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5 Zonal banning and public order in urban Australia

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Introduction

Australian governments of various ideological persuasions at local, state, territory and federal levels have introduced a range of zonal governing techniques to manage the flow of people in urban spaces. Despite the impetus for open movement within nations or larger regional groupings, such as the European Union, considerable governmental effort has been directed towards managing public order through the practice of geographic exclusion. Zonal regulation allows police and authorized private security personnel to undertake enhanced population surveillance, summary justice and exclusionary practices within a declared urban geographic region and formally ban those engaging in disorderly activity. We examine this process in the Australian state of Victoria by using Zedner’s (2010: 391–94) conception of “enemy criminal law.” As a form of enemy criminal law, zonal regulation adopts property, administrative and contractual governance principles to augment conventional methods of urban securitization. This approach to maintaining public order requires new forms of mass population surveillance to enforce zonal bans in designated public places.

To date, most discussions of banning and related forms of mass surveillance focus on national border control and identity authentication procedures. This logic now permeates many localized forms of regulation that aim to promote greater urban security. This chapter describes the legal right to ban “undesirable” individuals and groups from entering or using certain “major-event areas” and “designated entertainment zones” in the state of Victoria. These zones are exemplars of the contemporary public order maintenance revolution in Australia that legally authorizes the convergence of public and private policing functions and the use of mass population screening to ensure selective and unimpeded population flows. This chapter then goes on to explain how computerized surveillance and identity verification technologies have become necessary yet problematic methods of enforcing zonal bans.

Managing urban space through zonal bans

Since the mid-1990s, extensive reforms to public order laws throughout Australia highlight a broader cultural intolerance of disorder that mirrors
developments in the United Kingdom (Young 1998), Germany (Belina 2007), the Netherlands (Schuilenburg 2012), the United States (Beckett and Herbert 2010) and Canada (Hermer and Mosher 2002). New configurations of criminal law challenge the ideal of social inclusion by protecting selective and desirable commercial flows, particularly in large inner-urban housing redevelopment and entertainment precincts. Those visibly affected by illicit drug addiction, the homeless (Blomley 2010), beggars, the mentally infirm, antisocial youth (Crofts 2011; Crofts and Witzleb 2011) and drunken male “thugs,” “hoons,” or “yobbos” (Palmer et al. 2012: 306) are subject to a tighter array of behavioral controls and related surveillance practices designed to preempt and eliminate public disorder from urban space. While it is debatable whether these developments are part of a coordinated policy transfer process designed to control urban crime (Newburn and Jones 2007; Jones and Newburn 2007), extensive reforms to criminal, major-event and liquor licensing laws that incorporate zonal banning are now common forms of bio-political securitization in most major Australian cities. Such reforms promote the idea that public order can be maintained by excluding dangerous or troublesome individuals from designated commercial and entertainment areas. By extension, zonal bans allow for enhanced human and electronic surveillance to monitor population flows and exclude dangerous or troublesome populations (Schuilenburg 2012; Mattelart 2010; Aas 2011).

The current “governmentality of unease” that endorses “profiling and containing ... mobility” (Bigo 2011: 47; Aas 2011) adapts the logic of immigration control to prevent “noncitizens” from accessing goods or services provided by national governments (Zedner 2010: 381). As the “logic and language” of national citizenship restrictions “seep into domestic crime control” policies, a growing number of publicly visible “irregular citizens” (Zedner 2010: 381) are considered to warrant increased enforcement scrutiny for disrupting or blocking legitimate urban population flows. Enhanced criminalization and police enforcement powers that incorporate preemptive “broken windows” philosophies (Belina 2007; 2012; Lippert 2012; Crawford 2006) focus attention on the overtly visible signs of urban decay in one of two ways. Either they rezone “deviant industries,” such as legal brothels, into outer suburban industrial enclaves (Crofts 2007: 4), or they ban people from entering a growing range of urban residential and commercial spaces. Although the state has always had the power to enact regulatory offences that tinker with accepted due process requirements under the criminal law (Hildebrandt 2009), heightened social concern about preventing urban crime signals a public order maintenance revolution that enables police and authorized security personnel to ban people from a growing range of designated public spaces.

Zonal banning is a form of “enemy criminal law” (Zedner 2010). As Crawford (2003; 2011b) indicates, many recent public order laws invoke private property and contractual law obligations in an emerging branch of exclusionary quasi-criminal law that targets antisocial behavior (Schuilenburg 2012). These modes of criminalization delineate basic citizenship rights through a merit-based philosophy that rewards compliance with socially desirable forms of behavior. At the same time, hybrid criminalization targets “presumptive enemies,” by allowing the state and
authorized private entities to "... punish prospectively in a bid to prevent future harms; ... [impose] disproportionate sanctions in the name of security; and ... [depart] from conventional procedural protections" (Zedner 2010: 391).

