Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decisions

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T he tenuous and often contentious relationship between racial minorities and the police is a perennial concern of scholars, policymakers, and the public. Despite the centrality of race in the historical development of the police, as well as in contemporary criminal justice policies and police practices, there are few scholarly attempts to develop a construct for understanding this relationship. This essay discusses the interactive relationship between race, space, and policing in U.S. history. These three factors have been central in forwarding race-based social control and have been intertwined in public policy and police practices since the earliest days of this country’s history. Despite the demise of de jure segregation and discrimination, de facto discriminatory policies and practices perpetuate a substantially authoritarian, regulatory, and punitive relationship between racial minorities and the police. Drug-war related, quality of life, and zero tolerance policing are integral to the social control imperative in the contemporary policing of racial minorities. This essay concludes with a discussion of avenues for change that could improve policing in a multicultural democracy.

The interactive relationship between race, space, and policing has been of social and political significance since the earliest days of American history. Monitoring the movement of slaves was a central concern for plantation masters and slave patrollers. The desire to regulate and subjugate the behavior of newly manumitted slaves was the primary impetus for creating new legal rules against vagrancy and loafing in the post-antebellum South. The rise of Jim Crow and the location and construction of urban ghettos and public housing were deliberate efforts to promote social control and isolation through racial containment. For the better part of our history, race has been a central determinant in the definition, construction, and regulation of public spaces. Some authors have even used the analogy of internal colonization to describe the relationship between African-American communities, the state, and the police (see Staples, 2001; Blauner, 1969).

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Although the experiences of African Americans and the police are widely known and documented, history shows that the relationship between race, space, and social control also holds for other racial minorities. For example, in the 19th century, Chinese immigrants were harshly and legally discriminated against in California. Forced to live in ethnic enclaves, "Chinatowns" became a central feature on the West Coast. Soon, local municipalities created special Chinatown police squads to police Chinese workers. Divorced from "polite" society, the rule of law seemed to have limited bearing over police activities in various Chinatowns, and blatant police corruption was common (see, e.g., Friedman, 1981). A contemporary example of differential treatment for racially identified spaces is illustrated in one author's contention that the Los Angeles Police Department (LAPD) consciously sacrificed Koreatown during the L.A. uprisings in order to concentrate limited police resources on more affluent Anglo neighborhoods on the periphery (Cho, 1993).

The history of Latinos in the U.S. indicates a similar pattern of separation and social control. Edward Escobar's (1999) excellent history of the relationship between Mexican Americans and the LAPD argues that the emergence of a race-based political consciousness among Mexican Americans in Los Angeles was largely due to egregious police practices in Mexican-American barrios. The "Zoot Suit" riots and the "Sleepy Lagoon Murder Trial" are the best-known examples of discriminatory police actions against Latinos (Mirande, 1987; Escobar, 1999). Indeed, the U.S. Civil Rights Commission held hearings to discuss tensions between Mexican Americans and the police. The following excerpt illustrates the similarity of experience between Mexican Americans and African Americans with respect to policing:

[The Commission] heard frequent allegations that law enforcement officers discriminated against Mexican-Americans. Such discrimination includes more frequent use of excessive force against Mexican-Americans than against Anglos, discriminatory treatment of juveniles, and harassment and discourteous treatment toward Mexican-Americans in general. Complaints also were heard that police protection in Mexican American neighborhoods was less adequate than other areas. The Commission's investigations showed that belief in law enforcement prejudice is widespread and indicative of a serious problem of police/community relations between the police and Mexican-Americans in the Southwest (U.S. Civil Rights Commission, 1970).

Urban spaces are socially and politically constructed to meet certain goals, ends, visions, and dreams. Ethnic/racial separation has historically been a central feature, and in some instances, goal in the development of American cities, and federal, state, and local governments as well as private actors have historically engaged in a range of discriminatory practices to create and preserve racial
discrimination and segregation. The social construction of space has had a significant impact on the development of policing in America. As Steve Herbert (1997) notes, the police are the domestic institution responsible for preserving domestic spatial sovereignty. Thus, how the police conceptualize territory is critical to understanding police work. In his book, *Policing Space: Territoriality and the Los Angeles Police Department*, Herbert discusses six “normative orders” in police organizations that instruct how they exercise their territoriality: the law, bureaucratic imperatives, adventure/machismo, safety, competence, and morality. Surprisingly, even though Herbert’s rich ethnographic descriptions of police behavior often mention race in passing, he does not discuss the ways in which race affect police attitudes and behavior in the policing of spaces. Some have argued that class, not race, is the more critical determinant driving police behavior. In the classic critical criminological assessment of the police, *The Iron Fist and The Velvet Glove*, the authors subsume the issue of race under that of class, arguing that police brutality against racial minorities reflects the broader goal of capitalist repression of the working class (Platt et al., 1982).

Hall et al. (1978) place race, space, crime, and social control at the center of their analysis. In their detailed analysis of the emergence of “mugging” as a political issue in London in the 1970s, Hall et al. deftly exposed the ways in which the social and political construction of this “crisis” delineated the institutional imperatives that “reproduce” racial disadvantage. “Racism is not simply the discriminatory attitudes of the personnel with whom blacks come into contact. It is the specific mechanism which ‘reproduces’ the black labour force, from one generation to another, in the places and positions which are race specific” (Ibid.). This perspective recognizes the connection between class, race, and social control, yet clearly identifies the structural conditions that perpetuate racialized spaces and experiences.

