

# **BEYOND ZERO TOLERANCE**

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*Paper presented at the 3<sup>rd</sup> National Outlook Symposium on Crime in Australia,  
Mapping the Boundaries of Australia's Criminal Justice System  
convened by the Australian Institute of Criminology  
and held in Canberra, 22-23 March 1999*

## Introduction

'Zero tolerance policing' has several meanings and references.<sup>1</sup> Firstly, those who claim to support it are often merely using a fashionable slogan which condenses and expresses a range of commitments to harshness in criminal justice with no particular reference to specific policing strategies or tactics. Senior police officers often distance themselves from it.<sup>2</sup> It could be objected that, in this form, 'zero tolerance' is not worthy of our attention. None the less, there is something important here, both criminologically and politically. In the degenerate context of Australian law and order politics, it is not possible to dismiss zero tolerance as inconsequential.<sup>3</sup> The political power of tabloid newspapers and talk-back radio should be underestimated. Unfortunately, many politicians treat policing as a realm where populist common-sense prevails, rather than as an important and complex area of public administration in which policy development should draw on extensive research-based knowledge (Sherman, forthcoming).

Secondly, and literally, 'zero tolerance' would mean that police should fully enforce the criminal law and that discretion would be eliminated from policing. Far from being anything new, this expresses an approach to the law-policing relationship which has long been discredited. For many years, the true nature of American policing was disguised by legal duties of full enforcement - the myth that police could and did enforce the law to the letter without the mediation of discretionary decision-making. Non-enforcement was equated with corruption or inefficiency. This legalistic myth could not survive the emergence of academic research on policing practice which 'discovered' that policing was highly discretionary and that most of it did not involve law enforcement (Dixon 1997: ch.1).

It is trite to observe that police have to exercise discretion simply because it is physically impossible to do otherwise. The point was made well by that fine commentator on policing (and ex-police officer) C.H. Rolph in 1959, when he noted that 'The truth is (luckily for us) that there's too much law to be enforced' (1985: 68) and listed 38 offences which he noticed during a brief walk. These were only the tip of an iceberg of 'other things too numerous to mention', such as littering and parking offences. If an officer dealt with one, 'all the rest would have got away ... But it has to be faced that the great majority of policemen (sic) would have chosen none of them' (1985: 69).

More importantly, 'zero tolerance' suggests that 'zero' is an objectively attainable goal. This is totally to misunderstand the role of law in policing public order. Ironically, it is J.Q. Wilson who provides a classic explanation:

Most criminal laws define acts ... (P)eople may disagree as to whether the act should be illegal ... but there is little disagreement as to what the behavior consists of. Laws regarding disorderly conduct and the like assert, usually by implication, that there is a

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<sup>1</sup> 'Zero tolerance' also has other, related applications outside policing, eg in drug policy.

<sup>2</sup> An exception is in Cleveland (England), although even here an alternative neologism, 'confident policing', is offered (Dennis and Mallon 1997; Romeanes 1998).

<sup>3</sup> This is even more true of Britain, where New Labour has enthusiastically associated itself with zero tolerance (Morgan and Newburn 1997; Palmer 1997). The Crime and Disorder Act 1998 is a legislative expression of the tensions in New Labour's criminal justice policies: 'anti-social behaviour orders' sit alongside requirements for inter-agency cooperation.

condition ('public order') that can be diminished by various actions. The difficulty, of course, is that public order is nowhere defined and can never be unambiguously defined because what constitutes order is a matter of opinion and convention, not a state of nature (1968: 22-3).

Police do not just choose which public order offences to prioritize: they constitute the offence by choosing to intervene. There is no 'offensive language' until an officer decides to define speech as such. The law does not direct police intervention, but rather provides a resource used to categorize, justify, and account (Dixon 1997). From this perspective, zero tolerance is fundamentally flawed because it is based upon an erroneous conception of law's relationship to policing. A great attraction of zero tolerance is that purports to eliminate police discretion about what (and who) is to be targeted for attention. Once the impossibility of this is acknowledged, we return to more difficult questions of what should be the priorities of policing, and whose voices should be heard in setting them.

It is the third application of 'zero tolerance' policing which deserves our closer attention. Here, it is shorthand for a group of three related policing strategies. First, police focus on disorder and street offences in attempts to improve 'quality of life' in local areas. Second, police maintain the same focus, but with the expectation that doing so will reduce serious crime - the 'broken windows' thesis. Third, police engage in proactive, intensive operations directed at people, places, and property identified by risk assessment techniques. Clearly, 'zero tolerance' is used very loosely in relation to the last of these.<sup>4</sup> Indeed, my argument is that we need to shift the focus of debate from the misleadingly simple concept of zero tolerance to more complex and significant developments in policing.

This paper has two objectives. First, it presents a critique of the commonplace argument that the 'broken windows' thesis has been proven to be correct by experience in New York and that Australian police could emulate this success by adopting similar tactics. Particular attention is devoted to a critique of Kelling and Coles' Fixing Broken Windows (1996). Secondly, it comments on the focus and priorities of current developments in policing. It will be argued that there is great potential in the new strategies for crime control. However, it will also be suggested that criteria of success are inadequately formulated and, specifically, that the need for police legitimacy is both under emphasised and misunderstood. Sources include several related empirical studies of policing the Cabramatta heroin market (Dixon and Maher 1998; Maher and Dixon 1999; Maher et al. 1997, 1998).

### **Lessons From America**

According to the widely publicised account, the idea of zero tolerance policing came from an article in the Atlantic Monthly in which J.Q Wilson and George Kelling hypothesized (without empirical basis<sup>5</sup>) that serious crime could be reduced by clamping down on minor

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<sup>4</sup> Both Police Minister and Police Commissioner have described intensive operations against NSW drug markets as adaptations of zero tolerance policing.

<sup>5</sup> This much-reprinted article is often treated as if it reports research: it does not, contra eg Adam Graycar, have 'findings' (Graycar 1998: 2).

incivilities and disorder.<sup>6</sup> The argument was based on the metaphor of ‘broken windows’. Wilson and Kelling claimed that if a broken window in a building is not repaired, others will be broken. The rest of the building, then the street, then the neighbourhood, will deteriorate. The human equivalent of a broken window is ‘the ill-smelling drunk, the rowdy teenager, or the importuning beggar .... The unchecked panhandler is, in effect, the first broken window’ (Wilson and Kelling 1982: 34).<sup>7</sup> If human ‘broken windows’ are not fixed, disorder will turn into serious crime because ‘serious street crime flourishes in areas in which disorderly behavior goes unchecked’ (Wilson and Kelling 1982: 34). The theory is based on a kernel of common sense or ‘folk wisdom’ (Wilson and Kelling 1982: 34): little problems lead to big problems. It also relies on popular but inaccurate accounts of social decline resulting from moral and social indiscipline (the fall of the Roman Empire thesis). Indeed, it is arguable that zero tolerance and ‘broken windows’ are fundamentally ‘not about crime at all, but a vision of social order disintegrating under glassy-eyed liberal neglect’ (Shapiro 1998: 5).

