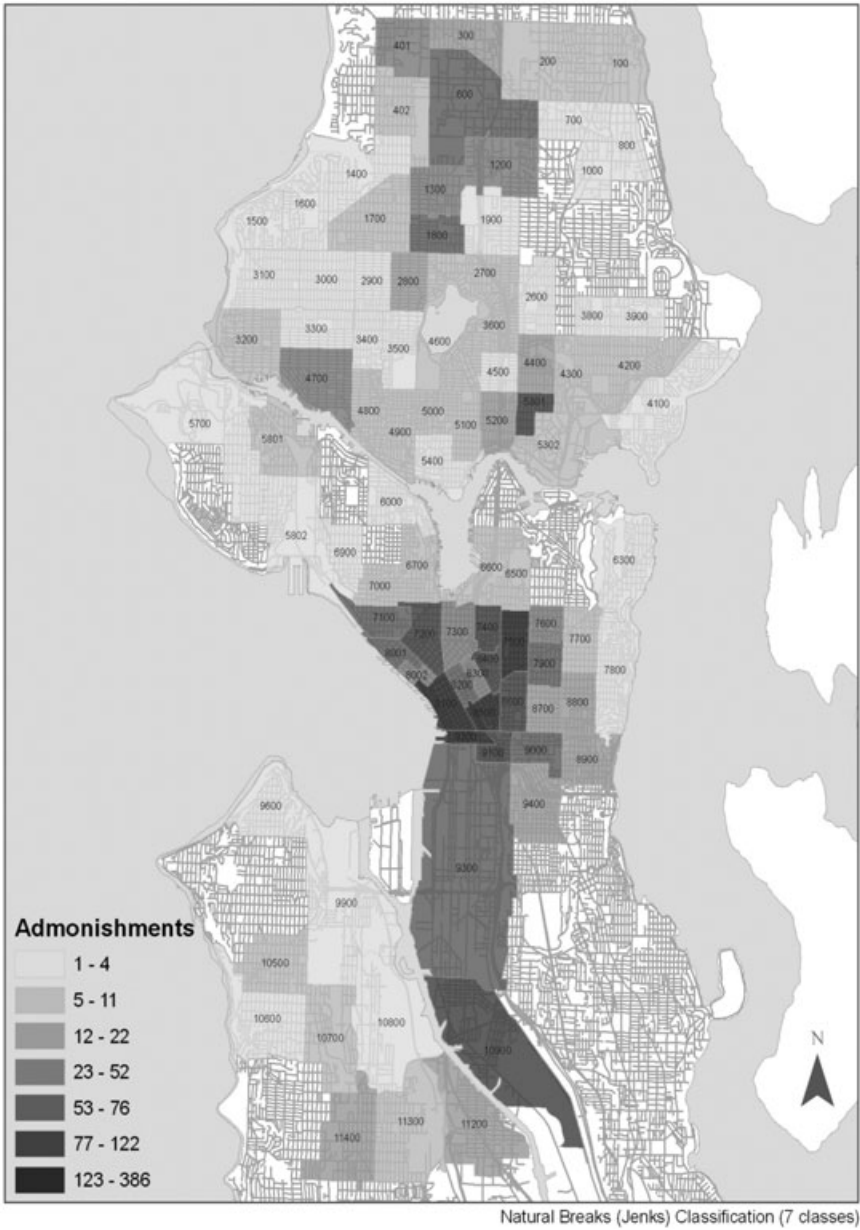
The areas from which people are banned often comprise significant parts of the city, and may include the entire downtown core in which social and legal services are concentrated. According to the most recent data available in Seattle, for example, roughly half of the city’s terrain, including all of the downtown, is now defined as a “drug area” from which someone may be banned (see Figure 1).

Those subject to these off-limits orders are generally prohibited from being in the proscribed areas for any reason. Violations may be considered separate crimes worthy of an additional year of jail and/or a violation that extends the length of the probation sentence or warrants incarceration. In some locales, exceptions may be granted if people live, work, or have other “legitimate” reasons to be in the proscribed areas (Sanchez 1997; Flanagan 2003; Hill 2005). In Seattle, judges’ willingness to grant such exceptions reportedly varies significantly.

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15. Seattle City Attorney’s *Liason Links*, Spring 2005 (on file with the authors).

16. A similar statute was in effect in Cincinnati, Ohio, from 1996 to 2000, but was overturned in the Sixth Circuit; these spatial restrictions are now imposed on those convicted as a condition of probation in Cincinnati (Associated Press 2002). In Portland, exclusion orders stay on a person’s record even in the absence of conviction (Sewell 2005).



**FIGURE 1.**  
**Trespass Admonishments by Census Tract, Seattle, 2005**  
*Source:* Seattle Police Department, Trespass Admonishment Notices issued in February, April, August, and November 2005.  
*Note:* The map does not show trespass admonishments issued in the South Precinct, which were not provided by the SPD.

**TABLE 1.**  
**Indicators of Social Disadvantage, City of Seattle vs. Downtown Seattle**

	City of Seattle	Downtown Seattle
Poverty Rate	11.8%	29.9%
Unemployment Rate	3.6%	12.3%
Percent Disabled*	17.2%	30.5%
Single Parent Households	23.6%	56.3%

\* Among adults aged 21–64.

Source: Data for City of Seattle from US Census Bureau 2000; data for Downtown Seattle taken from <http://www5.metrokc.gov/KCCensus/> (accessed July 30, 2009).

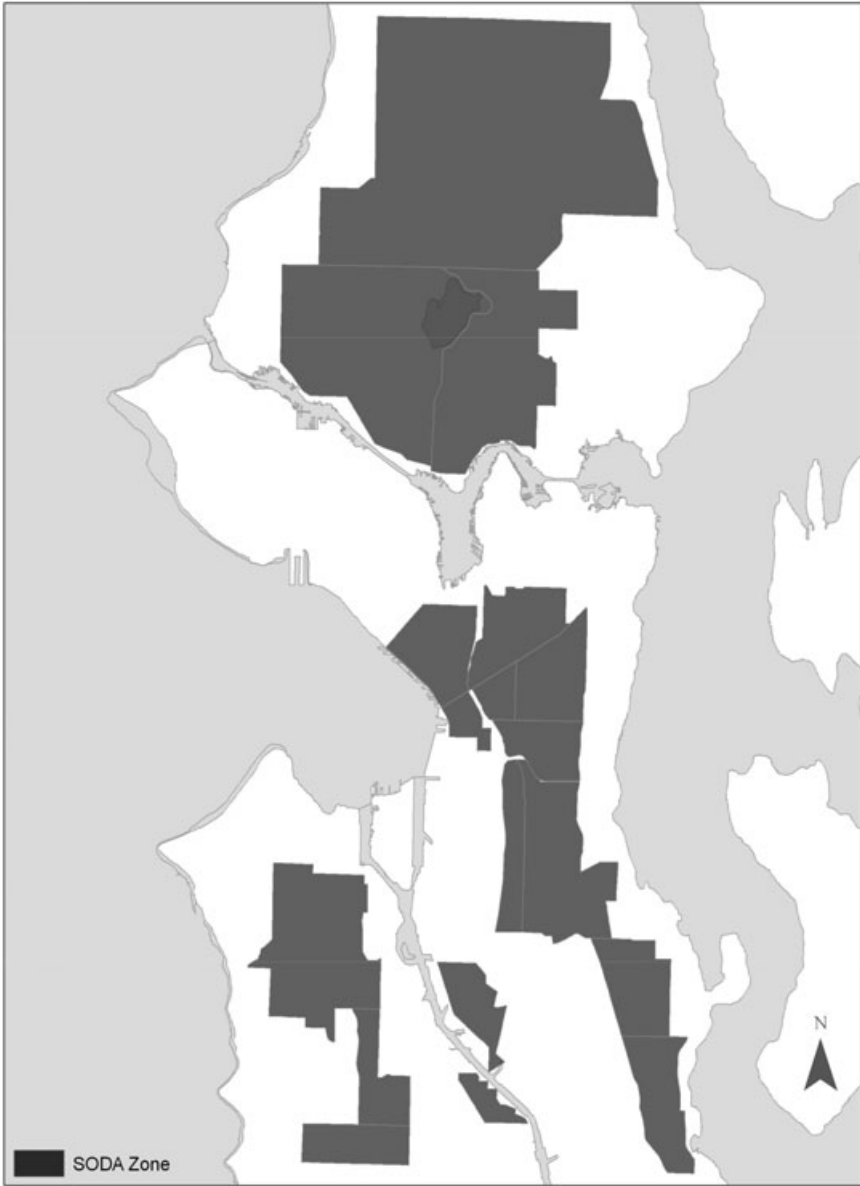
### Trends and Patterns in the Use of Banishment