Although the connection between race, space, and policing is useful for understanding tensions between the police and many racial minorities, this analysis will focus primarily on the experiences of African Americans. The dearth of research on police/community relations with other racial minorities is one reason for the more limited discussion. However, the enforced racial segregation that African Americans experienced is particularly unique and insightful. As Massey and Denton (1993) note, “no group in the history of the United States has ever experienced the sustained high levels of residential segregation imposed on blacks.” The linkages between race, space, and policing become clear in reviewing the history of legally sanctioned racial discrimination and residential segregation of African Americans and the development of policing. Government-supported racial discrimination and segregation have deeply affected the organizing ethos and practices of U.S. policing. A legacy of biased police discretionary decision-making persists beyond the demise of de jure racial discrimination, perpetuating a relationship between the police and racial minorities that is primarily authoritar-
ian, regulatory, and punitive in character. Further, contemporary policy decisions at the federal, state, and local levels continue to perpetuate a contentious relationship between the police and racial minorities based on social control rather than public service imperatives.

**Policing Space, Policing Race: The African-American Experience**

The American journey through slavery left an indelible mark on social and political institutions, particularly the police. Although informal policing mechanisms began in the colonial period, the emergence of a semi-formal, organized policing force can be traced to slavery (Williams and Murphy, 1990; Reichel, 1999). Under the slave regime, controlling a slave labor population that in some instances equaled or surpassed the size of the master class was a pressing social control problem. The threat of slave insurrection and the recurrent problem of slaves fleeing captivity necessitated the creation of a means of regulating the movement of slaves. Slaves moving beyond the boundaries of plantations were required to have passage papers that authorized them to do so. In the late 18th century, loosely organized slave patrols were created to patrol and enforce these regulations, and to engage in what Franklin and Schweninger (1999) have referred to as "the hunt." South Carolina, a state in which slaves outnumbered whites, was the first state to institute such a patrol.

Slave patrols were initially comprised of volunteers. Over time, particularly with the passage of the Fugitive Slave Act in 1850, state governments were given broad authority to compel individuals to join slave patrols. Slave patrols were vested with virtually unlimited coercive authority in their charge to monitor the movement of slaves and track down runaways. In many instances, slave patrols could and did enter slave homes with impunity. Slave patrolers, or "paterollers" as slaves came to call them, had the authority to physically punish runaway slaves. Patrollers were widely feared by slaves, since whippings and other extremely violent actions were not uncommon (Williams and Murphy, 1990; Reichel, 1999). A former slave recounts how one persistent runaway submitted to self-immolation rather than face the wrath of patrollers.

There was once a runaway slave who had been chased at different times for four years. At last a set of patrollers came in with their dogs and said they were determined to catch him. They ran him for two days. Once in a while he would mislead the dogs and make them double on their tracks and he would gain a little rest. Eventually they would again pick up the trail and you could hear the hounds as they ran; say, here he goes sing-a-ding; there he goes, sing-a-ding. At last, finding that he could not escape, he ran deliberately into a blazing furnace and was burned to death rather than be caught and suffer the tortures that awaited him (WPA Slave Narratives Project).
With the end of slavery, Southern whites were faced with new economic and social control dilemmas. On the one hand, the slave-owning class was dependent on black labor to sustain the largely agricultural economy. On the other hand, ensuring the social and political subordination of newly manumitted slaves was essential if the ideology of white supremacy were to continue to reign. An important legal tool for pursuing these aims was the passage of broadly defined vagrancy and loitering statutes that came to be known as the Black Codes. Mississippi and South Carolina became the first states to pass such legislation near the end of 1865. Even though many of these laws were racially neutral, the intention was clearly to control the black population. By law, blacks were required each January to exhibit to the government evidence of employment for the coming year. African Americans were also prohibited from engaging in a broad range of other “disorderly offenses,” such as using insulting gestures or language, engaging in malicious mischief, preaching the Gospel without a license, or taking on employment other than as farmers or servants without paying an annual tax (Williams and Murphy, 1990). Those who violated the codes received punishments ranging from fines to serving on chain gangs or doing involuntary labor on a plantation. The Black Codes essentially created a set of legal tools for ensuring the continued subordination of black labor to white economic power.

As the Black Codes came under legal attack, Southern states aggressively pursued radical racial segregation to ensure white supremacy and black subordination. One of the great ironies of history is that a practice that became synonymous with the South actually began in the North. In his classic pre-Civil War treatise on American social and political life, Democracy in America, Alexis de Tocqueville (2000/1835) was surprised to find, “the prejudice of race appears to be stronger in the states that have abolished slavery than in those were it still exists and nowhere is it so intolerant as in those states where servitude has never been known.” By 1860, the system of segregation permeated all aspects of black life in the free states (Woodward, 1968).

