

RESEARCH ARTICLE

Paying attention to minor offenses: order maintenance policing in practice

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Order maintenance policing is often equated with the term ‘zero tolerance,’ which implies that officers exercise little discretion when enforcing minor offenses. Few researchers, however, have explored the extent to which order maintenance actually limits officer discretion and creates a zero-tolerance atmosphere. This paper draws on field observations of police officers in NYPD – a department with a reputation for its order maintenance strategy – to explore officer decision making when enforcing minor offenses. Ethnographic data suggest that while officers acknowledge the importance of maintaining order, they possess and utilize a high degree of discretion when managing minor offenses.

Keywords: order maintenance; zero tolerance; disorder; ‘broken windows’

Introduction

The ‘broken windows’ hypothesis (Wilson & Kelling, 1982) suggests that maintaining order through the management of minor offenses is an essential function of public police. In their original paper, Wilson and Kelling argue that minor crimes and disorderly behaviors are linked in a developmental sequence to serious crime and felonies. The hypothesis is based on findings from the Newark Foot Patrol Experiment where researchers observed foot patrol officers managing the occurrences of disorder on their beats (Kelling, Pate, Ferrara, Utne, & Brown, 1981). This ‘order maintenance’ function was performed in negotiation with, and with support from, residents, business owners, and ‘regular users’ of public places.

The ideas put forth in ‘broken windows’ are appealing to police agencies in the era of community policing. From the police perspective, not only can order maintenance help answer citizen demands for a government response to disorderly conditions, but it can also potentially deter more serious crime from occurring. Kelling and Coles (1996) describe an example of this in the New York subway system during the early 1990s, where order maintenance policing was credited with restoring order to a chaotic environment while reducing incidents of robbery. Perhaps the most well-known example of order maintenance policing, however, was seen citywide in New York City (NYC) during the mid-1990s. When William Bratton became Commissioner of the New York Police Department (NYPD) in 1994, he asked officers to become more assertive in their enforcement of minor offenses. The debate continues as to the causes of NYC’s crime drop, but much of the discussion centers on Bratton’s adoption and application of order maintenance principles.

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Despite the potential appeal of order maintenance to citizens and policymakers, the approach remains controversial. Some have challenged the statistical underpinnings of ‘broken windows,’ including the empirical link between disorder and serious crime. More pertinent to this paper, however, is the criticism that order maintenance is inappropriate because it can be implemented at too great a cost to citizens. According to this argument, institutional pressure for order maintenance can lead police officers to overzealously enforce laws against minor offenses. Order maintenance policies, therefore, may have the effect of limiting officer discretion in decision-making scenarios, resulting in ‘zero tolerance’ of minor legal infractions. As such, the police may be criminalizing relatively innocuous behaviors that communities deem to be reasonably harmless. Indeed, the term ‘order maintenance’ is often used synonymously with ‘zero tolerance,’ which furthers the implication that order maintenance policing involves little discretion on the part of officers.

Both proponents and opponents provide commentaries on policies derived from ‘broken windows,’ although few have attempted to develop an in-depth investigation of these policies by observing order maintenance in practice. This limitation of previous studies clouds interpretations over the appropriateness of order maintenance strategies. Using observational data from ride-alongs with NYPD, this paper attempts to describe order maintenance in greater detail, particularly as it relates to officer decision making. In doing so, the paper seeks to inform the discussion over the extent to which order maintenance policing – as demonstrated by NYPD during the 1990s – limits officer discretion and creates an atmosphere of zero tolerance.

Literature review

Research on ‘broken windows’

Much of the research on ‘broken windows’ and order maintenance policing focuses on the hypothesized connection between disorder and serious crime. Skogan (1990) was the first to demonstrate empirically that disorder leads to community decline and to more serious criminal activity. Taylor (2001) also finds some support for the idea that ‘incivilities’ lead to more serious criminal activity, although he finds that neighborhood characteristics play an important role in the connection. Other research is less supportive of the link between disorder and serious crime, suggesting that the connection may be limited to only certain offenses such as robbery (Harcourt, 2001; Sampson & Raudenbush, 1999).

Several studies also find an association between order maintenance policing and crime reduction. Using official data, Kelling and Sousa (2001) and Corman and Mocan (2002) determine that minor offense enforcement was linked to the reduction in serious crime in NYC, while Worrall (2006) finds a similar connection in counties in California (see also Messner et al., 2007; Rosenfeld, Fornango, & Rengifo, 2007). Likewise, Braga et al. (1999) use experimental techniques to demonstrate that the aggressive enforcement of minor offenses reduced violence in Jersey City, New Jersey. Other research, however, suggests a more limited impact of order maintenance at reducing serious crime. These studies usually point to factors other than the police that may explain crime trends (see generally Blumstein & Wallman, 2000; Harcourt & Ludwig, 2006; Karmen, 2000; Levitt & Dubner, 2005, chap. 4).

The debates over the ‘disorder–crime’ connection and the ‘order maintenance–crime reduction’ connection continue. Commenting on these debates, Thacher (2004) indicates that studies focusing on such connections are inherently difficult because they seek to prove (or disprove) causal links that are rarely found in social science. According to Thacher, rather than viewing disorder management in terms of its *indirect* impact on serious crime,

it may be worthwhile to consider it in terms of its *direct* impact on disorder. In other words, regardless of its impact on serious crime, does order maintenance have intrinsic value as a method of reducing minor crime and disorder in public places? Answering this question, however, requires a closer look at the complexities surrounding the enforcement of minor offenses.