Its supporters claim that the ‘broken windows’ thesis was proved to be correct<sup>8</sup> in New York in the mid-1990s, when the potent combination of Mayor Rudolph Giuliani and Police Commissioner William Bratton claimed credit for ‘the New York miracle’ - spectacular falls in recorded crime rates. Felony crime rates halved, while homicides plummeted from 2245 in 1990 to 767 in 1997. Not surprisingly, this has attracted great interest from police officers, politicians, and media from around the world. All too often, those dispatched on ‘study tours’ to New York return with a simplistic message courtesy of City Hall’s and the NYPD’s publicity management: New York has discovered the philosopher’s stone which enables police to reduce crime significantly. Bratton confidently asserts ‘the good news ... “if you can make it in New York, you can make it anywhere”’ (1997: 42). Symptomatically, Shane Stone (then Chief Minister of the Northern Territory) announced on his return from New York that ‘whether you’re talking about New York, Darwin, Melbourne, the lessons are the same’.<sup>9</sup>

### **Doubting The Miracle**

My evaluation of the argument that Australia should seek to emulate the ‘New York miracle’ suggests that claims about police responsibility for the reduction in crime are exaggerated, that any police effect was not due solely to zero tolerance policing, that any such effect in New York is largely irrelevant to Australia, and that account needs to be taken of the costs of such strategies.

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<sup>6</sup> It should be noted that while zero tolerance usually prioritises law enforcement, ‘Broken windows’ suggested a broader order maintenance strategy, not least because some of the targeted behaviour was not illegal and because some of the police methods advocated to deal with disorder were unlawful.

<sup>7</sup> While usually a metaphor, ‘broken windows’ is sometimes used literally, in claims that environmental decay leads to social disorder, and then to more serious crime: see e.g. Wilson’s foreword to Kelling and Coles 1996: xv.

<sup>8</sup> Skogan had attempted to prove that disorder was significantly related to serious crime in his *Disorder and Decline* (1990). Kelling and Coles make much of Skogan’s findings (1996: 22-27). However, Harcourt’s rigorous reexamination of Skogan’s data concludes that they do not show that disorder leads to crime and, consequently, ‘do not support the broken windows hypothesis’ (1998: 296).

<sup>9</sup> ABC Lateline, 4 June 1998.

### **i. 'Crime is down in New York City: blame the police'**

William Bratton (1997; 1998: 289-90) claims not just that the NYPD contributed to the fall in crime, but were solely responsible for it. Against this must be set the fact that significant declines in crime rates in the mid-1990s were recorded in 17 of the 25 largest American cities and in 12 of the 17 advanced industrial countries (Travis 1998; Young 1998: 2-4). We do not know why this happened, although it seems likely that key factors are long-term economic revivals and demographic shifts (particularly a declining youth population). But we do know that zero tolerance policing was not responsible, because crime rates dropped in places across the U.S. where very different police strategies were implemented (Pollard 1997: 43).

In New York, economic, social and demographic changes have to be taken into account, despite Bratton's response to critics that 'We lined up their alternate (sic) reasons like ducks in a row and shot them all down' (1998: 290). These are complex matters, open to varying statistical interpretations.<sup>10</sup> Most importantly, there is a significant connection between the falling homicide rate and the decline of the crack cocaine epidemic. Crack was highly conducive to violence both because of its physiological effects and the market competition which its low price encouraged (Goldstein et al. 1989). As the crack epidemic peaked in the late 1980s (Maher 1997: 21), so the appalling violence which characterized it abated. Bratton claims that the percentage of arrestees who tested positive for cocaine did not decline (1998: 290). It is of course true that cocaine (whether in the form of crack or otherwise) did not simply disappear. However, Bratton ignores the crucial point which is that fewer people initiated crack use: the rate of cocaine use among younger arrestees 'went from 70 percent in 1988 down to 31 percent in 1991 ... Then it declined even further to 22 percent in 1996'.<sup>11</sup> In order to make sense of the extraordinary reduction in homicide in New York City, one has to pay close attention to changes in the illegal drug market (Zimring and Hawkins 1997: ch. 9). By contrast, smaller cities which are now belatedly experiencing crack epidemics 'are defying the national downward trend in crime rates' (Harcourt 1998: 337).

### **ii. Changes in policing other than 'zero tolerance'**

It would be foolish to mirror Bratton's absolutism and claim that the NYPD had no effect on crime. It seems plausible that they did, not least because crime rates declined further in New York City than elsewhere. It should be noted however that even the dramatic fall in homicide was not confined to New York and that Jacksonville, Florida, not New York, had the greatest decline in homicide in the early 1990s (Travis 1998: 3).

Zero tolerance street policing was merely the most-publicised feature of wide-ranging changes in policing in New York during this period. More policing was also done: police numbers grew significantly during the 1990s.<sup>12</sup> The NYPD also adopted intelligence-led policing, in

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<sup>10</sup> See e.g. Fagan et al.'s discussion (1998) of the effects of demographic change on homicide: apart from analysing at-risk groups separately from the general population, researchers have to take account of nonlinear effects, such as thresholds after which trends increase or decrease.

<sup>11</sup> Travis 1998: 5. For details, see Golub and Johnson 1994; Johnson et al. 1998a; 1998b. For an important argument that the decline of crack was due not to external, official action but to changes by and within marginalized communities, see Curtis 1998.

<sup>12</sup> Even this apparently straightforward matter is disputed: compare Harcourt 1998: 333-4 and Bratton 1998: 290. The effects of attrition and the merging into the NYPD of Transit and Housing Authority officers into the NYPD cause the difficulty.

which traditional reactive tactics are secondary to computer assisted identification of places and people at risk.<sup>13</sup> While this new, technologically-driven policing may be harder to sell to a public fearful of crime than a catchy slogan like zero tolerance, its impact may well be more significant. Computer mapping was a tool of significant managerial changes, in which close supervision and scrutiny of police performance were introduced, notably via the Compstat process, in which local commanders were called to account to the Commissioner and his staff for their performance (Safir nd; Kelling and Coles 1996: 146-8).<sup>14</sup>

It is claimed that before Bratton's arrival officers were reluctant to focus on street activities because of (a) fears of corruption allegations in relation to drug, vice and gambling enforcement; (b) constitutional challenges to prohibitions on activities such as begging and vagrancy on the basis of rights to free speech and requirements of legal certainty; (c) inadequate supervision and demoralization. More research is needed on changing patterns in the NYPD's work, but this image of a police department which had abandoned street policing prior to zero tolerance is exaggerated. The claim that the NYPD 'has finally wiped the smirk off the faces of millions of streetwise guys who had grown up thinking the police were a joke, rendered nearly impotent by a string of Supreme Court decisions' merely indicates ignorance of policing in New York.<sup>15</sup> Certainly, people whose neighbourhoods were occupied by the NYPD's Tactical Narcotics Teams would have been surprised by suggestions that police had given up street policing in the late 1980s and early 1990s (Maher 1997: 25; Sviridoff, Sadd, Curtis and Grinc 1992). The Mollen Commission hardly painted a picture of a department immobilized by legal restriction. However, it did report serious problems in supervision, culture, and morale (Mollen 1994). The legacy of bitterness and cynicism among the 5000 officers laid off between 1975 and 1978 was significant (McAlary 1994: 33-8). If a police service is reformed after years of institutional corruption, laziness, and incompetence in some quarters (Pollard 1997: 50), it should not be not surprising that its efficiency and effectiveness improves.

### **iii. The (ir)relevance of the New York experience**

It seems reasonable to accept, within the limits outlined above, that zero tolerance policing may have had some effect on crime in New York. However, the assumption that what 'worked' there will work here is fundamentally misguided. There are major differences between Australia and New York which sharing a common language may obscure.