In the South, the proliferation of Jim Crow grew out of economic crisis, political opportunism, and racial fears. With the demise of congressional reconstruction in 1877, white southerners were left to deal with the “race problem” on their own terms. In the 1890s, Southern states experienced an economic depression that some estimated to be greater in magnitude than the Great Depression (Ibid.). White solidarity was viewed as essential for the continued economic dominance of the white population. Ensuring that blacks did not vote was key to retaining white power. Political disenfranchisement of the black population flourished through devices such as grandfather clauses, white-only primaries, literacy and civic exams, and intimidation and violence aimed at deterring black voters from going to the polls. Further, as Southern states began to urbanize, fears of “race-mixing” began to mount.

Within this context, Jim Crow advanced rapidly as a means of resolving
multiple problems. Unlike the North, residential racial segregation was not aggressively pursued in the early years of Jim Crow. As Massey and Denton (1993: 26) note, Jim Crow in the South did not initially increase segregation or reduce black-white contact, but rather regulated the nature of interracial social contact. The intent of Jim Crow was to continually reaffirm and remind the black population of their lesser status or “place” in the larger society. Southern localities passed amazingly elaborate regulations to govern black life in shared public spaces and interactions between the races. Some of the regulations are astounding for their attention to detail. For example, some codes regulated the height, size, and color of Jim Crow signs (Woodward, 1968). However, legal rules do not fully represent the extent of Jim Crowism in the South. Practices often anticipated and sometimes exceeded the law. Since almost every aspect of black public life was regulated, and every white regardless of formal capacity or social station was viewed as superior to blacks, every white person was expected to participate in policing the racial lines (Woodward, 1968; Myrdal, 1944).

The Jim Crow laws put the authority of the state or city in the voice of the street car conductor, the railway brakeman, the bus driver, the theater usher, and also into the voice of the hoodlum of the public parks and playgrounds (Woodward, 1968).

Essentially, African Americans lived in a police state in which every aspect of shared public life was proscribed. Formal police organizations under this system were responsible for upholding the formal and informal social order. The formal police in the segregated South represented the South’s repressive civil order and the ideology of white supremacy overall. “He stands not only for civic order as defined by formal laws and regulations, but also for white supremacy and a whole set of social customs associated with the concept” (Myrdal, 1944: 535). Police brutality was frequently employed to punish insubordination and suspected criminals, and was another means of “keeping the Negro in his place more generally” (Ibid.: 540). Moreover, the police often overlooked or participated in overt acts of violence against blacks who offended against the reigning order.

Black migration from the South to the North surged after World Wars I and II. Northern industrial cities such as New York, Detroit, and Chicago were primary sites for black migration. As the black population grew, so did the tools and means for containing newly arrived blacks in burgeoning ghettos. Race riots broke out with some regularity in Northern cities between 1900 and 1920, largely due to black migration (Sugrue, 1996: 29). Federal policies played a significant role in encouraging white flight to the suburbs and restricting African Americans to specific inner-city neighborhoods. Local political leaders, real estate agents and developers, and community-based neighborhood preservationists used various tactics to discourage blacks from moving to white neighborhoods. In the postwar city, “blackness and whiteness assumed a spatial definition” (Ibid.: 9).
Blacks with the temerity to buy homes in "white" neighborhoods were often met with violence and intimidation. In Chicago, 58 Black homes were bombed between 1917 and 1921. One black real estate agent had his Chicago home and office bombed seven times in one year (Massey and Denton, 1993). Over 200 incidents of white antagonism directed at blacks moving into formerly white neighborhoods were recorded in the years between World War II and the 1960s in Detroit. Actions included "harassment, mass demonstrations, picketing, effigy burning, window breaking, arson, vandalism, and physical attacks" (Sugrue, 1996: 233).

These incidents were often community-organized events. White women — homemakers — were often leaders in acts of neighborhood resistance. The high participation rates of women offered a measure of protection against police actions since the police were often reluctant to arrest women and children (Ibid.). Even when gender participation was more balanced, the police were often slow to respond to acts of white violence against blacks and in some instances allowed whites to engage in terrorist attacks against black homeowners.

Although less widely recognized, racial discrimination and social control through residential racial segregation were also factors in the development of Western cities with appreciable black populations. In Los Angeles, for example, the city passed a law known as the Shenk rule that permitted saloons to charge blacks more than whites for beer (Bunch, 1990: 105). Racial segregation was also a primary tool of social control and discrimination. In early Los Angeles, residential racial mixing was more common than racial segregation, and African Americans enjoyed one of the highest home-owning rates in the country. Beginning in the mid-1910s, spatial social control and residential segregation were aggressively pursued through a variety of means. Fear of the establishment of a black political power base in Watts led to its annexation in the 1920s (Ibid.: 111). As the black population increased in the years after World War I and World War II, white homeowners used new tactics to deter blacks from moving into their neighborhoods. The most common tool was the residential racial covenant, which prevented the sale of real estate to blacks for a proscribed period of time. Racial covenants, along with other formal and informal acts, pushed blacks into the overcrowded neighborhoods of Watts and South Central L.A.

Developments in Northern and Western cities were directed toward spatially defining racial subordination. The inability to live beyond the boundaries of the ghettos and to move freely within the city without fear of police harassment severely restricted the civil liberties of African Americans. In 1963, one black minister in Detroit argued that the system of racial segregation in which those with "the desire and ability to move without the right to move" amounted to "refined slavery" (quoted in Sugrue, 1996).

