

# An Analysis of Failed Criminal Justice Policies

Nicholas Lancaster  
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## **Introduction**

Criminal justice policies often have unintended, negative consequences on the societies that they were designed to protect. Compiled here is an explanation of some of these faulty policies from the past that are representative of problems facing criminal justice systems as a whole. A focus is made on three different areas, problems associated with zero-tolerance policies, inadequate definitions, and problems arising from cultural transference. Attempts are made at connecting commonalities among the failed policies. It is believed through an analysis of the problems that have inadvertently risen from faulty criminal justice policies that solutions to these problems can be found, creating a stronger criminal justice system, and a safer, more secure world.

## **Zero-Tolerance Policies**

In the early 1990s the New York City Police Department began instituting policies in the subway system that pushed for the arrests of people who were jumping turnstiles to avoid having to pay for use of the subway system. These policies, called zero-tolerance policies, or “broken-windows” policing, called for the arrests of everyone who jumped the turnstiles or committed similar, “harmless” acts. These policies were based on the theories put forth by Kelling and Wilson in their 1982 paper, “Broken Windows.”<sup>1</sup> These theories are based on the idea that if a building has a single broken window that is left unfixed, soon all of the windows will be broken because the single broken window gives the message that no one cares about the building. If it is

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<sup>1</sup> Wilson, James Q., and George L. Kelling. "Broken windows." *Atlantic monthly* 249, no. 3 (1982): 29-38. This is the original “broken windows” or zero-tolerance study. This is the original study that sparked the implementation of zero-tolerance policies in many places. Zero-tolerance policies have become controversial on an even larger scale than what is presented in the example given concerning Honduras.

regarded that no one cares about the building, then it is believed that further destruction of the building will not be punished. Zero-tolerance policies try to control crime through the punishment of breaking the proverbial “first window,” stopping small crimes before the accepted behavior in the area in question escalates to more serious offenses.

Following the example set by New York City, the government of Honduras enacted zero-tolerance policies in an attempt to reduce gang involvement. These policies were introduced in 2003 with the purpose of reducing social violence and reinstating public security.<sup>2</sup> These policies, called *Mano Dura* (Iron Fist) and *Ley Antimaras* (Anti-gang Law), enabled law enforcement to arrest anyone involved in Honduras’ two main youth gangs, *Mara Salvatrucha* and the 18<sup>th</sup> Street Gang. As a result of these policies, crime and delinquency were not reduced, nor were the youth gangs brought under control or disbanded. Contrary to its intent, “zero tolerance reinforced emotional ties and a sense of belonging to the gang, especially in prison where imprisoned members perceived the gang as a transnational community.”<sup>3</sup> Incarcerations of gang members soared, causing inner-turmoil within Honduran prisons. The gangs banded together within the prisons and established territories, excluding non-gang members and prison guards alike from these areas.

The failure of the zero-tolerance policies in Honduras was fueled by deportation policies in the United States.<sup>4</sup> The two primary gangs discussed, the 18<sup>th</sup> Street Gang and *Mara Salvatrucha*, are both originally United States’ based gangs. The United States has deported

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<sup>2</sup> Gutierrez Rivera, Lirio. "Discipline and Punish? Youth Gangs' Response to 'Zero-tolerance' Policies in Honduras." *Bulletin of Latin American Research* 29, no. 4 (2010): 492-504.

<sup>3</sup> *Ibid.*, 493

<sup>4</sup> *Ibid.*

Honduran criminals back to Honduras. Many of these people are members of gangs, and are placed in prison in Honduras where they join up with other gang members, strengthening the gang presence in that prison. Upon release, many head back to the United States, where they are active with the U.S. branch of the gang they are affiliated with, further strengthening the ties between the gang branches in the U.S. and Honduras.<sup>5</sup> This produces more of a threat from these gangs in both nations; thus, policies that were meant to reduce crime are helping it grow.

