

*Zero Tolerance Policing and the Experience of New York City*¹

It recent years there has been considerable lauding of the New York experience in reducing crime through zero tolerance policing approaches. This paper is a critical examination of some of the issues which have emerged in relation to zero tolerance policing in New York.

The concept of zero tolerance is ambiguous. As one commentator noted it is 'a soundbite term regularly used by the media and politicians' (Burke 1998:12). It has been defined as a generic expression to cover a variety of 'proactive, confident, assertive policing strategies' (Burke 1998:12). Of course such a definition is itself so overly generalised as to be virtually useless. Some of the advocates of what is referred to as a zero tolerance approach such as George Kelling and William Bratton have in fact disassociated themselves from the term 'zero tolerance' (Wadham 1998:49). 'Zero tolerance policing' is no doubt favoured as a political slogan precisely because of its populist appeal and inherent ambiguity.

Zero tolerance policing is said to begin in New York during the 1990s under Police Commissioner Bratton and Mayor Guiliani. Guiliani was elected Mayor in 1993 and Bratton was appointed as Commissioner soon after. Guiliani's electoral campaign had centred around 'reclaiming the streets' of New York.

As Greene (1999) has noted 'reclaiming the streets' was only one of six crime strategies which Bratton developed. The others involved reducing youth violence, domestic violence, auto-related crime, drug dealing and the numbers of guns on the streets. However, 'cracking down hard on the most visible symbols of urban disorder proved to be a powerful political tool for bolstering Guiliani's image as a highly effective mayor' (Greene 1999:3). Reclaiming the streets through a focus on 'quality of life' offences became the hallmark of how zero tolerance policing was understood in New York.

An important element in zero tolerance policing has been the use of CompStat - a computerised managerial system. According to Bratton it is based on four principles: accurate and timely intelligence; rapid deployment of personnel and resources; effective tactics; and relentless follow-up and assessment. The current Police Commissioner, Safir, has described CompStat as a 'crime management tool which uses weekly crime statistics, computer mapping and intensive strategy sessions to direct the implementation of crime fighting strategies' (cited in Burke 1998:20). There is clearly considerable pressure placed on borough and precinct commanders to achieve reductions in crime within their areas.² Nicholl (1997) has noted however, that the performance by which commanders are judged

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2 'CompStat operates by the police commanders... giving periodical briefings to the senior management of the NYPD. These take place in the central command room of the Department which is set out like a wartime operations centre. The management team sit around a horseshoe-shaped desk while the borough commander stands in the middle. The crime statistics for the borough are displayed on screens behind the commander whether they want them or not. The statistics... are selected by the management team... There is one CompStat meeting a week and the borough commanders do not know which of them are going to be called to give a briefing... There is little doubt that these often "brutal" periodical interrogations... by NYPD senior management in an environment that resembles a wartime operations centre have provided sufficient motivation to achieve success in the fight against crime' (Burke 1998:20). See also Silverman (1998:59).

are 'numbers': the number of street searches, the number of high rise searches (verticals), the number of summons, the number of arrests, the number of warrants executed, and so forth.

A further component of zero tolerance policing has been significant increases in police strength. Between 1990 and 1996 the number of officers in the NYPD grew significantly from around 30,000 to over 38,000. There is a proposal to increase the department by a further 1,900 officers during the 1998/1999 fiscal year which would bring the total strength to 40,210 officer - a 25% increase over the number of officers in 1990 (IBO 1998).

The NYPD emphasised more minor 'quality of life' crimes, such as graffiti, vagrancy, begging, 'squeegee' windshield washing, subway turnstile-jumping, illegal vending, street-level drug dealing and street prostitution. These offences were pursued to demonstrate 'control' of the streets. Bratton had previously been Chief of the New York Transit Police and embarked on 'quality of life' policing program which had seen large scale arrests of people for fare evasion. As Greene (1999) has noted, what Bratton embarked on as Police Commissioner was in some ways a traditional law enforcement 'crack down' on local crime: arrest and gaoling of low-level drug offenders, picking up school age youth for truancy, aggressive use of stop and search powers, warrant checks and arrest of those caught violating even minor public order laws.

During the initial period of zero tolerance policing between 1993 and 1996 arrests increased by 23%. The type of arrests reflected the strategy of targeting low level public order offences and minor drug offences - arrests for misdemeanours rose by 40% and arrests for misdemeanour drug offences rose by 97%. By way of contrast, arrests for more serious offences (felonies) rose by 5% during the same period (Greene 1999).