This brief historical review of the connection between racial subordination and spatial development in the U.S. is relevant to understanding contemporary police
practices for several reasons. Legalized discrimination has had a profound impact on the police. As the primary agents of domestic law enforcement, the police were responsible for upholding and enforcing discriminatory laws. Further, the record shows that racial minorities have historically been viewed as objects of law enforcement and social control rather than as citizens entitled to civil protections. The centrality of race in the formation and organizing ethos of the police is often ignored, yet it is critical for understanding the development of policing as an institution.

Second, federal, state, and local governments played an active role in creating and preserving race-based spatial residential patterns. History shows that blatantly discriminatory and facially neutral polices that were discriminatory in practice were implemented primarily to segregate and discriminate against African Americans. The effects of these decisions are evident today in the persistent patterns of racial segregation that are readily visible in most major American cities. Further, policy decisions, particularly those concerning criminal justice at all levels of government, remain a central factor in perpetuating the differential treatment and outcomes of minorities who come in contact with the police.

Third, spatial segregation provided a means for differential delivery and distribution of public goods and services to black communities. As Gunnar Myrdal (1944) noted, residential segregation created “an artificial city...that permits any prejudice on the part of public officials to be freely vented on Negroes without hurting whites.” In other words, residential segregation provides a means by which wholly different standards of public service could be delivered without adversely affecting the white community. As the police are essentially a spatially deployed public service, the interaction between race and space are central to understanding police practices. Policing in the segregated zones has historically been qualitatively different from that in predominately white neighborhoods. Further, residential segregation created cognitive boundaries that defined those “places” that were relegated to racial minorities and those that were not. African Americans and other racial minorities who ventured outside their neighborhoods were often subject to police harassment for having the temerity to circulate “out of their place.”

Perhaps Williams and Murphy (1990: 28) put it most succinctly when they so famously noted:

The fact that the legal order not only countenanced but sustained slavery, segregation, and discrimination for most of our nation’s history and the fact that the police were bound to uphold that order — set a pattern for police behavior and attitudes toward minority communities that has persisted until the present day. That pattern includes the idea that minorities have fewer civil rights, that the task of the police is to keep them under control, and that the police have little responsibility for protecting them from crime within their communities.
Finally, despite the demise of *de jure* racial discrimination, police policies and practices perpetuate a relationship between the police and racial minorities that is substantially authoritarian and regulatory in character. In the contemporary setting, this relationship is most pronounced in the police policies and practices developed to contend with the war on drugs, to address urban disorder, and the growth of gang membership.

**The War on Drugs — The New Jim Crow?**

Police policies and practices associated with the “war on drugs” have been the most influential in perpetuating racially discriminatory police discretionary behavior. With the introduction of crack cocaine and the resulting violence associated with the drug trade, various criminal justice policies and practices have evolved to contend with the “drug problem.”

Particularly in the early years of the drug war, intrusive police practices characterized the response of local law enforcement to drugs. Commonly employed strategies have been buy/bust and reverse sting operations, in which police pose as buyers or sellers and then arrest offenders. The serving of “no-knock warrants” to “high-risk” drug offenders, as well aggressive raids on crack houses, were also part of drug war policing (Chambliss, 1994). The LAPD introduced military tactics into the fight against drugs. It pioneered the use of the “battering ram” — a vehicle equipped with a ramming device — to forcibly enter suspected crack houses. At times, police operations in the drug war have been reckless, if not blatantly illegal. For example, in August 1988, 80 police officers from various divisions executed a drug raid on four apartments on Dalton Avenue in South Central Los Angeles. Although officers seized only small amounts of cocaine and marijuana during the raid, the action resulted in “127 separate acts of police vandalism, ranging from doors, walls, and cabinets smashed apart, to smashed piggy banks.” One officer was reported to have “swung an ax so wildly as he tore from room to room in the apartments...that his fellow LAPD officers believed he was going to hurt himself or the other policemen in his path” (U.S. Commission on Civil Rights, 1999: 19). Thirty-three people were taken into custody, but only one was charged with possession of drugs. Chief Gates’ response to charges of officer misbehavior was customarily tepid: “the officers were trying hard to do the right thing — to solve the gang problem, to solve narcotics trafficking problem. Unfortunately, while doing the right thing, they were doing it in the wrong way” (Schiezl, 1990: 189). Although the police argue that no-knock warrants are necessary for police safety, they are an extremely intrusive practice that have accentuated the perception that inner-city neighborhoods are under military siege.

In recent years, the police practice of racial profiling has emerged as one of the most controversial drug war strategies. Racial profiling initially referred to the police practice of conducting traffic stops for petty offenses under the pretext that individuals stopped are likely involved in more serious criminal activity. Although
racial profiling has become the term-of-art to describe a range of race-based discretionary decisions, the practice is most commonly associated with drug profiling. The U.S. Drug Enforcement Agency is credited with introducing race as a variable in drug courier profiles (Glasser, 2000). Drug profiles claim to establish specific criteria for identifying drug couriers. However, the profiles are typically so vague and over-inclusive that virtually anyone can be considered a drug trafficker if the police deem them to be. (See, for example, Cole, 1999, Russell, 1998.)