Although our principal intent is to cast broad questions about the implications of banishment as an emerging form of punishment—and not to explain its social geography in Seattle—our data do suggest that its practice is somewhat concentrated downtown and that banishment is legitimated in multiple ways. Analysis of a four-month sample of all parks exclusion orders and trespass admonishments issued by the SPD in 2005<sup>17</sup> indicates that banishment is primarily used downtown, where the homeless and other disadvantaged groups are concentrated (see Table 1). Specifically, over 90 percent of the parks exclusion notices issued during our four-month sample of 2005 pertain to parks or park zones located downtown. Criminal trespass admonishments, too, were concentrated downtown (see Figure 2). Thus, the use of banishment is largely a “downtown story” in Seattle.

These data also indicate that banishment is used to exclude people from many different kinds of places (see Table 2). It is important to note, however, that an exclusion from a single location, such as a parking lot, commercial establishment, or park, may trigger exclusion from many such spaces as a result of the city’s creation of various “trespass programs” and “parks exclusion zones.” For example, a person excluded from any one of the establishments listed in Table 3 is banned from all of those listed for one year.

Officers issuing parks exclusion notices are required by ordinance to provide a reason for the exclusion. However, this is not true of criminal trespass admonishments. Indeed, officers failed to provide a reason for the admonishment in nearly 60 percent of the trespass admonishments included in our sample. Among cases where officers did offer a reason for the admonishment, a plurality were triggered by the allegation that a person was

17. The four months included in the sampling period were February, April, August, and November, chosen to maximize seasonal variation. The records were provided by the SPD through a Public Disclosure Act request.



**FIGURE 2.**  
**Stay out of Drug Area (SODA) Zones, Seattle, 2005**  
*Source:* SODA boundary data provided by the Seattle Police Department.

somewhere he or she did not have legal authority to be: on private property, or on public property in violation of a prior exclusion order or a posted “No Trespassing” sign, or in violation of the city’s prohibition of sleeping/camping in public places. The next largest categories included alleged narcotics activity and possession or consumption of alcohol (see Table 4).

**TABLE 2.**  
**Parks Exclusions and Trespass Admonishments by Location Type, 2005**

	Parks Exclusions	Trespass Admonishments	All Exclusions/ Admonishments
Commercial Establishments	0	47.2%	37.5%
Parks and Recreation Centers	100%	2.7%	22.8%
Public Housing/Apartment Buildings	0	12.5%	9.9%
Hotel/Motel	0	8.2%	6.5%
Hospitals and Medical Facilities	0	4.2%	3.3%
Parking Lot	0	3.8%	3%
Pike Place Market and Historical District	0	3.4%	2.7%
Dept. of Transportation Property	0	3.3%	2.6%
Social Service Agencies/ Shelters	0	1.9%	1.5%
Piers	0	1.8%	1.5%
Religious Institutions	0	1.4%	1.1%

*Source:* Seattle Police Department, Trespass Admonishment, and Park Exclusion Notices issued in February, April, August, and November 2005.

Note: Figures do not include trespass admonishments issued in the South Precinct, which were not provided by the SPD.

### Justifying Banishment

The contemporary practices of banishment in Seattle—parks exclusion orders, trespass restrictions, and off-limits orders—together constitute an expanding social control net. We suggest that these practices are best understood as punitive in nature. By contrast, their advocates cast them as non-punitive, indeed, as an alternative to punishment.

The official rationale for employing banishment as a means of combating disorder is that removing the disorderly from contested locales will improve the quality of life of other people who live and work in those areas. For example, former City Attorney Mark Sidran, a leading proponent of efforts to combat “disorder,” emphasized that “misbehaviors” that do not rise to the level of crime “can destroy a park just as surely as cutting its trees or paving it over,” and argued that the parks exclusion law will “better protect Seattle’s parks from illegal and inappropriate behavior” (Sidran 1997). Similarly, King County Prosecutor Norm Maleng opined that the use of off-limits (e.g., SODA) orders would “have a positive impact on the neighborhoods of our city” by “drawing a line around a neighborhood and making it off-limits to drug offenders” (quoted in Emery 1991, B5). The threat of sanction (arrest or incarceration) is thus intended to deter the banished from returning to the places that ostensibly offer temptation. As the legal advisor to the SPD explained, “SODA orders will spare [the SPD] the frustration of arresting

**TABLE 3.**  
**Rainier Beach Trespass Program: Participating Businesses**

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Vince's Italian Restaurant	8824 Renton Ave. S.
Allstate Insurance	9000 Renton Ave. S.
Gem Reality	9000 Renton Ave. S.
People's Translation Services	5013 S. Barton Pl.
G's Barbershop	5015 S. Barton Pl.
Video 4 You	5019 S. Barton Pl.
Komachi Beauty Salon	5027 S. Barton Pl.
Rany Food Mart	8600 Rainier Ave. S.
Payless Shoe Source	8824 Rainier Ave. S
Rite Aid Drug	9000 Rainier Ave. S
QFC	9000 Rainier Ave. S
Bank of America	9019 Rainier Ave. S
Southwest Mortuary	9021 Rainier Ave. S
Rainier Beach Dental	9040 Rainier Ave. S
Sub Shop #7	9050 Rainier Ave. S
SPD Storefront	9099 Seward Park Ave. S.
Jack in the Box	9102 Rainier Ave. S
Pho Van Vietnamese Restaurant	9150 Rainier Ave. S
Rainier Beach Veterinary Hospital	9238 Rainier Ave. S
King Donut	9232 Rainier Ave. S
Vinson Brothers Corporation	9245 Rainier Ave. S
Safeway	9250 Rainier Ave. S
Key Bank	9255 Rainier Ave. S
Washington Dry Cleaners, Inc.	9252 Rainier Ave. S
Safeway	9262 Rainier Ave. S
McDonalds	9304 Rainier Ave. S
Rainier Beach Chiropractic	9305A Rainier Ave. S
Seattle Best Cleaners	9305C Rainier Ave. S
Washington Federal Savings	9325 Rainier Ave. S
Roscoe Energy Systems	9367 Rainier Ave. S
Hong Kong Seafood Restaurant	9400 Rainier Ave. S
KFC/Taco Bell	9401 Rainier Ave. S
Living Color Beauty Supply	9416 Rainier Ave. S
Larry Veldyke Building	9420 Rainier Ave. S
Morris Tax Service	9428 Rainier Ave. S
International Beauty College	9431-9437 Rainier Ave. S
Rainier Beach Cleaners	9432 Rainier Ave. S
Maya's Family Restaurant	9447 Rainier Ave. S
Rainier Beach Espresso	9471 Rainier Ave. S
R & R Real Estate Services	9258 57th Ave. S.
Hair Studio 57	9259 57th Ave. S.

