

A Libertarian Analysis of “Broken Window” Policing

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Abstract. “Broken window” policing refers to the practice of stopping small relatively unimportant crimes (windows broken by hooligans) so that more serious ones will decrease. If the windows are allowed to be broken, criminals will get the message there is little or nothing to stop them from breaking more serious laws. The present paper looks at this practice from a libertarian point of view, and finds some of it justified, some of it not.

Keywords. Libertarianism, Crime, Safety, Policing.

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1. Introduction

Broken window policing refers to the practice of the men in blue to stop relatively insignificant crimes (e.g., windows smashed by criminals) so as to ward off more serious violations of law. The idea behind this concept is that if criminals see petty crimes go unpunished, if they see an environment where windows are allowed to be broken,¹ they will take this state of affairs as in effect an invitation to perpetuate more serious misbehavior. They will deduce a lack of law and order from the broken windows, and think they can get away with graver depredations.²


An early description of this phenomenon goes as follows (Wilson & Kelling, 1982): “...at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend to agree that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in rundown ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing. (It has always been fun.)”


In the words of Harcourt (1998): “the policing initiative is premised on the broken window theory of deterrence, namely the hypothesis that minor physical and social disorder, if left unattended ... causes serious crime.”

There is perhaps no more dramatic way of making this case than that offered by Wilson and Kelling (1982):

“Philip Zimbardo, a Stanford psychologist, reported in 1969 on some experiments testing the broken-window theory. He arranged to have an automobile without license plates parked with its hood up on a street in the

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Bronx and a comparable automobile on a street in Palo Alto, California. The car in the Bronx was attacked by ‘vandals’ within ten minutes of its ‘abandonment.’ The first to arrive were a family—father, mother, and young son—who removed the radiator and battery. Within twenty-four hours, virtually everything of value had been removed. Then random destruction began—windows were smashed, parts torn off, upholstery ripped. Children began to use the car as a playground. Most of the adult ‘vandals’ were well-dressed, apparently clean-cut whites. The car in Palo Alto sat untouched for more than a week. Then Zimbardo smashed part of it with a sledgehammer. Soon, passersby were joining in. Within a few hours, the car had been turned upside down and utterly destroyed. Again, the ‘vandals’ appeared to be primarily respectable whites. Untended property becomes fair game for people out for fun or plunder and even for people who ordinarily would not dream of doing such things and who probably consider themselves law-abiding. Because of the nature of community life in the Bronx—its anonymity, the frequency with which cars are abandoned and things are stolen or broken, the past experience of ‘no one caring’—vandalism begins much more quickly than it does in staid Palo Alto, where people have come to believe that private possessions are cared for, and that mischievous behavior is costly. But vandalism can occur anywhere once communal barriers—the sense of mutual regard and the obligations of civility—are lowered by actions that seem to signal that ‘no one cares.’”

There are many commentators who believe broken window policing is the last best hope for quelling crime (Wilson & Kelling, 1982; Isquith, 2014; Keizer, 2008)³. There are also critics of this initiative (Harcourt, 1998; Mathias, 2014). The purpose of the present paper is not to determine which side is correct, or even more nearly so. Rather, our goal is very different. It is to subject this policy to a libertarian analysis; to determine which elements of broken window policing are in accord with this political economic philosophy, and which are not.

Very briefly, libertarianism is based on private property rights and the non-aggression principle (NAP): it should be legal to do anything anyone wants to do, provided it does not constitute the use or the threat of violence against innocent people or their property. Libertarianism, a theory of proper law, is limited to these considerations (Rothbard, 1982). What, then, is the libertarian perspective on broken window policing?

In section II we look at these acts on private streets, or shopping malls and for public streets, or parks or other such amenities. We conclude in section III.

2. A libertarian analysis

It is important to consider broken window policing on both private and public property, since the comparisons are telling. In the libertarian vision, there would be no such thing as public sidewalks, streets, roads, highways, parks, libraries, museums (Woolridge, 1970; Block, 2009). At present, under the socialization of these properties, there certainly is. We now move to a public – private comparison of how, under the libertarian code, various “broken window” types of activities would be treated.

