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Zero Tolerance Policing Threatens Personal Freedoms

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Introduction

Zero tolerance policing (ZTP) commenced in the USA a decade ago and has been exported to many countries including Australia. It has been applied to a range of situations and even adopted in the education arena largely in America where firearms and violence in schools have been significant problems. The term has entered into everyday use, where most recently, political leaders have applied a zero tolerance stance to terrorism. While the hype surrounding zero tolerance policing appears to have abated, there is still the belief that it offers an easy solution to the problems of crime and public disorder.¹

This article specifically addresses the human rights problems associated with zero tolerance policing. In particular it examines how a “zero tolerance” approach may impact on indigenous and other ethnic minority groups if it were utilised fully in Australia. First, it presents an overview of the strategy and how it developed. It then provides a summary of findings from recent research studies to evaluate the success or otherwise of ZTP. Finally, it discusses those specific concerns about the application of this policing measure in Australia where it is likely to exacerbate policing problems for indigenous and ethnic minority groups and impact on personal freedoms in general.

What is zero tolerance policing?

ZTP is part of the conservative law-and-order agenda that has overtaken policing since the 1970s, more so in the USA than in Australia, but certainly in evidence here. The term “zero tolerance” apparently was hijacked from early feminist work on domestic violence which advocated a tough response to any form of spousal abuse. While it can mean many different things to many different people it is generally defined as aggressive or intolerant policing that lacks discretion. Its basic aim is to tackle minor crimes in the belief that if instances of public disorder are addressed then more serious crimes will decline as a result. Overall then, it is an aggressive form of social control rather than a cooperative community approach and is sometimes referred to as “order maintenance” or “quality of life” policing.²

However, the above is a relatively narrow and quite abstract definition of ZTP for it is important to note that, in practice, it is really a package of measures, not just a singular method. This package of measures focuses on cleaning up petty crimes such as graffiti or public drunkenness, with attention to “hot spots” and, importantly, includes greater accountability of police at the local level. In addition, in the

USA there was a particular emphasis on the confiscation of guns and other weapons as part of the package.³

How did zero tolerance policing develop?

ZTP is based on the “broken windows thesis” proposed by Wilson and Kelling to address seemingly rampant juvenile delinquency, heightened fear of crime, and a perceived decline in public morals. Their view is that inner city ghetto areas that have a dilapidated appearance in the form of “broken windows” will attract crime. It is the basis for our belief that graffiti, for example, should be cleaned off walls immediately. If the tags are left for any length of time then they will attract more graffiti leading to the perception that the building is not cared for. In turn this sends a message that the area is ripe for crime, or so the “broken windows thesis” goes. It is also why we are warned to ensure that our lawns are mown and our mail is collected while we are away on holidays, because an uncared-for property sends a signal to would-be thieves.⁴

The police commissioner for New York City, William Bratton, adopted a form of the “broken windows” philosophy from 1994 to 1997 to clean up Manhattan and the boroughs (across 76 precincts) especially as crime rates were then at record levels. Previously he was in charge of the New York Transit Police and had achieved significant success in cleaning up the subway system. Bratton himself eschews the term “zero tolerance” because he states that his package of measures was not just about tough policing. It involved restructuring, computerisation, devolution of power, and intelligence gathering and was therefore much more complex. A key aspect of ZTP in New York was data collection and monitoring via the Compstat (Compare Statistics) system where specific tactics were developed for specific crime problems in specific locations by local police on a weekly basis.⁵

What does the research evidence show?

The crime rates in New York did decline with a 35% drop in all crime and a 73% reduction in homicide rates. For example, homicides reduced from over 2,000 in 1992 to around 700 in 1998. Similarly, at the same time in the UK, Detective Chief Inspector Ray Mallon was taking a hard line on minor crimes in Hartlepool in the north-east of England and claimed that crimes dropped 27%, and Chief Constable John Orr in Scotland’s Strathclyde invoked a form of ZTP and professed a decrease of 13% in violent offences.⁶ To criminologists these decreases in serious violence were astounding. In fact because these figures were so amazing it was suggested early on that they must have been fudged, and it is true that there were problems with the data in the initial stages and some “precinct commanders lost their jobs as a result”. But it is difficult to fudge the statistics on major crimes and so it is widely accepted that these declines are real. In addition, the evidence seems to indicate that not only was ZTP impacting on murder and manslaughter rates but it was controlling “public morals and physical disorder” or minor types of street offences.⁷