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*Source:* Seattle Police Department, South Precinct Trespass Admonishment Form.

**TABLE 4.**  
**Reasons Given for Parks Exclusion Order/Trespass Admonishment**

	Parks Exclusion	Trespass Admonishment	All Exclusions and Admonishments
No Reason Given	0%	59.8%	45.7%
Suspected Narcotics Activity	29.5%	6.8%	11.6%
No Legal Access*/Trespass	14.8%	7.8%	9.4%
Possession of Alcohol	29.2%	3.5%	8.9%
Disturbance (No Violence)	1.5%	6.5%	5.6%
Theft/Shoplifting	0%	6%	4.9%
Loitering	0%	5.3%	4.2%
Sleeping/Camping**	17.6%	0%	3.6%
Disturbance	0%	3.6%	3%
Other	6.2%	.7%	3.1%

Source: Seattle Police Department, Trespass Admonishment, and Park Exclusion Notices issued in February, April, August, and November 2005.

\* Parks exclusion orders include people present in violation of prior exclusion order and/or in the park after closing time. Trespass admonished includes people on property not open to the public, public property in violation of a posted no trespassing sign (usually DOT property), and/or public or private property in violation of a prior admonishment.

\*\* During park hours.

someone one night and seeing them back on the streets selling drugs the next night” (quoted in Schellinger 1990, B1).

In short, banishment is defended as a means to improve the quality of life of orderly urban residents. This rationale presumes that the world is neatly divided between the orderly and disorderly, with the latter serving solely as a vector of crime and vice. Yet matters are more complicated than this social cartography allows. For example, in his well-known analysis of the lives of book and magazine vendors in New York City, Mitch Duneier (1999) found that even if many of these street inhabitants committed “disorderly” acts such as talking loudly, using drugs, and spreading their wares on the sidewalk, they also acted as agents of informal social control on the streets. Moreover, the service they provided—selling recycled reading material—arguably enhanced the quality of life of some New York residents. In short, Duneier’s subjects could not be characterized solely as “disorderly” despite sometimes engaging in illicit behavior.

Official claims about the deterrent effects of spatial exclusion also tend to ignore important empirical matters, including the vexing problems of noncompliance and displacement, and the possibility that spatial exclusion may render the lives of the banished more rather than less disorderly. Indeed, the assumption that the banished will comply with their exclusion order(s) presumes that the locales from which people are banished offer little other than temptation. Yet compliance with an exclusion order may mean loss of



access to important and stabilizing resources; for this reason, it is conceivable that many of the banished will not comply with their exclusion order(s).

In short, the practices that entail banishment are justified in part by claims that are subject to empirical inquiry. In particular, proponents argue that exclusion orders are relatively minor sanctions, serve as an alternative to punishment, and, by deterring the disorderly from returning to exclusion zones, will improve the lives of others who spend time in those zones. The following analysis considers the validity of these claims, paying particular attention to the consequences of banishment for those directly targeted and for the criminal justice system. First, however, we briefly describe the data and methods utilized in this analysis.

## DATA AND METHODS

Our assessment of banishment in Seattle shows that it is very much a form of punishment and should be understood as such. Specifically, we show that its targets experience many of the same deleterious effects that Sykes (1958) identified among the incarcerated. We also show that banishment works to expand the criminal justice system and to subject people to criminal punishment who would not otherwise experience it.

To analyze banishment's effects on those who are subject to it, we draw on interviews with forty-one Seattle residents, each of whom possessed one or more of the banishment orders listed above at the time of the interview. These interviewees were recruited through attorneys, social service providers, flyers, and by word of mouth. The respondent pool thus comprises a convenience sample and may not be representative of the banished population as a whole. Conducted between September 2006 and June 2007, the interviews took place in public locales such as coffee shops and parks, and ranged from thirty to ninety minutes in length. The interviews were semistructured: certain questions were asked of all interviewees, although respondents were also able to introduce topics and issues. The interviews were tape recorded and later transcribed for analysis. Interviewees were paid \$25 for their time. Information about the sample and their exclusion orders is summarized in Table 5.

To rely on interview data such as this requires one to confront the question of truthfulness: how do we know whether we can trust what our respondents are telling us? Several considerations bolster confidence in the reliability of these data. First, many of the interview questions focused on the subjective experience of banishment; although deceit remains a possibility, there is no higher authority on one's subjective experience than oneself. However, some questions did focus on "factual" issues. For several reasons we are confident that the answers to these and other factual questions are largely reliable, with a handful of exceptions. First, the responses we obtained were largely consistent with what we learned from other data sources. For example,

**TABLE 5.**  
**Characteristics of the Interview Sample**

Male	51.2%
Female	48.8%
Black	56.1%
White	29.2%
American Indian	12.2%
Latino/a	2.4%
Average age	38
Homeless	80.5%
Trespass admonishment	41.7%
Parks Exclusion	58.5%
SODA order	41.7%
SOAP order	14.6%

in a prior analysis of police records of parks exclusion orders, we found that roughly 30 percent of these exclusions were triggered by alleged narcotics activity, 30 percent for possession of alcohol, and 30 percent for sleeping/camping. Of the twenty-four individuals interviewed who had been excluded from city parks, a third fell into each of these three categories. Thus, the information provided in police records very closely matched the information obtained from respondents.<sup>18</sup>

Two additional factors further enhance confidence in the reliability of these data. First, we relied upon the same kinds of indicators that are commonly used in everyday interaction to assess the reliability of the information with which we were supplied. That is, we considered the internal consistency of respondent's accounts, as well as their demeanor. Most of the interviewees offered fairly consistent stories, convincingly explained any contradictions noted, and made eye contact throughout the interview. (This was not the case in two interviews, the results of which were discarded.) Finally, many respondents freely admitted in their interviews to engaging in illicit conduct. Those who had been SOAPed, for example, clearly and openly identified themselves as "working girls." Others spoke freely of their struggles with addiction. In short, most of the interviewees were quite candid about

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18. In some cases we checked people's accounts of their legal history against the information available to the public through the King County jail registry. The jail registry lists each booking into King County Jail that has occurred within the past year and the charges that precipitated that booking. In every case we checked, those who told us that they had no criminal record had, according to the jail registry, not been booked into the King County Jail in the past year. We also checked the jail registry in a few cases when interviewees' accounts strained credulity. For example, one interviewee failed to arrive for his interview twice within a two-week period. In both cases, he called days later and explained that he had been arrested for trespass and missed our appointment because he had been in jail at the time. Although we were initially dubious, his account was indeed borne out by the information supplied by the jail registry.

their own less-than-flattering behavioral issues. Their candor is likely a reflection of the fact that interviewees were paid for their time no matter what they said; moreover, because they were recruited through public defenders and social service providers, respondents likely perceived the interview environment as safe.