New York City's implementation of zero-tolerance policies were successful in reducing some types of crime,<sup>6</sup> and these policies have been successful toward combating crime in other jurisdictions. From 1993 to 1997, New York City saw a drop in serious crimes, including murders and negligent homicides dropping 60.2%, forcible rapes 12.4%, robbery 48.4%, and burglary 45.7%.<sup>7</sup> Because of this drop in crime many other jurisdictions have sought similar results through similar policies. As is evidenced by the example of Honduran prisons, these policies are not always successful, and unintended negative consequences do arise. Comparing the success and failure of zero-tolerance policies in New York City and Honduras shows that criminal law enforcement policies that are successful in one area of the world may cause significant amounts of damage in another.<sup>8</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Greene, Judith A. "Zero tolerance: A case study of police policies and practices in New York City." *Crime & Delinquency* 45, no. 2 (1999): 171-187. This study provides an analysis of New York City's zero-tolerance policies. Regardless of the crime drop in New York City, zero-tolerance policies have been the subject of much criticism and debate, especially concerning racial profiling and other social issues. Greene's research provides an in-depth look into some of these criticisms.

<sup>7</sup> Ibid., 171

<sup>8</sup> It is important to note that the policies discussed here only pertain to those of criminal justice. There are many other institutions that have implemented zero-tolerance policies for maintaining order, such as many school systems. These policies have generated a large body of research and commentary that is important to understanding these types of policies. That research is not discussed here because it does not directly pertain to the policies in New York City or Honduras.

### **Inadequate Definitions**

A contributing problem to failed criminal justice policies has been a lack of firm legal definitions for what constitutes criminal behavior. In 2014, researcher Zachariah Fudge wrote about the problems that result from a lack of a firm definition for gangs.<sup>9</sup> In his study, he uses a group known as the “Juggalos,” the loyal fan base of musical group Insane Clown Posse, to show how labeling a group as a gang can lead to “arbitrary and discriminatory police action.”<sup>10</sup> The National Gang Intelligence Center, an agency created by the Federal Bureau of Investigation, classified the Juggalos as a gang in 2011. Fudge examines the various definitions of gangs used by experts in the social sciences, and constructs a list of their common elements. These elements consist of a propensity towards criminality, control of territory, level of organization, recurrent face-to-face interactions of members, common name, insignia, colors, and the age of members of the group.<sup>11</sup> The only elements that the Juggalos meet from this list is a common name and the use of symbolism. There is no organizational structure within the Juggalos, they hold no control over territory, nor is criminal behavior a part of their group’s identity; nevertheless, the National Gang Intelligence Center classified the Juggalos as a gang. The group has responded to this classification, along with the artists Insane Clown Posse, and the American Civil Liberties Union (ACLU) with a lawsuit, claiming the label has led to arbitrary police action against the group. Unclear gang definitions open up the possibility for a group that is deemed as undesirable by the

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<sup>9</sup> Fudge, Zachariah D. "Gang Definitions, How Do They Work: What the Juggalos Teach Us about the Inadequacy of Current Anti-Gang Law." *Marq. L. Rev.* 97 (2013): 979.

<sup>10</sup> *Ibid.*, 979

<sup>11</sup> *Ibid.*, 992

society at large to be discriminated against, even though the group may not fit the typical aspects of a gang.

Inadequate definitions have the potential to lead to arbitrary police action against an entire group of people. This opens up the possibility for racial, ethnic, and class discrimination to emerge. Vague labels of what constitutes criminality allows law enforcement entities, such as the FBI with the Juggalos, to identify a group as a threat based on nothing more than dislike. Fudge has shown that criminal behavior has not been a commonality among the Juggalos.<sup>12</sup>

It is important to have a firm legal definition for gangs, as well as other criminal acts. Laws that deal specifically with gangs need to have a clear definition for law enforcement so that they can adequately deal with the problem. In the case of the Juggalos, the group has been classified as a gang, but does not engage in criminal behavior as a group, and has no organizational hierarchy, both essential elements for the composition of a gang. The group does have symbolism, the most common symbol being a silhouette of an axe-wielding clown.<sup>13</sup> This is similar to many typical youth gangs, but this is the only common element that can be applied to the Juggalos. In addition to the prominence of the clown symbol, members in the Juggalos wear heavy amounts of theater makeup, and create alternate egos that they embody at Insane Clown Posse concerts and gatherings.<sup>14</sup>

Without a clear definition of what constitutes a gang, public policies will not be able to reach their fullest potential in addressing the groups that pose a threat to society, whether that threat is violence, property damage, or the trafficking of illegal substances. Inadequate

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<sup>12</sup> Ibid., 987

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

definitions of what constitutes a gang and a gang member can lead to arbitrary labels being placed on non-gang members. Ralphs, Medina, and Aldridge propose that Britain policies “risk demonizing a whole generation” through arbitrary gang labels.<sup>15</sup> This study focused on British youth that lived in “known gang areas.”<sup>16</sup>

It was found that because of the areas that these British youth lived in they were more likely than not to get stopped and questioned by police. Police used association with “known gang members” to label other non-gang members, excluding them from public events and making them prone to extra surveillance.<sup>17</sup> Because police were relying primarily on association and place to identify gang members many non-gang members were suspected to be involved in gang activity. Law enforcement was using an inadequate definition of gang involvement to identify non-gang members as threats.

