

# When tolerance is ZERO

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## *Is this the future of policing and crime prevention?*



Many things happened during the recent elections in the United Kingdom (UK) (1 May 1997). The Conservatives lost for the first time in 18 years with New Labour, led by Tony Blair achieving the largest Labour parliamentary majority in more than 100 years. The Conservatives were also left without any seats in Wales and Scotland — important as one of the key issues was and remains ‘devolution’ of powers to Wales and Scotland. Parliamentary ‘sleaze’ (politicians asking questions in Parliament in return for money) was another important issue, and in one seat the Labour and Liberal Democrat parties forged an agreement with international journalist Martin Bell whereby the two parties would suspend their candidates to enhance Bell’s chances of defeating one of the central figures of the sleaze allegations. Bell won. These are all interesting developments in the political changes of 1997 but I want to focus on something that wasn’t as central to this election as it has been to previous elections — ‘law and order’.

In the policy area of ‘law and order’, two general things happened in the election. First, New Labour developed a policy that attempted to address what was seen to be a potential weakness, that they were seen as ‘soft’ on crime. New Labour’s slogan was ‘Tough on crime — tough on the causes of crime’. Second, a new slogan emerged in the lead-up to the election (largely from police sources) which was incorporated in general terms into the policy position of both the major parties. This slogan was ‘Zero Tolerance’. I hope to be able to show below that there is much to be learnt from the English experience, important lessons that will be of some value in future debates in Australian jurisdictions. But first, let me provide some detail on the two slogans.

### **Part 1: On being tough**

Criminal justice policy in the lead-up to the recent election certainly contained much of the punitive law and order elements we have come to expect in English-speaking countries in recent years. The Conservatives gestured towards more extreme measures such as ordering a prison hulk from the US, which sailed into the southern coast in mid-March 1997, ready to take on board the overflow of a ‘prison works’ policy orientation by Home Secretary Michael Howard (Home Secretary is like a Minister for Police/Corrections/Justice in Australia). It seemed to be highly symbolic of the bankruptcy of their ideas that the Conservatives had to resort to a practice reminiscent of the 18th century.

The Conservatives were also trying to introduce extremely permissive legislation which would grant the police extraordinary powers of investigation and surveillance with limited forms of accountability, and significant changes to sentencing practices (such as mandatory minimum prison terms for repeat offenders of violence, burglary and drug dealing). New Labour (a term adopted to distin-

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guish current Labour from the 'follies' of the past) was well versed in the dangers of being portrayed as 'soft on crime' and thus very slow indeed to criticise any aspects of the Conservative proposals.

It was left largely to the not-so-democratic House of Lords to resist changes to police powers and sentencing on the grounds that what was being proposed was an affront to civil liberties and a threat to democracy (see for instance the comments of the Lord Chief Justice in the *Guardian*, 3 February 1997, p.16). New Labour sensed that they both *could* step in to place limits on the Bill without too much negative electoral impact and, secondly, *should* step in as the House of Lords was itself an electoral issue. It was with some irony then that in relation to these criminal justice issues the House of Lords was being referred to as the bulwark of democracy. Indeed, New Labour had specifically argued for the need to reform the undemocratic body in order to promote the cherished though often undefined goal of 'democracy'. For instance, New Labour promised to remove the right of hereditary peers to sit and vote in the House of Lords.

New Labour had other means of trying to avoid the taint of being 'soft'. Principally, they promoted the idea that they would take crime seriously (influenced by what generally is referred to as the new realist position on crime) as well as attempt to integrate concerns about the causes of crime — thus the double-edged policy of 'Tough on crime, tough on the causes of crime'. A set of papers from well-known commentators, writers and researchers on the criminal justice system was put together by a Labour backbencher. These articles outlined the New Labour position on criminal justice issues.<sup>1</sup>

In part, this policy position emerged from the space created through the Conservatives becoming more 'liberal' in the early 1990s.<sup>2</sup> When Tony Blair was Shadow Home Secretary he sought to take the initiative on law and order issues and stated that there was a need to talk again about values and principles, about what is right and wrong. Jack Straw succeeded Blair in 1995 and continued the focus on public incivilities, disorder, 'quality of life' issues and specifically endorsed the 'Zero Tolerance' policing seen to exist in New York (see below).