When examined more closely though, the evidence connecting ZTP as a causal factor in these decreases in crime rates is rather circumstantial. Other reasons have been suggested, even though they too remain speculative.⁸

1. A prime alternative explanation is that the population had aged during the 1990s. This reflects an important criminological point about demographics in that it is widely accepted that most crime is committed by those aged 15 to 24 years and thus if there are proportionately fewer young people in a population then one would expect crime rates to fall. However, figures show that the proportion of 15 to 19 year olds in New York has not declined significantly since the mid-1990s.
2. The decline may also be attributed to statistical anomalies. For example, there are some indications that crime events may have shifted to nearby centres and therefore they are not reflected in the New York figures. This is known as displacement where the type or location of crimes can change when there is a crack-down or when specific crime prevention measures are implemented. In addition, crime rates may just be falling “naturally” in New York after abnormally high rates for a long period of time. This is part of a statistical phenomenon where rates tend to regress to the mean (or average) and has been demonstrated quite clearly in one study for gun homicides in New York for the mid-1990s.
3. Another factor posited is that the use of crack cocaine (clearly implicated in much of the violent and property crime in New York) had already begun to decline prior to the implementation of ZTP. It is fairly well accepted that the crack cocaine market brought with it an increase in gang warfare and so a decline in gang violence resulted from the decline in crack use. It has also been well documented that gun violence and crack use tend to rise and fall together.
4. At the broader social level, it has been noted that economic conditions generally had improved throughout the 1990s and this is certainly thought to impact on crime rates. Indeed, the crime rates were already in decline in New York where violent offences dropped 12% from 1989 to 1993 prior to the implementation of ZTP and this early decrease is said to be a reflection of better economic indicators. While it is certainly true that the economic conditions had improved in New York beginning in the late 1980s (for example the job market had expanded), there is little direct evidence linking this to the decline in the crime rates.
5. Finally, it has been suggested that other policing or criminal justice responses might be causal in the decline in crime. The adoption of community and problem-oriented policing approaches had already begun to foster greater cooperation between communities and their police and this may have led to the declines in crime rates. Or it may be that harsher sentencing which resulted in the exponential growth in the imprisonment rate during the 1980s meant that serious offenders were locked up for longer periods and therefore unable to commit crimes. Thus, policing and justice responses might be implicated in the decline in crime in New York and these innovations had commenced well before the introduction of ZTP.

A significant factor in attempting to tease out whether ZTP was a success or not is the observation that other cities in the USA experienced similar declines in crime even though they did not use ZTP methods. For some of these locations the drop in crime rates was even greater and thus the New York scenario may merely be part of a national trend. For example, the often-cited comparison is with San

Diego which experienced a similar decline in crime during the same period as that of New York and yet there were no specific ZTP measures implemented. Across the USA “between 1990 and 1996 the crime rate decreased in 160 of 197 American cities with a population of 100,000 or more” and the decline was 40% or more for nine of those cities. Yet these major cities, like San Diego or Chicago, took more of a community or problem-oriented policing approach – two vastly different strategies from a zero tolerance one.⁹

A final piece of research evidence comes from a longitudinal study involving interviews, field observation, and analysis of existing data conducted by a team from Rutgers University. This is the most recent and comprehensive study to gauge the success or otherwise of ZTP in NYC to date. This study addresses some of those alternative explanations given above and acknowledges that social and justice factors such as “demographics, drugs use patterns, imprisonment rates, prosecutorial and court policies, the economy, probation and parole policies, weapon availability, and so on, can and do have an impact on crime levels” but it also demonstrates, through a carefully designed research project, that policing strategies affect the quality and quantity of crime.¹⁰

Could zero tolerance be adopted in Australia?