It is often difficult to document these types of discretionary decisions. However, research conducted in New Jersey and Maryland confirms that some members of these agencies actively used race as a proxy for criminality. In New Jersey, Lamberth (in Harris, 1999) found that even though observational data determined that only 13.2% of drivers on the New Jersey turnpike were black, and that blacks and whites violated the traffic code at roughly the same rates, 73.2% of arrests were of African Americans. In Maryland, a similar phenomenon was found: 72% of those stopped were black, yet only 17.5% of the drivers were black. Further, African Americans were far more likely to be subjected to consent searches than were white drivers. Befitting scientific evaluation, Lamberth subjected both studies to rigorous statistical testing and found the statistical significance for both of these studies was literally “off the charts” (Harris, 1999).

A great deal of racial profiling occurs on what law enforcement agencies deem to be drug courier routes, such as major interstate highways. However, racial profiling is practiced in a broader range of local settings as well. Many African Americans particularly fear being stopped and harassed by police when they venture beyond the borders of the black community. For example, one man discusses his experiences with arbitrary police stops:

I come from a lower-middle-class black neighborhood, OK, that borders a white neighborhood. One neighborhood is all black, and one is all white. OK, just because we were so close to that neighborhood, we were stopped endlessly and it happened even more when we went up into the suburban community. When we would ride up and out to the suburbs, we were stopped every time we did it (Anderson, 1990: 197).

The experiences of prominent African Americans such as Wesley Snipes, Blair Underwood, and Johnnie Cochran, who have been stopped and questioned as they drove through high-income, white communities confirm that race is a central factor in how the police determine who belongs where. As David Harris writes,

Driving while black serves as a spatial restriction on African Americans, circumscribing their movements. Put simply, blacks know that police and white residents feel that there are areas in which blacks “do not
belong.” Often, these are all-white suburban communities or upscale commercial areas. When blacks drive through these areas, they may be watched and stopped because they are “out of place” (Harris, 1999: 19).

The police practice of indiscriminately stopping and questioning blacks likely deters blacks from frequenting “white” neighborhoods. Indeed, deterring African Americans from entering specific spaces for fear of police harassment is perhaps the most effective means of perpetuating race-based territorial boundaries.

Police policies and practices that have evolved to fight the drug war have contributed significantly to the wide disparities that exist in other aspects of the criminal justice system. The statistics are sadly familiar: even though African Americans comprise only 12% of the population and approximately 13% of drug users, they constitute about 38% of all those arrested for drug offenses and about 59% of those convicted for drug offenses (Ibid.). Approximately one-third of all African-American men are under some form of criminal justice supervision. In Washington, D.C., the number is close to 50%. One unintended consequence has been the rise of African-American men who, because of felony convictions, are barred from voting. Nationwide, nearly 13% of all African American men have been disenfranchised due to felony drug convictions. In Virginia, approximately 40% of black males have lost the right to vote (Sentencing Project, 1998). Indeed, it appears that the increase in felony convictions (many for drug possession rather than sales) has inadvertently replicated the deliberate disenfranchisement affects of the Jim Crow era.

The drug war has also had a significant impact on the life chances of African Americans caught in the criminal justice juggernaut. Black males convicted of drug offenses face a less than welcoming labor market and often have difficulty finding employment after release. Together, these factors have had profoundly negative consequences for the social organization of black communities. Recycling a substantial proportion of African American males through the criminal justice system has diminished the capacity of families to remain intact, eroded community social organization, and undermined community support and confidence in the criminal justice system.

Perhaps ACLU president Ira Glasser (2000: 707) said it best when he stated, “the drug war hysteria has become an engine for the restoration of Jim Crow justice in this country.” Such is the case when the policies and practices of a criminal justice system discriminate against African Americans on the basis of race.

“Quality of Life” and “Zero Tolerance” Policing: The New Black Codes?5

In 1982, Wilson and Kelling (1982) became the standard-bearers of the current resurgence in order maintenance or “quality of life” policing with the publication of their Atlantic article, “Broken Windows.” Based primarily on research conducted in Newark, New Jersey, Wilson and Kelling argued that quality-of-life
environmental factors, such as graffiti, trash, litter-filled lots, and unrepairoken windows, as well as low-level disorderly behavior such as prostitutes
gathering on corners, aggressive panhandlers, and the inebriated, were critical
indicators of community disorganization and disregard. Left unattended, these
neighborhood conditions signaled to the criminal element that a community
lacked the necessary social organization to manage its own public life, and was
thus a prime target for victimization. These authors advocate assertive police
order-maintenance actions to help reestablish or strengthen community behav-
ioral norms. Although Wilson and Kelling consider the potential for inappropriate
and undesirable police behavior the adoption of these practices could entail, they
fail to state any possible remedies (Ibid.).

Since the publication of “Broken Windows,” order maintenance or “quality of
life” policing has been at the forefront of policing. In his bid for the mayor’s office
in New York City, Rudy Giuliani made quality of life a central point in his
campaign. Upon winning the office, Giuliani tapped former Transit Chief William
Bratton as Police Commissioner, who soon introduced sweeping changes to the
New York Police Department (NYPD). Bratton reorganized the NYPD and
introduced a computer-driven, problem-oriented internal accountability system
known as COMPSTAT. He also questioned the effectiveness of the community
policing practices instituted under former Mayor David Dinkins and Police
Commissioner Lee Brown. Bratton refocused the police on “quality of life”
offenses and advocated assertive and prominent police actions that came to be
termed zero tolerance policing (ZTP).