Enemy criminal law also involves the "fluid interpenetration of ... residual security [measures involving] ... state, municipal, private and voluntary policing" activities (Crawford 2006: 111). Because the re-active investigative focus of the public police is considered inadequate in dealing with insecurities about crime (Crawford 2003), urban governance has evolved to incorporate a growing amalgam of public order strategies. Any blockages "to the idealistic vision of a public [sic] sphere and space that is open to everyone" increases the demand for laws enabling the "exclusion and expulsion" of undesirable individuals (Belina 2012: 20). Therefore, the power to ban is directly linked to the right to access protective enforcement services based on a citizen's social standing, appearance or "economic utility" (Zedner 2010: 394). As urban security becomes a publicly sanctioned "club good" (Crawford 2006), preemptive forms of social exclusion that target visible signs of urban disorder gain increased social acceptance. Lippert's (2012) examination of Business Improvement Districts (BIDs) that aim to encourage "clean and safe" urban commercial passage by eliminating crime, low-level disorder, vagrancy and begging in Toronto, demonstrates how this form of securitization involves selective collaborations between diverse business, policing, municipal and security industries. In Crawford's terms, these and many other urban crime prevention strategies

... are more frequently provided by and through collective 'club' arrangements, often with implications for the experience of public policing, which is left to manage ... crime and disorder displacement, and to police the bad risks excluded from club membership.

(Crawford 2006: 121)

Increased fixed penalties, strict liability offences, incentives to plead guilty and other procedural adaptations to the criminal law (Ashworth and Zedner 2008) are all linked to the "territorialization of urban governance through the construction of differential 'zones' of security governance" (Crawford 2011b: 3). Recent Australian public order laws reflect these trends by enabling state government Ministers or unelected bureaucrats to classify a particular geographic region as a "designated area" (Liquor Control Reform Act Vic 1998 Part 8A). Once this designation is made, police and security personnel can implement various preemptive securitization measures to deal with crime and public disorder. Our term "zonal regulation" distinguishes these approaches to urban securitization from conventional criminal and summary offence laws that apply uniformly within each jurisdiction. Although Crawford does not define the term "zones," we believe it incorporates the preemptive "language and logic" of "enemy criminal law" (Zedner 2010) by regulating public "incivilities" (von Hirsch and Simister 2006) through the power to ban. Zonal regulation also
incorporates the graded structure of various banning, barring and exclusion provisions currently in force in Victoria and several other Australian states that equate “physical presence with social harm” (Belina 2012: 21).

Major-event sites and nightclub precincts are the main settings where temporary zonal bans can be implemented to enhance urban security. Extended bans can also be imposed by authorized persons or their agents, or through court orders. We consider the convergence of these zonal banning policies (Bennett 1991) to be tied to the “long-term social processes and public acceptance of the routines of surveillance” that permeate contemporary urban life (Bigo 2011: 47; Monahan 2011). Zonal bans either expressly or tacitly endorse the expansion of “open-street” CCTV networks, identification scanning, automated and ticketing systems and the use of portable X-ray devices to prevent unauthorized individuals and items, such as weapons or drugs, from entering a designated zone. These population screening technologies are essential to enforce zonal bans and the accompanying system of fixed penalties (Ashworth and Zedner 2008: 26–8) under a “simulated” order maintenance “demerit point” framework (O’Malley 2010: 801–3). These surveillance measures are not necessarily incompatible with individual privacy, due process or other important citizenship rights (Hildebrandt 2009; Solove 2011; Lips et al 2009; Aas 2011). Nevertheless, their alignment with several major inner-city redevelopment projects seems to equate urban security with the power to ban undesirable “others” through “enemy criminal law.” By extension, as zonal regulation in declared public areas increasingly draws from approaches to security governance adopted in enclosed “mass private” spaces (Palmer and Whelan 2007: 401–2), new forms of mass population surveillance appear essential to contemporary order maintenance and law enforcement.