While it is difficult then to conclude with certainty that ZTP had a direct influence on the decline in crime rates in New York, there are other questions that need to be asked beyond its ability to reduce crime. For example, there is evidence of greater levels of police brutality and a clear targeting of minority community members where ZTP has been invoked. Often this affects specific communities such as the targeting of the Lebanese community in Sydney or for indigenous Australians. Some commentators have gone as far as referring to ZTP as a form of “social cleansing” because it targets minorities. It should be recognised though that race has always been significant in policing policies and practices so this over-policing of minorities is not solely a result of “zero tolerance” and there is some evidence from the New York data to suggest that after an initial increase in complaints against the police these figures had declined by 1999.¹¹

There are also unintended consequences where crime problems can escalate. This is especially the case for certain crime types where, for example, those involved in drugs can be displaced elsewhere or forced to engage in more risky behaviours if intensive policing styles are adopted. This has been evidenced in the Cabramatta area in Sydney. Other unintended consequences, at least as measured by public opinion polls in one study, is that “crack-downs” by police may mean less cooperation in the long-term for community policing strategies. The result is that if people don’t respect the law and their law enforcers then they are more likely to disobey.¹²

Many commentators caution against the use of ZTP for Australia. There are many reasons for this: the sheer geography of our inner city areas; the lower rates of violent crime and the lower usage of firearms which means that “the patterns of crime and criminality are very different in Australia compared with New York”. Moreover, ZTP clearly involves the employment of many additional officers (the figure was over 7,000 in NYC) and a more sophisticated use of resources (NYC computerised extensively during the

1990s). These financial implications are significant with 12% more arrests and a 25% increase in prisoner numbers during the four year period in the mid-1990s. Thus the police, court and prison resources required would mean a substantial increase in justice expenditure that might more appropriately be spent elsewhere.¹³

While no Australian jurisdiction has fully implemented ZTP there are some districts or specific events where the approach has been partially attempted and in some cases approached with "religious zeal". In Australia it has mostly been utilised in relation to drug offences and this utilisation has impacted on minority group members. Also, those arrested for minor public order offences in Australia are indigenous, so the use of zero tolerance is most likely to affect them deleteriously. Yet there are many studies to show that indigenous Australians are already over-policed. This would result in increased over-representation of Aboriginal people in our criminal justice system which breaches the main recommendations of the Royal Commission into Aboriginal Deaths in Custody and is in contravention of international standards such as the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Racial Discrimination; and the Standard Minimum Rules for the Administration of Juvenile Justice.¹⁴



Zero tolerance policing

Conclusions

Taking a zero tolerance stance can be successful in reducing certain forms of deviant behaviours but its success is usually limited to specific areas and over defined time periods a short term fix rather than as a total policing strategy. Indeed, overall we have no direct evidence that zero tolerance policing has a direct causal influence on reducing crime rates. In addition, there are alternatives to ZTP that have been shown to work such as the targeting of repeat offenders and victims, high police presence in some "hot spot" areas, problem-oriented strategies and community policing initiatives. As Commissioner Bratton himself argues, what we need is better and more strategic policing methods rather than a zero tolerance approach and he advocates a more

comprehensive "broken windows" style.

Further, it is suggested that the presumption of innocence will be lost under a zero tolerance style of policing and that it will impact on civil liberties, human rights and personal freedoms. Indeed there has been evidence of the increase in complaints against police, evidence of greater police brutality, targeting of racial and ethnic minorities as well as those who are poor or homeless and overall increases in "violations of civil and political rights" in the New York experiment. A zero tolerance approach has the capacity to increase crime and certainly to foster distrust between the community and their police. Yet all the research evidence shows that to have an effective police force it is essential to have cooperation and trust from the community, where discretion is an important element of justice practices that should be encouraged rather than eliminated by restrictive schemes like ZTP.

Zero tolerance policing is viewed as a "quick fix" and thus has political and public appeal. While the zeal with which zero tolerance has been debated appears to have died down, with many state elections looming, it is possible that a zero tolerance chant will once again be heard in Australia. Yet it is clear from the evaluations done to date that crime remains a complex phenomenon and so there is never likely to be a single easy solution.

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