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Unraveling the Fraying Edges of Zero Tolerance

by RACHEL HERZING

In summer 2011, following the uprisings in Britain and the proposal by Prime Minister, David Cameron that former New York Police Department (NYPD) Commissioner and former Los Angeles Police Department (LAPD) Chief, William Bratton be brought on to run the Metropolitan police and advise on gangs, I wrote a piece warning against investing in quick-fix, Bratton style suppression policing. Reflecting on the impacts of Bratton's handiwork in cities including New York and Los Angeles and the ripples felt even in cities where he had not been chief, such as Oakland, CA, where I live, I recounted some of the ways in which Bratton's controversial approaches may not be as effective as they have been purported to be, and some of the inevitable effects of policing approaches that rely on containment and repression.

In the final week of December, Oakland's Mayor, police chief, and City Manager announced their intentions to offer a

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\$150,000 contract to Bratton to advise on policing in our city. The contract comes just months after an audit revealing that the Oakland Police Department (OPD) had already blown \$2 million on technology it had never used or had underutilized and more than \$1million on policing consultants in 2012 alone. Despite the fact the department continues to teeter precariously on the brink of federal receivership (and is already under terms of a federal consent decree related to brutality, coercion, and evidence tampering), Bratton's high priced contract is purportedly not related to OPD becoming compliant with federal standards.

Oakland has made other attempts to implement Bratton-style, zero-tolerance policing practices such as gang injunctions and curfews without public input or support. These attempts have also been summarily rejected by Oakland residents as have their proponents, including Bratton-trained former police chief Anthony Batts, and former City Attorney, John Russo, both of whom were pressured out of town in response to their fervor for gang injunctions and similarly repressive approaches.

One can only wonder if bringing Bratton to Oakland is just another in the string of quick fixes city leaders have desperately taken up during the past couple years from gang injunctions and raids, to technology-based solutions, to geographically-driven models, to programs such as Operation Ceasefire, that have already been attempted and contested in other US cities. Bratton is well-known for coming in and "cleaning" things up (largely through displacing and making invisible poor communities and communities of color), although the long-term impacts of his approach often leave situations more fractured, alienated, and destabilized than when he came in. The seams are starting to show more and more clearly on zero-tolerance policing and the

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bid for Bratton's consult seems to be simply Oakland throwing good money after bad.

Bratton's approach to policing is based on James Q. Wilson and George L. Kelling's "broken windows" theory which proposes that minor social and physical disorder – broken windows, overgrown weeds, public urination, loitering – left unchecked, will inevitably lead to an increase in "serious" crime. Through the "quality of life initiative" Bratton launched in New York, he aimed at restoring public order by aggressively enforcing minor quality of life infractions such as public drunkenness, littering, or begging through sweeps, ticketing, and arrests. No crime, no matter how insignificant would go unnoticed and unpunished – zero tolerance. Bratton can also be credited with popularizing stop and frisk tactics including surveilling persons suspected of being involved in higher level offenses – drug-dealing, gang involvement – and using minor infractions as a pretext for fishing for additional incriminating evidence to use against them.

Under zero tolerance, also sometimes called suppression policing, use of police sweeps has become commonplace as police forces remove entire elements of communities from the streets – the homeless, queer and gender non-conforming people, sex workers, day laborers, youth – explaining that their very presence causes disorder. Stop-and-search tactics have deeply engrained the logic of racial profiling in the practice of policing, as individual cops are given discretion to assess who is suspicious and worthy of stopping. The rise in the use of zero tolerance policing has coincided with the increased militarization of law enforcement, creation of specialized policing units, longer sentences, a tripling of the US prison population, and the increased use of solitary confinement within prisons.

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And while zero-tolerance policing may be the favored quick fix of the day, there is no reliable data indicating this approach has the glowing results Bratton purports. Bernard E. Harcourt, a critical theorist and law professor who has studied Bratton's approach extensively, has demonstrated repeatedly that the New York "miracle" upon which so much of Bratton's prestige is premised is likely a result of what Harcourt and his colleague Jens Ludwig have called Newton's Law of Crime, suggesting that "what goes up, must come down (and what goes up the most, tends to come down the most)." Examining other US cities during the same period, Harcourt points out that cities that employed different policing approaches than suppression policing had even higher drops in their crime rates. He further notes that isolating zero-tolerance policing as a factor without situating it within a context of rates of imprisonment, trends in drug use, and societal and ideational changes gives us only a sliver of the picture.

In teasing apart the distinctions between cities using more community-based approaches and those using zero-tolerance, Harcourt compares San Francisco and New York, for instance. Citing a report released by the Justice Policy Institute Harcourt states,

San Francisco also focused on community involvement and experienced decreased arrest and incarceration rates between 1993 and 1998, whereas other California counties either maintained or slightly increased their incarcerations. San Francisco also abandoned a youth curfew in the early 1990s and sharply reduced its commitments to the California Youth Authority from 1994 to 1998. Despite this, San Francisco experienced greater drops in its crime rate for rape, robbery, and aggravated assault than did New York City for the period 1995 through 1998. In addition, San Francisco

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experienced the sharpest decline in total violent crime—sharper than New York City or Boston—between 1992 and 1998.

Social scientific analyses of zero-tolerance policing also consistently suggest that factors such as trust between neighbors and poverty are much stronger indicators of whether or not harm will occur within a community, than the kinds of things Wilson and Kelling identified as disorder (and it should go without saying that poverty and “disorder” are not at all the same thing). As recently as 2004, James Q. Wilson himself has maintained that broken windows theory was speculative and that he has no idea if improving order reduces crime rates.