A significant part of zero tolerance policing has also involved attempts at regulating various aspects of public expression. In particular this has involved refusals to permit processions, marches and rallies. There have been a number of Federal court cases challenging Police Commissioner Safir (who replaced Bratton) over violations of the First Amendment. These include successful challenges to allow a protest procession by taxi drivers in May 1998. There was an attempt to prevent food vendors from marching against a curtailment of their stands, and a declaration that no more than 30 people could assemble at any one time on the steps of City Hall. In October 1998 the October 22 Coalition, who were planning a protest against police brutality, were refused a permit to march. The decision was overturned by a Federal Court judge. The judge ruled that the refusal of the permit was a suppression of their First Amendment Rights and that the decision to refuse the permit had more to do with the protesters' message than any likely excessive traffic congestion (Kit Roane 'Federal Judge Orders City to Allow a Rally Against Police Brutality', *New York Times*, 22 October 1998:B1). The City appealed the decision. However, three Federal court judges upheld the right to hold the march (Kit Roane 'Permitted By Court, 1,000 March Against Police Brutality', *New York Times*, 23 October 1998:B3). In August 1998 a permit was refused to hold the Million Youth March in Harlem. A Federal Court judge ruled that the refusal was unconstitutional and that the rules in relation to granting permits were 'breathtaking in their lack of standards' (Abby Goodnough, 'Judge Rejects Effort to Block Harlem March', *New York Times*, 27 August 1998:B1). A later Federal court appeal upheld the right of the rally to take place (Dan Barry 'Harlem Rally to Take Place Within Limits', *New York Times*, 2 September 1998:B1).

The policing of demonstrations and marches in the city has also been the subject of complaints about police concerning violence, provocation, the refusal to negotiate with organisers and widespread arrests. Immediately prior to the Million Youth March in Harlem

the Police Commissioner announced plans to 'saturate the site' with police and to promptly clear the streets at 4pm. The rally ended in violence when a police helicopter swooped low over the crowd and police in riot gear stormed the stage to shut down the meeting three minutes after the allotted time for the event had expired. The event had attracted 6,000 attendees and 3,000 police. Numerous policing experts criticised the police handling of the event, particularly the aggressive tactics and refusal to negotiate. Professor Lawrence Sherman described the tactics as the application of zero tolerance policing to crowd control (Kit Roane, 'Huge Deployment of Police Planned for Harlem Rally', *New York Times*, 5 September 1998: A1; Abby Goodnough, 'Giuliani and Organisers of Rally Clash Over Use of Force by Police', *New York Times*, 7 September 1998:A1, B4).

A march and vigil over the killing in Wyoming of gay college student Matthew Shepard resulted in the arrest of more than 100 people in October 1998. Police defended the arrests by saying that the organisers had failed to get a permit. Rally organisers said the police refused to talk or negotiate with them. In fact the rally's organisers and marshals were arrested at the beginning of the march. As the march continued demonstrators were batoned by police and charged by mounted police (Michael Cooper, '60 Arrested in Rally Against Bias Crimes', *New York Times*, 20 October 1998:B3; John Kifner, 'Protesters Say Police Created Havoc at Rally' *New York Times*, 21 October 1998:B5).

Zero tolerance policing has also involved the use of various ordinances such as New York's City Parks Department regulations. The New York Civil Liberties Union successfully argued that summons for violating regulations issued against three Socialist Worker's Party members for 'unlawful solicitation' and 'unlawfully assembly, meeting and exhibition' violated their First Amendment rights. The three party members has been collecting signatures for a petition in a City park. Besides issuing them with summons, the NYPD also seized political literature and other material. The court dismissed the summons and ordered the police to return the material ('New York Mayor No Friend to First Amendment, NYCLU Says at Independence Day Rally' *ACLU news*, 4 July 1998, www.aclu.org/news/n070498a.html).

Similar regulations were used to prosecute members of the All Saints Lutheran Church who were distributing condoms as part of their HIV/AIDS education program in the South Bronx. The court held that the prosecutions violated the First Amendment. Three members of the National Organisation of Women were prosecuted for 'unlicensed general vending' for distributing and selling various pro-choice and feminist material during the annual Gay Pride Parade ('New York Mayor No Friend to First Amendment, NYCLU Says at Independence Day Rally' *ACLU news*, 4 July 1998, www.aclu.org/news/n070498a.html).

Police strategies have included greater use of CCTV. This has occurred in various public areas such as Washington Square where it was aimed at deterring small scale drug-dealing, as well as in some housing estates ('New York City Residents Rally against Video Cameras', *New York Times*, 2 February 1998). In addition to the use of CCTV, police tactics in Washington Square have involved completely sealing off the park during operations, thus detaining all people there at the time. After a legal challenge by the Civil Liberties Union, the NYPD has adopted a policy whereby they will no longer completely seal off city parks, but at least leave one exit open. The sealing off of particular areas has not only included parks and squares, but also involved neighbourhood areas. In these instances, mobile command posts have been established (using police from outside the precinct) to allow for police 'sweeps' through the area. Residents are forced to remain in doors. This strategy is referred to as 'barricading' - 'in which an entire block is laid siege to for weeks

on end' (Asche 1998:4). These type of operations have generally required a greater level of police surveillance, including an increased use of police helicopters.