2.1. *Drunks; public drinking*

a. Private: Some private establishments would allow this; nay, they would encourage it: for example virtually all bars, many restaurants, most pool halls. This, of course, provided that the inebriated did not annoy their fellow drunkards or any other paying customers for that matter. Other property owners will not welcome this at all; places where children congregate, etc.

b. Public: There are places in the U.S. where carrying open containers with booze in them is allowed by law. For example, Bourbon Street in New Orleans.

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The question the libertarian must confront is, Does such behavior constitute a per se act or threat of violence? Of course it does not. Therefore, were libertarianism to take over, but streets, somehow, remained public, such behavior would be legal everywhere. However, would not people in some neighborhoods object, i.e., near churches, schools, residential areas? Of course they would. But, still, since drinking alcohol in public does not constitute a per se violation of the NAP, it would be allowed by law. If the locals objected to a great enough degree, presumably the sidewalks and streets would be privatized, in which case their owners would determine appropriate behavior, see above. The overwhelming probability is that then such activity would not be allowed; not by law, but based on the owners' decision as to how their property would be used.

2.2. *Drunk driving*

a. Private: It is extremely likely that private owners of highways would prohibit this behavior (Block, 2009). This, at least, for most of the time. However, between 2:00 and 4:00am, it is possible that drunken driving would be not only allowed but encouraged, with very high fees, to defray the costs of gathering up all the dead bodies. This "thinning of the herd" would be all to the good, as dangerous drivers of this sort would no longer be able to impose mayhem on innocents.

b. Public: Does drunk driving constitute a rights violation? Not at all.⁴ Many inebriated drivers do not cause accidents, and cold sober motorists do, due to inattention, texting, whatever. In the view of Rockwell (2000):

"What precisely is being criminalized? Not bad driving. Not destruction of property. Not the taking of human life or reckless endangerment. The crime is having the wrong substance in your blood. Yet it is possible, in fact, to have this substance in your blood, even while driving, and not commit anything like what has been traditionally called a crime.

"What have we done by permitting government to criminalize the content of our blood instead of actions themselves? We have given it power to make the application of the law arbitrary, capricious, and contingent on the judgment of cops and cop technicians. Indeed, without the government's "Breathalyzer," there is no way to tell for sure if we are breaking the law.

"Sure, we can do informal calculations in our head, based on our weight and the amount of alcohol we have had over some period of time. But at best these will be estimates. We have to wait for the government to administer a test to tell us whether or not we are criminals. That's not the way law is supposed to work. Indeed, this is a form of tyranny."

But what of the fact that driving while under the influence is highly statistically correlated with motor vehicle accidents?

Rockwell (2000) responds:

"This is why the campaign against 'racial profiling' has intuitive plausibility to many people: surely a person shouldn't be hounded solely because some demographic groups have higher crime rates than others. Government should be preventing and punishing crimes themselves, not probabilities and propensities. Neither, then, should we have driver profiling, which assumes that just because a person has quaffed a few he is automatically a danger. "In fact, driver profiling is worse than racial profiling, because the latter only implies that the police are more watchful, not that they criminalize race itself. Despite the propaganda, what's being criminalized in the case of drunk driving is *not* the probability that a person driving will get into an accident but the *fact* of the blood-alcohol content itself. A drunk driver is humiliated and destroyed even when he hasn't done any harm."

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And, we can add to that the fact that if people do not like public highways where drunken driving is allowed, they can move to de-socialize them.⁵ On private roads, drunken driving would not be a crime; merely a contract violation.⁶

2.3. Addicts, loiterers, the mentally disturbed

a. Private: On private property, anyone may exclude anyone else he does not like for any reason, or for no reason. This is what the libertarian law of free association is all about: no one may be forced to associate with anyone else against his will. Indeed, this was the great problem with slavery. Innocent people who were kidnapped at the point of a gun were forced to “associate” with their masters. The slaves wanted nothing more, nothing so much as to dis-associate themselves from these criminals. According to the NAP, they have every right to do so. A similar point applies to rape. The victim does not want to “associate” with her attacker; she wants to be free of him. She wants to freely associate, only, with people of her own choosing. She does not want to be forced to associate with individuals against her will. It is the same with the civil rights act of 1964, that compelled white restaurant owners to serve black customers against their will.