First, patterns of crime are very different. In New York, the relationship between minor offences and serious crime may have had some validity in the early 1990s. The police were dealing with a highly criminalized, heavily armed population. If an officer stopped and searched a male suspect or arrested him for, say, public drunkenness, there was a good chance that he would be found in possession of an illegal firearm or that he would be the subject of a

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<sup>13</sup> What is novel is the capability provided by new technology and the strategic deployment of risk assessment (Ericson and Haggerty 1997; Johnson 1998). As Sherman suggests, identification of 'high-risk locations, victims and offenders' as a policing tactic goes back at least as Fielding's and Colquhoun's foundational policing in the eighteenth century (1992: 162).

<sup>14</sup> The NSW Police Operations and Crime Review process draws heavily on Compstat, providing a good example of what can usefully be learnt from the NYPD's experience.

<sup>15</sup> R. Basham, quoted in 'Combating crime' NSW Police News, August 1998 at 43.

warrant or on parole for a serious offence. Zero tolerance policing allowed police to deal with serious crime both preventively (detering carrying unlicensed guns) and directly (taking unlicensed guns off the street and locking up those subject to criminal justice controls). In Australia, the situation is quite different. When police do intensive street operations, they may find people with outstanding warrants, but these are more likely to be for the kind of minor offences which facilitated the intervention than for serious matters. In Australia, people still do not routinely carry guns, as was the case in sections of New York. These points are related to fundamental differences in patterns of violent crime. First, the New York ‘miracle’ was essentially about tackling a homicide rate which towers above that in Australia (Zimring and Hawkins 1997; Fagan et al. 1998; Langan and Farrington 1998). Secondly, it is almost a cliché to point out that the most problematic form of violence in Australia is private rather than public, and that homicides in Australia overwhelmingly occur between people who are intimates or acquaintances. Our homicide and serious violence rates are unlikely to be affected significantly by zero tolerance policing.

It may, as Don Weatherburn has argued, be worth finding out what kind of offences come to light if warrant checks are done on drunk drivers or fare evaders.<sup>16</sup> Even if, as argued above, doing so is unlikely to affect the homicide or serious violence rate, it might have an impact on offences such as break and enter. But such an experiment would not be an expression of zero tolerance policing: it would merely involve police doing more rigorous checks on people who are already in custody. This has to be distinguished from proactive intervention for the purpose of facilitating a warrant check, eg stopping and searching a person when the criterion of reasonable suspicion is not satisfied or enforcing subjective street offences such as offensive language or behaviour.

Secondly, the place of law in Australian life and culture is different in crucial respects from the legalistic, rights-oriented US. As noted above, one of the constraints on NYPD activities in the 1980s and early 1990s was legal: indeed, a substantial part of Kelling and Coles’ manifesto for ‘broken windows’ (1996) strategies is devoted to the extensive constitutional and other legal limits on street policing (see also Ellickson 1996; Livingston 1997). Police in Australia have suffered no such constraint, despite what is often said in a remarkably ill-informed public debate about police powers. For example, in NSW, the unqualified power to arrest for any offence, (recently extended) powers to stop and search in the Crimes, Summary Offences, and Drug Misuse and Trafficking Acts, powers to demand name and address and to move on, and the reservoir of power provided by widely-drawn offences such as goods in custody, offensive behaviour, and offensive language provide NSW police officers with an extensive resource of legal authority (Dixon 1997: ch.2). While there have been controversies over the particular wording of offensive language and offensive behaviour offences, the legality of such statutes is beyond challenge in Australia. Such offences have not just existed on the statute book: they have been the bread and butter of Australian policing. Far from abandoning public order, our police have always had street offences as their daily fare.

Furthermore, the letter of the law and policing practice are different matters. Anyone who has any knowledge or experience of how street policing actually operates (or has bothered to read the Wood Commission’s Report) would be puzzled by assertions that our police work with

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<sup>16</sup> Interview on the ABC Law Report 25 August 1998; transcript at: <http://www.abc.net.au/rn/talks/8.30/lawrpt/lstories/lr980825.htm>

their hands tied by legal restrictions. Research indicates that street policing in NSW is constrained little by the law (Dixon 1997: ch.2,5). 'Reasonable suspicion' in stop and search can be minimal because it is ineffectively regulated (despite the provision of a new code of practice) and is rarely tested by supervision, whether from superior officers or by the courts. In any case, the need for legal power can be routinely obviated by obtaining 'consent'. The police officer who 'asks' a young person to turn out his or her pockets on the street has no more need of a legal power than the shop attendants or airline security personnel who check your bag: an explicit or implied consent (which in practice may be no more than acquiescence) is all that is needed (Dixon 1997: ch.3). Pointing out that policing in NSW is comparatively unregulated in practice by law is not, in itself, a criticism: legalistic policing may be poor, while good policing may be determined by factors other than the law. My objection here is to the quite misleading account of policing in NSW whose accuracy is so often taken for granted.

Fundamental differences in politics and state organization between Australia and the United States need also to be acknowledged. Zero tolerance is a policy designed for a society which regards criminal justice and punishment as its primary tools of social policy. Zero tolerance is a policy for a society divided by chasms of class and particularly race, in which the fear of 'the underclass' permeates. In a highly influential text, J.Q. Wilson writes 'we are terrified by the prospect of innocent people being gunned down at random, without warning and almost without motive, by youngsters who afterwards show us the blank, unremorseful face of a seemingly feral presocial being' (1995: 492). Wilson is too politically adroit to specify the race of these 'youngsters' and disingenuously distances himself from judgment ('seemingly'), but we - and his influential U.S. audience - know what he means. In contrast, Australian society retains (despite growing challenges) a commitment to a broader state capacity in welfare and public health and to inclusive policies of multiculturalism and reconciliation. Indeed, comparison with the US makes resistance to current challenges to fundamental aspects of Australian society particularly pressing.

#### **iv. Costs of zero tolerance**

Despite what has been suggested above, it may still be argued that zero tolerance should be tried because it will have some effect on serious crime. Alternatively, the emphasis may shift away from serious crime: it may be argued that zero tolerance should be used because of its direct effects on minor offences and other disorder. Improvement of the 'quality of life' in an area may be presented as a more appropriate objective. In both respects, it is necessary to take account of the potentially counterproductive effects of zero tolerance policing. What is gained may not be worth the cost.

First, there is a documented history of intensive, proactive street policing leading to serious social disorder (Pollard 1997: 60). Indeed, I remember reading 'Broken windows' when it appeared in 1982 and being struck by its irrelevance because of the authors' apparent ignorance of this. I was then in England, where the policing debate was dominated by the 1980-81 riots. Attention focused principally on the Brixton riots which were set off by intensive stop and search operations carried out by the Metropolitan Police. Lord Scarman's report on Brixton eloquently dismissed the argument that police actions were justified by a duty to enforce the law. According to Scarman, maintenance of public order is the primary mandate and the law has to be exercised with the discretion which 'lies at the heart of the policing function' (1981: para. 4.58). Scarman went on to argue that discretion could only be properly used by police who had good relations with the local community, consulted them,

and were (in this limited sense) accountable to them (1981: paras. 4.60, 5.56-58). He was reflecting the knowledge learnt from the experience of the riots in US cities in the 1960s: the counterproductive failure of intensive policing had led to the search for new policing strategies, such as community and problem-oriented policing. Today's police may be less concerned than before about public disorder: they are much better prepared both in tactics and equipment to respond. However, the inability of the Los Angeles Police Department - the epitome of modern police paramilitarism - to contain the riots following the trial of Rodney King's assailants should lead even the hardest head to question the desirability of relying on superior force (Cannon 1997).