Below we describe a link between an extensive urban renewal program in the City of Melbourne and the incremental expansion of zonal banning laws in Victoria’s major-event sites and night-time economies. Since the early 1990s, the attempt to eliminate disorderly and antisocial conduct through the gradual expansion of public order laws has produced a convergence of public policing and security functions at major-event sites and licensed venues. While various alcohol supply (Victorian Auditor-General 2012), anti-violence (Drugs and Crime Prevention Committee 2010) and public surveillance measures (VLRC 2010) have had mixed effects in reducing crime and disorder, zonal banning has been relatively immune from critical public debate in contemporary Australia. Our discussion views zonal banning as a key dimension of “enemy criminal law” that simultaneously reinforces the commercial appeal of revitalized inner-city entertainment areas and heightened public insecurities over groups of young “hoons,” “yobboes,” and “underage drinkers” attending these areas en masse (Palmer et al. 2012). In addition, the use of legal provisions derived from private property law to maintain public order adds legitimacy to contentious mass population surveillance measures aimed at enhancing security in a growing range of urban exclusion zones (Blandy and Sibley 2010). Whether this approach to urban securitization genuinely reduces crime, antisocial behavior
or alcohol-related harm within or beyond Victoria’s designated areas remains conjectural.

The City of Melbourne and its major-event venues

As with most Australian cities, Melbourne has experienced considerable growth since the late 1980s. The Central Business District (CBD) is a 2.7 square-kilometer grid governed by the City of Melbourne and surrounded by a 37.6 square-kilometer ring of inner suburbs (City of Melbourne 2012a). A glut of vacant office space during the 1990s led to an extensive urban regeneration strategy designed to produce a “resurgence in inner-city living” (City of Melbourne 2009: 3). Between 2001 and 2008, the CBD and immediate surrounds experienced an annual residential population growth of 13 percent (City of Melbourne 2009: 3). “Hoddle’s Grid,” a rectangular series of inner-city thoroughfares and laneways designed in 1837 by colonial surveyor Robert Hoddle, now has a stable residential population of around 18,000 and the largest proportion of dwellings, retail establishments, offices and employment opportunities in the municipality. Close to 50 percent of the CBD demographic comprises young professionals or university students aged between 20 and 24 years, who were born abroad, live in high-rise apartments that increasingly permeate the city’s landscape and have a relatively low average individual income of under A$500 per week (City of Melbourne 2009: 3–5). While tensions between preserving the city’s architectural heritage and future commercial, residential and retail development are ongoing (City of Melbourne 2012b), the Council estimates by 2021 the CBD population will reach 30,000.

The CBD renewal was prompted by the extensive corporate land development in the neighboring Docklands area. In 1991, the Docklands Authority was created by the Victorian state government to transform the southern tip of the CBD from “an industrial wasteland ... into a modern residential, commercial and visitor destination in the heart of Melbourne” (Docklands Authority Act 1991 s. 10).

Docklands Authority Act 1991 s. 10.

After 15 years of sustained construction, the governance of Docklands was transferred to the City of Melbourne in July 2007. By 2010, 75.6 percent of the total 3.5 square kilometers of reclaimed land comprised “(p)arking, office, residential accommodation ... transport/storage ... retail, indoor entertainment and industrial” facilities (City of Melbourne 2011: 2–3). Demographic indices reveal the residential population of 3,940 is more affluent compared with other surrounding municipalities (City of Melbourne 2006: 10–13). By 2009, population
rates were increasing by 55 percent annually and it is estimated 16,000 people will live in this high-rise suburb on the CBD’s fringe by 2031 (City of Melbourne 2011: 7). Docklands also attracts considerable domestic and international tourist flows and a daily influx of up to 40,000 workers in various banking, business and service industries, while 127 cafes, restaurants and bistros and 12 bars accommodate up to 20,000 patrons (City of Melbourne 2011: 18). Southern Cross Station separates the CBD and Docklands, which is the main transit-point for all Victorian suburban and regional train services. Several internationally renowned sporting facilities are readily accessible by rail, tram or a short walk through Melbourne’s well-tended inner-city parks.

Official crime statistics are a notoriously poor measure of urban insecurity. Nevertheless, it is worth noting that reported levels of serious interpersonal crime in the Melbourne Local Government Area (LGA) are negligible compared with most outer suburban and regional areas. Between 1 July 2009 and 20 June 2011, Victoria Police statistics recorded a 30–40 percent decline in all public order offence categories in and around the CBD (Victoria Police 2011a: 19). Victoria Police claim these reductions are due to the implementation of new on-the-spot fine and banning powers within the CBD and Docklands designated areas (Victoria Police 2011c: 5). We analyze the merits of these claims below. However, one notable feature of these reforms is their close resemblance to enhanced security arrangements introduced for the Melbourne 2006 Commonwealth Games. Despite limited evidence of widespread disorder, these order maintenance provisions apply to all major events held at Melbourne’s sports and entertainment venues.