Discretion and 'broken windows'

Observational studies have long acknowledged the role that discretion plays in police decision making (Bittner, 1967, 1974; Black, 1971; Klockars, 1985; Reiss, 1971; Wilson, 1968). Wilson and Kelling (1982) discuss discretion and order maintenance policing specifically in the original 'broken windows' article, especially as it relates to the balance between individual rights and community interests. The original authors have since expanded on the importance of discretion for order maintenance, advocated strongly for its proper use when dealing with minor offenses, and promoted policies that instruct police in the appropriate use of discretion (Kelling, 1999; Kelling & Coles, 1996; Kelling & Sousa, 2001).

Taylor (2006) suggests, however, that despite the objections from the original authors and their associates, many have come to interpret order maintenance as a call for zero tolerance of minor offenses. This equating of order maintenance policing with low discretion/high arrest/zero tolerance has led to several criticisms of the strategy. Manning (2001), for example, indicates that in NYC, officers under the rhetoric of zero tolerance may have been encouraged to make arrests for minor offenses with little regard for the circumstances or consequences of the offense. Greene (1999, p. 185) cites the apparent correlation between increased arrests for minor offenses and complaints of police misconduct in NYC as evidence that order maintenance is less 'humane' than other forms of policing. Harcourt (2001) argues that by enforcing disorder, police are de facto criminalizing behaviors that may be harmless, if not generally accepted, in certain communities. Still others propose that order maintenance policies may disproportionately target citizens living in minority communities (Fagan & Davies, 2000; Golub, Johnson, & Dunlap, 2007).

These criticisms point to potential concerns regarding the implementation of order maintenance. Many of these criticisms, however, operate on the *assumption* that officers performing order maintenance do so in a zero-tolerance fashion where arrest is the primary option for minor offenses. Sousa and Kelling (2006) indicate that this assumption may be based more on speculation than on evidence. Sousa and Kelling also suggest that critics rely heavily on dramatized media accounts and ideological statements from politicians and activists to verify that order maintenance is inappropriate. Critics may also fail to consider empirical measures of citizen and community support for disorder enforcement. Additionally, few critics have observed order maintenance in practice to confirm that officers do indeed exercise poor use of discretion in the enforcement of minor offenses.

Methodology

Given the alternative viewpoints surrounding the interpretation of what is order maintenance policing, this paper describes field research that explores officer decision making when enforcing minor offenses. Thacher (2004, p. 413) argues that ethnographic research is particularly important for the study of discretion and order maintenance because it allows researchers to 'systematically describ[e] the kinds of situations that police might potentially treat as disorderly and the kinds of actions they might take to regulate it.' Others have also recognized qualitative field research as an appropriate method for investigating complex

transactions between police and citizens (Mastrofski et al., 1998). Furthermore, observational methods were used for some of the seminal works on police discretionary activities during the 1960s and 1970s (see, for example, Reiss, 1971).

The data for this paper were gathered from a larger project exploring organizational change within NYPD – a police department that developed a reputation for order maintenance throughout the 1990s. For the project, six NYPD precincts were selected for in-depth analyses of strategy development and implementation.¹ Since researchers were particularly interested in how strategy formation translated into officer performance, one member of the research staff conducted observations on 40 ride-alongs with NYPD officers during the year 2000.² The observer visited each of the precincts on a rotating basis, each time asking precinct strategists for permission to ride with officers who were currently addressing problems in the precinct.³ The strategists were also told that the purpose of the ride-alongs was to see NYPD problem-solving/order maintenance tactics in practice. The observer adopted the role of ‘observer-as-participant’ while conducting the observations (Gold, 1969). In this role, the observer was plainly identified as a researcher to the officers, and the officers were clearly briefed as to the purpose of the observer’s presence.

Before each ride-along, the observer assured officers of confidentiality and indicated that notes would be taken concerning the different activities the officers would perform during the shift. Officers were invited to view these notes at any time during the ride-along.⁴ Each ride-along typically began with the observer and officers discussing the planned efforts for the shift. The observer asked if these efforts would be directed in any specific area of the precinct and/or at any specific problem or series of problems. The observer summarized and recorded the information from these initial discussions before proceeding with the observations.

Once the ride-along began, the observer began recording the details of officer activities (other than random patrol).⁵ Since the purpose was to capture officer decisions related to order maintenance, the observer was particularly interested in officer activities that involved an encounter with a citizen where that citizen was suspected of wrongdoing. Special attention, therefore, was given to the following: whether encounters with citizens involved particular types of offenses or violations; the decisions made by the officers during those activities; the reactions of officers and citizens; the final outcome of the activities. The observer routinely asked officers to describe each activity and the reasons behind their decisions.

Analysis

The 40 ride-alongs produced a total of 429 observed activities.⁶ Many of these observations did not involve encounters with citizens, such as administrative activities (report writing, arrest processing, court proceedings, updating activity logs, etc.) and personal activities. Also, many activities were in response to, proactively directed at, or designed to prevent a legal violation, but did involve contact with citizens. These types of activities included surveillance operations, property searches, directed patrols, and vertical patrols where no citizens were encountered.⁷ Interestingly enough, several of these activities involved cases where the officer(s) *observed* an apparent law violator, but elected *not* to initiate an encounter with the individual.

Of the activities that did involve interactions with citizens, many were cases where the citizen was not suspected of any legal violation. Accident investigations, traffic and crowd control, and interviews or re-interviews with crime victims were examples of such activities.

Community meetings and crime prevention discussions with citizens were other examples, as were discussions with informants.