The greater control of street offences has seen the movement of some illegal behaviour into new domains. For example, the crackdown on the selling of drugs at the street level has resulted in greater drug dealing in private premises. As the drug market has reorganised itself to deal with police pressure, the exchange of drugs is more likely to occur indoors. One result has been the development of more intimate relationships between buyers and sellers, which has also made the work of undercover police far more difficult.

A further result of this has been a dramatic increase in the number of police raids on houses. And a result of more raids on private apartments and houses has been an increase in the number of raids on the wrong premises. Between 1994 and 1997 there was a 50% increase in the number of people who required reimbursement for damage caused as the result of wrongful police raids. One of the more disturbing aspects of these bungled raids has been the refusal of the Police Commissioner to apologise to the victims and to acknowledge that the raids were errors. The Administration's view has been that if the police raid a house or apartment identified by an informer, and it turns out to be the wrong house, then the police have acted correctly³

The pressure on police to maintain arrest rates for drugs which were set in the mid 1990s, has intensified the concentration on minor drug dealing, as well as turning attention to the customers. Researchers noted one heroin user who had never been arrested for drug-related offences since beginning use in the 1970s, was arrested five times for drug possession between November 1996 and May 1997. Other innovations in drug distribution have involved the use of delivery services where an ordered is placed by telephone and a bicycle messenger delivers the drugs (Hamid, et al 1997:383-384).

Sex work has also changed since the introduction of zero tolerance policing. The police crackdown on street prostitution began in 1994 with more than 9,500 prostitutes and clients arrested. Since that time there are significantly fewer street workers. However, the sex trade has moved largely onto the Internet where agencies and individual workers can operate with relative safety from police intervention. According to the operator of Redlightnet, an on-line clearinghouse for the sex trade, the decline of crime in New York and the rapid growth in tourists and conventions had meant an even bigger market for prostitution (Kit Roane, 'Prostitutes on Wane in New York Streets But Take to Internet', *New York Times*, 23 February 1998:A1)

It appears that it is the pro-arrest strategy for minor offences which is causing a great deal of resentment among a cross section of New Yorkers.⁴ The pro-arrest strategy has been stepped-up under Police Commissioner Safir, particularly during 1997 and 1998. Individuals on bicycles are being stopped, searched, handcuffed and arrested for offences relating to their bicycles such as riding without a bell, or without a headlight or taillight, or on the footpath. They often remain in police custody for over 24 hours before appearing in front of the court. Similarly, men and women have been arrested and held in custody for having open containers of alcohol at neighbourhood weekend basketball games or for

3 John Marzulli 'Cops Delay Reporting Botched Raid', *Daily News*, 3 March 1998; Kit Roane, 'Bronx Ma Recounts Abuse by Police in Mistaken Raid', *New York Times*, 4 March 1998; Kit Roane, 'Once Again Police Raid Wrong Apartment', *New York Times*, 21 March 1998; John Marzulli 'Cop Raid Targets Cry Foul', *Daily News*, 8 May 1998; Jim Dwyer, 'Safir Not Sorry for Bad Raids', *Daily News*, 10 August 1998; Juan Gonzalez, 'Cops Trampling Families and Rights', *Daily News*, 19 November 1998.

4 According to Silverman (1998) summons are used if an individual is carrying a Government-issued photo identification and has no outstanding warrants.

selling such things as peeled oranges (Jim Dwyer, 'The No-Bell Losers. Jail for You if that Cop Feels Like It', *Daily News*, 25 October 1998) Others have been caught up in the pro-arrest strategy for minor traffic offences such as failing to wear a seatbelt. They also can spend well over 24 hours in custody before being brought before a court (Jim Dwyer, 'Zero Tolerance, Zero Sense', *Daily News*, 31 July 1997).

In the majority of these minor offences no other charges are laid, nor are outstanding warrants found. Yet part of the strategy behind zero tolerance policing is that by intervening in less serious offences there is a likelihood that more serious matters will be uncovered. During the ongoing controversy over the arrest of bicycle riders in late 1998, an analysis was conducted of 73 people arrested and detained for matters relating to their bicycles. It was found that 17 people were in possession of drugs and four were carrying firearms. Over two thirds of the people detained had no other matter before the court except the one relating to their bicycle (Jim Dwyer, 'Apple's Now Suspect City', *Daily News*, 1 November 1998).

It is claimed that the most beneficial outcome of zero tolerance policing has been the decline in the level of crime in New York City. According to the Mayor's Office there has been a 60% drop in murders, a 12% drop in rapes, a 48% drop in robberies and a 46% drop in burglaries. Between 1993 and 1997 reported serious offences fell by 44% (Greene 1999, also IBO 1991). Some of the possible reasons for this, as well as comparative data will be discussed further below.