In cities where Bratton-style policing is the primary approach, police departments tend to see a spike in complaints of illegal searches, police harassment, brutality, and misconduct as well as an increase in court cases. Those same cities also suffer the social and economic costs that come with those complaints. In fact, research indicates that the only result that seems to be reliably attached to zero-tolerance policing seems to be the entrenchment of racial profiling.

Stop-and-search tactics, for instance have deeply engrained the logic of racial profiling in the practice of policing, as individual cops are given discretion to assess who is suspicious and worthy of stopping. In 2008 in New York, the NYPD stopped 531,159 people (five times the number than just six years earlier) and of those people stopped 51 percent were Black, 32 percent Latino, and 11 percent white. The practice has also led to the increased use of gang databases throughout the US to profile and track young people of color.

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Similarly in Los Angeles, a 2008 study by Ian Ayers and Jonathan Borowsky on behalf of the ACLU yielded startling information regarding police stops by LAPD under Bratton's leadership. According to Ayres and Borowsky,

For every 10,000 residents, about 3,400 more black people are stopped than whites, and 360 more Latinos are stopped than whites. Stopped blacks are 127% more likely to be frisked — and stopped Latinos are 43% more likely to be frisked — than stopped whites.

Stopped blacks are 76% more likely to be searched, and stopped Latinos are 16% more likely to be searched than stopped whites.

Stopped blacks are 29% more likely to be arrested, and stopped Latinos are 32% more likely to be arrested than stopped whites.

Now consider this: Although stopped blacks were 127% more likely to be frisked than stopped whites, they were 42.3% less likely to be found with a weapon after they were frisked, 25% less likely to be found with drugs and 33% less likely to be found with other contraband, weapons, or any other legitimate reason that we can discern from the rich set of data we examined.

Ayres and Borowsky further found that stop, frisk, search, and arrest rates for Black and Latino people did not correlate with them living in higher-crime areas or because they carry weapons more often.

Intimately related to racial profiling, policing sweeps, which have become increasingly commonplace as Bratton's popularity has grown, are also frequently rooted in racial and economic biases

about which groups of people constitute nuisances. Sweeps displace entire segments of communities deemed nuisances and renders them invisible either by locking them away in jails and prisons or by making the environments completely hostile both physically and through law enforcement. Bratton's 'clean up' handiwork can be seen from Times Square in New York City to Johannesburg, Mexico City, and Caracas. And following his work in London he's also slated to make the disorderly invisible for the 2014 World Cup and 2016 Olympic Games in Rio de Janeiro.

One of the cornerstones of Bratton-style policing is the use of the Compstat crime tracking program. The system is touted as a crucial element of tracking what kinds of harms are happening in cities and where they are occurring. The reliability of Compstat is questionable, however. In 2010 researchers Eli B. Silverman and John A. Eterno (Eterno is also a retired NYPD police captain) conducted a survey of retired high-ranking police officials about Compstat which found that precinct commanders and supervisors felt under such enormous pressure to reduce crime rates that they distorted crime statistics entered into Compstat system toward that end.

According to Silverman and Eterno, who have continued to monitor the use of Compstat "When crime control becomes the be all and end all, then the ends justifies the means. This entails headquarters' quotas for summonses, arrests and other enforcement activities. It also means almost 700,000 stop and frisks in predominantly minority neighborhoods [in 2011] alone." They continue, "What began in 1994 as a valuable and innovative crime tracking and managerial accountability system, Compstat has morphed into a centralized top down numbers dominated system which places unrelenting pressure on commanders to produce favorable crime statistics, summonses,

arrests, stop and frisks and other activity.” The manipulation of Compstat results not only falsely bolsters the success of suppression policing, but further entrenches policing practices based on racial and economic profiling and similar biases— frequently with deadly consequences. According to a report by Amnesty International for instance, there was a 34 percent increase in people fatally shot by NYPD in Bratton’s first year as Police Commissioner, alone.

Bratton’s methods are controversial. Under the guise of community policing, they break up neighborhoods into militarized police zones, often alienating and angering community members rather than engendering hope or safety, let alone the direct violence used by police on these same community members. As alienation and mistrust build within local communities and is coupled with increasingly aggressive police tactics, pressure builds.

Yet in cities across the US and the globe the people most directly targeted by Bratton’s approach are resisting this brand of policing. A strong surge of broad based resistance to the racial profiling, curfews, sweeps, quality of life arrests, and suppression tactics used by zero tolerance advocates is generating increased ill will toward the cops and suspicion of their practices. In Oakland, for instance, a unique, citywide effort led by Stop the Injunctions Coalition has made gang injunctions politically and practically unviable. Large-scale mobilizations against stop-and-frisk and police sweeps are being coordinated as are organizing campaigns and lawsuits challenging the constitutionality of the tactics. Groups including Communities United for Police Reform in New York City have exposed the problems with stop-and-frisk and helped channel residents’ anger into action. As a longer view begins to demonstrate the questionable results of

Bratton's approach, I can only hope that smarter, clearer heads will prevail and that we will see a turn toward investment in the long-term health and wellbeing of our cities rather than the tightening of the lid on the powder keg.

Rachel Herzing is a member of [Critical Resistance](#), a national organization dedicated to abolishing the prison industrial complex.

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