The New Labour policy that emerged seems a rather confused position that is very much open to more punitive voices (including 'Zero Tolerance'). First, New Labour has turned on its head the belief that minimal intervention is the best policy. Instead, the assumption is that early intervention 'works', that the criminal justice system can make a positive contribution to individual development by 'nipping bad behaviour in the bud'. In turn, this stops individuals developing into hardened criminals, and it is seen to stop certain high problem areas acting as the 'breeding grounds of crime'. Preventing and controlling crime thus focuses on policing tactics which concentrate on sources of high crime levels, either places ('hot spots') or people ('repeat' and/or 'persistent' offenders).

Second, New Labour promised to over-haul criminal justice procedures so that the time taken to get from arrest to sentence is halved in the cases of young 'persistent offenders'. Apart from difficulties and dangers with the notion of a distinct group labelled as 'persistent', even more worrying is the underlying assumption that people arrested are criminals. It is no longer a case of innocent until proven guilty beyond reasonable doubt, but rather a continuation of the trend towards presuming that people are not innocent. That is,

criminal justice becomes disconnected from the presumption of innocence as a key principle, and is increasingly a matter of efficiency in processing.<sup>3</sup> This legitimates a range of practices that 'get the job done' and assumes unanimity as to what that 'job' might be and how indeed it might be achieved. In other words, key criminal justice principles are sacrificed as obstacles to desired outcomes.

Increasingly punitive techniques for controlling crime are also evident in the proposed Community Safety Orders which will enable senior police and/or local government officers to obtain injunctions restraining people involved in 'chronic anti-social behaviour' (which may not even be limited to multiple criminal convictions). The orders might include exclusions from certain places or other disciplinary techniques such as curfews. Further, the orders are obtained under a civil burden of proof — on the balance of probabilities — but a breach of the order would be a criminal offence. In other words, the processes work more easily for 'the system' whilst simultaneously extending the reach of the system and the punitive options available. Again, Labour is seeking in these proposals to enable a multi-agency attack on what are seen to be the activities that threaten quality of life.

In each of these examples of New Labour policies, the concern is to provide quicker, more efficient and less complicated ways of establishing orderliness. Intervention occurs at the earliest possible moment, is less concerned with the niceties of due process, and holds out the promise of establishing a new moral order that is based on being tough on the incivilities and offensiveness that are the source of later problems. The reach of the criminal justice system is extended whilst at the same time the procedural limits or controls are lessened. This is fertile ground for 'Zero Tolerance'.

## Part 2: Lowering tolerance

Alongside the formal policies of both major parties (the third party is the Liberal Democrats whose main policy in this area was to provide an extra 5000 police), some senior police in particular had begun to take up another police-led solution to crime in the mid-1990s. Borrowing (loosely) from the US and New York in particular, the idea that crime could be prevented through fairly ruthless policing with detailed attention to even the most minor infraction began to take some hold within some sections of the police and in the broader criminal justice policy arena. This idea was labelled 'Zero Tolerance' and was taken up by New Labour as part of its attempts to be seen as addressing the fears and sensibilities of 'middle England'.

In the US, the term 'Zero Tolerance' had actually emerged from the Customs Service and its attempts to win the 'war against drugs' through targeting users, and was later used as the operational method in relation to drink driving and the policing of 'gangs'.<sup>4</sup>

Similarly, in the UK use of the term 'Zero Tolerance' has changed over time. For instance, 'Zero Tolerance' was used specifically in the early 1990s by municipal governments (for example, in Edinburgh and the Association of London Authorities) in campaigns against child abuse, sexual assault and domestic violence. Billboards appeared with a large 'Z' and the term 'Zero Tolerance' written below.<sup>5</sup> The extension of the term to more general policing practices in the UK by 'innovative' police managers gathered pace in mid-1990s.<sup>6</sup> Before examining some of the specific practices that have been embraced under the UK version of 'Zero Tolerance' and

similar programs, there is a need to recognise the more general basis of this approach to crime control, which is the 'Broken Windows' thesis.