The torture of Abner Louima

Abner Louima, a 30 year old Haitian immigrant, was arrested on 9 August 1997 outside a Brooklyn nightclub following a dispute between police and clubgoers. Witnesses told the New York Times that Louima was arrested while trying to break-up a fight. He was allegedly assaulted twice while being transported to the police station. At the station he was allegedly subjected to racist abuse. In the washroom of the station, one officer then shoved a wooden stick (believed to be a broom or toilet plunger handle) into Louima's rectum and mouth. The officer then borrowed gloves from another officer and reportedly carried the stick covered in excrement and blood around the police station.

Other inmates in the cell where Louima had been placed complained that he was bleeding. He was held for three hours before being transported to hospital. Louima claimed that officers threatened to kill him if he made any complaint. Doctors confirmed serious internal injuries and broken front teeth which were consistent with his allegations of assault. Louima was hospitalised for two months. The police charges against him were dropped.

No police officer at the station reported the attack. A nurse who treated Louima and reported the incident to the Internal Affairs Bureau (IAB) did not have her report recorded. The first officially recorded complaint came from Louima's parents some 36 hours after the attack. The IAB did not attend the police station where the attack occurred until 48 hours after the incident.

During the two weeks following the attack, fourteen officers were suspended or placed on modified duties. Many of these officers had been the subject of previous complaints of police brutality. Two officers were charged with aggravated sexual assault, and another two officers were charged with assault. The officer directly responsible for sodomising Louima was also charged with assaulting another Haitian male on the same night as the attack on Louima. A sergeant was charged with attempting to conceal both assaults.⁵

5 For a further discussion of the Louima incident see Human Rights Watch 1998:286-289; 'Abuse Charge Rocks New York Police Department' *ACLU news*, 14 August 1997, www.aclu.org/news/w081497c.html.

It would be simplistic to argue that the torture of Abner Louima was the result of zero tolerance policing. However, it is *indicative* of the types of severe problems within the NYPD which a strategy of zero tolerance policing has exacerbated: aggressive public order policing; the routine use of violence and, in extreme cases, torture; and the targeting of minority groups. Certainly the widespread use of violence against members of minority groups is a major issue. The New York City Public Advocate claimed that the police torture of Louima was part of a 'pattern of police abuse, brutality and misconduct' (Human Rights Watch 1998:382; Greene 1998).

The police-community relations inquiry 1997-1998

A task force to review police-community issues was established by the Mayor of New York following the alleged beating and torture of Abner Louima. The Mayor's Task Force on Police-Community Relations comprised 31 members including clergy, the director of the New York Civil Liberties Union, members of the City council, community leaders, a retired police chief and lawyers.

The recommendations of the task force were rejected by the Mayor in March 1998. He criticised the Task Force's majority report and failed to mention the torture of Louima which been the catalyst for establishing the Task Force. 'Some of the things we've already done. Some of the things I've opposed in the past, I'll continue to oppose them. And some of the things are unrealistic and make very little sense' (Dan Barry, 'Giuliani dismisses police proposals by his task force', *New York Times*, 27 March 1998:1). The Mayor complained that the Task Force had ignored the drop in crime in the city.

Among the recommendations in the majority report were the elimination of the forty-eight hour delay allowed for officers under investigation; the creation of an auditor position to review the performance of the Civilian Complaint Review Board (CCRB) and to improve cooperation by the police department with the CCRB; better screening of police recruits; bi-lingual or multi-lingual receptionists in precincts that have a large number of residents who do not speak English; and requiring officers to live in the city in an effort to improve diversity, and cultural awareness, on the force.

There was also a minority report, authored by three members of the Task Force who reportedly believed the Task Force's majority report was inadequate. Among other recommendations, the minority report called for the creation of an independent special prosecutor's office (Human Rights Watch 1998:270; Dan Barry, 'Giuliani dismisses police proposals by his task force', *New York Times*, March 27, 1998).

What can be learnt from the New York City example?

The suppression of dissent

The introduction of zero tolerance policing has been accompanied by an attempt to control dissent, including the desire to ban a range of demonstrations as outlined above. Norman Siegel, the Director of the New York Civil Liberties Union, noted the following.

I've been here 13 years and my legal director has been here even longer, and we've never filed as many cases involving one administration. The Mayor's vision of a new New York is a vision that is more authoritarian and repressive, a vision that is antithetical to our rich tradition of tolerance for protest and dissent ('New York Mayor No Friend to First Amendment, NYCLU Says at Independence Day Rally', *ACLU News*, 4 July 1998, www.aclu.org/news/n070498a.html).

Demonstrations and marches have occurred because of the intervention of the Federal court which has over-ruled the refusal of permits by the Police Commissioner. However, the policing strategies which have then been used to control marches and processions have reflected a hardline, non-negotiated approach. The lessons concerning crowd control learnt from the demonstrations of the 1960s have been ignored and there is now far greater likelihood of serious public disorder directed against police.