This labelling of youths as gang members when they are not involved in a gang is a problem because it pushes youth who are already marginalized further out of mainstream society.<sup>18</sup> Some of these youth who are labelled by the police as gang members end up actually joining the gang they are associated with. There is reason to believe that the association placed on these youth by law enforcement is a contributing factor to becoming involved in the gang.<sup>19</sup> Similarly, Fudge holds that the Juggalos are typically regarded as unpopular by mainstream

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<sup>15</sup> Ralphs, Robert, Juanjo Medina, and Judith Aldridge. "Who needs enemies with friends like these? The importance of place for young people living in known gang areas." *Journal of youth studies* 12, no. 5 (2009): 483-500..

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 490-491

society, and that they are a group made up of marginalized people.<sup>20</sup> Misidentifying marginalized groups of people as possible criminal threats tends to push those people further out of society, sometimes contributing to criminal behavior eventually. Similar to the circumstances in Honduras, the surveillance and preemptive actions taken to combat criminal behavior has inadvertently become a contributing factor in its growth.

### **Cultural Transference**

When two cultures form connections with each other aspects of one culture are often adopted by the other. This transfer between cultures takes ideological, political, economic, and social forms. This cultural transference can have positive and negative effects, including the transference of crime. This can manifest itself in different ways, from criminals becoming inspired by others in a separate culture, to one culture transferring its criminals to another country.

Regarding gangs, policies can cause the unintended consequence of cultural transference from one gang to another. This can happen as a result of immigration,<sup>21</sup> deportation policies,<sup>22</sup> or a mixture of the two.<sup>23</sup> Temple found that the United States policy concerning the deportation of non-citizen criminals inadvertently increased criminality in the nations the deported criminals

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<sup>20</sup> Fudge, Zachariah D. "Gang Definitions, How Do They Work: What the Juggalos Teach Us about the Inadequacy of Current Anti-Gang Law." *Marq. L. Rev.* 97 (2013): 985

<sup>21</sup> Decker, Scott H., Frank Van Gemert, and David C. Pyrooz. "Gangs, migration, and crime: The changing landscape in Europe and the USA." *Journal of International Migration and Integration/Revue de l'integration et de la migration internationale* 10, no. 4 (2009): 393-408. This study contrasts European and American gangs, and how American gangs and American policies regarding gangs have spread around the world.

<sup>22</sup> Temple, Jonah M. "Merry-Go-Round of Youth Gangs: The Failure of the US Immigration Removal Policy and the False Outsourcing of Crime, the BC Third World LJ 31 (2011): 193.

<sup>23</sup> Williams, Carl, and Mitchel P. Roth. "The importation and re-exportation of organized crime: explaining the rise and fall of the Jamaican posses in the United States." *Trends in Organized Crime* 14, no. 4 (2011): 298-313.

were being sent. Ironically, the number of non-citizens being held in the United States' prisons has risen since the policies were enacted.<sup>24</sup> The policies dictating deportations required law enforcement agents to give notice to the receiving country at least three days prior to the criminal's arrival. This short notice was often coupled with little information regarding the criminal, including whether or not the person in question was involved in gang activity. Often, many Central American nations would not hold the deported person in prison for an adequate length of time, if the person was held in prison at all. These people eventually made their way back into the United States. This strengthens gang activity because the deported person would form social ties with the gang branch in the native country and return to the original gang in the United States.<sup>25</sup> When numerous people go through this cycle within one gang, a network of communication is formed between the United States gang and the gang in the foreign country. Across this network, symbolism, gang practices, and gang culture travelled, slowly unifying the two gangs. This poses a problem within international security because the two gangs are no longer two separate entities that are dealt with under one government. They resemble a single gang that crosses national boundaries.