Of the 429 total observed activities, 173 (40.3%) involved an encounter with a citizen where the individual was suspected of a legal infraction.⁸ Any instance where an individual was stopped or questioned by officers because of a suspected violation was coded in this category. This included any activity that involved official police action, such as an arrest for a serious offense, arrest for a minor offense, or summons for a minor offense. Activities of this sort that did not result in any official police action were also coded within this category.

The remaining analysis and discussion concentrate primarily on the 173 activities where officers encountered individuals where those individuals were observed or suspected of a legal infraction. These activities almost always involved decision making on the part of officers in terms of whether or not to take official action (summons, arrest, etc.). It is within this category that the role of discretion in order maintenance can best be observed. If the decisions of NYPD officers regarding the enforcement of minor offenses can best be described as zero tolerance, then one would expect a high percentage of official action taken by officers. Otherwise, one would expect more of a balance between official police action and non-official action (verbal and written warnings, verbal reminders, no action, etc.).

Outcomes: official action

Sixty-five of the 173 'violation/encounter' activities (37.6%) had the end result of officers taking some form of official police action (Table 1). Thirty-four of the 173 involved officers making an arrest. Three of these arrests were for violent offenses – all involving assaults on police officers. In another instance, officers arrested an individual for driving under the influence of alcohol. Many arrests were for minor/disorderly offenses, such as vice crimes (prostitution-related charges (11 arrests), drug possession (5 arrests), gambling offenses (2 arrests)) and criminal trespass (1 arrest). The remaining arrests were triggered as the result of an offense that would normally result in no more than a summons. For example, five individuals were arrested for outstanding warrants after officers stopped four of them for drinking in public and one for keeping a disorderly premise.⁹ Others were arrested for failing to produce identification after being stopped for drinking in public (3 arrests) or for traffic offenses (2 arrests).¹⁰ One other was arrested for driving with a suspended license.

Officers issued summonses for violations in 31 of the 173 activities. Eighteen of these were for traffic-related offenses (erratic driving, parking violations, broken brake lights, etc.). Six were for liquor code violations (usually issued to the owner or manager of a bar or social club). Four were for drinking in public. One summons each was issued for public urination, gambling, and public disturbance (an excessive noise incident).

Table 1. Outcomes of 'violation/encounter' activities.

	Number	Percentage of total (%)
Official action	65	37.6
<i>Arrest</i>	34	
<i>Summons</i>	31	
No official action	108	62.4
Total 'violation/encounter' activities	173	100.0

Outcomes: no official action

The remaining 108 (62.4%) ‘violation/encounter’ activities resulted in no official action on the part of the ride-along officers. In each of these activities, the officers either knew or suspected that the individual they encountered had engaged in (or was engaging in) a legal violation, yet the officers elected not to invoke their official powers of arrest or citation. These ‘violations-in-question’ ranged in degree of seriousness.

Some of the violations-in-question were felony offenses (12 cases), including burglary, robbery, assault, auto theft, and gun crimes. In most of these cases, the officers initiated the encounter because the individual initially fit the description of the perpetrator of the crime. In all 12 of these cases, the officers ended the activity when they became convinced that the individual they had stopped was not the perpetrator.¹¹

Most of the other violations-in-question were similar to those described above for which individuals received an arrest or summons. Many involved prostitution and/or drugs (38 cases) or traffic violations (21 cases). Others involved public disturbances (excessive noise, etc. – 12 cases), liquor code violations (10 cases), criminal trespassing or loitering (7 cases), public drinking (3 cases), receiving stolen property (2 cases), public urination (2 cases), and illegal street vending (1 case).

Results***A matter of context***

Consistent with other observational studies of police discretion (Black, 1971), the data reveal that context was an important determinant in officers’ decisions to take official action. Context refers to the wide range of circumstances surrounding the officers, the offender, and the offense. These circumstances can include factors unique to the officer (individual priorities, organizational priorities, etc.), officer perception of factors unique to the suspect (demeanor, recognition of officer authority, recognition of harm done, potential of being deterred without official sanction, etc.), and officer perception of factors unique to the offense (amount of evidence, time of day, geography, relative harm of the offense to the community, whether non-official action would serve the same purpose as official action, etc.).

Elements of context: evidence

The amount of evidence against the individual, for example, appeared to be a key element of context – at least in some cases – in whether officers invoked their official powers. This was especially true when the violation-in-question involved a felony or otherwise ‘serious’ offense. In all three assault cases where an arrest was made, the arrestee was clearly the perpetrator (again, all three cases involved assaults on police officers with other officers as witnesses). Likewise, the one arrest for drunk driving was the result of a traffic stop where the driver exhibited obvious signs of intoxication. In all cases that ended with no arrest where the violation-in-question was a felony or serious offense, there was clearly not enough evidence to suggest that the individual the officers stopped was the perpetrator.

The idea that officers utilize little discretion with serious offenses when there is strong evidence of wrongdoing is not surprising – for a variety of reasons, officers sense an obligation to prevent these types of offenses and apprehend the culprits. Evidence plays a role, however, with less serious offenses as well. Activities 1 and 2 illustrate this point – both were observations made during the course of this study and both involve a prostitution reverse-sting.¹²

Activity 1 [ride #28; 6:15 a.m.]: Soon after the undercover officer moves into position, a car pulls up to the sidewalk near where she is standing. The driver starts the conversation which is recorded through a hidden microphone on the officer. The driver asks the officer for a sexual service. The driver and the officer discuss a fee for the service. Once the price is agreed upon, the officer gives a signal and the arrest team moves in. Within five minutes the driver is arrested and his car is confiscated.