Police brutality, particularly against racial and ethnic minorities

Police corruption and the use of excessive force has long been recognised as a problem in the NYPD. The Mollen Commission of Inquiry into corruption in the NYPD in 1994 found police officers were involved in drug dealing, robberies, assaults, perjury and falsification of records. It also found a failure by the NYPD to discipline officers accused of brutality.

A 1996 Amnesty International investigation after the Mollen Commission found that some steps had been taken to tackle corruption within the NYPD. However, police brutality remained a serious problem. Importantly, Amnesty noted that local community and civil rights groups reported that aggressive zero tolerance policing policies 'had been accompanied by unacceptable levels of brutality, especially toward racial minorities'. There were many cases 'where police officers had used excessive force in response to minor incidents, including assaulting bystanders for taking photographs or criticising police treatment of others' (Amnesty International 1996).

The Amnesty report noted that

The evidence suggests that the large majority of the victims of police abuses are racial minorities, particularly African-Americans and people of Latin American or Asian descent. Racial disparities appear to be especially marked in cases involving deaths in custody or questionable shootings, an issue Amnesty International believes should be the focus of particular inquiry (Amnesty International 1996).

Certainly the police precincts with the highest number of reported complaints against police are in neighbourhoods with higher proportions of African-American and Latino residents (Greene 1999). Amnesty reports have continued to draw attention to the high level of police killings and the apparent failure to respond to police who are responsible for the deaths. For example, an unarmed African-American was shot dead in a New York supermarket on 25 December 1997 by police who said they mistook the keys he was carrying for a gun. The officer who shot him had been involved in eight prior shootings but had not been placed on any monitoring program (Amnesty International 1998:27).

Statistics published by the CCRB indicate that minorities are disproportionately the victims of police abuse — particularly African-Americans. Half the people who lodged complaints with the CCRB from January to June 1995 were African-American (50%), a quarter were Latino (26%), while the remainder were either white (21%) or 'other' (3%), including Asian. The CCRB semiannual report for the first half of 1997 noted a similar trend where African-Americans and Latinos lodged 78% of complaints against police. The 1996 investigation by Amnesty International also revealed that more than two thirds of the cases of police brutality were African-American or Latino. Most of the police officers involved were white. Nearly all of the victims in the cases of deaths in custody (including shootings) reviewed by Amnesty were members of racial minorities.

Similarly, Human Rights Watch noted in a 1998 report that the cost of zero tolerance policing was revealed by

citizen complaints against more aggressive NYPD officers during the past several years and continuing impunity for many officers who commit human rights violations despite the

recent reorganisation of both the civilian review board and the police department's internal affairs bureau...

There is often a racial or ethnic component to police abuse cases in New York City, with many incidents also fuelled by language barriers and miscommunication in the culturally diverse city (Human Rights Watch 1998:268-269).

In November 1998 the New York City Council's Public Safety Committee issued a report arguing for stronger policies to control police brutality. The Committee's chairperson noted that

The Department has perpetuated a police culture in which officers may be emboldened to conduct themselves in a manner that runs contrary to departmental policy, the law and public interest... It is not a stretch to suppose that officers - such as those implicated in the Louima incident - felt that they could get away with it (Michael Cooper, 'Stronger Policies Are Needed to Stem Police Brutality', *New York Times*, 10 November 1998:B1).

Increased complaints against police and increased deaths in police custody

Despite reforms following the Mollen Commission, complaints against the police registered with the CCRB have risen sharply since 1993. The CCRB reported 4,920 new complaints in 1994, an increase of 37% over the previous year. While complaints cover a range of alleged abuses from discourtesy to deaths in custody, the largest proportion (1,670 complaints) were for excessive force. These had also risen proportionately since 1993. A further increase of 32% was noted for the first six months of 1995 compared to the first six months of 1994. Complaints against police recorded by the CCRB continued to rise in 1996. During early 1997 there was a slight decline in the number recorded. However, it was later revealed that complaints were being undercounted by the CCRB by around 20% as a result of a 'clerical error' (Michael Cooper, 'New York Undercounted Civilian Complaints about Police', *New York Times*, 11 December 1997:B1). After the Louima incident in the later half of 1997 there was again an increase in the number of complaints lodged. The most recent figures for the first half of 1998 revealed a 20% increase in complaints compared to the same period in the previous year (Michael Cooper, 'Complaints against Police in '98 Grow 20%', *New York Times*, 11 June 1998:B7).

During the specific period between 1993 and 1996 when Bratton was the Police Commissioner complaints concerning police misconduct rose by 65% ('ACLU warns of 'Dark Side' of NY Police Plan', *The Philadelphia Inquirer*, 16 December 1997). In the four years up to 1998 the filing of civil rights claims against police for abusive conduct had increased by 75% and they were continuing to increase (Greene 1999).