Zonal bans and major events

Although recent “security-focused policies” at major-event venues might bear similarities to those introduced in other urban environments, they also retain a peculiarly site-specific focus that caters to distinct patron dynamics and order maintenance requirements (Warren 2003; Warren and Hay 2009). However, when viewed as “mass private” spaces (Crawford 2006: 125, Palmer and Whelan 2007) that are connected to other elements of urban governance, new legal, policing and security initiatives appear to lose their site-specific character. The increasing standardization of event management and public order law reforms that apply in and around major-event venues is a symptom of this issue. In Victoria, widespread reforms first introduced to regulate the Melbourne 2006 Commonwealth Games now extend to all major domestic sporting and entertainment venues.

Prior to the 2006 Commonwealth Games, the prevailing regulatory model at major-event sites combined summary and criminal law provisions with site-specific by-laws enabling police and authorized venue agents to eject people for untoward behavior. Subcontracted private security personnel and venue stewards had equivalent powers to deny entry or evict patrons if there were “reasonable grounds that the person has committed or is attempting to” contravene any venue
regulations (Warren 2003: 183–4). Historically, most major-event venues adopted similar trespass powers, but statistics for the Melbourne Cricket Ground (MCG) indicate these provisions were used sparingly (Warren 2003).

In the build-up to the Melbourne 2006 Commonwealth Games, the Major Events (Crowd Management) Act (2003) adapted key elements of the MCG by-laws to cover any domestic or international event at Docklands Stadium, the Melbourne Sports and Aquatic Centre, the National Tennis Centre, Olympic Park, the State Netball and Hockey Centre and the Phillip Island Grand Prix circuit. These provisions could be extended by the relevant Minister to cover any additional events that warranted this designation “in the public interest” (Major Events (Crowd Management) Act 2003 s. 5). Specified offences included refusing to undergo a compulsory bag or body search before entering a venue, failing to surrender prohibited items, such as “animals (other than ... a guide dog),” “laser pointers,” and “distress signals” (Major Events (Crowd Management) Act 2003 ss. 9–13), or unauthorized entry onto a managed playing surface. An “authorized” security guard or crowd controller registered under Victoria’s private agent’s licensing system (Major Events (Crowd Management) Act 2003 s. 25) could impose an immediate 24-hour ban for any of these offences and fines of up to A$6,000 (Major Events (Crowd Management) Act 2003 ss. 14–15). Police could also issue on-the-spot infringement notices for any venue offences, while both police and authorized officers could impose fines exceeding A$2,000 for the infringement of a 24-hour ban (Major Events (Crowd Management) Act 2003 ss. 16; 18–24). Magistrates could impose extended bans against offenders found to have trespassed on a playing surface or who refused to comply with an order to leave a venue (Major Events (Crowd Management) Act 2003 s. 17). A breach of these zonal bans could lead to fines exceeding A$6,000, but the number of fines imposed under these provisions is not publicly available.

Further reforms introduced in 2009 expanded the ministerial discretion to add new events to these provisions based on their size and economic significance (Major Sporting Events Act 2009 ss 9–10). All order maintenance powers were also extended to cover adjoining “event areas.” Table 5.1 outlines fourteen major public order offences and their accompanying penalties under the 2011–12 fine tariffs (Major Sporting Events Act 2009 ss. 83–84; 90). Police can now issue mandatory 24-hour zonal bans and on-the-spot infringement penalties of up to A$735 for all public order offences (Major Sporting Events Act 2009 s. 91), while court-imposed bans can be issued for up to five years and lead to a maximum A$14,648.40 fine if a person is found at or in the vicinity of a specified event (Major Sporting Events Act 2009 ss. 86–87). Several ambush-marketing provisions have also been introduced to protect exclusive brand insignia, television, sponsorship and ticketing arrangements (Warren 2002). These reforms enable police and authorized officers confiscate property associated with any proven offences and issue fines of up to A$100,000 against individuals or A$600,000 against corporations (Major Sporting Events Act 2009 ss. 43–44; 54–60; 117; 125; 137–50; 166; 170–82).
Table 5.1 Major sporting event public order offences and penalties