Activity 2 [ride #32; 12:50 a.m.]: While the undercover officer is in position, a car pulls up to the sidewalk near where she is standing. The driver starts the conversation which is recorded through a hidden microphone on the officer. In vague terms the driver asks the officer for sexual service for a fee. When the officer asks the driver to specify the service and the fee, the driver hesitates and eventually drives off.

An officer involved in the operation later states that they probably had enough for an arrest, but without a specific fee being stated it is hard to say if the charge would stick.

As these two scenarios suggest, officers were conscious of whether official action (be it arrest or summons) will stand up to prosecutorial and judicial scrutiny. This was especially the case when the officers were conducting a special operation that targets a specific type of criminal activity.

Elements of context: officer, offender, and offense circumstances

Lack of evidence, however, was just one explanation for why officers elected not to invoke their official powers when they encountered an individual who was committing, or was suspected to have committed, a violation. In fact, in many instances officers had enough evidence to make an arrest or issue a summons but elected against taking action. For these cases, other elements of the context surrounding the activity appeared to play an important role in officer decision making. The following activity provides an example, returning again to the offense of prostitution.

Activity 3 [ride #31; 2:11 a.m.]: While parked in an unmarked vehicle in an entertainment/residential area, officers observe a car drive up to a known prostitute. After the prostitute and the driver exchange words, the prostitute enters the passenger side of the vehicle and the car drives off. The officers follow the vehicle for several blocks, lose it for a few minutes, and then spot it again pulled off to the side of the road down a side street. The officers drive down the street and pull up behind the car by several car lengths. Eventually the prostitute exits the vehicle and the car drives off. The officers drive up to the prostitute and one officer says, 'Listen, we just caught you red-handed. If we see you again, you're going in.' The prostitute nods and walks off in the direction of the subway. The officers do not see the prostitute for the remainder of the night.

The officers later explain that 'sometimes we'll sneak up on them like that and get them for a public nuisance.' The officers also indicate that this particular prostitute, who they had observed talking with other drivers earlier in the night, could have been arrested for 'loitering for the purpose of [prostitution].' However, the officers explained that 'tonight we're not out to arrest unless they're being obvious – tonight we're just going to push them along.'

In this particular case, prostitution was taking place yet the officers decided not to invoke the legal process, on the basis that they (the prostitute and john) were not 'being obvious' and because the prostitute heeded the officer's warning and left the area. This of course implies that by not being obvious, the harm to the community had been minimized. It also implies if the prostitute and john were less discrete, the officers would have more strongly considered official action.

It is difficult to say if this same outcome would have resulted if different officers were in the same scenario. It is also difficult to say what would have happened if the same officers saw the same prostitute in a similar situation later that night. However, officers' decisions not to take official action on minor offenses when there was enough evidence to do so were common occurrences. Interestingly enough, in some cases, officers themselves either admitted or implied that other officers might have taken official action if they were in the same scenario. Activities 4 and 5 illustrate this point.

Activity 4 [ride #16; 6:00 p.m.]: Officers enter an apartment building in response to a call for a possible burglary. Upon arriving at the apartment, the resident is outside his door, unable to open it because the lock appears broken. After gaining access to the apartment, officers discover that the lock had been jammed from the inside by an apparent burglar who had used the back window and fire escape to leave. While looking through the apartment, one officer discovers that the cable box next to the television is illegal. The officer turns to the resident and referring to the box says, 'You're not in trouble, but I just want to know who you got this from.' The resident appears nervous, but tells the officer that he does not know the person's name. After a few more questions, the officers finish the reports and leave the apartment.

Later the officer explains, 'We had every right to arrest him for receiving stolen property [referring to the cable box] and some cops might have done it. But if we locked this guy up right after he was the victim of a crime, I mean, that'd be pretty f-cked up.'

Activity 5 [ride #14; 2:30 p.m.]: Officers enter a small grocery store with a prior history of gambling violations to execute a warrant for suspected gambling activities. The owner of the store, an elderly woman who appears to be in poor health, is present behind the counter. The officers begin the search of the store and find a collection of betting slips and receipts. Speaking to a sergeant, a lieutenant says, 'All the stuff is here [enough evidence] for an arrest, but it's your call.' The lieutenant then leaves the store. Once the officers finish the search, the sergeant indicates that no arrest will be made, but he orders an officer to write the woman a summons for a gambling violation.

The officers later discuss the operation. 'Gambling around here is a growing problem because more and more violence is associated with it – especially when people don't pay up. Plus, some of these people aren't paying to feed and clothe their kids, but they're dropping \$70 a day to play the numbers. This is not a victimless crime.'

The sergeant also explains his decision, 'You heard the lieutenant say that there was enough [evidence] there to arrest her, and he's absolutely right.' But, he explains, 'There is no way that lady was getting locked up. It would have given her a heart attack – and probably me too.' Later he continues, 'This sort of thing – warrants for gambling – [almost] never happened a few years ago. If they did, then someone was definitely getting locked up or else there would be questions of corruption. The good thing about this administration is that it allows us more discretion with cases like this ...'

In both Activities 4 and 5, officers had enough evidence to make an arrest yet elected not to, even while implying that other officers would have found arrest to be appropriate. In both activities, the context surrounding each offense was important as officers reached their decisions. More specifically in these cases, the violators' special circumstances appeared to mitigate the offense. In Activity 4, the fact that the violator himself had just been the victim of a more serious criminal offense weighed heavily on the officer's decision to not invoke official action. In Activity 5, the violator's age and poor health played a role. Still, in Activity 5, officers were conscious of the potential harm of the offense to the community. Although the storeowner avoided arrest because of her unique circumstances, she did not avoid culpability – the officers believed that their purpose was served by issuing her a summons.