Although it is unclear whether ZTP is true to Wilson and Kelling’s original
conception of Broken Windows policing, that theory has been the legitimizing
premise behind the ZTP’s adoption. Bratton instructed officers to crack down on
squeegee men, petty drug dealers, graffiti taggers, prostitutes, and other quality-
of-life offenders. Officers were encouraged and expected to assertively stop and
question “suspicious persons,” both to discover violations and to obtain informa-
tion on other criminal activities. To empower patrol officers to address neighbor-
hood drug problems, Bratton lifted a 20-year-old corruption-reduction reform that
had banned patrol officers from engaging in drug arrests. He also created the Street
Crime Units (SCU), plain clothes officers who are deployed specifically to apprehend serious offenders.

The ramifications of these new policing directives were felt most deeply by the
city’s minority and immigrant population. The number of minorities stopped and
frisked rose precipitously with the introduction of ZTP. African Americans
constitute only 25.6% of New York City’s population, yet they comprised just over
50% of all persons stopped. Thirty-three percent of persons stopped were His-
panic, though they comprise only 25% of the population (Office of the New York
State Attorney General [ONSAG], 1999). Nearly two-thirds of stops conducted by
the SCU were of African Americans. Moreover, blacks and Hispanics were at a
greater risk of being stopped in neighborhoods in which they constituted a distinct minority. In precincts in which African Americans and Hispanics constituted less than 10% of the population, they constituted 30 and 23.4% of the stops respectively. Relatively few of these stops resulted in arrest. New York police stopped 9.5 African Americans, 8.8 Hispanics, and 7.9 whites for every one arrest. The disparity is even greater for the SCU, which stopped 16.3 African Americans, 14.5 Hispanics, and 9.6 whites for every one arrest. This disparity holds even after controlling for crime rates by race (ibid.).

Advocates of ZTP often point to the falling crime rate in New York as evidence of its effectiveness. Any analysis of the drop in crime in New York, however, must consider the range of other factors that affect crime rates, such as economic health, demographic factors, and changes in the drug economy. Recent research also questions both the causal connection between disorder and crime and the suggestion that NYPD tactics are responsible for the reduction in crime. Harcourt (1998) reexamined the original data from the Newark and Houston fear-reduction studies and found that the connection between disorder and future crime was weaker than had been previously reported. A longitudinal study of 66 Baltimore neighborhoods found that neighborhood structural factors had a greater impact on future crime than did changes in the level of “incivilities” (Taylor, 1999). Other cities, notably San Diego, have experienced drops in crime similar in magnitude to New York without adopting aggressive quality-of-life policing (Greene, 1999).

Despite evidence that questions the connection between crime and low-level disorderly behavior, many cities, citing the dramatic drop in crime in New York, have rushed to duplicate the NYPD model as the latest weapon against crime. The architects of the New York plan have built lucrative careers consulting with cities on how to implement ZTP. In Cleveland, police officers have increased the number of stops conducted sixfold in recent years (Innes, 1999). The victory of Baltimore City Council member Martin O’Malley in the city’s recent mayoral race has been largely attributed to his campaigning on a “zero tolerance” on crime platform (Paik, 1999). Baltimore Police Chief Tom Frazier resigned his post rather than implement a zero tolerance plan designed by New York consultants (Rosen, 2000).

ZTP practices have also had a deleterious affect on the relationship between minorities and the police in New York. Since the implementation of ZTP, complaints against the police have risen 41%, with many of these complaints coming from people of color (Greene, 1999). However, the deaths of Amadou Diallo and Patrick Dorismond best underscore the tragic consequences of unrestrained police aggression. In February 1999, Diallo, a West African immigrant, was gunned down in the foyer of his Brooklyn apartment building by SCU officers who mistook Diallo’s wallet for a gun. In the subsequent criminal trial, none of the four officers were held criminally responsible for his death. Patrick Dorismond, a security guard and the son of a Haitian official, was killed by NYPD officers running a marijuana sting when he reacted negatively to an officer’s aggressive
overtures to procure marijuana from him. The officers who killed Dorismond were part of a new narcotics enforcement team named “Operation Condor.” Officers working in Operation Condor are required to have five narcotics arrests per shift or risk the wrath of their supervisors, a directive that likely encourages officers to engage in unnecessary stops and arrests.

Police practices to address gang violence illustrate another area in which monitoring and regulating the movements of young men of color has been a primary tactic. Gang violence has become a critical concern for law enforcement. Addressing gang violence and crime challenges fundamental principles of our legal system. While the criminal law is structured to contend with the acts of individuals, crimes committed by gang members are attributed to their group membership. Unless law enforcement agencies can find ways to tie specific individuals to a crime, they often cannot prosecute individuals they believe are tangentially involved in criminal activity. In some instances, law enforcement believes that gang violence and crime persist because individuals on the periphery of the gang protect them or enable their behavior. Further, there is a belief that preventing gang-related crimes requires the adoption of measures that destabilize gang structure and organization.