These interviews are supplemented by police records and data provided by the Seattle Municipal Court, and the Seattle mayor's office provided data analysts at each of these institutions. These data will be used to illustrate the increased use of banishment and its consequences for the criminal justice system.

## BANISHMENT'S CONSEQUENCES

In this section we assess the effects of banishment on those subjected to it. As is illustrated below, the banished experience themselves in ways entirely congruent with Sykes's catalog of the pains of incarceration. For this reason, we suggest that banishment be considered by scholars as a highly contemporary and consequential form of punishment. Before describing Sykes's taxonomy, we need first to provide an overall assessment of the impacts of exclusion orders on those who receive them.

The punitive apparatus exerts its strongest force on those who refuse to comply with the terms of their banishment, for obvious reasons. One-third of those interviewed indicated that they largely complied with their exclusion orders; the remainder did not. A number of factors appear to discourage compliance. First, although jail is widely considered to be a decidedly horrible place, the fear of being jailed was not sufficient to deter many. This fact largely reflects the unpleasant conditions in which our respondents lived; it also underscores the importance of the space(s) from which they had been excluded to their lives and well-being.

Social contact was among the important amenities offered in parks and other exclusion zones. Richard,<sup>19</sup> a Native American man arrested several times for returning to a park known as a gathering spot for Native Americans, reported that, "All the Natives like Victor Steinbrueck Park, you know, its how we find each other, or at least it used to be. And it's beautiful, it's got this great view, and there's bathrooms there, and Debbie here, she used to bring us food once in a while." In a follow-up phone conversation, Richard reported that he had just been released from his fifth jail stay for trespass in the parks that year: "They just can't kick me out of there. That's where my people are at." Lou, a homeless African American man, also felt strongly about this:

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19. Pseudonyms are used throughout the document.

But uh, I go to parks where people be. People of all cultures and colors. Not, not where, not just some open field. An open field, that's creepy. Very creepy. . . . So the whole thing is just trying to find a place to be that's safe and comfortable. Yeah, that's safe, that's comfortable, that's out in the light, you know, with people around, yeah. People of all cultures, you know.

This appreciation of the social contact afforded by parks and other exclusion zones was also keenly felt by homeless veterans who worried about their antisocial tendencies:

That's another thing about the parks, is, you know, that you go in there, you have a thousand people around. . . . Have all the company you want but don't have to talk to anybody in particular. And even though you may not talk to them, it's good just to have somebody around, you know, because I, uh, that's the worse thing I do is that I isolate . . . so, like I said, I might not be social but I come to be around people. (Darren)

For many, being around other people was crucial to their sense of security:

I feel like, you know, if people are around, you know, you might, the maniac might not catch you up, you know what I mean? 'Cause I been in California where maniacs are, you know, people come and kill people, harass people for nothing, just because they are homeless, you know what I mean. So that's why I choose to be in a park around people. (James)

Many respondents also reported that parks were simply the only place they could go.

You know, we really don't have no place to go because they kick us out of there [the shelters] for a certain portion of the day and we get to go back in at around 5:30 in the evening. So we really, really, really don't have any place to go but to that park, or to the fountains across the street, or to the other park, or whatever. (Lugena)

Although important, parks were not the only spaces that were reported to offer significant opportunities for social contact. Ronald, a homeless African American man, found shelter and other needed services at the Downtown Emergency Services Center (DESC), located in the SODA zone from which he was banned. Because he stayed at DESC, Ronald was told by the judge that he could be in the area during the day as long as he was not "loitering." Even with this allowance, Ronald objected to the constraint his exclusion order and the prohibition against loitering imposed on his ability to maintain social relationships:

They're sayin' I can't do that [socialize] anymore, but I'm gonna do it. I got to do it! I'm not gonna say, uh, "I can't talk to you, I got to get the to Lazarus center, I'm on a SODA." Nooooo. [Pauses, adopts a street voice.] "Wassup, girl? Watch you doin'?" [Laughter.] That's it. You know, I'm goin' on with my life. I don't have a home, at least let me have some fun!

In short, compliance with banishment orders is frequently complicated by the fact that the spaces from which people are banned usually offer crucial opportunities for social contact and relationships. Access to social services was also a key consideration. Parks and SOAP/SODA zones were reported to house a number of important services that rendered compliance with an exclusion order impractical:

They come over to 1st and Yesler, spread out the food, set up racks of clothes and you get a number and when they call your number pick out a few things. You know, they give out the hygiene kits. And it takes me out for all of that. Which I need, all of that. So no, I still go the parks. . . . They got the clothing, they got the food, they got the medical attention right there, down here. Where am I gonna move? . . . See that [complying with a SODA order] is kind of difficult for me because I use the public health area down there, I have a case worker down there. I go through there, also like right down Belltown, there's the DHHS [Department of Health and Human Services] office. I have to go to the DHHS office to complete my, uh, my work, to get my benefits and stuff. . . . Uh, Chinatown, I had to go there to the Social Security office, 'cuz I'm applying for SSI [Supplemental Security Income]. . . . You know? So I had to walk through Chinatown. My mother lives in the Central District, do you know what I'm saying? I can't stay out of these areas. (Marjorie)

Many respondents also described a more amorphous sense that the place from which they had been banished was home:

I got to go there [to the SODA zone]—I don't know nothin' else! I know my way around, now, pretty good now the downtown area, I've been here now since 2002. . . . But basically, this is home, this little downtown area, I don't know anything else. . . . Them are the blocks that you walk around and keep your feet warm, or hustle, whether you panhandle, whether you wash windows, or whatever it is. That's where you live. That's your home, downtown. So, I mean, and a lot of times what they consider to be a dope area is not a dope area. You know it might be a place where a few smokers go smoke, or, um, but that's it. But it's your home too. (Daniel)

Thus, whereas city officials who design and implement banishment policies appear to imagine certain parks or neighborhoods largely in terms of the illicit opportunities they afford, those interviewed reported a much more complex understanding of, and relationship to, these spaces. Often the areas from which they were banished were seen as the only place they felt at home. The fact that services are often concentrated in those same areas made the exclusion order painfully ironic, even nonsensical, for many. In sum, most of those interviewed reported that they were largely unable or unwilling to comply with their exclusion order.

Whether they complied with their exclusion order or not, banishment imposed many costs on most respondents. Only five of the forty-one interviewees reported that their exclusion order had largely positive effects. This comparatively small group reported that their exclusion order provided a helpful incentive to stay away from the people and places that afforded opportunities for trouble. As William, a recipient of a SODA order, put it,

Actually for me, it [the SODA order] betters my situation. I guess it's strictly me because . . . I'm tryin' to quit. This allows me not to be in that area anymore, so therefore I'm less likely to start usin', you know. . . . So when this was presented to me, it seemed like everything fell in place. Because I had an incentive to stay away from it, to get it over, to get on with my life.