Officers' perceptions of the violator's special circumstances appeared to be a major element of the context of the offense. This was especially the case when no apparent aggravating circumstances were involved or when the offense did not present any long-term harm to the community. In these cases, the officers appeared to make the determination that the law in question overreached its intended purposes. Activity 6 provides an example of this.

Activity 6 [ride #35; 6:05 p.m.]: While conducting surveillance of an apartment building that is part of the Trespass Affidavit Program due to suspected drug activity inside, officers observe an individual enter the building and exit within a matter of several minutes.¹³ The officers determine that this behavior is consistent with that of an individual who just bought drugs, and so they exit the unmarked vehicle, stop the person, ask for his identification, and ask why he entered the building. The person replies that he entered because he was looking for his son who is a drug dealer and he wanted to get him out of the building – when he saw that his son was not present, he immediately exited. The officers examine his driver's license, give it back to him, and tell him that because of the Trespass Affidavit Program (which they briefly describe) they could arrest him but that they will not.

After returning to the car, the officers explain that they could have locked him up for criminal trespass under the Trespass Affidavit Program – ('Technically, all he has to do is go into the building') – but that they did not because 'he was straight up with us and he had a good story.' Prior to this incident, the officers had arrested someone who had entered and quickly exited the building but could not provide a legitimate reason for being in it – drugs (heroin) were later found on this individual.

In Activity 6, the activities of this particular individual, while technically illegal, were in support of police and community actions (i.e., removing drug operations from the Trespass Affidavit building). Therefore, the law in question, in the officers' opinions, was clearly not intended for the individual they stopped. This point is further illustrated in Activities 7 and 8 – both involving citizens described as 'homeless.'

Activity 7 [ride #10; 8:00 p.m.]: While driving on a busy, slow-moving roadway, officers see a panhandler walking in the street between cars. One officer turns on the car's public address system and tells her to stay on the sidewalk. The woman complies and the officers continue on.

The officer explains, 'Technically, she can be arrested for that, but personally we would never do it. The arrest option is not meant for those people.' Later in the evening, the same officer sees an apparently homeless person sleeping on the steps of a brownstone. Referring to the previous panhandler encounter, the officer says, 'See, this is what I'm talking about. Look at this guy. Now what is he doing? Who is he really bothering? The "homeless" enforcement is not meant for him – it's meant for the assholes.'

Activity 8 [ride #13; 1:55 p.m.]: Officers enter an apartment building that is part of the Trespass Affidavit Program and climb the stairs. At the top of the stairs, just before the access door to the roof, the officers find a person sleeping. The officers wake up the individual, who has set up a camp complete with make-shift bed and clothesline. The officers ask the individual if he knows who has been committing the burglaries in the building – the individual appears nervous until the officers make assurances that they are not accusing him. He indicates that he does not know about the burglaries. Officers tell him that they could lock him up but that they will not, 'But next time, try to have some information for us on who is doing the burglaries.'

The officers later indicate that under the Trespass Affidavit Program, they could have arrested the individual for criminal trespass, but 'he's just homeless, he's not bothering anyone and he doesn't do anything illegal.'

In both Activities 7 and 8, the officers appeared to be particularly aware of the vulnerability of the violators. Because the violators were not ‘bothering’ anyone, and because their actions posed no threat to themselves or others, the officers decided that assertive enforcement of minor offenses was ‘not meant’ for them.

Balancing ‘justifying our existence’ with ‘letting us do our job’

Officers’ decisions to not take official action when in a ‘violation-encounter’ scenario were prevalent throughout the ride-along observations. The idea that NYPD officers, during their order maintenance activities, enforce minor offenses with a zero-tolerance approach appears overstated. On the contrary, more often than not, officers did not take official steps when faced with a choice of action or inaction. In some of these cases, of course, officers may not have believed that there was enough evidence to take formal action. Often however, sufficient evidence for arrest and/or sanction was present, but officers chose an ‘unofficial’ response (a warning glare, a verbal admonition, no response at all) instead.

Differential police response was the norm even when, according to the letter of the law, the same offense had been committed by different people. Officers did not always articulate why one person received an official sanction while another did not for the same offense. To the officers, these decisions were usually explained only by ‘common sense.’ Nevertheless, ‘common sense’ was dependent on the numerous circumstances making up the context of the offense.

This is not to say that some officers did not sense institutional pressure to enforce minor offenses. While no officer reported an official quota, several times officers suggested that they were expected to ‘justify their existence.’¹⁴ Most officers, however, found the emphasis on minor offenses that came with the Bratton administration to be an important part of police work. In the words of one officer that reflected the general attitude of many of the ride-along officers, the enforcement of minor offenses, ‘lets us do our jobs.’

Conclusion: paying attention to disorder

As a result of the Bratton administration, the NYPD of the 1990s gained a reputation for a style of policing influenced by the ‘broken windows’ hypothesis. The research presented in this paper focuses on these NYPD order maintenance practices as they were performed during the 1990s. The research does not necessarily reflect the activities of other agencies that practice order maintenance, nor does it reflect the nature of NYPD policing in the post-9/11 era. Nevertheless, the paper does address order maintenance principles at a time – and in a place – that has been highly scrutinized in public policy and academic debates. It is within this context that the concepts of ‘order maintenance’ and ‘zero tolerance’ have been examined.