The police have developed several tools to address crimes committed by gangs. A common law enforcement tactic is the use of gang profiles. Much like drug courier profiles, gang profiles seek to delineate the distinguishing characteristics of gang members. Gang profiles focus on physical attributes and association with gang membership. Similar to drug courier profiles, gang profiles are often a poor means for identifying gang members. Rather than a compilation of actual behaviors, gang profiles often focus on clothing, territory, identification by an informant, and affiliations. These are particularly poor measures given the widespread adoption of “gang” clothing (e.g., baggy pants, scarves, shaved heads) in popular culture and the often fluid nature of social interactions among young people.

Gang profiles are not racially neutral and these practices have led in recent years to an exponential growth in the number of young men of color identified as gang members. Nearly half of all young black men in Los Angeles County have been defined as gang members or gang associates. In Orange County, California, there are reportedly 13,609 identified gang members; approximately 75% of them are Latinos and the rest are predominantly Asian. In Denver, Colorado, two of every three young black men are on the gang list (Kim, 1996: 275). Even though white gangs are known to exist and to engage in violent and deviant acts, they are often not viewed as a problem (Ibid.). “Community opinion of white gangs...tends to be less critical than that of gangs comprised of different races” (Ibid.: 271). Hence, the definition of what constitutes a criminal gang is itself racially biased and contributes to the disproportionate number of minorities defined as gang members.
Despite the imprecision of gang profiles for identifying criminal gangs and gang members, law enforcement agencies conduct broad “sweeps” in inner-city neighborhoods using these loose criteria to identify “gang members.” In many respects, these sweeps illustrate en masse the practice of indiscriminate “stopping and questioning.” Many jurisdictions use this information to compile lists of “known” gang members, which law enforcement and officers of the court use. Some agencies keep photographic logs of suspected gang members. Further, states such as California have developed computerized statewide databases that list the names of known gang members. Once defined as a gang member, an individual may be eligible for enhanced penalties that may be in effect for gang-related offenses, and may have his or her movements monitored by law enforcement. The accuracy of these databases is contestable. As noted, gang profiles are a notoriously imprecise means for identifying gang members. Second, although these databases are to be purged every two years, it is unclear whether this is done on a timely basis. Indeed, the names of deceased “gang members” have appeared on a gang list years after their death. Provisions for purging the names of gang members who have left gang life are also lacking. Once someone is entered into the database, how and when his or her name will be removed is unclear.

The reliance on vague and overly broad stereotypes to identify gang members has resulted in the wholesale labeling of young men of color as gang members in some jurisdictions. In this respect, gang profiling, like other discriminatory practices, perpetuates discretionary police practices that disproportionately affect young men of color. Similar to the Black Codes of previous eras, gang profiling has developed into a system for “keeping tabs” on virtually an entire generation.

Quality-of-life policing has also been introduced to abate gang violence. Relying primarily on public nuisance laws, several jurisdictions have filed civil injunctions that severely restrict the behavior of “known” gang members in public spaces. Police and prosecutors compile extensive dossiers that document the activities of suspected gang members and their associates; depositions collected from officers and community members document the nuisance behavior of individuals. This documentation is then used to civilly enjoin specified individuals from engaging in certain behaviors in specific neighborhoods. The enjoined behaviors are typically quite extensive and cover a range of activities, including loitering in public, being seen in public with two or more known gang members, trespassing on private property without written consent of the owner, disorderly conduct, wearing “gang” clothing, violating curfews, littering, blocking free passage of streets and parks, and noise. Approximately 30 gang injunctions have been or are being filed, mostly in California. For the most part, developing case law has supported the constitutionality of the injunctions (People ex rel. Gallo v. Acuna, 1997; In re Englebrecht, 1998; Iraheita v. Superior Court of L.A. County, 1999).

Gang civil injunctions effectively bar the young men named in them from appearing in public spaces in their neighborhoods. The potential for police abuse
of this extension of their discretionary power is far reaching. Officers may stop individuals indiscriminately to verify whether they are covered under the injunction agreement. As injunctions establish probable cause, enjoined individuals may be stopped at any time, regardless of whether their present behavior suggests reasonably suspicious behavior, to verify whether they are in compliance with the restrictions imposed by the injunction. Essentially, gang injunctions give police carte blanche to engage in pretextual stops of suspected gang members in specific neighborhoods.

The dangers of using civil law in lieu of criminal prosecution are substantial. For one, due process protections are attached to criminal, not civil, proceedings. Enjoined individuals have no right to counsel and must provide their own legal representation. Further, the standards of evidence are substantially lower in civil cases. This has meant that prosecutors can obtain injunctive sanctions against individuals they could not convict in criminal proceedings.

One author compared the broad reach of anti-gang civil injunctions to the vague vagrancy statutes that were part of the Black Codes (Stewart, 1998). In reviewing quality-of-life and zero tolerance policing policies and practices, the potential for police abuse of discretionary power can surely be extended to this entire genre of police behavior.