### The legacy of broken windows

It is clear that 'Zero Tolerance' is a mutation of the 'Broken Windows' thesis developed in the United States in the early 1980s by Wilson and Kelling and which is enjoying somewhat of a renaissance through new evaluations of the thesis and the development of 'Zero Tolerance' programs.<sup>7</sup>

The 'Broken Windows' thesis argues that if various forms of minor disorder, disturbances, incivilities and transgressions are allowed to go on unchecked, then over a period of time the community becomes increasingly disenchanting, fragmented and fearful. Such undermining of communal bonds leads to further disorder and the emergence of communities which are increasingly permissive in terms of the opportunity for crimes of an increasingly serious nature.

Unchecked, this leads to (or might already be a symptom of) a loss of a sense of safety and security amongst local residents, lessening of communal ordering, and increasing ability of 'outsiders' or 'undesirables' to engage in more serious crime. In other words, such local conditions provide the opportunities for crime and become training grounds for more serious criminal activity. As this occurs, communities can reach a point where they spiral downwards into the abyss of lawlessness to become criminal no-go-zones. Thus, to return to its basis, if minor property damage or other disorderly conduct is left unchecked or unrepaired (such as broken windows), this then leads to further damage and disrepair to the physical and psychological aspects of the community, continuing into a downward spiral and ultimately ghettoisation.

### 'Zero Tolerance'

'Zero Tolerance' adapts the 'broken windows' thesis in a particular manner. While both share a concern with minor disorder, the former focuses more heavily on hard-edged policing and law enforcement with an emphasis on producing results. The latter seeks to develop longer term partnerships that enhance the capacity to address underlying causes.

A variant of the 'Zero Tolerance' approach was recently invoked in New York where a new Police Commissioner (Bratton 1994-96) introduced changes to police structures and practices (It should be noted that Bratton does not actually use the term 'Zero Tolerance'). Further, 7000 new police had been appointed and a set of police practices were adopted which centred on greater police presence on the streets (a version of Beat Policing). The claimed effect is that the crime rate in New York dropped significantly.

This is not the place to argue the trends and influences on crime rates in New York but it is worth noting two things. First, official crime statistics are a very limited and poor way of understanding levels of crime and measurement of police performance. The evidence that exists suggests a limited relationship between crime and police practices and that at best there might be a small short-term change. Second, New York has not been alone in securing significant drops in the recorded rate of crime. As one sceptical English Chief Constable has noted, San Diego had similar falls in recorded crime without the adoption of 'Zero Tolerance' tactics, thus suggesting that there are quite distinct factors at work.<sup>8</sup> If any weight is to be accorded to the effects of 'Zero Tolerance' through crime statistics we would need far more information on such matters as crime trends, changes to reporting prac-

tices in the community, changes to police recording practices, any legislative changes, and comparisons with other places.

We also need to keep at the forefront of the analysis of 'Zero Tolerance' the possible impact on other aspects of policing beyond changes to crime rates. For instance, the New York Police Department is currently having to address further allegations of racism and brutality. Several police are alleged to have brutally beaten and sodomised a Haitian man. It is also alleged that one of the officers said that 'You niggers have to learn to *respect police*' (my emphasis).<sup>9</sup> Since then, arrests in the precinct are down by more than 50% as police soften their approach (other areas have had slight increases). This comes quite soon after major reforms to the NYPD as a result of the two-year investigation by the Mollen Commission into police corruption and reform (July 1994), and the appointment and reforms of the new Police Commissioner and key proponent of 'Zero Tolerance', William Bratton between 1994-96.