To point out that overpolicing may spark disorder is familiar. Less so, but equally important, is the argument that underpolicing may do the same. Wilson and Kelling's 'Broken windows' argued that policing should target neighbourhoods in decline. (However, it should be pointed out that complaints about disorder often come most loudly from upwardly mobile areas, in which new residents are discomfited by the presence of unrespectable neighbours and street people: inner Sydney provides several such examples.) What of places which have already 'declined'? Wilson and Kelling suggested that some neighbourhoods are so 'demoralized and crime-ridden' that proactive policing is impossible (1982: 38).<sup>17</sup> Irvine Walsh's 'Detective Sergeant Bruce Robertson' puts it more bluntly: 'Zero tolerance of crime in the city centre; total laissez faire in the schie hinterlands. That's the way forward for policing in the twenty-first century' (1998: 273). The consequence of police withdrawing from areas except in response to emergency calls was seen in the riots in the sump public housing estates of Northern England in the early 1990s. This time, it was under-, not over-policing that was crucial. 'Communities' whose structures had been eaten away by mass unemployment and the accompanying social, economic, and political marginalisation turned upon themselves (Campbell 1993).

Secondly, even if serious disorder is not instigated, zero tolerance is likely to worsen relations between police and the communities whose activities are no longer tolerated. It represents a serious threat to a conception of community policing as founded on close, cooperative relations between police and people. Those targeted by police have to be marginalised as 'not part of the community'. The persistent attempt to explain away the British riots of the 1980s and early 1990s as the work of 'outsiders' always faltered before the evidence that most of those rioting were *part* of the community. A local example is provided by our research in Cabramatta: police mistreatment of young Indo-Chinese heroin users has implications for relations not just with that group, but with the broader Indo-Chinese community (Maher, Dixon, Swift and Nguyen 1997). As even Bratton acknowledges (1998: 291-2), the increase in complaints of police brutality in New York is a clear indicator of the cost of encouraging police aggression.<sup>18</sup> The danger is that, however fancy the packaging of zero tolerance,

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<sup>17</sup> But contrast Kelling and Coles' suggestion that 'Even those neighborhoods struggling with significant levels of predatory behavior .. can benefit from taking the first steps toward attempting to restore order' (1996: 242).

<sup>18</sup> After dipping in 1997, complaints resumed a steady increase: note however that the rate of arrest increased even faster than complaints. F: for official statistics, see Harcourt 1998: 377-80; Shapiro 1998. For a more controversial analysis, see Amnesty International (1996). A recent cause for concern is the death of the unarmed Aboubacar Dione, hit by 19 of 41 bullets fired at him by four officers: 'Thousands gather again to protest police shooting' New York Times, 10 February 1999.

operational officers receive it as coded order to do the 'dirty work' (Kelling and Coles 1996: 121), a mandate to get tough on the streets, just to return to 'how policing used to be'.<sup>19</sup> The NYPD officers who, while sexually assaulting and beating Abner Louima, declared 'This is Giuliani time'<sup>20</sup> were not, as J.Q Wilson claims (1997), merely bad apples: their actions have to be understood in the context of zero tolerance policing.

A third cost of zero tolerance is a substantial expansion of the prison population: New York State has more than three times as many people in gaol now as it did in 1980 (Massing 1998: 8). This cost may be acceptable: indeed, some, like Giuliani, regard the growth of imprisonment as one of his administration's achievements. Combined with sentencing policies providing mandatory life sentences for accumulated lesser offences ('three strikes' laws and the like), then zero tolerance constitutes a coherent, albeit highly objectionable and expensive, policy. If, however, punishment of those swept up in the zero tolerance net is not to be indefinite, then its effects are likely to be very undesirable. In criminal justice, we may be certain of little: but one thing we surely do know is that imprisonment should be minimized because of its counterproductive effects. Indeed, if one *wanted* to make minor crime lead to major crime, sending to jail those who commit the former would be an excellent way of doing so. (On the criminogenic effects of zero tolerance tactics, see Sherman 1997: 18). In addition, those concerned about crime, disorder and victimization should recognize their existence inside prisons: mass warehousing of offenders creates criminogenic and often very dangerous conditions.

A fourth example of counterproductive effects is provided by the experience in Australia of applying tactics influenced by the New York experience to the policing of drug markets (Dixon and Maher 1998). Cabramatta has been the subject of intensive policing for some time, but in the period since July 1997 intensive deployment of uniformed officers in Operation Puccini has attempted to drive heroin use and sales out of the CBD. In this program of saturation policing, between mid 1997 and mid-1998 'more than 16000 ... had their details checked by police' (Cassidy 1998: 4). Influenced by zero tolerance policies, police have used minor offences as a way of deterring drug users and of facilitating searches and warrant checks: for example, 4286 railway infringement notices were issued (Cassidy 1998: 4). If the objective was to clean up the Cabramatta CBD, it has had some (but certainly not total) success. But such success has been bought at considerable public health costs (encouraging unsafe practices in storing and transferring illegal drugs and in using and disposing of injecting equipment), social, geographical and substance displacement, and hardening of the target by encouraging drug market participants to become more organized (Dixon and Maher 1998; Maher and Dixon 1999; Maher et al. 1998). The amount of heroin sold and bought in South West Sydney does not appear to have been reduced: the market is affected only to the extent that some heroin is being sold in different ways, by different people, in different places. Meanwhile, the price of heroin has declined significantly and a market for injectable cocaine has become established.<sup>21</sup>

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<sup>19</sup> Mike Bennett's letter to the Police Review (20 September 1996) expresses this well: 'As I enter my thirty-sixth year of service, I realise that I am considered a dinosaur but I have policed the streets in the style that Bratton used in New York and it does work. It ... would need the total commitment from chief constables who appear to want to involve themselves with the social conditions instead of upholding the law as they were sworn to do'.

<sup>20</sup> "'Zero tolerance' policy questioned after assault' Washington Post 20 August 1997, A03.

<sup>21</sup> See Illicit Drug Reporting System Drug Trends Bulletin, October 1998.

## The Criminal Justice Cringe

A disappointing characteristic of debates on policing in Australia is the criminal justice cringe - the assumption that we should copy what has been done in the United States. It is encouraged by some American academics and officials who are apparently oblivious to the irony of presenting US society and its criminal justice system as an exemplar. As suggested above, zero tolerance is a policy for a society very different from Australia. Of course, it would be equally foolish to suggest that there is nothing to be learned from the U.S. Specifically, the New York experience provides important lessons about crime management, proactive policing, and the use of new technologies. It is good to see, for example, that the NSW Police Service is developing programs drawing on some aspects of this experience.

However, another feature of the criminal justice cringe is inadequate recognition of superior elements within our own institutions and policies. In significant respects, zero tolerance is archaic. New York-style policing involves using enforcement of the criminal law as the primary tool in dealing with the disorderly behaviour of people who are intoxicated, homeless or mentally ill (Travis 1997). For us, this would mean reverting to methods of dealing with social problems which have long been discredited. It beggars belief that zero tolerance should be promoted to deal with alcohol abuse in the Northern Territory's Aboriginal communities.<sup>22</sup> In that case, zero tolerance is a policy whose time has come and gone: that time was between 1943 and 1970, when arrests for public drunkenness accounted for between 32% and 54% of all non-traffic arrests in NSW (Brown et al 1996: 922). As a method of dealing with the social, economic and health problems of Aboriginal communities, we know that zero tolerance was an abject, shameful failure: the Royal Commission into Aboriginal Deaths in Custody should surely have brought that message home. Politicians and others who ignore this are culpably irresponsible.