Zero-tolerance policing implies that officers have limited or no discretion in the enforcement of minor offenses (Clarke & Eck, 2005). Zero tolerance also suggests that the enforcement of minor offenses is an end unto itself (i.e., the purpose of enforcement is to generate arrest and citation numbers). NYPD officers, however, are encouraged to view the enforcement of minor offenses as a means to an end (crime and disorder prevention). As the observational data indicate, officers acknowledge the administration’s emphasis on minor offenses, but they do not interpret this necessarily as a call for official action such as arrest or citation. Rather, officers understand that they should *pay attention* to minor offenses and *not ignore* them. If, in the officer’s estimation, this means official action, then the department will support his or her decision. If however, the officer believes that the minor offense

can be dealt with via other means and still achieve the ultimate goal, the department will support that decision as well.

The data ultimately lead to the conclusion that labeling order maintenance as a high arrest/limited discretion/zero-tolerance approach is improper because it misrepresents the amount of discretion that officers possess (and utilize) when enforcing minor offenses. The idea, therefore, that order maintenance is purely a tactic to increase arrests of minor offenses is misleading and generally oversimplifies the nature of the strategy. While it is true that arrests/citations for minor offenses may increase as a result of order maintenance strategies – as the New York experience demonstrates¹⁵ – this may well be a function of officers being more cognizant of disorderly situations in which official action is *one* possible option. Indeed, as the observational data indicate, officers took disorder seriously, but they did not consider official action as their primary option when addressing minor offenses.

This paper does not argue that order maintenance is necessarily an appropriate solution for community problems or that it cannot be implemented improperly. It does suggest however, that with support from citizens within the communities it is likely to impact, order maintenance can be conducted in a manner that promotes the fair use of police discretion.¹⁶ As advocates for order maintenance attest, policy guidelines are essential regarding the proper use of discretion in the enforcement of minor offenses (Kelling, 1999; see also Eterno, 2001).¹⁷ If implemented properly, therefore, order maintenance can offer police and citizens an option within a larger problem-solving framework for addressing disorder and minor offenses.

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Notes

1. NYPD was asked to aid researchers in the selection of six precincts from the possible 76 police precincts. This purposive sampling technique held several advantages over a probability sample. The research team wanted six precincts that represented a variation in neighborhoods throughout the city. Rather than drawing a random sample, it was determined that NYPD personnel were in a better position to point to precincts that represent different types of neighborhoods in the city and that experienced important changes during the 1990s as far as crime, disorder, and police practices. The final sample included the 6th Precinct (Greenwich Village in South Manhattan), the 34th Precinct (Washington Heights in North Manhattan), the 43rd Precinct (the Soundview and Parkchester sections of the Bronx), the 67th Precinct (Flatbush in South Brooklyn), the 75th Precinct (East New York in North Brooklyn), and the 114th Precinct (the Astoria section in North Queens). NYPD officials selected this sample based on the precincts' varied political and social problems, but it cannot be stated for certain why NYPD suggested these precincts over others. It should be noted, however, that NYPD officials did not avoid troubled beats or precincts under political scrutiny. Two of the selected precincts (the 67th and 75th) are historically among the leaders in violent crime in the city. A third precinct, the 43rd, was selected for the sample shortly after becoming the location of the Amadou Diallo shooting – a politically charged incident that received intense local and national media attention (the incident involved the death of an unarmed man at the hands of four NYPD officers).
2. The observer was a graduate student who was working on the project as part of his doctoral dissertation. He was trained and supervised by members of his doctoral committee with experience in ethnographic and field research.

3. Given the limited resources and time available for the research, it was important to maximize the observer's opportunities to examine order maintenance activities. The observer, therefore, was usually placed with a proactive unit that was assigned to the precinct but not responsible for responding to calls for service. These units varied slightly in terms of their primary focus, ranging from violence prevention to vice enforcement, but all were considered to have 'order maintenance' as a core function.
4. Although invited to view the observer's notes at any time, at no point on any ride-along did officers request to view the notes.
5. An 'activity' was operationally defined as: any action by officers that deviated from general, random patrol that (a) involved an encounter with another individual beyond casual conversation between officers or radio communications, and/or (b) lasted more than 30 seconds. The determination of whether an officer 'deviated from general, random patrol' involved a subjective judgment on the part of the observer. When an encounter was involved (in whatever form), the deviation from patrol was usually obvious, which is why all encounters were recorded as 'activities.' However, when officers deviated from general patrol for purposes other than communication, the 'deviation' was not always obvious to the observer (for example, surveillance activities where no individual was encountered). The choice of a '30-second' rule for non-encounter type activities, therefore, was used so that the observer could confirm that the officers were indeed 'doing something' other than general patrol.
6. The full classification strategy for these activities, along with a more detailed description of the classification categories, can be found in Appendix 1.
7. Vertical patrols refer to directed foot patrols in high-rise apartment buildings where officers start at the ground floor and walk their way to the top.
8. The high percentage of activities that involved an encounter with a citizen where the individual was suspected of a legal infraction is not surprising. Most of the ride-alongs were with proactive units that sought to stop and prevent specific types of criminal and disorderly behaviors. The units' mandates, therefore, often brought them into contact with individuals who were performing (or seeking to perform) these behaviors.
9. Warrant checks are often run when someone is stopped for a minor offense – an activity that was not routinely practiced prior to Bratton's administration. If a warrant check comes back positive, the officer on-scene often does not know why the warrant was issued – this information is typically obtained during the booking process. In each of the five cases referred to here, the on-scene officers were not aware of the reason for the warrant.
10. Without identification, officers cannot run warrant checks.
11. NYPD policy states that when officers stop and question individuals concerning criminal activity (whether or not the end result is an arrest), the officers are required to fill out a field investigation report (called a '250' report).
12. A prostitution reverse-sting refers to an initiative employed by several precincts that is designed to reduce solicitation for prostitutes. An undercover officer disguised as a prostitute stands on a street corner and waits to be solicited by a 'john.' Once a signal is given, other officers move in and make the arrest. Publicity is often attached to these initiatives, which have become popular with community groups that have traditionally had problems with 'curb-crawlers' in their neighborhoods.
13. The Trespass Affidavit Program is a community policing and prosecution initiative developed in response to indoor drug dealing and drug use. To participate in the Program, landlords sign into a formal agreement with the police and the prosecutor's office. The agreement essentially states that only tenants and their guests are allowed in the building. Should the police find anyone else in the building that cannot provide a legitimate reason for being there, the individual can be arrested for criminal trespass.
14. The observer did not get the impression from most officers that they were under great organizational pressure to make arrests or issue citations, however, this may be because most ride-alongs were with officers in special units. Because of their mandates, special units often proactively place themselves in situations where they observe more illegal activity than patrol officers, and therefore have more opportunities to make arrests or issue citations. In a sense, officers in special units may have the luxury of 'picking and choosing' which offenses to officially enforce.
15. Several studies examining crime trends in NYC have noted an increase in arrests/citations for minor crimes during the implementation of order maintenance strategies (see Greene, 1999; Kelling & Sousa, 2001).