Several others similarly reported that their exclusion order helped keep them out of trouble:

I was kind of pissed off at the time, because I was down in the park, you know, and I wanted to go back to the park like everybody else. But in the long run, you know what I'm saying, in the big picture of it all, you know, it [the park exclusion] helped me stay out of trouble. (Sabrina)

However, the vast majority of respondents reported that their exclusion order(s) had overwhelmingly negative consequences. The pains described by these respondents paralleled those identified by Gresham Sykes (1958) in his now-classic analysis of the pains of imprisonment, including the deprivation of liberty, goods and services, autonomy, security, and psychic pain. The experience of each of these pains is described below.

### **The Deprivation of Liberty**

One of our respondents' main complaints was that their ability to move around the city was compromised by their banishment. This complaint was widely registered both by those who complied with their exclusion order and

those who did not. The consequences of impaired mobility ranged from relatively minor to very serious:

Like for example, I can't go to any stores in the area that I live in. . . . I have to go outside the area if I wanna go buy a bag of potatoes. (Marjorie)

Uh, it's hard, 'cause most of the ones [sleeping spots] that aren't very visible you usually have to, like some might be a business that don't close 'til late . . . or, like say, one spot was an automobile lot that had a couple, couple junk cars in the back, but they didn't close 'til about 8, and so you know. So being homeless you're tired all the time, you know. You, sometimes you have to wait until he closes, and the junk cars in the back, you go there and sleep, so like I say, it made it hard. (Thomas)

I lost my wallet up there. So therefore I can't get up there and get my wallet back, and, uh, the person who has been entrusted with my wallet stays up there, so, uh, and he doesn't have a phone, anyway, for me to get contact with. So I gotta go through the inconvenience of starting all over again, get the ID, Social Security card. And, uh, I got like a flagger's card, I dunno if I'll get that replaced. And my CPR Certification, so I'm just going through a whole lot of changes with that. (James)

Those who did not comply with their exclusion order reported that their days were full of "duckin' and dodgin'": "Oh, you duck and dodge a lot. Duck and dodge a lot" (Vicky). Others concurred: "I tried to be more careful, and dress with hoodies and hats and look like a little boy and shit like that. It was just a lot of ducking and dodging" (Cheryl). "Everything I do, and I live downtown, so I just like, stand on guard. Just, uh, you know, when you see the [police] van, you get to running" (Jim).

Ronald was one of several interviewees who lived in a shelter inside his SODA zone and who had been excluded from the parks as well:

I sneak all day long. I try to turn my head away [holding his hood over his head], try to see who's in the cop car to see him before he sees me, see if he knows you, if he knows me I gotta make a move, maybe for a doorway or somethin'. Now, now, on this first arrest, for the SODA violation, DESC announced over the intercom, "They're feedin' in the park for anyone who wants to go over." OK, first thing is, I'm trespassed from the park, so I got to go sneak in front of you [pointing at his friend], and I got to bribe somebody to let me up front so I could grab somethin' and get back out of the way. Then, I've got to be able to make back across 3rd Street and get back up into DESC.



For Sykes (1958), the deprivation of liberty refers not only to restricted movement, but also to social isolation: “The mere fact that the individual’s movements are restricted, however, is far less serious than the fact that imprisonment means that the inmate is cut off from family, relatives, and friends, not in the self-isolation of the hermit or the misanthrope, but in the involuntary seclusion of the outlaw” (65). Similarly, many respondents reported that their banishment limited their capacity to see family and to maintain their social contacts. This was especially painful for people when their capacity to connect with family members or people of the same cultural background was diminished:

When I got trespassed from out here . . . and I got trespassed from the Lake Washington [apartments], you know what I’m saying, it kind of clicked in my head, like, okay, they don’t want me here in this area, but this is my community, but I go to late night still, to this day, you know what I’m saying, I go to late night still, and I be hooping and playing dominoes and stuff. But now I can’t be doin’ that. (Earnest)

Because most of the Hispanic people hang out at Casa Latina, so it’s depriving me of people that, that I’ve gone to work with, from socializing with my own people! (José)

I used to bring dinners down to the park, you know, pot roast, stuff like that, for the Native men who won’t eat if nobody feeds them. But I can’t be doin’ that no more. (Debbie)

In sum, whether respondents complied with their exclusion orders or not, the result was often the deprivation of liberty, including both impaired mobility and the diminished capacity to maintain important social relationships and connections.

### **The Deprivation of Goods and Services**

In Sykes’s formulation, the deprivation of goods and services refers to the capacity to ensure that one’s basic material needs are met. Many of our respondents reported that their capacity to meet their physical needs was significantly diminished as a result of their exclusion. Many also reported that their exclusion order reduced their access to crucial social services:

And at Christmas, you, I couldn’t go in there and get nothin’, no blankets, no food they was givin’ out, nothing. You know what I’m saying? And that’s not fair. (Maydean)

Especially when I was trying to stay clean, it was really hard. When you're trying to stay clean and sober, you're trying to do things, get services, take care of things . . . but I wasn't supposed to be down there. It made it real hard. (Felicia)

If they're feedin' in Courthouse Park, Occidental, I can't go. If they're over there feedin' at 1st and Yesler, I can't go. (Roxanne)

In some cases, the loss of social services had very significant and adverse consequences. Bob, a homeless white vet, was trespassed from the Veterans Administration after security found several clean needles in his backpack:

They told me I can't go in any federal buildings now . . . it's a catch-22, I mean, so what are you telling me, that I can't go into the Veterans [Administration Building]? Thing is, if I break a leg and I didn't have no ID, no hospital . . . what are you telling me, I can't get medical treatment at the Veterans?

For Curt, a long-time heroin addict, the possibility of being picked up by the Department of Corrections (DOC) when carrying used syringes to the needle exchange facility led him to use that facility less regularly, at serious risk to his health:

And I told [my probation officer], look, there's no law against it [carrying clean needles], even though I'm on probation, even though I got a SODA, there's nothing to prohibit me from having clean syringes. . . . And, uh, you know, uh, she told me, alright, I can't keep you from carrying the clean ones, but she said God help you if you have a dirty one. So sometimes, you know, if the [DOC] van is out, I'll just try to clean the needles I already got.

Thus, many respondents reported that their ability to access social services and other resources was diminished as a result of their exclusion order(s). In several cases, the consequences were dramatic. A number of respondents also reported that they lost income and/or work as a result of their exclusion. José was trespassed from Casa Latina: "Now I can't get regular work, so I gotta hustle." Others also reported losing a job or access to a job training program:

The main cost for me was, you know, I was going to do that program, that restaurant training program for homeless people, what's it called? . . . Yeah, Farestart. I was gonna do that, but after I got the SODA, I was too scared to go over to it, especially at night. You know, the cops would be all over me if they saw me walkin' around at night. (Felicia)

Vic, a white homeless vet who made his living by playing music at the Pike Place Market until he was trespassed for possession of alcohol, reported that his exclusion made it much more difficult for him to make a living. “Oh man, I, I made my living at the [Pike Place] Market. I’ve been there for almost thirty years so, uh, when I’m kicked out of the Market for a year, it really puts a kibosh on my, my ability to make money.”