New York-style policing means fighting a war on drugs although Australian police leaders recognise the futility of such an approach and support harm minimisation. Australia has a considerable international reputation for our bipartisan commitment to harm minimization as the foundation of its national drug strategy. Our priority here should be translating harm minimisation into policing practice (Maher and Dixon 1999), rather than indulging in 'bizarre American fantasies of "zero tolerance"' (Pearson 1992: 18). Once again, zero tolerance is not new, and we know what it produces: the US commitment to zero tolerance of illegal drugs has been a recipe for harm maximisation (Drucker 1998; Wodak and Lurie 1996).

Similarly, zero tolerance may involve the criminalization of prostitution or the use of street offences and powers to disrupt strolls. The costs of inevitably unsuccessful attempts to prohibit prostitution are well-recognised in Australia and the priority is to develop modes of regulation which allow prostitution to be conducted in ways which minimise prostitution-related harms by seeking to ensure the safety and protect legitimate interests of both prostitutes and residents. In addition, as noted above, New York-style policing will greatly expand the prison population a time when it is widely accepted in Australia that the sensible policy is to minimise the use of imprisonment because of its cost and its counterproductive effects.

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<sup>22</sup> 'Drunks to get zero tolerance' The Australian 13 May 1998.

Finally, there is a tendency to undervalue the potential contribution of Australian researchers, some of whom are producing work of international quality. We underestimate our own policies, resources and institutions when we slavishly look to the United States for guidance. In many of the matters involved here, we have as much to teach New York as to learn from it.

### **Zero Tolerance and Community Policing**

Some police and commentators distance themselves from 'zero tolerance' but accept key elements of it in more acceptable neologisms such 'confident', 'in your face', 'firm but fair' or 'back to basics' policing. These are indicators of a troubling trend in contemporary policing which is best illustrated by the work of Kelling and Coles (1996). They present their major work, Fixing Broken Windows,<sup>23</sup> as if it conforms with the paradigms of community policing and community crime prevention. They provide an excellent critique of 'professional policing' (1996: ch.3) and present their work as advocating the 'new paradigm of community-based policing' (1996: 7). This, however, is disingenuous, because the program advocates an approach which would subvert community policing. This is not the place for a definition, but by this I do not merely mean neighbourhood watch, beat patrols, consultative committees, and inter-agency cooperation, but a philosophical abandonment of the claims to autonomy and expertise which were characteristic of 'professional' policing. 'Broken windows' and its offspring, zero tolerance, amount to an attempt to colonise community policing and community crime prevention and to turn them into tools of professional crime fighting in a way that would threaten the significant progress in policing over the last quarter of this century.

For some thirty years, those who prefer to see (and do) policing as the work of autonomous, hierarchical law enforcers and crime fighters have been threatened by advocates of community policing (in all its many guises) who have argued that reactive crime-fighting is inefficient and marginal to key policing tasks. Broken windows and zero tolerance square the circle, promising that law enforcement will reduce crime and restore public order, allowing aggressive law enforcement to be done in the name of community policing (cf Johnston 1997; Pollard 1997: 49). If Fixing Broken Windows was simply advocating a problem-oriented, 'whole of government' approach (as Kelling and Coles insist), then it says nothing new: indeed, it fails to take account of the most interesting conceptual and empirical work in the field (eg Crawford 1994, 1995, 1997; Hope and Shaw eds 1988; Liddle and Gelsthorpe 1995; Pearson et al 1992). They merely offer old cliches: for example, they insist that police-community partnerships 'must be fully inclusive of all racial, ethnic, religious, and economic groups' (1996: 234), but they say nothing about the practicalities and problems of achieving this. What is new (and problematic) is the role to be played by law enforcement. Their commitment to inter-agency problem-solving is skin-deep. They promote the police as the

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<sup>23</sup> Despite the title, their main concern is not the link between disorder and serious crime. They believe that it exists, but are more concerned about tackling disorder per se than doing so a mode of serious crime prevention. They criticise the 'policy bias toward serious crime' (1996: 5), arguing that it diverts attention from significant problems of disorder and does so by promoting counterproductive 'solutions' such as 3 strikes and capital punishment. More generally, Kelling and Coles soften the message of the original 'Broken windows', ignoring for example the original essay's apparent approval of extra-legal police violence. For his response to such criticism, see Kelling 1997b.

lead agency, with law enforcement as the primary strategy of problem-solving, and show no recognition of the problems which this assumption of leadership causes in inter-agency partnerships (Crawford 1997; Liddle and Gelsthorpe 1994).

Kelling displays a lamentably narrow knowledge of the criminological literature. He speaks of the left's axioms: To deal with crime one must deal with the social 'causes' of crime - poverty, racism and social injustice; minor offences like prostitution and aggressive panhandling are victimless crime; police order-maintenance activities constitute a 'war against the poor and minorities'; behaviours called disorderly are really expressions of cultural diversity that challenge middle-class mores; and finally, individual rights eclipse community interests... (1997b: 5).

It may be true that some expressions of this peculiar blend of vulgar Marxism, simplistic labelling theory, and civil libertarianism can still be found in the deep backwoods of US criminology. But to identify it with contemporary critical criminology is either dishonest or ignorant. Left realism began to emerge twenty four years ago (Young 1975) and has constituted a major new paradigm in criminology for the last decade. The key studies were by English criminologists<sup>24</sup>. While the parochialism of criminology in the U.S may explain Kelling's myopia, one might expect him to be aware of such developments via the work of writers such as Elliott Currie (eg Currie 1985, 1998). It is, of course, easier to follow J.Q.Wilson's lead by setting up straw figures to sneer at.

In Fixing Broken Windows, Kelling and Coles try desperately to claim the centre ground, flaunting their commitment to community policing and insisting that policing must be moral and legal. This position is deeply flawed. Their commitment to community policing is rhetorical. Their claims about police commitments to community policing can be undermined by going to the horse's mouth: William Bratton's self-aggrandizing<sup>25</sup> autobiography makes quite clear that what happened in New York in the mid-1990s was not community policing, but the application of new strategy, tactics, and technology by a police leadership which was committed to very traditional conceptions of police autonomy, social order, and crime.<sup>26</sup> Bratton's book may be 'full of anodyne prose about the importance of cooperation between the cops and the community', but the 'idea of cooperation ... doesn't remotely describe what happened in New York under Bratton ... Indeed the police under Bratton were determined not to work with the community' (Massing 1998: 4). John Timoney (a key member of Bratton's inner circle and now chief of police in Philadelphia) 'contemptuously dismissed the idea that the police should enlist neighbourhood residents in fighting crime ... "It's the cops' job to fight crime. Community policing said the cops can't do it alone. Our answer was, "Yes, they can"' (Massing 1998: 7).

Their insistence that policing must be legal has an obvious superficial attraction. However, it expresses a legalistic belief that police illegality is the key problem and that law provides solutions. This ignores the crucial work in the sociology of policing which has shown how law

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<sup>24</sup> For a summary, see Young 1997; nb also the Australian adaptation and development eg Hogg and Brown 1998.

<sup>25</sup> nb his book's subtitle.

<sup>26</sup> Kelling and Coles felt some discomfort from Bratton's 'tough talk' and acknowledged that 'in its emphasis on aggressive order maintenance, the NYPD appears to some to have moved outside the pale of community policing and to be involved in a revival of reform-model policing' (1996: 161).

has facilitated abuse, and that the significant distinction is not between law and practice, but between legal ideology and law's substance (McBarnet 1983; Dixon 1997: 28-40).