People addicted to drugs, alcohol, or whatever else may properly be excluded from private property if their owners do not wish to serve them

b. Public: The same analysis does not at all apply to public property. Drug laws should all be repealed, so that addicts dependent upon these substances would no longer be criminals. Given that, it would be improper under libertarian law for the police to arrest, or hassle or in any other way inconvenience addicts. They should be treated as all other people.

2.4. Rowdy teenagers

a. Private: Some emporiums signal “no shirt, no shoes, no service.” They may also indicate they are not open to teenagers, to rowdy people, and, perforce, to rowdy teenagers. Private property is private property is private property. No one should be forced to associate with anyone against his will.

b. Public: It all depends upon just how “rowdy” are the teens. If they are merely their usual boisterous selves, they are committing no crime, and the “broken windows” theory should not be used against them. On the other hand, if their rowdiness rises to the level of constituting a threat against law-abiding passersby, then all bets are off. The police should deal with them as with any others who threaten the initiation of violence. How to tell one from the other? This is impossible. Making this distinction is a continuum problem (Block&Barnett, 2008). There is no sharp, clear, definitive, line between normal teenagers and those who constitute a criminal threat. This is an insoluble problem, and no political philosophy can solve it. The best practice is to use a “reasonable man” solution.

2.5. Prostitutes

a. Private: Would prostitutes be allowed in shopping malls? Very likely not. Or, it would be the rare such emporium that would welcome “sex workers,” since their presence would be incompatible with attracting the overwhelming proportion of their customers. On the other hand, possibly, they would be allowed, welcomed, in some bars, restaurants, pool halls, etc. But this is unlikely, given the practices in places where selling sexual services is legal. Typically, there are houses of prostitution that cater to this market alone.

b. Public: The main if not the sole reason prostitutes are on the street, constituting a “broken window” is because this profession is outlawed. One finds very few if any ladies of the evening plying their trade on the streets in Nevada, or many places in Europe where prostitution is legal. Legalize this practice and in one fell swoop it disappears.

2.6. Turnstile jumping

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a. Private: This is theft of services and is a clear violation of the NAP.

b. Public: Paradoxically, this would be *justified*. Why? This is because government ownership of buses and trains is impermissible in the libertarian society. In New York City, the locale in which this issue arose, the Interborough Rapid Transit (IRT) and the Borough of Manhattan Transit (BMT) train systems were initially private. They were contemplating a raise in their fares from a nickel to a dime, which they had every right to impose, and were, instead, nationalized (e.g., municipalized) by the city (Fischler, 2000; Fischler and Handerson, 2004; Gotham Gazette, 2003; Hood, 2004) government.⁷

Thus, in libertarian eyes, the N.Y.C. subway system is as legally valid as are any of the collectivized farms or factories of the Soviet Union, namely, not justified at all.⁸ So, what is the appropriate reaction to an enterprise built on theft? Should its “private property rights” be respected? No, of course not, since it lacks these amenities; indeed, its very existence is predicated on the *absence* of this institution. Thus, turnstile jumping would not be considered a crime under libertarian law.⁹

2.7. Aggressive panhandling; squeegee men

There is no need to make any Private – Public distinction here. Aggression is a per se violation of the NAP, wherever it occurs. This is hardly a “broken window” understood as a minor aberration which leads to a real crime. This is a real crime itself. And, the same goes for other non-victimless or actual crimes such as murder, rape, theft, kidnapping, arson, etc. These are per se violations of the NAP and should be prohibited wherever they occur.¹⁰

2.8. Graffiti

a. Private: Painting another person’s private property without his permission is a trespass, clear and simple. It would be prohibited in the libertarian society.

b. Public: Marking up or defacing public property is entirely a different matter. For the anarcho-capitalist libertarian (Rothbard, 1982; Woolridge, 1970), all public property is illegitimate. Therefore, if it is attacked by graffiti artists, this should not be considered a crime. If we oppose graffiti on such buildings, let us privatize them, and then it would be a transgression to mark them up in any way opposed by their new owners. The minarchist libertarian (Nozick, 1974) supports some public property, such as buildings needed to support armies, police and courts. Graffiti on any of these structures would be considered by them as on private property, and strictly prohibited. However, there are numerous government installations anathema to this version of libertarianism. If their proponents acted in a manner consistent with their own espoused philosophy, they would not want to prohibit by law painting buildings housing such enterprises.