For some, the loss of work or income resulted from being jailed for violating an exclusion order. Marjorie reported that she lost a job as a result of being incarcerated for a SOAP violation:

- Marjorie: You know, you end up losing things. Like I lost a job because of being on SOAP, you know?  
 Interviewer: How’s that? What happened?  
 Marjorie: Because I went into jail! And I stayed in there two weeks. So, because of that, they didn’t want to hire me, or they didn’t want to rehire me, ’cuz what if you go to jail again because you’re in this area.

Because Curt was frequently jailed for being in his SODA area, his SSI checks were often discontinued:

They, uh, basically, they would use that [the SODA order], and they would either catch me with something, like syringes, or whatever . . . and I would end up in jail for a couple weeks to a month at a time. It affected my Social Security because after thirty days, they discontinue it, and you have to reapply. So, uh, you would get out and you don’t have an income anymore, including food stamps, you have to go and start the whole process over and it takes months.

Thus, many respondents reported that their exclusion order made it more difficult for them to secure access to income, goods, and services, thereby compromising their ability to meet their basic needs.

## The Deprivation of Autonomy

In his discussion of the deprivation of autonomy, Sykes (1958) highlights not only the requirement that inmates follow certain rules, but their experience of those rules as both arbitrary and irrational: “From the point of view of the inmate population, it is precisely the triviality and irrationality of the official’s control that proves to be most galling” (73). This was certainly the experience of many of those interviewed:

When the city of Seattle decided to put services there [in Pioneer Square], they knew this was part of the game. You know? So I don’t see why they’re out there giving us a hard time. I mean, if I’m out there

hitting somebody, yeah, if I'm out there selling dope, yeah. But if somebody's feeding at the park, uh, I can't go to the park and partake of the meal being offered . . . that's bullshit. (Norman)

It's definitely a class thing, there's no doubt about it. Now, how do you control the masses, huh? Most, most of the time, I work with Indians an awful lot here at Chief Seattle Club, and many of them are indigent. Many of them have alcohol problems, so they hang out in the parks, which is the only place on the streets you can go. They sit there and have a drink, 'cause that's the cheapest high they can get, to endure their meager existences, and, of course, here comes a police, "We want to clear 'em out because we're having those big ships come in from Alaska." You don't want those drunk Indians sitting on that park bench—that's just terrible. It's alright for the drunk Alaskans to sit down there and puke, but it's not alright for the Indian guy. You know. (Vic)

Many also objected to the fact that an exclusion order meant that simply being in a particular place could be treated as a criminal offense. For these respondents, the exclusion orders were simply too broad, and the failure to differentiate between criminal activity and mere presence was offensive:

'Cuz you can't just assume somebody's doing something wrong . . . some people are doing the right thing, like going to the meal line . . . it [SODA] erases differences, if you're doing the right thing, or you're doing the wrong thing. (Sabrina)

But, I mean, I can tolerate doing time if I do something wrong, I mean, I understand there's consequences, but not when I'm not doing something wrong, and they understand the living conditions, that's different. (Coffee)

In short, many of the banished with whom we spoke described feelings of anger and frustration with what they experienced as the arbitrary or biased enforcement of illegitimate rules akin to what Sykes refers to as the deprivation of autonomy.

### **The Deprivation of Security**

Sykes notes the ironic fact that society seeks to reduce the criminality of particular individuals by forcing them to associate almost exclusively with other criminals. He also observes that doing so diminishes the security of the incarcerated. Banishment similarly led our respondents to feel less rather than more secure. This finding is somewhat counterintuitive, as the parks and neighborhoods from which many were excluded are seen by many other

Seattle residents as among the most dangerous. Nonetheless, many of our respondents felt most secure in these same spaces.

I feel safe down here [in the Pioneer Square area]. Because there's a whole lot of people downtown, walkin' around, plenty of police. But if I was to go to another neighborhood where there's just dark, quiet streets and someone come along and just kick you in the head just because they happen to be drunk and they don't like homeless. . . . I'm not with that. (Ronald)

Well, yeah, I feel unsafe, because now I'm sleepin' in, you know, abnormal places. Up there [at the park], like I said, everybody looks out for everybody. I wasn't worried about nothing. I am worried now. I am worried now. (Claude)

For some, this sense of insecurity stemming from an exclusion order was so powerful that they had difficulty sleeping. José describes how he got through the previous night after being kicked out of the park in which he feels comfortable:

I just walked all night long. My eyes hurt right now. I'm not gonna lie down and have some crackhead think that maybe I got three dollars . . . no, I'll walk all night. Sometimes I'll walk over to that park called Freeway Park and I'll sleep over there, but that's not very safe. Mostly I walk.

The vast majority of those interviewed also reported that their exclusion order led to police harassment, regardless of whether they were in the place from which they had been banned. Julie, a homeless white woman, reported that she was harassed constantly after her exclusion from the parks.

Once you have your name in the system that they just, it, they always gonna pick you up, you know, for something, and now it's like, but now they see me, I mean, they've run my name so many times. It used to be everyday, everyday, everyday. I'm just walking down the street and they say, "Hey, come here," you know? And I dunno if that's, uh, you know, if that's okay to do, but, I mean, but they see I'm all clear and stuff, but still every day it's "Come here we're gonna run your name," you know?

Police harassment, many indicated, severely undermined respondents' sense of security:

And I just feel like they're watchin' me all the time, and stoppin' me all the time, even when I'm just pullin' in to Safeway. . . . God! Oh, now I can't even drive? (Marjorie)

I was being stopped by every, on sight, not by every cop, but by two or three different ones, and it just seemed like they . . . just wherever they saw me, whether I was staying at the mission, just wherever. . . . Once I seen a cop come through the alley and he seen me, he arrested me. (Nate)

The fact that many respondents felt unable to comply with their exclusion orders, combined with frequent police stops, meant that many of our respondents cycled in and out of jail:

And if those NCIs<sup>20</sup> come on you, you're gone. You're goin' to jail. You know, you be back out in two, three, four days. And then you got to go back to court and take a chance on how many times this has happened, are you up to thirty days, forty-five days . . . last time I got thirty. . . . But, um, I been arrested several . . . oh, many times. . . . It's overnight, then out the next day. It don't make sense. (Guy)

They, um, they basically gave me the three days time served, gave me a year probation, and told me I had to, uh, do eight hours of community service and also had to report to a probation officer. You know, it's just in and out, in and out. (Pete)

In short, although one might predict that excluding people from "high crime" areas would enhance their sense of security, the opposite was true. This finding reflects the fact that places, and people's relationship to those places, are far more complex and multifaceted than is allowed by the designation of a particular space as a high crime area or drug zone.

### Psychic Pain

Sykes (1958) concludes his discussion of the pains of imprisonment with the observation that the most fundamental kind of pain imposed by imprisonment is psychic and symbolic in nature: "The individual's picture of himself as a person of value—as a morally acceptable adult who can present some claim to merit—begins to waver and grow dim" (79). Elsewhere he notes that "the status lost by the prisoner is, in fact, similar to what Marshall has called the status of citizenship—that basic acceptance of the individual as a member of the society in which he lives" (66).