Perhaps most problematically, there is their use of the term 'community'. It is a cliché to point out that this has been a problematic term in the community policing literature. Nevertheless, for most it has denoted a political (liberal/social democratic) aspiration towards inclusion and consultation: 'community' means as much of society as possible. In Kelling, Coles, and Wilson's writing, there is a politics of exclusion which operates through dichotomies: 'decent folk' versus 'drunks and derelicts' (Wilson and Kelling 1982: 30); a 'stable neighborhood of families' versus one populated by 'unattached adults' (Wilson and Kelling 1982: 31, 32); 'the public' versus 'aggressive panhandlers, dishevelled vagrants, and rude teenagers' (Kelling and Coles 1996: xiv); 'good citizens' versus 'the homeless' (Kelling and Coles 1996: 218); 'prostitutes harassing husbands in front of their wives and kids, panhandlers sticking cups under peoples' (sic) noses'; 'citizens ... trying to protect their own territory' threatened by 'predators'. Wilson and Kelling's list of human 'broken windows' could be a quotation from Tom Robinson's 'Power in the Darkness' - 'disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed' (1982: 3). According to Kelling and Coles, 'ordinary citizens' are those 'who travel daily along streets and by public transportation to work, to school, to shop, in pursuit of all the ordinary activities of everyday life' (1996: 108). Ranged against them (or, rather, 'us', for 'we experience the problem': 1996: xiv - this is a conspiracy of inclusion as well as of exclusion) are 'the unruly and predators', 'those who behave in outrageous ways, and who prey on the weak and the vulnerable' (1996: 9).<sup>27</sup>

Of course, the function of dichotomies such as these is to express the superiority of one side over the other. The way in which Kelling and Coles construct their dichotomies has a peculiarly legalistic character. In their argument that the courts have ill-advisedly interfered with police attempts to control disorder, they claim that this has involved privileging 'the rights of these individuals' over 'the interests of the community' (Coles 1997). The disorderly are individualized and isolated from the groups which their proponents seek to protect:

Many people think that trying to regulate disorder means jumping on the homeless and pitting the rights of the rich against those of the poor. That sort of thinking is a definite obstacle. What we need to focus on is dealing with *acts by people* and regulating troublesome unlawful behaviour. (Coles 1997, original emphasis)

The act of pan-handling, the act of public drinking, are disorderly behaviors of concern here - not being poor ... The issue is behavior (Kelling and Coles 1996: 40).

This approach is strengthened by undermining the claims to status by those who use the law in order to challenge police actions: notably, people are said to be not really homeless, but to have chosen to live on the street when other arrangements were available. Predictably, they introduce a new version of the hoary distinction between the deserving and the undeserving poor. They adopt Scheidegger's classification of the 'have-nots', who are 'the genuinely poor'; the 'cannots', who are 'the seriously mentally ill and addicted'; and the 'will-nots', who are 'those for whom living on the streets and hustling, including criminality, has become a life style... (T)he

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<sup>27</sup> See Harcourt (1998: 297-8, 303-5) for a perceptive discussion of the use and meaning of dichotomies in the 'broken windows' literature.

have-nots are not generally the problem; repeated and continuous antisocial behavior by the can-nots and will-nots is' (1996: 68).

Yet they are inconsistent: here they insist on the individual focus, but in rejecting court-imposed limitations, they argue that judges looked at 'acts by people' rather than their 'agglomeration' effect. Coles criticises courts for looking 'at individual cases apart from the broader context within which they take place ... Judges are asked to make decisions about the lawfulness and the impact of individual acts. This is problematic' (Coles 1997; cf Wilson and Kelling 1982:9). Having discredited one group status - homeless, poor - Kelling and Coles inscribe another - disorderly, criminal - which excludes people from the category of 'citizen'. As such, it is a notable example of how 'social exclusion' is constructed and mobilized (Finer and Nellis, eds 1998; Jordan 1996).

They individualize litigants and reduce their rights to personal claims: a concept of rights as part of a communal interest is alien to this philosophy. In counterpoising 'the legitimate rights of individuals' and 'the interests of neighborhoods and communities' (1996: 5), Kelling and Coles express a conventional conservative resistance to the expansion of rights which reflects the schlock jurisprudence of their mentor, who asserts that 'Courts are institutions whose special competence lies in the discernment and application of rights. This means that to the extent courts decide matters, the drift of policy will be toward liberty and away from community' (J.Q.Wilson, in Kelling and Coles 1996: xiv).

Their work expresses a fundamental misunderstanding of 'community'. These neat dichotomies of 'us' and 'them' misrepresent a reality in which criminals and the disorderly are part of, not alien predators on, communities. Drug markets are particularly significant examples of this, as a New York Times reporter explained:

... while many people on the block say they hate the sight of dealers and users on the streets where their children play, many also concede that these soldiers of the drug trade are less invaders than part of the community's tangled web of blood ties and friendships (quoted in Maher 1997: 24).

Our research in Cabramatta found not dichotomy but complexity: street-level user- dealers are people's sons, daughters, brothers, sisters, grandchildren. Their families would like the drug trade to stop. But when police mistreat their young people in the ways which usually accompany crackdowns, they resent it and police-public relations are harmed.

This misunderstanding of community in the work of Kelling and Coles stems at least in part from their methods. They see the world (literally as well as figuratively) from a police perspective (ironically echoing familiar elements of police culture) and have no contact with 'the other' except when protected by a police officer's presence (see 1996: 1-2, 236-7). Kelling stares at four Afro-American boys, 'something he would not have done had the officer not accompanied him' (1996: 236). They are dehumanized in his description: they sit with their 'shoulders slouched over, vulture like' (1996: 236). Kelling's fears are confirmed by a report that, soon afterwards, the four mugged someone. Some thirty years ago, sociologists of deviance showed that to explain, we have to understand, and to understand, we have to do research which involves contact with 'the other'. Only work of this kind (e.g. Maher 1997) allows real and inclusive understanding of community.

Ever concerned to anticipate accusations of illiberalism and to wrap themselves in defensive consensus, Kelling and Coles insist that they 'have the same concerns about homelessness,

poverty, and social injustice as do the vast majority of the population' (1996: 64; see also Kelling 1997b). None the less, the politics of their account is an unmistakably conservative lament about social decline. The behaviours of disorderly individuals are the product of 'individualism', their synonym for permissiveness.

the primacy of the 'self' and the right to be 'different'; a corresponding emphasis on individual needs and rights, and the belief that such rights were absolute; a rejection, or at least serious questioning of middle-class morality; the notion that stigmatizing individuals as criminals or deviants turned them into criminals or deviants; and the positing of solutions such as mental hospitals, therapies, and other interventions as more insidious than the problems they were designed to address ... The increase in urban disorder that has occurred in the past thirty years, in many senses is rooted in these very changes... (1996: 41-2)

Here is a very familiar social conservative account which traces the roots of contemporary problems to the challenges to authority and slackening of discipline supposedly characteristic of the 1960s. As Margaret Thatcher told us, 'We are reaping what was sown in the Sixties. The fashionable theories and permissive claptrap set the scene for a society in which the old virtues of discipline and self-restraint were denigrated'.<sup>28</sup> William Bratton's view is similar: he 'disliked everything about the sixties' (1998: 35), while he saw the late 1970s as 'an anything-goes era' in which 'society was becoming increasingly tolerant of aberrant behavior' and its standards declined in consequence (1998: 87).

In summary, beneath Kelling and Coles' patina of consensus, there lies a series of political standpoints on policing, crime, and community which are, to those who do not share their brand of social conservatism, highly problematic.