<table>
<thead>
<tr>
<th>Offence and section</th>
<th>Fine (dollar rate 1 July 2011–30 June 2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of a prohibited item (s. 62)</td>
<td>20 penalty units ($4,882.80)</td>
</tr>
<tr>
<td>Possessing lit distress signals or fireworks (s. 63)</td>
<td>30 penalty units ($7,324.20)*</td>
</tr>
<tr>
<td>Throwing lit distress signals or fireworks (s. 64)</td>
<td>40 penalty units ($9,765.60)</td>
</tr>
<tr>
<td>Possession of unlit distress signals or fireworks (s. 65)</td>
<td>20 penalty units ($4,882.80)*</td>
</tr>
<tr>
<td>Possession of alcohol not purchased in event venue or area (s. 66)</td>
<td>20 penalty units ($4,882.80)</td>
</tr>
<tr>
<td>Entry into sporting competition space (s. 67)</td>
<td>10 penalty units ($2,441.40)*</td>
</tr>
<tr>
<td>Throwing or kicking projectiles (s. 68)</td>
<td>20 penalty units ($4,882.80)*</td>
</tr>
<tr>
<td>Damaging or defacing property in and around an event area (s. 69)</td>
<td>20 penalty units ($4,882.80)*</td>
</tr>
<tr>
<td>Damaging flora in or around an event area (s. 70)</td>
<td>20 penalty units ($4,882.80)*</td>
</tr>
<tr>
<td>Blocking stairs, exists or entries (s. 71)</td>
<td>10 penalty units ($2,441.40)</td>
</tr>
<tr>
<td>Climbing a fence, barrier or barricade (s. 72)</td>
<td>10 penalty units ($2,441.40)</td>
</tr>
<tr>
<td>Obstructing the view of a seated person (s. 73)</td>
<td>10 penalty units ($2,441.40)</td>
</tr>
<tr>
<td>Climbing the roof or parapet of a building (s. 74)</td>
<td>10 penalty units ($2,441.40)</td>
</tr>
<tr>
<td>Refusing to leave or re-entering a venue within 24-hours (s. 85)</td>
<td>20 penalty units ($4,882.80)*</td>
</tr>
</tbody>
</table>

Source: Major Sporting Events Act 2009 ss 62–74, 85

* Also subject to an on-the-spot infringement notice issued by police

Palmer and Whelan's (2007) interviews with Victoria Police and subcontracted security personnel working at the 2006 Commonwealth Games reveal the 2003 reforms shifted the dynamics of public order maintenance in and around designated event sites. As "the number of private security firms rostered to these events" increased, venue managers routinely hired a special "risk manager" to oversee all security activities (Palmer and Whelan 2007: 410, 412). Rather than requesting the Victoria Police to provide equivalent oversight and "beating policing" services, this contractual model was considered more "cost effective" (Palmer and Whelan 2007: 410, 412–3). Even with enhanced discretion to implement on-the-spot fines, zonal bans or to formally prosecute under summary offence legislation, the contractual securitization model ensures the public police only retain a marginal "back up" order maintenance role. Further, these provisions now apply to an extended zone surrounding a growing number of designated venues administered by venue managers who subcontract all major coordination and operational functions to private specialists. While the classification of many spontaneous forms of crowd behavior as offences generates concerns over the cultural sanitization of Australia's major sporting events
(Taylor and Toohey 2011), the legal authorization of a punitive and highly discretionary fine and ban enforcement structure effectively privatizes a growing zone of public space in and around Melbourne’s major-event sites. This approach to public order maintenance integrates the pre-emptive logic of “enemy criminal law” under a user-pays proprietary and contractual securitization framework, which remains largely immune from the supervisory and judicial oversight requirements that apply to public policing activities. Moreover, records of privately enforced fines and zonal bans are protected by trade secrecy provisions common to most privately negotiated security contracts.

Designated alcohol-free zones

Historically, local governments could enact by-laws enabling police or municipal officers to enforce provisions designed to protect community infrastructure, such as public roads, sewerage, trains and dance saloons (Collins and Ellis 1933). These regulations also delineated various public spaces, such as parks, as “alcohol-free zones” or “dry areas” that had bearing on law enforcement activities (Webb et al 2004: 2–6). The actual conduct of individuals contravening these regulations was ultimately a matter for the courts to decide if police issued a summary charge.