16. During ride-alongs, NYPD officers typically reported a good relationship with the surrounding communities and indicated that, for the most part, the public was supportive of police order maintenance practices. Officers generally believed that criticism of the police was often the result of a few activists and 'professional protesters.' The reality of this perceived support from the community cannot be determined with the available data. However, many officers believed that the public would complain significantly if the police stopped enforcing 'minor' offenses in their communities.
17. Eterno's analysis (2001) of NYPD suggests the potential of assertive order maintenance leading to an increase in police abuse of power. He therefore encourages departments with order maintenance strategies to implement proactive policies designed to prevent misconduct and enhance due process considerations.
18. A 'violation of the law' includes a felony, misdemeanor, or legal violation for which one can be arrested or receive a summons.

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References

- Bittner, E. (1967). The police on skid row: A study of peacekeeping. *American Sociological Review*, 32(5), 699–715.
- Bittner, E. (1974). Florence Nightingale in pursuit of Willie Sutton: A theory of police. In H. Jacob (Ed.), *The potential for reform in criminal justice* (pp. 17–44). Beverly Hills, CA: Sage.
- Black, D. (1971). The social organization of arrest. *Stanford Law Review*, 23, 1087–1111.
- Blumstein, A., & Wallman, J. (Eds.). (2000). *The crime drop in America*. Cambridge: Cambridge University Press.
- Braga, A.A., Weisburd, D.L., Waring, E.J., Mazerolle, L.G., Spelman, W., & Gajewski, F. (1999). Problem-oriented policing in violent crime places: A randomized controlled experiment. *Criminology*, 37(3), 541–580.
- Clarke, R.V., & Eck, J.E. (2005). *Crime analysis for problem solvers in 60 small steps*. Washington, DC: Office of Community Oriented Policing Services.
- Corman, H., & Mocan, N. (2002). *Carrots, sticks and broken windows* (NBER Working Paper 9061). Cambridge, MA: National Bureau of Economic Research.
- Eterno, J.A. (2001). Zero tolerance policing in democracies: The dilemma of controlling crime without increasing police abuse of power. *Police Practice*, 2(3), 189–217.
- Fagan, J., & Davies, G. (2000). Street stops and broken windows: Terry, race, and disorder in New York City. *Fordham Urban Law Review*, 28(2), 457–504.
- Gold, R.L. (1969). Roles in sociological field observations. In G.J. McCall & J.L. Simmons (Eds.), *Issues in participant observation: A text and reader*. Reading, MA: Addison-Wesley.
- Golub, A., Johnson, B.D., & Dunlap, E. (2007). The race/ethnicity disparity in misdemeanor marijuana arrests in New York City, 1989–2000. *Criminology & Public Policy*, 6(1), 131–164.
- Greene, J.A. (1999). Zero tolerance: A case study of police policies and practices in New York City. *Crime and Delinquency*, 45(2), 171–187.
- Harcourt, B.E. (2001). *Illusion of order: The false promise of broken windows policing*. Cambridge, MA: Harvard University Press.
- Harcourt, B.E., & Ludwig, J. (2006). Broken windows: New evidence from New York City and a five-city social experiment. *The University of Chicago Law Review*, 73(1), 271–320.
- Karmen, A. (2000). *New York murder mystery: The true story behind the crime crash of the 1990s*. New York: New York University Press.
- Kelling, G.L. (1999). *Broken windows and police discretion* (Research Report NCJ17859). Washington, DC: National Institute of Justice.
- Kelling, G.L., & Coles, C.M. (1996). *Fixing broken windows: Restoring order and reducing crime in our communities*. New York: Free Press.
- Kelling, G.L., Pate, A., Ferrara, A., Utne, M., & Brown, C.E. (1981). *Newark foot patrol experiment*. Washington, DC: Police Foundation.