## **Policing And Crime Control**

### **i. From zero tolerance to the new policing**

Far from being an insignificant slogan, zero tolerance is but part of a new paradigm in policing. Its emergence may presage as significant a shift as that which occurred when community policing challenged law enforcement policing. Zero tolerance is to be understood in the context of broader changes in criminal justice practices and rhetorics. Clearly there are dangers of overstating their unity and novelty, and ignoring the differences between what is said and done. Nevertheless, there is a shape here in which a variety of trends are articulated, not in a formal program, but in a significant tendency. This is indicated by the shift in conceptual foundations from

*certainty/individual/guilt/rights/reactive response*  
to  
*flexibility/group/risk/safety/proactive intervention.*

It is not possible to develop this argument here: the significant point for present purposes is to insist that the broader political and social implications of broken windows and zero tolerance policing deserve serious attention. There is considerable danger that we may complacently dismiss zero tolerance, while allowing ourselves to shuffle crab fashion into something much

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<sup>28</sup> Quoted in The Observer, 28 March 1982.

more significant. Such change in the criminal justice process is driven by deeper social, political and economic changes: returning to older conceptions of policing is simply not an option. The significant choices involve attempts to direct, rather than reverse, the course of change.

There are elements of the new policing which are desirable. Greater managerial involvement in and supervision of policing strategies may be beneficial: the NSW Police's Operations and Crime Review process shows how lessons can be taken from Compstat. Technologies such as risk assessment, crime mapping and proactive strategies which involve the deployment of resources where they are most needed are potentially valuable in responding to problems of crime and disorder which a realist criminology must recognize as more than law and order rhetoric. There are some interesting projects of this kind in NSW.<sup>29</sup> While critical of some aspects of Operation Puccini, I would argue that drug policing by means of law enforcement may, if carefully deployed, make a significant contribution to a harm minimization strategy (Pearson 1992). Such policing must be proactive, targeted, information-led and intensive - all features of the new policing. The issue is not whether such strategies are appropriate, but how they are used, how their targets are identified, whose opinions count, and how their benefits and costs are calculated.

## ii. Can police control crime?

A foundation stone of modern policing studies and policy is the body of research on police activity which has found that conventional policing - random patrol and reactive investigation - cannot substantially reduce crime (Reiner 1992: 147-9). The classic example here is the Kansas City Preventive Patrol Experiment (Kelling et al. 1974), in which comparative deployment of various styles of policing was found to have no significant effect on crime, on fear of crime, or on attitudes towards the police. Indeed, it appears that the variation was hardly noticed by many residents. Most criminal activity is unaffected by police either because it is not reported or is, to all intents and purposes, undetectable (Bayley 1994: ch.1). An illustrative example is provided by our recent study of the illicit drug market, which shows that the risks of arrest per street-level heroin transaction in Australia are relatively low. Using data from the Australian Bureau of Criminal Intelligence on the total number of heroin arrests in Australia for 1996-7, we calculate the risk of arrest per transaction as being between one in 2600 and one in 10,900 (Maher, Dixon, Lynskey and Hall 1998). Within levels of resources and powers which can realistically be provided, it is unlikely that conventional policing can significantly reduce general crime rates.<sup>30</sup>

Such research findings were sometimes misinterpreted as a part of a simplistic claim that 'nothing works'. For example, Gottfredson and Hirschi concluded: 'no evidence exists that augmentation of police forces or equipment, differential patrol strategies, or differential intensities of surveillance have an effect on crime rates' (1990: 270, quoted in Sherman 1992: 167). The flaws in this position are apparent. If it is accepted that police have *some* effect in controlling crime,<sup>31</sup> then there is no reason to believe that the extent of this effect is

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<sup>29</sup> For example, the NSW Police Waratah area reports good results from the targeting of recidivist offenders and hotspots in Operation Digos: see Police Service Weekly 31 August 1998, pp.4-5.

<sup>30</sup> This assumes that the police in question work with reasonable efficiency. If a department is institutionally corrupt, with substantial numbers of lazy and incompetent officers, one could expect even reform along traditional professional policing lines to improve effectiveness.

<sup>31</sup> If this really needs to be demonstrated, studies of what happens when police strike are available: see Sherman 1997: 6-7.

determined and unchangeable. The significant issue is how that effect can be altered. The continuing importance of studies such as the Kansas City project is that they demonstrate that changes in policing of the kind that are conventionally demanded will be ineffective: 'Hiring more police to provide rapid 911 responses, unfocused random patrol, and reactive arrests does not prevent serious crime' (Sherman 1997: 1).

Such studies do not show that 'nothing works'. As Sherman demonstrates, careful analysis of the extensive research literature shows that some things have worked: there is research evidence that certain strategies and tactics can reduce crime in particular contexts. I say 'have worked' rather than 'do work' to emphasize a point that Sherman makes: the studies show that certain strategies and tactics have worked in reducing or preventing crime at particular times in particular places. There is no guarantee that they will work elsewhere, particularly when 'elsewhere' is another country (Sherman 1998: 26). The cautionary tale of Sherman's own work on mandatory arrest policies to counter domestic violence illustrate the point best. One study appeared to demonstrate that arrest was the most effective police action. Police forces in many jurisdictions consequently advised or instructed officers to arrest suspects in domestic violence cases. However, subsequent research has shown that, in some areas, the same beneficial arrests have not been produced, while in others arrest increases subsequent violence. According to Sherman's interpretation of these data, the effect of arrest depends upon the suspect's socio-economic status (1992: 203-12).

The first lesson to take from this is that great care should be taken in adopting new strategies because their success cannot be guaranteed and, to the contrary, they may actually increase rather than control crime (other counterproductive effects are considered below). Secondly, they need to be specific: 'crime' is far too imprecise a target. Everything we know to date suggests that claims that police activity has significantly reduced 'crime' should be treated sceptically. The worthwhile questions are more specific: how can particular police tactics affect particular patterns of crime in particular places and what lessons can be learnt about the applicability of such tactics elsewhere? Thirdly, we need much more high-quality research on Australian policing. Some excellent work has been (and is being) done, but compared to the vast US literature, there is much more to do.

A recent review by Ross Homel emphasizes that successful crime control necessitates moving well beyond conventional policing strategies: policing can affect particular types of crime, 'but usually only in cooperation with other agencies and only if they adopt strategies which are in stark contrast to those dictated by the "professional law enforcement" model' (Homel 1994: 32; cf Sherman 1997). There is a real danger that the coincidence of conventional policing strategies (notably crackdowns) and crime reductions wholly or largely the result of factors outside police control may lead to misplaced confidence in the efficacy of such strategies.

### **iii. Assessing crime control strategies**

As Sherman puts it, 'it is not necessary to like punishment or disvalue due process to value the development and testing of police crime-control strategies (1992: 17). However, it is necessary to add some qualifications to claims about the success of certain policing strategies.

First, there is a tendency to rely on easily quantifiable measures of police performance. Rates of stop/search, move on, and arrest have their uses, but also dangers. Focusing too closely on what can be counted is not always the best way to identify good policing, or good police officers. It is notable that the NSW Audit Office's first study of policing (1998) focused on response times, despite extensive research showing that reducing response times does not reduce crime (Bayley 1994: 6; Sherman 1997: 7-9). Criticism of the impact of the Audit Commission's work on policing policy and practice are relevant to developments in NSW (Leishman et al. eds 1996; Power 1997). Audit-accountability is limited by its dependence on what can be counted. Politicians and policy-makers might do better to consult the research literature and to educate themselves and the public about what is significant in policing.