After the state government deregulated venue licensing in the mid-1980s, public anxieties over the extent of alcohol-related violence and disorder throughout Victoria increased markedly. Market forces attracted several large nightclub at the south end of Melbourne’s CBD, which generated many governmental and independent inquiries into liquor supply and venue security (Department of Justice 2009; Drugs and Crime Prevention Committee 2010; Zajdow 2011). In 2007, zonal bans were introduced to counter persistent concerns over rising violence and antisocial conduct in many Victorian nightclub precincts. Zonal regulation in the night-time economy mirrors the Major Sporting Events Act by enabling police and registered security personnel to evict people from private venues and public spaces considered by the Liquor-Licensing Minister to justify additional securitization. Similar zonal bans can be authorized under voluntary Liquor Accord agreements between licensed venue managers, police and local councils (Liquor Control Reform Act Vic 1998 s. 146A-D). However, the use of “enemy” criminal law to maintain “public safety and public order” (Liquor Control Reform Act Vic 1998 s. 148I(6)) within the liquor-licensing structure exposes a new generation of presumptive enemies to a greater array of punitive, preemptive and discretionary enforcement and surveillance measures.

Ministerial directives are based on evidence of any alcohol-related disorder within a proposed area provided by the Victoria Police or the Victorian Commission for Gambling and Liquor Regulation (Liquor Control Reform Act Vic 1998 s. 147). Zonal banning currently applies in thirteen “designated” areas throughout Victoria. A zonal designation can be appealed by a local authority and scrutinized in court (see Liquor Control Reform Act Vic 1998 s. 148), but this has yet to occur in Victoria. Most designated zones outside the Melbourne CBD and
Docklands are inner-metropolitan suburbs or regional cities with high concentrations of licensed venues (see Victorian Commission for Gambling and Liquor Regulation 2012).

Police may ban any individual who does not normally reside in a designated zone for up to 72 hours for drunk and disorderly behavior, using threatening language, possessing unlawful weapons, willful property damage or serious violent and sexual assaults (Liquor Control Reform Act Vic 1998 ss. 148B(6)-(7); Schedule 2). A court can extend a short-term ban if the offence is proved and carries an imprisonment term of less than 12 months (Liquor Control Reform Act Vic 1998 s. 148I). Breaches detected by police can lead to mandatory eviction from a specified area or declared zone and fines exceeding A$7,000 (Liquor Control Reform Act Vic 1998 ss. 148J-L). Supplementary “barring” powers can also restrict entry within a 20-meter zone surrounding any licensed venue in Victoria. Barring orders are determined on a sliding scale ranging from one to six months depending on a person’s previous offence history. These powers apply if police, venue managers or their agents believe a person’s intoxication or “drunk, violent or quarrelsome” behavior presents a risk to themselves or others (Liquor Control Reform Act Vic 1998 s. 106D). A barred person detected within the 20-meter zone is subject to fines of over A$2,000 (Liquor Control Reform Act Vic 1998 s. 106J).

Table 5.2 demonstrates that between June 2009 and June 2010, police were quite willing to impose short-term zonal bans in the Melbourne LGA. Table 5.3 indicates that while over 80 percent of people receiving short-term and extended court-ordered zonal bans were young men aged between 15 and 34 years, there were only 32 detected contraventions of short-term orders between 1 July 2009

<table>
<thead>
<tr>
<th>Designated area</th>
<th>2009–10</th>
<th>2010–11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bendigo(a)</td>
<td>14</td>
<td>8</td>
</tr>
<tr>
<td>Ballarat(a)</td>
<td>58</td>
<td>64</td>
</tr>
<tr>
<td>Frankston</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Geelong(a)</td>
<td>5</td>
<td>15</td>
</tr>
<tr>
<td>La Trobe</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>Melbourne</td>
<td>1,697</td>
<td>681</td>
</tr>
<tr>
<td>Port Phillip</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>Shepparton(a)</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>Prahran</td>
<td>30</td>
<td>18</td>
</tr>
<tr>
<td>Warrnambool(a)</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>Yarra</td>
<td>21</td>
<td>7</td>
</tr>
<tr>
<td><strong>Totals (n = 2,717)</strong></td>
<td>1,867</td>
<td>850</td>
</tr>
</tbody>
</table>

Source: Victoria Police (2011b)

\(a\) Denotes regional cities with populations under 200,000
Table 5.3 Age distribution of first bans and first exclusion orders, Victoria 2009–10 and 2010–11

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10–14</td>
<td>7</td>
<td>3</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>15–34</td>
<td>1,582</td>
<td>736</td>
<td>2,318</td>
<td>42</td>
<td>65</td>
<td>107</td>
</tr>
<tr>
<td>35–50+</td>
<td>175</td>
<td>83</td>
<td>258</td>
<td>8</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Unspecified</td>
<td>8</td>
<td>9</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>1,802(^a)</td>
<td>831</td>
<td>2,633(^a)</td>
<td>50</td>
<td>73</td>
<td>133</td>
</tr>
<tr>
<td></td>
<td>(1,772)</td>
<td>(2,603)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Victoria Police (2011b)

\(^a\) A calculation error of 30 cases appeared in the original source (correct figures in brackets)

and 30 June 2011 (Victoria Police 2011b). However, the 40 percent decline in the number of banning orders issued in Melbourne in this two-year period coincides with several additional discretionary fine enforcement powers under revised summary offence laws.