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20. The Neighborhood Corrections Initiative (NCI) involves joint SPD-DOC patrols. Inside the van, SPD officers can access databases for information of criminal warrants and for restrictions such as trespass admonishments. The DOC officers' database is confined to those with any history with that department. The DOC officer seeks to determine whether anyone under supervision is in compliance with the various conditions of probation or parole.

Many of our respondents similarly reported that their exclusion triggered feelings of shame, anger, hurt, and resentment. These respondents found the symbolic message embedded in their exclusion order offensive. Claude, excluded from Courthouse Park for sleeping, explained: "I felt offended, I was offended, like I don't have any rights, like I don't matter or nothin'. . . . And I was really offended." Neil, kicked out of various parks for sleeping or drinking, put it this way: "Just being kicked out of a public place, it's kinda embarrassing. Not only embarrassing, but, I dunno, but, yeah, being kicked out of society, it's like you're just no longer socially acceptable. Like you're not really a member of society."

Many homeless people were particularly insulted because they believed that their exclusion reflected a bias against and tendency to stereotype the homeless:

[Sigh] It kind of upset me, because I feel that a lot of people categorize every person that's homeless as either on alcohol, drugs, and uneducated, and that's not true for everybody. You know, sometimes you just have a bad time, and that doesn't mean that you're a bad person, you know? Just because you're going through trials and tribulations. (Sabrina)

Many also objected to what they perceived as race and class bias in the use of banishment:

How does it make me feel? At that particular time, two years ago, I felt like I was a noncitizen, I felt like I was racially profiled, I was an African American, and I believe the only reason why they stopped me was because they knew they could, and they could get away with it. And the repercussions of them doing what they did would be very, very much less if it was someone other than someone who was African American, or of a minority persuasion. So, it made me feel like a noncitizen. It's definitely a class thing, there's no doubt about it. (Charles)

Now, I have not, I have not drank in the [Pike Place] Market [since my exclusion], but I can go to any bar in the Market, I can sit down with the shoshy drunk guys next to me, you know, guys off the ships and the guys are, you know, sailors off the boats, and hey, I [pretending to hiccup], I have [hiccup] no problem with that guy. You know, they don't exclude him as he stumbles down the Market and knocks over the veggie stand, you know. No, he's cool, or the fat guy with the big wallet who just got off the cruise ship from Alaska, and he's still drunk when he gets off the ship. Yeah, see, those guys, that's alright as long as you have money and you're dressed fine, you know, in the finest fashions. (Vic)

The fact that exclusion orders were frequently experienced as offensive deepened the depression with which many of our respondents reported



struggling. Lanya, a twenty-two-year-old African American woman who had been arrested for trespassing while trying to find a place to sleep on the University of Washington campus, put it this way:

But it's just, like, so much stuff, like, that going on, and it's hard to find a reason to live at all, even want to live. You know, I mean, why would anybody want to live if they have nowhere to sleep, if they are getting dragged out of the bushes by the cops, you know, and they have to go to jail and go to court. You know, and they just, it's not worth it. . . . Because you can't go in this building, you can't go in that building. If they see you walking across the street, if they see you talking to a friend, you know what I'm saying, you're automatically arrested. And that, it takes my spirit away. It takes hope away. We're hopeless people, you understand, we're hopeless people . . . looking for hope.

Although Sykes's typology was used to describe and conceptualize the experience of incarceration, a practice widely recognized as punishment, his categories also capture well the experience of banishment in Seattle. For all but a handful of our respondents, banishment had an array of quite negative consequences. These included impaired geographic mobility, a diminished sense of safety and security, loss of income and access to work, reduced access to social services, police harassment, and frequent entanglement in criminal justice institutions. For many, these material hardships were significantly exacerbated by banishment's capacity to inflict pain, shame, anger, and resentment. To be banished, it seems, is to be punished.

As with many forms of punishment, banishment does not appear to generate its desired effects, at least according to our informants. Although space considerations preclude a full accounting of their responses, many respondents believed that spatial exclusion is highly ineffective in reducing disorder. In particular, many felt that spatial exclusion did nothing to address the underlying issues and, as a result, often led to displacement:

They used to tell me to get out of Pioneer Square, just leave, take my ass to Belltown. When you get up to Belltown they'll do the same thing. They're just passing the buck. Kicking us from one section to another section. (José)

If I got citywide SOAPed in Seattle, I would go to Tacoma. And so, when once a year went by, I would come back out here [to Seattle]. And by that time I was citywide SOAPed in Tacoma! You just travel from area to area, like, let's say I was SOAPed out of this area. So, I go to Denny Park area. And then they SOAP you out of Denny Park area, and then you go to Aurora. And then they SOAP you out of Aurora, and then you go downtown. And then you're in downtown and you get SOAPed out of that, then you can go to Tukwila. You know, and you get

caught in Tukwila, they citywide SOAP you pretty much. But then you got SeaTac. Then you got SeaTac. (Tomi)

Many further noted that displacement heightened the adverse consequences of their behavior, often subjecting them to greater criminal justice sanctions as a result. Curt's experience provided the most dramatic example of this pattern. After being excluded from the methadone program, Curt resumed his daily heroin habit and returned to a life of property crime and drug dealing. Many others similarly reported that their exclusion increased the likelihood that their behavior would harm themselves or others:

When, you know, you're doin' wrong, you think, this is what you pay for doing the crime. But don't force my crime to get bigger! And that's what they're basically doin'. If you won't let me be around here, and push me back so I can't even live my life. . . . And when you tell me I can't go to the park and I didn't get my meal, know you're hurting me 'cuz I didn't get my meal. So what I'm gonna do is I'm gonna go panhandle. Or steal. (Neil)

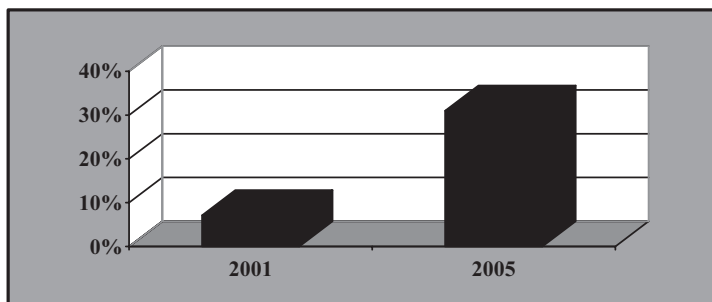
Similarly, Tomi had to move out of her trailer because it was located in a SOAP zone, and therefore she returned to the streets:

Yep, and when I was eighteen I found it [the trailer], you know, and I was so happy that I had my own place. And I probably could have started doing something better for myself, but my probation officer just put a big blank on it. 'Cuz I was going to go to school, I was gonna live there, I was gonna do things for myself, and she just put that big halt on it 'cuz it was in the SOAP zone. I didn't know where to go, so I just went back to the streets.

More generally, many respondents strongly conveyed the sense that banishment would not solve either their own issues or the problems that are all too often erased through their construction as "disorder."

One officer told me, um, he arrested me one day, he arrested me on a Thursday, I got out on a Friday, I was back down here on a Friday. He said, "I'm not taking you to jail. I'm so fucking pissed off at the judge, because they never do nothing with y'all. All they do is release y'all. I'm not even going to take you to jail. Send him a message." . . . So, the courts and the police officers, um, is not communicatin'. I mean, it's crazy. What you have it [SODA] for? You just, so they just arrest you one night. It doesn't make sense to me, I don't see the point. (Maydean)

Well, you know, you're more nervous, you're cautious inside that area, but it doesn't stop you from bein' there, I mean, that's where you at. I



**CHART 1.**

**Proportion of Sentenced Felony Drug Offenders with a SODA Order.**

*Source:* Washington State Department of Corrections.