- Kelling, G.L., & Sousa, W.H. (2001). *Do police matter? An analysis of the impact of New York City's police reforms* (Civic Report No. 22). New York: Manhattan Institute.
- Klockars, C.B. (1985). *The idea of police*. Newbury Park, CA: Sage.
- Levitt, S.D., & Dubner, S.J. (2005). *Freakonomics*. New York: HarperCollins.
- Manning, P.K. (2001). Theorizing policing: The drama and myth of crime control in the NYPD. *Theoretical Criminology*, 5(3), 315–344.
- Mastrofski, S.D., Parks, R.B., Reiss, A.J., Jr., Worden, R.E., DeJong, C., Snipes, J.B., et al. (1998). *Systematic observation of public police: Applying field research methods to policy issues* (National Institute of Justice Research Report). Washington, DC: US Department of Justice, Office of Justice Programs.
- Messner, S.F., Galea, S., Tardiff, K.J., Tracy, M., Bucciarelli, A., Piper, T.M., et al. (2007). Policing, drugs, and the homicide decline in New York City in the 1990s. *Criminology*, 45(2), 385–414.
- Reiss, A.J., Jr. (1971). *The police and the public*. New Haven, CT: Yale University Press.
- Rosenfeld, R., Fornango, R., & Rengifo, A.F. (2007). The impact of order-maintenance policing on New York City homicide and robbery rates: 1988–2001. *Criminology*, 45(2), 355–384.
- Sampson, R.J., & Raudenbush, S.W. (1999). Systematic social observation of public spaces: A new look at disorder in urban neighborhoods. *American Journal of Sociology*, 105(3), 603–651.
- Skogan, W.G. (1990). *Disorder and decline: Crime and the spiral of decay in American neighborhoods*. New York: Free Press.
- Sousa, W.H., & Kelling, G.L. (2006). Of 'broken windows,' criminology, and criminal justice. In D. Weisburd & A. Braga (Eds.), *Police innovation: Contrasting perspectives*. Cambridge: Cambridge University Press.
- Taylor, R.B. (2001). *Breaking away from broken windows*. Boulder, CO: Westview Press.
- Taylor, R.B. (2006). Incivilities reduction policing, zero tolerance, and the retreat from coproduction: Weak foundations and strong pressures. In D. Weisburd & A. Braga (Eds.), *Police innovation: Contrasting perspectives*. Cambridge: Cambridge University Press.
- Thacher, D. (2004). Order maintenance reconsidered: Moving beyond strong causal reasoning. *The Journal of Criminal Law and Criminology*, 94(2), 101–133.
- Wilson, J.Q. (1968). *Varieties of police behavior*. Cambridge, MA: Harvard University Press.
- Wilson, J.Q., & Kelling, G.L. (1982, March). Broken windows: The police and neighborhood safety. *The Atlantic Monthly*, 29–38.
- Worrall, J.L. (2006). Does targeting minor offenses reduce serious crime? A provisional, affirmative answer based on an analysis of county-level data. *Police Quarterly*, 9(1), 47–72.

Appendix 1. Classification of police ‘activities’

The 40 ride-alongs produced a total of 429 observed and recorded activities that were subsequently entered into an askSam 3.0 database for qualitative analysis. In order to examine activities that were most relevant to order maintenance, the activities were coded into four categories based on two classifications: (1) whether the activity was in response to, proactively directed at, or designed to prevent an existing, apparent, or future violation of the law,¹⁸ and (2) whether the activity involved an encounter between the ride-along officer(s) and another individual or group of individuals. A1 describes these categories.

Table A1. Activity classification (N = 429).

		Violation?	
		No	Yes
Encounter?	No	Violation: <i>no</i> ; encounter: <i>no</i> n = 90	Violation: <i>yes</i> ; encounter: <i>no</i> n = 108
	Yes	Violation: <i>no</i> ; encounter: <i>yes</i> n = 58	Violation: <i>yes</i> ; encounter: <i>yes</i> n = 173

Category 1: Violation (no); Encounter (no). The first category contains those officer activities that involved no violation of the law and no encounter with another individual. The best example of this involved administrative activities, including report writing, arrest processing, court proceedings, updating activity logs, etc. Personal activities, such as meal and coffee breaks, were also included in this category. The observer categorized 90 of the 429 total activities (21.0%) as either administrative or personal.

Category 2: Violation (no); Encounter (yes). The second category contains those activities that involved an encounter with a citizen, but where the citizen was *not* immediately involved as a violator of the law. Interviews or re-interviews of crime victims were examples of activities that fall within this category. Community meetings and crime prevention discussions with citizens were other examples, as were discussions with informants. Also falling within this category were activities involving accident investigations and traffic and crowd control. Fifty-eight of the 429 activities (13.5%) were coded in this category.

Category 3: Violation (yes); Encounter (no). The third category involves those activities that were in response to, proactively directed at, or designed to immediately prevent an existing, apparent, or future violation of the law, but that did not involve contact with citizens. This category included: activities where officers responded to calls and found no complainant or legal violation (prank calls, false alarms, etc.); strategy meetings between officers in the field or before a specific operation was initiated, and; surveillance activities, property searches, directed patrols, and vertical patrols where no citizens were encountered. This category also included those activities where the officer(s) *observed* an apparent law violator, but elected *not* to initiate an encounter with the individual. One hundred eight of the 429 activities (25.2%) fall within this category.

Category 4: Violation (yes); Encounter (yes). The fourth category involved those activities where officers encountered an individual in a situation where the individual was a suspected law violator. Any instance where an individual was stopped or questioned by officers because of a suspected violation was coded in this category. This included any activity that involved official police action, such as an arrest for a serious offense, arrest for a minor offense, or summons for a minor offense. Activities of this sort that did not result in any official police action were also coded in Category 4. Of the 429 total activities, 173 (40.3%) involved an encounter with an individual where the individual was suspected of a legal infraction.