There is little doubt that the increase in complaints is associated with the introduction of zero tolerance policing. According to Amnesty International, police have suggested that the sharp increase in complaints arose as a result of increased arrests and police activity during the intensive anti-crime drive (known as the 'quality of life initiative' before attracting the title of 'zero tolerance'). According to police, many complaints arose from more effective policing and an increase in arrests, rather than genuine abuses. However, the CCRB noted that most of the complaints arose from encounters with police that did not involve arrests or persons receiving summonses. Most complainants had no prior complaint history, so could not be characterised as 'chronic' complainers.

In 1996 the Amnesty delegation were told by several sources, including officials from the CCRB, that more aggressive policing had led to an increase in complaints of ill-treatment. This view was certainly reflected in the complaints statistics noted above. In addition deaths in custody increased. The NYPD statistics for 1993 and 1994 show a rise in

both the number of civilians who died from police shootings (an increase of 35%) and in the number of people who died in police custody (an increase of 53%).

Failure to deal with complaints against police

The CCRB is an independent board responsible for dealing with complaints against police. However, it has no power to take action against police officers - all matters relating to the disciplining of police officers is conducted by the NYPD. The New York Task Force on police-community relations reported in March 1998 that the NYPD had taken either no action, or imposed minimal discipline, in a large proportion of complaints found to be substantiated by the CCRB. The task force found that 57% of substantiated cases resulted in no disciplinary action at all; in other cases disciplinary measures were 'slight'. The CCRB report for 1997 revealed that action was taken in less than one third of cases (89 of a total 276) referred to the police department for disciplinary action (Amnesty International 1998:45).

The situation of disciplining officers found to have engaged in misconduct was made even more farcical when, in September 1998, it was revealed that the CCRB had failed to pass on to the NYPD 108 substantiated cases of police misconduct (Michael Cooper, 'Police Say Panel Withheld Findings Against 108 Officers', *New York Times*, 2 September 1998: B3).

The failure of the police department to deal with issues of brutality and corruption has been a constant source of criticism of the City's administration. Some, such as councillor and chair of the Public Safety Committee, Sheldon Leffler, have argued that while zero tolerance of offending is demanded of the public, there is no zero tolerance approach to police misconduct ('Got a Police Problem? Keep it to Yourself', *New York Times*, 29 March 1998; Bob Herbert 'The Stone Wall of Silence', *New York Times*, 23 July 1998:A25).

The demise of community policing and the further marginalisation of ethnic and racial minorities

Some criminologists have commented that although Bratton was not antagonistic to the basic principles of community policing including a commitment to crime prevention, problem-solving and closer community partnerships, the effect of the changes he commenced in the NYPD has been to undermine community policing approaches (Greene 1999:4). While managerial changes devolved power to the local command level, the enforcement strategies which were embarked upon were those of a traditional 'law and order' crackdown, and were not developed in partnership with local communities.

Both the general police crackdown in neighbourhoods and the hardline taken against demonstrations and marches shows that there is *no negotiation* of who is arrested or what they are arrested for. The failure to negotiate and the failure to develop partnerships with communities in relation to their policing needs reflects a substantial departure from community policing principles.

The NYPD does not reflect the ethnic and racial composition of New York City where a little over 40% of the population are white, 29% black, 24% Latino and the remainder predominantly Asian American. The large majority of NYPD officers are white. In 1995 the racial distribution of the NYPD was 72% white, 15% Latino, 11% African-American and 2% of other ethnicities. The NYPD is also comparatively non-representative by United States standards — in a 1992 study New York was ranked last among 50 cities surveyed to see how well police departments reflected the racial make-up of their populations.

The separation of police officers from the community they police is further accentuated when it is noted that most NYPD officers live in the suburbs outside the city. Amnesty International (1996) has noted that some critics of the department allege that this has contributed to a sense of alienation and tension between the police and the inner-city communities in which they work.

The cultural and spatial separation of police from the communities in which they work is further reflected in the lack of confidence which minority groups have in the police. A *New York Times* poll in October 1997 found that 82% of blacks and 71% of Hispanics felt the police did not treat whites and blacks in New York City with equal fairness. The poll reflected the findings of other studies and was taken several years after the introduction of zero tolerance policing in the city.

Value for money?: the relationship between policing levels and crime reduction

Zero tolerance policing is a resource intensive policing strategy. It requires high staffing levels to achieve the necessary level of direct law enforcement on the streets. Therefore, it is fair to ask whether citizens get value for money from the increased number of police necessary to operate a zero tolerance policing strategy. Does the increase in resources actually lead to a reduction in the crime rate?