This transfer of gang culture can also occur across national boundaries. Decker, Van Gemert, and Pyrooz, discussed the presence of the Los Angeles, California based gang, the Crips, in the European country of the Netherlands. The Netherlands' Crips have taken on the L.A. gang's name and symbolism, but there are important differences between the two. The Netherlands' Crips are not as organized as the L.A. gang, they are not based around drug sales,

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<sup>24</sup> Temple, Jonah M. "Merry-Go-Round of Youth Gangs: The Failure of the US Immigration Removal Policy and the False Outsourcing of Crime, the BC Third World LJ 31 (2011): 193.

<sup>25</sup> Ibid.

they claim no real territory, and are much less violent.<sup>26</sup> The influence of the L.A. Crips on this group in the Netherlands has been believed to have been a result of media portrayals of the L.A. group. What the Crips in the Netherlands have seen in the media concerning the L.A. based gang has inspired them to emulate the American gang. The differences between the two gangs can be attributed to the source of information that the Netherlands' group has used. The Netherlands' Crips have only taken on the symbolical attributes of the gang because that is what they have seen in the media. If nothing else, the Netherlands branch of the Crips has shown that it is important how gangs and criminal behavior are portrayed in the media. If a gang is presented with a sense of fear and awe, groups seeking respect may attempt to emulate that gang's symbolism and behavior. Media portrayals may make joining a gang more appealing to those who are already at risk of gravitating toward gang involvement.<sup>27</sup>

In the early 1980s, the United States saw a rise in gang activity from Jamaican political groups that immigrated to the U.S. and formed drug trafficking gangs.<sup>28</sup> At their height, membership in these gangs was an estimated 22,000 and were involved in the trafficking and distribution of crack cocaine.<sup>29</sup> The Jamaican gangs, called "posses," asserted a strong presence in many major U.S. cities as well as some rural areas.<sup>30</sup> Over the following decades many of

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<sup>26</sup> Decker, Scott H., Frank Van Gemert, and David C. Pyrooz. "Gangs, migration, and crime: The changing landscape in Europe and the USA." *Journal of International Migration and Integration/Revue de l'integration et de la migration internationale* 10, no. 4 (2009): 393-408.

<sup>27</sup> It should be noted that the formation of the Netherlands' Crips was not directly caused by the media portrayals of the L.A. based gang. There are many circumstances surrounding the formation of a gang. The Netherlands' gang would probably have formed regardless of any knowledge of the Crips. The adoption of Crips symbolism and name is a danger because it opens up the possibility for communication between the L.A. gang and the Netherlands' gang, creating an international body.

<sup>28</sup> Williams, Carl, and Mitchel P. Roth. "The importation and re-exportation of organized crime: explaining the rise and fall of the Jamaican posses in the United States." *Trends in Organized Crime* 14, no. 4 (2011): 299

<sup>29</sup> *Ibid.*, 300

<sup>30</sup> *Ibid.*

these gang members were sent back to Jamaica, where the gangs have persisted. These gangs have been blamed for many of Jamaica's crime problems in recent years.<sup>31</sup> A criminal organization was formed in the United States from the remnants of Jamaican political factions and then sent back to Jamaica. Criminal behavior transferred between the two cultures, becoming stronger from and harming both. Without transferring to the United States, the Jamaican groups would never have become the large organization that they were, and without moving back to Jamaica, they likely would have died out.

Some cultural transference of crime may be inevitable; however, much of it can be restricted. Deportation and immigration policies can be changed to combat the transfer of criminals from one area to another. Information on gangs will still be readily available to other gangs around the world, allowing for some cultural transference of criminal behavior to occur, but depictions of gangs in the media can also be changed to combat this.

### **Conclusion**

As is evidenced in the given examples, criminal justice policies can inadvertently have serious negative outcomes. Through zero-tolerance and deportation policies, gangs have become stronger. Inadequate definitions of crime allow the possibility for discrimination and arbitrary labeling of people who may or may not be involved in criminal behavior. Deportation policies and the media both can play a part in cultural transference of criminal behavior, allowing criminal groups in different countries to become closely connected. Solutions can be found for all of the preceding examples of problems within criminal justice policies. It is only through the

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<sup>31</sup> Ibid., 310

identification and analyses of these problems that adequate solutions can be found. These problems are not inevitable, and should be addressed. Understanding the problems that criminal justice policies have faced in the past will allow better policies to be implemented in the future.

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