Nonetheless, the 'Zero Tolerance' approach to crime and criminal activities can be attractive at two levels. First, it accords with the reasonably strongly held view that these are times of danger, where the 'thin blue line' of the police holds together an increasingly disorderly society.

Second, the targeted activities are portrayed as threats to our 'way of life', indicative of a breakdown in a sense of right and wrong. In turn, this is seen to indicate more fundamental problems such as a loss of 'family values'; increasing individual pleasure-seeking (the 'me society') undermining communal interaction; challenges to authority (however minor) and disorderly conduct (whether strictly criminal or not) which are seen as representative of the current state of decline not only in moral values, but also in the sense of life opportunities and freedoms.

It is these types of social changes that lend support to various programs aimed at reclaiming the streets and neighbourhoods for respectable, law-abiding people. Beggars, idle youth, people swearing or spitting, people drinking alcohol in public places, graffiti 'artists', the 'squeegee pest' (people seen to be harassing car drivers by offering to wash the car window for some 'change') — the presence of these people represents the loss of another time when there was a shared consensual moral order produced by family, church and school, when things were much more orderly. These activities are seen to be possible only in societies which have 'defined deviancy down',<sup>10</sup> that is, societies which have accepted or allowed such 'bad behaviours' rather than tried to do something about them. Further, such activities are indicative of the absence of 'confident policing', where police are not afraid to take action.

It should be fairly clear why this approach has proved somewhat attractive to police. 'Zero Tolerance' puts police in the central position of responding to 'disorderliness'. It encourages the police to be confident about intervening and taking action and, where 'appropriate', forcefully intervening.

Of course, forceful interventions have a longer history than 'Zero Tolerance' and perhaps can serve as warnings to those thinking about 'Zero Tolerance' and 'confident policing'. Look back, for instance to the February 1990 NSW police 'raid' on Redfern, Operation Sue. Although denied as an objective of the operation, the early morning raid on several Redfern houses by 135 NSW police, including the paramilitary unit (the Tactical Response Group) who force-

fully entered and searched premises at 4 a.m., was in part justified by police as important for enhancing their morale and confidence. The Ombudsman's report into the matter cites evidence from the Chief Inspector overseeing the operation where he states that the operation 'is seen by many as affirmative action and not appeasement ... The *confidence of staff* ... has been enhanced by this operation' (my emphasis).<sup>11</sup> Further, evidence from junior officers was that 'until the operation police were really scared of going down there' but after the operation there was a 'side effect of *boosting police morale*' (my emphasis).<sup>12</sup>

Using the rhetoric of 'Zero Tolerance' and 'confident policing' offers the promise of police-led solutions to the fears and anxieties of communities. It centres government and community responses on police and the use of their discretionary legal powers, such as the power to 'stop and search' people, to conduct raids, ask people their personal details and make them account for themselves. It also promotes other forms of heavy-handed policing such as the use of forms of geographical policing (focusing on specific areas or zones seen to be a problem). It promotes 'hollow' partnerships which involve consultations limited to providing police with various forms of assistance rather than the more fundamental discussions concerning operational practices as envisaged by the original proponents of the 'Broken Windows' thesis, Scarman in 1981 and more recently Kelling and Coles (1996).

For the police, 'Zero Tolerance' also accords with the basic storylines of police cultures. It is straight talking, action oriented, technology centred, and authority enhancing. What follows are some examples of the type of policing envisaged by one of the key proponents of what he originally labelled 'confident policing'.<sup>13</sup>

### **Dont drink, dont smoke, dont womanise etc.**

One of the key proponents of 'Zero Tolerance' in the UK is Chief Inspector Ray Mallon, who has appeared in *Readers Digest* (May 1997) and in the *Times Magazine* (22 February 1997). According to the reports, Mallon's creed of life is based on the above heading — he doesn't drink, smoke, womanise, swear in front of women, litter or cheat. Without specifically stating such, it is clear enough that it is these types of behaviours — for men — which would be indicative of moral breakdown or failure.<sup>14</sup>

Based in the large urban area of Middlesborough, Mallon is so convinced of his capacity to impact on crime that he has offered to cut crime by 20% in 18 months or resign. Again, it is an example of the kind of straight talking, no nonsense style of policing that places emphasis on results and willingness to make personal sacrifices.