*Note:* Pertains to felony drug offenders sentenced in King County, Washington.

mean, being an addict and being homeless especially, it don't make no difference. (James)

I mean, I don't see nobody going to a different city or different state and just saying, "OK, let me move up out of here and try something new." And going to a different area is not going to change who you are, and your addiction especially, or your living situation. (Guy)

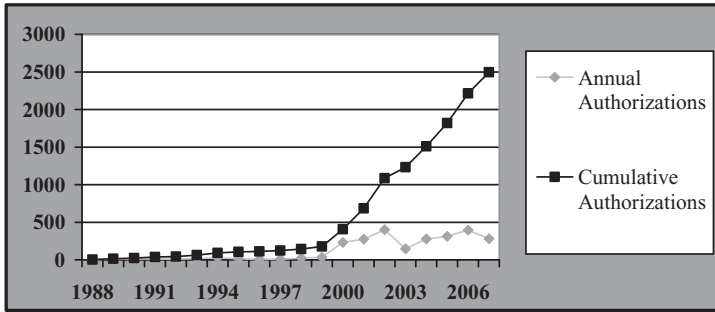
### **Criminal Justice Consequences**

Above, we used Sykes's taxonomy of the pains of imprisonment to show that the pains of banishment are qualitatively similar and to demonstrate the punitive nature of banishment. Yet our claim that banishment is punishment rests on another set of empirical findings as well. Even if the use of banishment does little to address the problems experienced by many of those who are so excluded, it has had important consequences for the criminal justice system in Seattle.

The data obtained for this study support two conclusions. First, the social control tools that entail banishment are being used with increasing frequency. For example, the proportion of felony drug offenders who have a SODA order as part of their supervision sentence has also grown markedly, from 7 percent to 30 percent (see Chart 1). SODA orders are now issued by the municipal courts to increasing numbers of drug defendants as a condition of deferred prosecution.<sup>21</sup> The number of parks exclusion notices issued annually

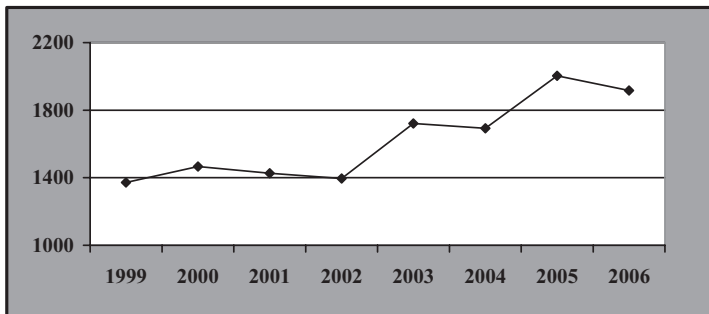
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21. In 2005, the King County prosecutor's office made a policy decision not to file felony charges against those who possessed only drug paraphernalia (and the drug residue contained within it). In response, the city attorney's office began charging most of those arrested for possession of drug paraphernalia and residue with "attempted" VUCSA (Violation of the



**CHART 2.**  
**Growth of Trespass Enforcement Authorization Contracts, Annual and Culmulative Numbers.**

*Source:* Trespass Authorization Forms, Seattle Police Department.



**CHART 3.**  
**Trespass Cases Filed Annually in Seattle Municipal Court, 1998–2005.**

*Source:* Bob Scales, Crime Policy Analyst, Seattle Mayor’s Office.

increased by 33 percent between 1997–1998 and 2005. Similarly, the number of trespass contracts signed by property owners each year has increased significantly. Because these contracts stay in effect unless specifically withdrawn by property owners, the cumulative number of trespass contracts on file has grown even more sharply (see Chart 2).

Given this trend, it is unsurprising that these “alternatives” to punishment generate many court cases and short-term jail stays. Chart 3 shows the increase in trespass cases filed in the Seattle Municipal Court. By 2005, trespass cases constituted 10 percent of all case filings in Seattle Municipal

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Uniform Controlled Substances Act)—a (nonexistent) gross misdemeanor offense. Those charged with this crime are given a choice at the time of sentencing to either agree to a deferred prosecution that would be dismissed after four months, as long as the defendant did not violate his or her SODA order, or to face felony charges in the superior court (Seattle City Attorney’s Office, Annual Report 2007, on file with the authors).

Court. Although DOC data regarding the frequency and consequences of SODA violations among felony drug offenders are not available, municipal court data indicate that the number of court cases involving SODA violations more than quadrupled between 2004 and 2006.<sup>22</sup>

These data demonstrate how the new social control tools fuel an expansion of the criminal justice net. Although touted as alternatives to punishment, the increased use of spatial exclusion has clearly subjected many to punishment who would not otherwise experience it.

## CONCLUSION

This article calls attention to the surprising return of banishment as a contemporary social control strategy. It also draws upon interviews with the banished and other data sources to explore the experiences and consequences of the use of legally hybrid social control mechanisms that entail banishment. These data allow for an empirical assessment of the claim that these new social control tools are, as their proponents oft proclaim, best understood as alternatives to punishment. The evidence provided by respondents challenges this claim in two ways. First, the consequences of spatial exclusion are typically both negative and significant. Indeed, the consequences of banishment were analogous to those identified by Sykes as characteristic of imprisonment. The banished objected not only to the practical effects of exclusion as practice and policy, but also to its symbolic effects. Being excluded was often a powerful emotional experience, one that confirmed their sense that they were no longer considered citizens, even fully human, by other residents of Seattle. In a variety of ways, then, the use of the new techniques rendered the lives of some of Seattle's most vulnerable residents more difficult and precarious. The insistence that these exclusion orders are nonpunitive in nature is thus in marked tension with the experiences of the banished.

Our analysis leads us to conclude that banishment works primarily to expand the criminal justice system and to diminish both the life circumstances and the rights-bearing capacity of those who are targeted. We see little evidence that these techniques reduce the individual and collective harm associated with homelessness, addiction, outdoor drug sales, unregulated prostitution, and inadequately treated mental illness. Worse, we find evidence that these measures intensify the pain and harm associated with these social problems. We also find that the new techniques are sometimes used to limit the mobility and rights of those whose principal "offense" consists of being poor, homeless, and/or of color. As Leonard Feldman (2004)

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22. Bob Scales, crime policy analyst, Seattle Mayor's Office.

argues, the denial of citizenship rights to the homeless and other socially marginal urban residents both reflects and perpetuates their economic and cultural “misrecognition.”

More generally, these findings suggest that analysts of punishment might profitably broaden their focus to consider the sanctions imposed through newly innovative and legally hybrid techniques. To limit our attention to those convicted of criminal law violations obscures much, including the ways in which civil, criminal, and administrative law are increasingly blended in ways that enhance state power and give rise to legal interventions that may have punitive consequences. Finally, the findings presented here underscore the need to consider the consequences of the return of what, at first glance, might seem to be the “relatively minor” nature of sanctions that entail spatial exclusion.

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