“Move-on” powers are a type of dispersal order enabling police to immediately evict people from public spaces for conduct deemed to be an actual or potential “breach of the peace” that might damage property or cause physical injury to another person, or that is considered “a risk to public safety” (Summary Offences Act Vic 1966 s. 6(1)). Failure to comply with a “move-on” directive can lead to an automatic A$244 infringement notice and a 24-hour zonal ban from the area where the offence occurred (Summary Offences Act Vic 1966 ss. 6; 60AA-AB). On-the-spot penalties can also be issued for public disorder, “riotous, indecent, offensive or insulting” behavior and using “profane, indecent, obscene” or “insulting language” in a public place (Summary Offences Act 1966 s. 17(1), Victoria Police 2011c: 5). These offences can lead to fines ranging from almost A$2,500 and up to two months imprisonment for a first offence, to over A$6,000 and up to six months imprisonment for a third offence. Between 1 July 2008 and 30 June 2011, 21,587 of these infringement notices were issued in Victoria. Table 5.4 also indicates that penalty notices under the less severe “move-on” powers are readily invoked to deal with public drunkenness both within and outside declared liquor-control zones.

There is no doubt that heavier on-the-spot penalties and broader definitions of conventional public order offences that enhance police enforcement discretion and restrict the scope of judicial review are the main hallmarks of “enemy criminal law.” The punitive impact of these reforms is especially magnified by the graded fine and imprisonment structure for repeat offenders. However, the zonal securitization component (Crawford 2011a) adds a further dimension to the enemy criminal law thesis. As short-term and extended bans can be implemented in areas surrounding private venues and where move-on powers have been
invoked, an increased range of penalties specifically targets zonal infringements. As with major-event regulations, these liquor-control and summary move-on powers are silent on how the zonal banning requirements are to be enforced. Our view is these laws tacitly create a new offence of “unauthorized presence” (Belina 2012) that enables new mass population screening methods to permeate the contemporary urban order maintenance landscape. While the effectiveness of this form of urban securitization remains largely speculative, zonal regulation governs urban mobility through a contemporary variant of the “pass law” system (Cohen 1992: 187). In fact, it seems virtually impossible to enforce the graded banning measures in Victoria without the introduction of networked mass surveillance and identity verification technologies amongst public, private and municipal law enforcement agencies.

Technology, protective policing, and zonal banning

As identity authentication is central to the power to ban persons within any geographic zone, cheaper portable and networked identity-recognition systems can streamline the administration of fines and short- or longer-term zonal prohibitions. Australian major-event venues have yet to adopt contentious facial recognition technologies (Schimmel 2011). However, electronic turnstiles activated by ticket scanners are installed at all major-event sites to regulate patron entry before mandatory security checks are undertaken for alcohol, weapons and other contraband items. These mechanized processes have been a standard method of entry into most closed or cordoned open-air major-event venues in Melbourne since the 2006 Commonwealth Games.

The incorporation of these surveillance measures in the CBD and Docklands zones has already begun. A mandatory “smartcard” transport ticketing system first proposed in 2002 (Victorian Ombudsman 2011) is now fully operational on all suburban rail and tram networks. Police have also deployed portable walkthrough scanners at Southern Cross and other major inner-city railway stations to randomly screen rail users attempting to enter inner-Melbourne with unlawful weapons (O’Connell 2012). Preventing access to these designated areas by foot, tram or private cars appears more difficult. However, Automatic Number Plate
recognition systems and tollway scanners are deployed on many of Melbourne's major road networks. In the future, any combination of urban zonal delineations and existing or new security technologies (Loader et al. 2010) may enhance mass population surveillance to create a digital securitization enclosure within the CBD, Docklands and neighboring suburbs.