### **Intimacy and sex**

Mallon's version of 'Zero Tolerance' also suggests that police are to educate the public they encounter about the discipline expected of them — bringing discipline back to the streets. A key technique employed to achieve this is that of confronting people with close face to face interaction. This is Mallon's idea of getting intimate. He wants this to extend to policing more generally, arguing that police can do more with the resources available by confronting people who are engaging in unacceptable behaviour. They are to be confident about confrontation.

Police are also to be action oriented. From the police perspective, one of the key attractions of 'Zero Tolerance' is

that it allows them to return to what they see to be their core function — catching crooks. In doing so, they can increasingly employ whatever hardware is deemed necessary for the job. One such piece of equipment that has become attractive to use is the door-buster — a large ramming device used to force entry. It is used in raids to break down doors and was described by one of Mallon's cohorts as 'better than sex'. This is undoubtedly a 'mans world', one where the police are expected 'to have courage to begin with ... to protect the public ... [and where] anti-social behaviour had to be confronted head-on'.<sup>15</sup>

Further, police are attracted to the use of various forms of technology or equipment which enable them to control situations more effectively. One type of armoury is capsicum spray gas, increasingly attractive in Australia. Other forms of technology include the rapidly increasing use of closed circuit TV which allows constant monitoring of various public places.

Technology and tactics come together to promote confident policing and the promise to be able to deliver on the desires that emerge from 'Zero Tolerance'. In this way, the police are able to regain the lost ground caused by the sustained criticism of inquiries into police corruption and cases of various forms of injustice perpetrated by the police.

### **Conclusion or warning?**

This conclusion is in a sense a warning. As the politicians and bureaucrats begin to trawl the changes in the UK of New Labour we will undoubtedly begin to see versions of the 'tough' approach and 'Zero Tolerance' visit our shores. While I don't subscribe to the idea that Australia is still locked into a colonial mentality of following blindly the developments of the centre of the Old Empire, the recent history of criminal justice reform clearly indicates that there are good reasons to think that developments in the UK and the USA are monitored closely. The extent to which they are taken up or not is very much the product of local forces.

So having seen the tough approach and 'Zero Tolerance' emerge as key policy directions, what are the warnings? First, as I was writing this article, the Assistant Commissioner (Traffic) in the Victoria Police Force appeared on a morning radio program (3LO Melbourne, 22 July) to discuss policing the unlawful use of mobile phones in motor vehicles (he claimed that in Victoria last year more than 12,000 people were given penalty notices for this offence). When the interviewer, Jon Faine, expressed surprise at this number and suggested that policing appears to have had little effect, Assistant Commissioner Davis responded by noting that he had recently been to New York and witnessed the practices and successes of 'Zero Tolerance' policing (jokingly suggesting that this might be used for this offence). If such a senior police officer has already obtained the terminology and witnessed the 'successes', I am fairly confident that a 'Zero Tolerance' program will emerge somewhere in this State and then in other jurisdictions in the very near future.

The language of 'Zero Tolerance' has also entered the field of occupational health and safety. For instance, in a recent article concerning several cases of highly injurious workplace 'pranks' as part of initiation ceremonies, it is reported that several corporations 'have now introduced so-called 'zero-tolerance' policies towards aggression and violence in the workplace'.<sup>16</sup> This gives the term an important source of legitimation and support.

Second, as the Thames Valley Police Chief Constable Charles Pollard (1997) has argued, 'Zero Tolerance' raises several potential difficulties and negative outcomes — it is difficult to implement where the 'law' is less than clear, it involves an enormous impact on police resources when arrest is used as opposed to alternatives such as persuasion, it increases rates of custody and imprisonment, it undermines police legitimacy and consent to policing, and it threatens police values and standards.