As noted previously the size of the NYPD increased dramatically during the first half of the 1990s. The city also experienced a 46% reduction in the crime rate during the same period (1990-1996). San Diego is a city with a similar crime index rating as New York.⁶ During the same period it achieved over 40% reduction in the crime rate with a 1% increase in its per capita police staffing levels (IBO 1998). San Diego restructured its police department along a community policing model which stressed problem solving and police-community partnerships for reducing crime. In contrast to the New York experience the drop in crime rates in San Diego was achieved at the same time as the number of arrests between 1993 and 1996 actually *declined* by 15%. Complaints against police for misconduct also fell. San Diego police also made greater use of new technologies in crime mapping and police intelligence in locating consistent areas of high crime. However, they were able to utilise the new technologies within a context of community policing (Greene 1999).

The Independent Budget Office (IBO) for the City of New York provided comparative analysis to the City Council's Committee on Public Safety on differing rates of policing and crime rates in the 25 largest United States cities. The IBO found that many other cities achieved significant reductions in the crime rate with either much smaller per capita police staff levels or with actual reductions in police staff levels.

- San Diego achieved a 40% drop in the crime rate with a 1% increase in per capita police staffing levels
- Dallas achieved a 39% drop in the crime rate with a decline in the per capita police staffing levels of between 2 and 3%
- Pittsburgh achieved a 36% drop in the crime rate with a 6% increase in per capita police staffing levels
- El Paso achieved a 33% drop in the crime rate with a 5% increase in per capita police staffing levels
- Miami achieved a 28% drop in the crime rate with a decline in the per capita police staffing levels of over 11%

6 An index based on the rate of serious offences which compares and ranks 189 of the largest United States cities.

- Seattle achieved an 18% drop in the crime rate with a decline in the per capita police staffing levels of 6% (IBO 1998).

Based on the 1996 FBI Crime Index figures, New York had the third lowest crime rate of the 25 largest United States cities. However, it had the second highest (after Washington) per capita police staff levels. The two big cities with lower crime rates than New York are Indianapolis and San Jose. By way of comparison with New York, these two cities also have the lowest per capita police staff levels of the 25 largest cities. In Indianapolis there are 13 police officers for every 10,000 residents, and in San Jose there are 16 police officers for every 10,000 residents. In New York there are 53 police officers for every 10,000 residents. In San Diego where there was dramatic reduction in crime rates and a small increase in the policing levels, the per capita policing level is 17 per 10,000 - less than a third of New York's (IBO 1998).

The relationship between the level of policing and the level of crime in a community is by no means clear. Some cities have both low crime rates and low per capita policing levels. Others have high crime rates and high police staffing levels. In addition some cities have achieved significant reductions in crime without embarking on a zero tolerance policing strategy with the associated increase in police staff levels.

Has zero tolerance policing reduced crime?

As noted above, proponents of zero tolerance policing point to the decline in the crime rate in New York as proof of the success of the strategy. However, there are doubts that the falling crime rate in the city during this period was simply attributable to zero tolerance policing given that many other large United States cities experienced similar declines, although using different policing strategies and with dramatically different levels of policing. Nationally the incidence of serious violent crime and property crime declined in the United States during the first half of the 1990s. National victimisation surveys show a decline in homicide, rape, robberies, aggravated assaults and property crime. Not all large cities or states recorded a fall. However, there appears to be no correlation between whether zero tolerance policing strategies were introduced, or indeed whether 'three strikes' legislation and mandatory minimum prison terms were introduced, and the decline in crime rates (Greene 1999).

A range of demographic, social and economic factors, as well as some law enforcement strategies such as greater control on handguns, have likely contributed to the declining levels of particular types of violent crime. Economic growth, reduced levels of unemployment and greater community-based activities to reduce crime are likely to have had an effect on crime levels (IBO 1998; Greene 1999). There have also been significant changes in the pattern of drug use including the decline in the use of crack-cocaine. An ongoing study by Hamid, et al, (1997) of heroin use in New York has found that young African-Americans are avoiding both heroin and cocaine. Even licit drugs are viewed with disfavour.⁷ Others have argued that there is a direct connection between the drop in the murder rate in New York and the decline in the crack cocaine epidemic (Dixon 1998:97).

Local accountability, crime reduction and the falsification of records

Zero tolerance policing has relied on new information technologies which provide localised assessment of the nature and incidence of crime and provide for the targeting of police

7 'Equally profound changes have occurred in other aspects of their lives. For example, they commit far fewer crimes or acts of violence than formerly... At the same time, they have redoubled their efforts to complete their education, find jobs and participate in communal activities' (Hamid, et al 1997:378).

resources at the local level. They also provide the opportunity for police managers to place considerable pressure on local area police commanders to demonstrate results in reducing crime or increasing the number of arrests.

The experience in the United States appears to be an upsurge in falsifying crime reports designed to demonstrate a reduction in the number of crimes being committed in particular areas. Recent media reports have suggested manipulation of crime data (usually by downgrading the nature of the crime when it is recorded) in a number of cities where commanders have felt the pressure to show ever-decreasing crime rates (Fox Butterfield, 'As Crime Falls, Pressure Rises to Alter Data', *New York Times*, 3 August 1998).