A related point is obvious, but still significant: real temptation is put before police officers whose performance is assessed according to statistics that they themselves provide (Pollard 1997: 52-3). Manipulation of statistics was an entrenched practice in New South Wales until its exposure by Philip Arantz (Arantz 1997). In 1998, the New York Times reported 'charges of falsely reporting crime statistics in Philadelphia, New York, Atlanta and Boca Raton, Fla., resulting in the resignation or demotion of high-ranking police commanders'. The New York subway, site of Kelling and Bratton's first triumph, was involved: the 'head of the police department's transportation bureau was forced to resign ... over allegations of a scheme to reclassify incidents on the subway as street crimes ... (M)anipulation had gone on for many years and had underestimated crime in the subways by about 2 percent'.<sup>32</sup>

Secondly, 'success' should not be judged purely in terms of effects on crime: policing strategies may have significant effects other than those on which police usually focus. For example, Operation Puccini, a series of intensive crackdowns on the Cabramatta heroin market, is presented by the NSW Police Service as an 'outstanding success' (Cassidy 1998). However, as noted above, our research reports that such success has been bought at a significant price in terms of displacement, public health, and damage to police-community relations (Dixon & Maher 1998; Maher and Dixon 1999; Maher et al. 1997, 1998). Such outcomes have not been adequately considered as potential consequences of intensive policing operations.

It may be that, if they were, the strategies would still be considered a success. More significantly, there is room for legitimate disagreement about criteria for defining success. In other words, defining success is not exclusively a matter of science, but also one of policy and politics. The issue of displacement provides a particularly important example here. Displacement was an intended effect of Operation Puccini. Those responsible for the strategy regard it as desirable, arguing that a dispersed drug market is both more controllable and more equitable: the key analogy is to aircraft noise (Dixon and Maher 1998). While I consider this to be a serious misunderstanding of the nature and effects of displacement in the context of drug markets,<sup>33</sup> the significant point for present purposes is simply that there is room for legitimate disagreement about such issues.

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<sup>32</sup> 'Pressure to manipulate crime data worries police', New York Times 3 August 1998. For discussion of related problems, see Coleman and Moynihan 1996: 32-6.

<sup>33</sup> In addition, it was informed by research analysis which was weak and ill-informed: see Dixon and Maher 1998. 'Smart policing' needs a better research and analysis basis than it currently has. Another example of inadequacy with damaging consequences is analysis of 'Asian crime and culture' upon which NSW Police have drawn: for a critique, see Dixon 1998.

This specific example illustrates a crucial general point. The choices made in the new policing are not matters of autonomous professional judgment, just police business. They involve the exercise of significant political discretion. Targeting and setting priorities involves as a corollary that some policing tasks are allocated less resources and lower priority. This is not an argument for reviving the call for 'democratic control' of the police. Rather, it requires us to look forward to new modes of governance which provide effective, just and accountable policing. In this respect, the discussion and recommendations by the Royal Commission into the NSW Police Service were particularly disappointing (Dixon 1999). Its discussion of parliamentary accountability relied on a division between policy and operational matters which had not only been discredited in the academic literature, but the inadequacies of which were clearly illustrated by the Report's treatment of the dispute over replacing the Special Branch. As regards broader 'community' accountability, the Royal Commission provided an accurate critique of consultative committees in England and Wales, then inexplicably went on to recommend something very similar for New South Wales. These were to be complemented by higher level committees to advise the Police Commissioner. It may be useful for the Commissioner to have such resources, but they have little to do with accountability or meaningful consultation when the consultation is on the terms set by and with whom he chooses to appoint. It is hard to see how they could, as was expected, connect with local level committees.

The key issue is political in a broader sense. Policing is, to use an old but useful cliché, too important to be left to the police. Most of their key concerns are not just police issues: they are social, economic, and health issues. Drug policing provides the obvious example. An effective public policy response must be one in which interdisciplinary, multi-agency approaches are translated from rhetoric into real commitment. The problems resulting from police operations in Cabramatta which our research has demonstrated are strong examples of how the new policing will be problematic unless it learns what should be some old lessons about the limitations of a form of policing which is defined by the police.

#### **iv. Legitimacy and efficiency**

The harm which some police strategies and tactics can do to police-public relations has been noted above. It is worth emphasizing the instrumental significance of police legitimacy: the point is that legitimate policing is not just more popular, but is also more efficient. It is in this context that the need for legitimacy receives appropriate and welcome recognition in Sherman's survey of what works in policing for crime prevention:

the less respectful police are towards suspects and citizens generally, the less people will comply with the law. Changing police 'style' may thus be as important as focusing police 'substance'. Making both the style and substance of police practices more 'legitimate' in the eyes of the public ... may be one of the most effective long-term police strategies for crime prevention (1997: 1).

He cites significant research (notably Tyler 1990) which reports a 'strong correlation ... between perceived legitimacy of police and willingness to obey the law' (1997: 22). While Sherman argues that zero tolerance tactics such as intensive field interrogations can be used 'in a polite manner that fosters rather than hinders police legitimacy', he acknowledges that this has often not been the case and that they 'have often been a flash point of poor police-community relations' (1997: 18).

In NSW, it appears that this relationship between legitimacy and efficiency is sometimes inadequately appreciated and, in traditional fashion, it is expected that legitimacy will be a by-product of efficiency. It seems unfortunate, for example, that consideration of complaints and other indicators of police-community relations was not built into the Operations and Crime Review process from the start. There is a commitment to consider complaints, but its implementation will come when the tone and priorities of OCRs has been established. At times, the reform process is presented as a distraction from the key task of fighting crime: officers are encouraged to put the Royal Commission behind them and to get back to fighting crime. Indeed, the Commission is sometimes presented as a diversion which criminals exploited as ‘the Police Service had “taken its eye off the ball” while it cleaned up corruption within the force and that was the cause of the State’s high crime rate’.<sup>34</sup>

The arrest rates have gone down ... that’s why crime is going up ... What I have to do is say to the cops: ‘Never mind this reform business ... this is what it will mean to you over time and we’ll get there. But for now concentrate on ... getting crime down’.<sup>35</sup>

There attractions of such rhetoric are clear enough; however, its dangers should also be recognized. Far from putting the Commission behind them, officers should be reminded of it every day. If policing in New South Wales is to be fundamentally refashioned (as Wood showed it needs to be), then the active involvement of every officer in the process will be needed. A commitment to fighting crime is not enough (Dixon 1999).

The counterpoising of legitimacy and efficiency is related to other common dichotomies such as crime control vs due process and police powers versus suspects’ right. As I have argued elsewhere (Dixon 1997), such dichotomies have consistently obstructed constructive discussion and policy development in criminal justice. Recent legislation in NSW such as the Young Offenders Act and the Detention After Arrest Act provide important examples of changes in criminal justice which cannot be simplistically slotted into one or other side of these dichotomies. A more mature approach to criminal justice would appreciate that legitimacy and efficiency (like due process/crime control and police powers/suspects’ rights) are not necessarily counterpoised.

## **Conclusion**

I have argued in this paper that great care needs to be taken in taking lessons from policing in New York (or, indeed, anywhere else). Rhetoric about the effectiveness of zero tolerance obscures important and complex questions of evaluation, policy, and principle. What we need is a new policing, not the old ‘professionalism’ dressed up with tactics, technology, and rhetoric.

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<sup>34</sup> ‘Stay out of politics Ryan told’ Daily Telegraph 25 September 1997; see also ‘Crime is soaring says Ryan’ Sun-Herald 21 September 1997.

<sup>35</sup> Quoted, ‘Get back on the beat’ Sun-Herald 21 September 1997.

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