More generally, 'Zero Tolerance' is actually the antithesis of some of the more positive possibilities of community policing. It undermines communal trust and emphasises a policing solution focused on heavy police presence, harassing people and increasing use of formal legal powers. This form of policing has previously led to serious confrontations between police and local communities and is likely to do so again. Further, it undermines the very basis of policing as it alienates significant sections of the community, leading not only to confrontation but also loss of community co-operation.

'Zero Tolerance' avoids yet again the more fundamental debates about forms of police accountability. While Australian police forces/services continue to stress their high levels of accountability to Parliament, to law, to various organisations (such as an Ombudsman), and to the community, compared to English police forces, there is a substantial deficit to the forms of communal accountability. The English forces are subject to a local authority which holds the local police chief to account. There have been ongoing debates about the effectiveness of these local authorities, particularly in relation to monitoring of operational aspects of policing.

More recently, these authorities have been re-formed under 1994 legislation, making them smaller, having greater reporting and consulting requirements than before and a stronger focus on strategic planning, leaving the police chief to manage within the strategic plans. The Home Secretary can also establish national objectives to be addressed by each local authority in their duties of producing local plans with stated objectives and performance criteria. The effect of these changes has been to lessen democratic representation but at the same time enhance the ability of the authorities to negotiate with Chief Constables over the police practices in the local area.

These structural elements of UK policing provide some scope for democratic controls on the development of policing policies. In part this process helps to stimulate the development of new programs, including 'Zero Tolerance'. But at the same time such structures help promote a healthy democratic debate about policing, including police officers themselves willingly criticising various programs. What occurs is something quite distinct from the 'hollow' consultation we have here in Australia. The UK police have similar committees, but these are small players alongside the more important police committees or local authorities where operational policy and more general policing issues can become part of local democratic deliberation. The English arrangements are not without their limits and problems, but compared to the limp, under-resourced and ineffectual community consultative arrangements that emerged in the 1980s as central elements of the shift to community policing, they offer substantial scope for communities to play an active part in policing. They offer the opportunity to know more about policing and to be able to debate policing policy development rather than have matters imposed by police.

As things stand now, the possibility of a 'Zero Tolerance' campaign being developed in Australia seems quite likely. It would build on various police programs which claim to be community oriented and problem oriented. However, as Aus-

tralia currently lacks some of the key elements to community and problem oriented policing — most particularly those elements which link broad policing policies to democratic politics — the likelihood is that the implementation of policies under the catchy slogan of 'Zero Tolerance' would be even more devastating in the Australian context than in the UK. Hopefully, should 'Zero Tolerance' be taken up we can be aware of the dangers it entails and we can point not only to its theoretical and practical limits, but also to the voices of dissent within police circles.

Finally, as Operation Sue in Redfern should remind us, the more general issue of over-representation of Aboriginal people at all stages of the criminal justice system requires us to think very carefully about the potential for a 'Zero Tolerance' campaign to undermine the various efforts introduced to limit the intervention and negative impact of the criminal justice system on Indigenous people.

More generally, 'Zero Tolerance' is indicative of a society where people are presumed not to be innocent and the main criminal justice issue is the capacity of criminal justice personnel to mobilise their resources efficiently to process such disorderly people in ways that limit their presence in the lives and minds of a mythical core called 'middle Australia'. As places seek to compete as 'most livable cities' or countries or municipalities, those things that are deemed to have a negative impact on perceptions of 'quality of life' are likely to be subject to greater intervention. Crime is one of these. More generally though, it will be 'disorderliness' and 'anti-social behaviour'. These are being seen as the signs of either actual or future decline in quality of life and therefore a threat to the very viability — economic and social — of a particular place. Thus, they are not to be tolerated on the grounds that the 'community' wants a better life. Whether the attraction of 'Zero Tolerance' can be resisted here remains to be seen.

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