2.9. Litter

a. Private: It is *impossible* for litter to occur on private property. If garbage appears there, it is either trespass or welcomed; in neither case is it litter. Consider the circus, or baseball stands after the event is over. The premises are positively replete with¹¹ candy wrappers, popcorn boxes, soft-drink cups, spilt beer, etc. Is this litter? It certainly appears that way, and did this occur on public property it most certainly would constitute litter, but not here. This is a matter of logic, because on such types of private property the owner full well realizes, and welcomes, the dispersal of such garbage after the event.

What about at fast food restaurants? Here, the situation is a bit more complicated. For if customers drop detritus on the floor, or fail to place their leavings in the receptacles conveniently provided for that purpose, they would be violating an implicit contract: the emporium will keep prices low, in return for patrons cleaning up after themselves. However, there are limits to this implicit

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agreement. If a diner spills a soft drink all over the table and onto the floor, he is not expected to ply a mop and return the premises to their previous spotless condition. The employees of the restaurant will do that.

b. Public: It is only on public property that actual litter can occur. Consider highways. Their bureaucratic management (Mises, 1944) is simply unable to treat motorists as customers. If they do not, they suffer no financial penalty for failing in this regard. In the view of Sowell (undated): "It is hard to imagine a more stupid or more dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong." Any private restaurant or shopping mall that treated its denizens the way the highway patrol deals with travelers, would soon be out of business. No such penalty accrues to those in charge of the nation's highways (Block, 2009)

2.10. Public urination

a. Private: There is not a private mall or restaurant or any such establishment in the nation that does not offer toilet facilities to its patrons. The very idea is absurd. Any that overlooked this vital service would soon enough suffer bankruptcy. If all sidewalks were privately owned (Block, 2009), there is little doubt, likewise, that such services would also be provided. Of course, if the urination occurs not in the bathroom toilet provided for that purpose, but out in "public" in a privately owned facility, this would constitute a criminal trespass.

b. Public: When you "gotta go, you gotta go." Sorry for the infelicitous phrasing of this basic biological fact, but the truth of it cannot be denied. The government of course, facing no "weeding out" (Hazlitt, 1946) market test, fails dismally in satisfying those who use their premises. What is to be done? Why, "let 'er rip" is the response from the libertarian quarter. Yes, of course, this violates the "broken window" program. So much the worse for the "broken window" program. Urinating is not a crime.¹² People should be free to use the public streets as the toilets they are.

2.11. Selling "loosies"

a. Private: This refers to selling untaxed individual cigarettes. Would this be allowed in a private shopping mall? This is unlikely in the extreme. The owner of such an establishment collects rental fees from the retailers who locate there. To have an individual, such as Eric Garner of Staten Island, engage in such an enterprise would undercut their rent roll. Why would a seller of cigarettes pay good money to do so while leasing space from the mall owner if he could set up shop in the middle of a mall thoroughfare and pay nothing for the privilege?

b. Public: Eric Garner of Staten Island engaged in this act on a public street. Before we discuss whether or not such activity would be allowed in a libertarian society with public streets,¹³ let us turn to the issue of whether this was the cause of his death, as is widely asserted (Calabrisi, 2014).

Writes Sowell (2014): "The death of Eric Garner has likewise spawned stories having little relationship to facts. The story is that Garner died because a chokehold stopped his breathing. But Garner did not die with a policeman choking him. He died later, in an ambulance where his heart stopped. He had a long medical history of various diseases, as well as a long criminal history. No doubt the stress of his capture did not do him any good, and he might well still be alive if he had not resisted arrest. But that was his choice."