The adoption of mass surveillance technologies by private businesses to mitigate the risk of liquor-control violations is also accelerated by venue-specific bans. Many venue managers have installed computerized systems requiring all patrons to have ID documents or fingerprints scanned as a condition of entry. Patron data can then be networked to equivalent systems used at other venues within a designated zone and by police to identify "flagged" or banned individuals (Palmer et al. 2011, 2012). Lengthy queues at venue entrances mean it is often impractical to scan all patrons (Palmer et al. 2012). However, there is virtually unanimous trust in the capacity of computerized ID verification systems to deter violent and antisocial behavior in designated zones. According to the following crowd controller interviewed in 2011, ID scanners are considered important in enforcing a venue or zonal ban:

I tend to pull someone aside if they have been banned and I just have to talk to them and tell them this is how it is. 'You keep going, you'll be banned for a long time' ... [Our venue is] the place to be on a Saturday night at the moment and it hurts them when they rock up and their friends are there and they can't get in.

Most Australian states have introduced new risk-based venue-licensing schemes (Department of Justice 2009), accompanied by proposals for license fee discounts (Law, Justice and Safety Committee 2010) and "affirmative defences" (Cross 2005: 404) for proprietors who install new surveillance technologies to enhance venue security. All licensed premises in Victoria are legally required to install high-resolution digital CCTV cameras to minimize disorder at entry points and on adjoining public walkways (VLRC 2010). Such legislatively mandated incentives normalize mass computerized forms of securitization, which reinforces the acceptance of zonal banning as a key method of promoting good order by constraining urban mobility.

Outside the Melbourne CBD and Docklands, routine approaches to public order maintenance are also shifting with the introduction of state-employed Protective Services Officers (PSOs). These quasi-police officers (Crawford 2006: 134–5) have a specific mandate to combat "crime and anti-social behavior," including vandalism, loitering and illicit drug dealing or use in various designated crime "hot spots," such as railway stations, other transport hubs and adjoining car parks (Justice Legislation Amendment (Protective Services Officers) Act 2011; Police Regulations 2003 reg. 64). PSOs can enforce move-on powers, detain people for public drunkenness or serve on-the-spot infringement notices for "riotous, indecent, offensive and threatening" behavior (Summary Offences Act 1966 ss. 6; 15; 60AA). This extension of summary offence powers replicates the fusion
of private and public policing functions at major-event venues. PSOs also have legal powers to demand a person’s name and address, issue infringement notices for transport ticketing, disorder and weapons offences, and detain the mentally ill or those with outstanding warrants. Such identity authentication powers can enhance the enforcement of preemptive bans in designated inner-urban zones, and provide a day-to-day enforcement complement to periodic “stop-and-search” blitzes ordered at the discretion of the Chief Commissioner of Police on Melbourne’s suburban rail network (Office of Police Integrity 2012: 26–7) and roads (Ainsworth 2012).

However, the lack of integration of these securitization developments has been widely criticized. An independent review of information communication technologies (ICT) deployed by Victoria Police recommended a centralized administrative structure to rectify several “information management and security” failures (KPMG 2009: 2). A subsequent independent investigation into seven major ICT projects across various public sector bureaucracies identified a consistent pattern of inadequate “leadership, accountability and governance, planning, funding, probity and procurement, (and) project management” (Victorian Ombudsman 2011: 15). Of particular concern was the protracted upgrade to Victoria’s crime database, which lacked “a clear vision for modern policing” and failed to generate the necessary “organizational transformation from a paper-based organization to an electronic organization” (Victorian Ombudsman 2011: 66). A further report into the use of “stop-and-search” powers to control prohibited weapons found significant police intelligence gaps resulted in the selective targeting of ethnic minority youths in “designated areas” (Office of Police Integrity 2012: 26–8). Suggestions that this problem can be overcome by allowing all people to be “stopped and searched equally” (Office of Police Integrity 2012: 8) demonstrate how mass population surveillance has become normalized in contemporary urban life (also see Bigo 2006), while reinforcing the political and public acceptance of zonal banning as an effective public order maintenance strategy.

Conclusion

The “logic and language” of zonal banning as a key element of urban securitization is enmeshed within broader patterns of inner-city redevelopment. Through the adaptation of private property law principles, public order maintenance is increasingly subject to dominant market and commercial approaches to managing signs of disorder that are considered to block free and unimpeded passage through designated areas (Lipert 2012; Blomley 2010). As more public spaces are governed by this security logic, those who disrupt legitimate commercial flows can simply be removed from sight. However, zonal regulation is also part of several contingency laws that require new forms of identity validation to preserve order in Australia’s cities. Any countervailing rights to privacy, free movement and presence in an increasingly fluid multi-agency law enforcement context are yet to be reconciled under this approach to “enemy criminal law” that promotes urban securitization through more intensive zonal regulation.
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References


Docklands Authority Act, Victoria, 1991.


Liquor Control Reform Act, Victoria, 1998.
Major Sporting Events Act, Victoria, 2009.