Nicholl (1997) provides a selection of quotes from NYPD officers which reflect the distorting influence which zero tolerance policing and CompStat have had on policing:

CompStat is the tail wagging the dog. I am trying to build relationships with my community so my crime rates are increasing because there is more confidence in reporting crime to us. But I then get beaten over the head at CompStat.

Robbery patrol hours and the number of verticals are more important than dealing with domestic violence and rape.

You try reporting a crime to the station - they don't answer the phone, so their numbers are distorted because people just give up.

I am not accepting this as an assault report - no-one gets their ribs cracked by a hairbrush. Get rid of it.

We have to find more larceny reports - if we only have three this week, they will expect us only to have two next week.

And from a lieutenant, 'I spend all my time counting crime reports and checking we are not recording too many. I don't get to go out on patrol with my officers any more' (Nicholl 1997:5).

She adds, These are quotes from real cops in NYPD who have had to operate to CompStat and under the fear of being caught out with high crime figures. It strikes me this is wholly predictable - the consequence of a police department driven by fear of being embarrassed if they do not reduce the levels of crime. Crime statistics are notoriously unscientific. They are made even harder to make sense of if there is tomfoolery going on with the way crime figures are recorded (Nicholl 1997:5).

Conclusion

There are highly divergent views within police services concerning the merits of zero tolerance policing - it would be highly misleading to view all senior police as favourably disposed to the idea of zero tolerance policing. To a greater extent it has been the overtly political use of the concept of zero tolerance policing which is alarming. Many of the proponents of zero tolerance policing present a naive and public relations-inspired view of policing in New York City. The purpose of this paper has been to raise questions around such a sanitised view.

In addition the experience of New York also provides a useful framework for considering criminological arguments against zero tolerance policing. These arguments can be summarised as follows.⁸

8 Some of these points can be found in a various articles including (Burke 1998; Dixon 1998; Greene 1999; Nicholl 1997; Palmer 1997; Pollard 1997; Wadham 1998).

- There is a lack of evidence of any direct causal link between zero tolerance policing and declining crime figures. In some United States jurisdictions the same reduction in levels of crime are being achieved through other policing strategies. The pressure placed on local commanders to show ongoing reductions in crime has led to concern about falsification of crime statistics.
- Zero tolerance policing is resource intensive. It requires either increased police numbers or the allocation of existing resources away from other areas of enforcement. Thus zero tolerance policing strategies are seen as invariably short-term and expensive.
- Zero tolerance policing emphasises offences in public places - street offences. It is apparently not concerned with other and potentially more major areas of violence such as domestic violence, nor other facets of property crime such as fraud. The notion of 'quality of life' is itself defined to only include a narrow section of 'public' life. Corporate crime and environmental crime, for example, have large scale effects on 'quality of life'. Crimes which occur in the private sphere (such as domestic violence) are not seen as 'quality of life' issues at all.
- Zero tolerance policing represents a return to pro-active policing strategies (common in Britain prior the inner city riots of the early 1980s, and common in parts of Australia during the 1980s and early 1990s, particularly with the use of tactical response police).
- Zero tolerance policing may increase the level of public disorder because it is pro-active. It contradicts the results of major inquiries into public disorder such as the Scarman inquiry in the UK which stressed policing based on community consent, trust and participation. It will also worsen relations between particular communities and police.
- Zero tolerance policing undermines principles of community policing including commitments to crime prevention, problem-solving and closer community partnerships. In this sense, zero tolerance policing is antithetical to policing by consent - the supposed hallmark of policing in a democracy. Policing priorities are defined external to the community.
- Zero tolerance policing strategies have been consistently implicated with violations of civil and political rights.
- By targeting street offences, zero tolerance policing is aimed at essentially the poor and the homeless. Racial and ethnic minorities are also concentrated in these groups. Zero tolerance policing will lead to greater discrimination - either directly through the targeting of minorities or indirectly through their greater presence among those arrested.
- Zero tolerance policing will lead to far greater levels of criminalisation. In particular, minority groups which already have large proportions of their male population with criminal records will see even greater degrees of criminalisation. This will further compound social and economic marginalisation.
- Zero tolerance policing will bring about an increase in complaints about police misconduct and brutality particularly from minority groups.
- Zero tolerance policing will require greater court resources to deal with increased arrests; it will impact eventually on the prison population (through greater criminalisation, increased fine defaulters and sentences of imprisonment).
- Zero tolerance policing rests on a spurious assumption that the law is neutral and can be enforced in all situations - that complete enforcement is a possibility. However, public order and the actions which constitute disorder are broadly defined and open to constant interpretation and discretionary decisions by police. By pretending that zero tolerance is possible, the more important question of *who* gets arrested is obscured.

The experience of zero tolerance policing in New York shows that these issues and arguments are matters of very real concern, and go to the heart of the nature of relationship between police and the social and political communities which are the subjects of policing.

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