I think it safe to go even further than Sowell (2014), and maintain that had Garner¹⁴ not resisted arrest, had he placed his hands behind him for the handcuffs as ordered by police, he would be alive today. According to Former New York City Police Commissioner Bernard Kerik: "You cannot resist arrest. If Eric Garner did

not resist arrest, the outcome of this case would have been very different. He wouldn't be dead today" (Meyers, 2014).

What, then, is the libertarian position on what he did that prompted his (attempted) arrest? It is that he was entirely within his rights to do so. "Tax, schmax" might be the response from this quarter to the fact that he did not pay taxes. Similarly, the fact that it is illegal to sell cigarettes one at a time, and that they must be sold in entire packs, is hardly compatible with the emphasis of laissez faire capitalism that people may engage in any acts they want, provided only that they are not per se violations of the persons or legitimately owned property of innocent people. Mr. Garner's commercial behavior certainly does not fit that bill.

But what of the fact that his behavior was "unfair" to the tax paying shopkeepers in front of whose premises he was conducting his sales? This claim must be rejected, at least by libertarians, on several grounds. First, the store owners were if anything guilty of aiding and abetting an improper institution, the government. They deserve no special consideration on that ground alone.¹⁵ Second, this is what competition is all about: each entrepreneur struggles to bring his product to market in a manner more acceptable to consumers than his competitors (Kirzner, 1973). If Garner was guilty of anything, it was of engaging in "capitalist acts between consenting adults" (Nozick, 1974, p. 163)

3. Conclusion

We have analyzed "broken window" policing through the prism of libertarianism. We have found this policy wanting in several regards; not because it is successful or unsuccessful in reducing crime, the usual considerations. Rather, in terms of whether or not each of these separate policies violates the NAP of libertarianism. Our conclusion is that some few of these police actions are justified under this rubric, but most are not.

Notes

¹ Especially if these eyesores are allowed to remain

² This "broken window" policing must be sharply distinguished from the "broken window fallacy" in economics. The latter is a Keynesian notion that if windows are broken, this will help the economy, since the glazer will have more jobs to do, and his expenditure of the money he earns in fixing windows will in effect prime the pump of the economy. For an antidote to this fallacy, see Hazlitt (1946).

³ New York City police commissioner Bill Bratton is perhaps the most well-known practitioner of this philosophy.

⁴ Of course, we can only take this analysis so far. If someone is going 250 mph on a highway, or 90 mph on busy city streets (Rodney King) even without inebriation this would constitute a clear and present danger, or, in libertarian-speak, a threat, which violates the NAP. Just how fast would the motorist have to be traveling in order for this consideration to kick in? That is hard to say. It constitutes a gray area, or a continuum (Block & Barnett, 2008)

⁵ The same analysis applies to speeding

⁶ Positing that the rules of the private road prohibit this.

⁷ Which then raised the fares by this precise amount.

⁸ The IND when joined to the IRT and the BMT, constitutes the present NYC subway system. The former was not itself municipalized. But, it was built with money mulcted from the citizenry via taxes, so is just as improper as are the other elements of this system.

⁹ The same goes for "borrowing" a book (from a public, not a private) library, and not returning it. For a libertarian analysis of the proper relation with the unjust state, see Block, 2002, 2004, 2006, 2007, 2009A, 2009B, 2010, 2011A, 2011B, 2011C, 2011D, Block and Arakaky, 2008. Of course, I do not regard the U.S., or any other country I may ever visit, as an unjust state.

¹⁰ Of course, the squeegee men who first ask if they can squirt your windshield with dirty water, and then rub it with a dirty rag would be an exception. But the overwhelming proportion of them do not first seek permission before touching your property.

- ¹¹ But not littered by
- ¹² Purposely aiming in a wrong direction is an exception to this general rule.
- ¹³ A pure libertarian society would have no public streets. So, we are perforce discussing a semi demi quasi libertarian situation.
- ¹⁴ A mountain of a man, at 6'3" and 350 pounds (Meyers, 2014)
- ¹⁵ They paid these taxes under duress, so they cannot themselves be considered criminals.

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