Conclusion

An analysis of the policies and practices associated with drug war, quality of life, and zero tolerance policing reveals a system of de facto racial discrimination driven by specific policy choices and low-level police discretionary decisions. The subtlety of these forms of discrimination makes it difficult to offer definitive solutions. Since many of these polices are racially neutral on their face, the victims are obliged to prove racial bias and discrimination. To date, there does not appear to be strong legal grounds for using racially disparate impact as an indicator of racially discriminatory policies (e.g., McCleskey v. Kemp, 1987). Thus, even as the number of young men of color detained, harassed, profiled, labeled, or arrested continues to escalate, few in policymaking positions question whether the fundamental premises of policy choices portend racially skewed outcomes.

Exposing bias in police discretionary decisions may be even more difficult. Since these practices involve low-level discretionary behavior that often occurs beyond the purview of the public, concrete evidence of bias is often elusive. In an effort to quantify possible racial bias in traffic stops, several police departments have voluntarily begun to collect data on all traffic stops. Such local efforts are a positive step toward obtaining substantiating evidence, but in the absence of standardized, nationwide data-collection requirements, local data collection systems are of varying depth and quality.

Should the data demonstrate racial bias, intent must often also be established for these practices to be deemed legally discriminatory. The standard of intent
presumes that officers are conscious of their racially biased behavior. Although some officers clearly may be, the centrality of racial bias in the development of policing suggests that individual intent is not a necessary precursor to race-based decision-making. Indeed, when an institution has developed within a racially discriminatory social and political environment, when racial social control has historically been a fundamental function of that institution, and when guiding public policies and the informal social system support racial bias, racial discrimination is likely to be an inherent part of its organizing ethos. Our search for the intentional “racist” moment when an officer deliberately chooses to treat someone differently due to race misses the broader social, political, and organizational cues that instruct officer behavior. Moreover, focusing on individual intent rather than on institutional imperatives limits the discussion to individually focused solutions, such as narrowly construed cultural sensitivity training and individual disciplinary actions, rather than solutions that seek to transform institutions and organizations more generally.

Change can be accomplished; however, it requires a more thoughtful consideration of the broader factors that affect police organizations and police work. For example, policies that seek to forward broader social justice ends — drug treatment instead of incarceration, scattered site housing rather than concentrated ghettos, community capacity building and economic development, job training, and early childhood and youth development — can ultimately change the environment in which the police operate and thus may in the long term lead to a rethinking of policing strategies.

Change in police organizations is also required. Although evaluations of community-policing programs report mixed results, this may reflect the narrow design of many programs. Community-policing rhetoric often waxes poetic about interagency collaboration and community partnership; however, few programs fully embrace these ends. In many cities, community-policing programs are defined, organized, and implemented by the police themselves. Perhaps a better approach would be to view community policing as a precursor to community-oriented government more generally. Community-oriented governments in which governing structures support community participation and relevant city agencies receive adequate resources to work collaboratively with the police toward the larger goal of community restoration would likely result in a model of policing that differs substantially from most current programs that often ask police officers to act as community mobilizers, organizers, advocates, and enforcers. Under a community-oriented government scheme, a city experiencing problems with gang membership might pursue gang outreach, youth development programs, job training, educational support, diversion to counseling or treatment, and law enforcement as a complete policy response.

Moreover, a fundamental shift must take place in the way the police envision their role in a multicultural democracy. Police must work toward building an
organizational infrastructure that supports diversity within the organization and recognizes the challenges of serving a diverse population. For example, an organization committed to diversity would develop organizational measures for evaluating progress. Standard measures would include the number of racial minority and women officers, the quantity of cultural diversity training hours, and community surveys. Departments would develop measures for assessing recruitment and retention programs, officer attitudes and departmental climate, and complaints from Internal Affairs, and also set up a citizen review body and document and analyze field interrogation, Terry stop, and traffic stop data. Further, departments would not rely solely on managerial staff or in-house analysts to review this data. Rather, the department could establish a diversity community council made up of community members who would review the department's progress and issue annual diversity report cards. Collecting and analyzing these types of qualitative and quantitative measurements would more accurately assess how a department was performing with regard to diversity. Moreover, it would send a strong message that respect for diversity within the organization and the broader community was supported at the highest levels of the department. Clearly, these suggestions are far more comprehensive than those typically pursued. Implementing changes like these would require us to go beyond the narrow solutions typically offered when considering police reform and to embark on developing police organizations that are truly prepared to protect and serve the multicultural reality in which we all live.

NOTES

1. For example, Massey and Denton (1993) extensively discuss how federal highway and FHA policy encouraged racial segregation.

2. Sugrue (1996: 252–253) recounts the normal course of protest activities in this excerpt. “Demonstrations followed a predictable pattern. Early in the evening, community members would drive slowly in the vicinity of a newly purchased black home, beckoning neighbors to join the protest. Crowds gathered after the dinner hour, drawing men who had just returned home from work, and school-age children, especially teenagers, who played in the streets in the evening. Often outdoor protests followed emergency improvement association meetings. Mob activity ranged from milling about in front of targeted houses to shouting racial epithets, to throwing stones and bricks. The intensity of violence in the early stages depended on the presence of the police. Frequently officers were slow to respond to housing incidents, and residents had ample time to hurl objects at the offending houses. After police arrived, they often passively watched crowds gather, without dispersing them for parading without a permit, disorderly conduct, or riot. When the police broke up crowds for obstructing traffic or for crowding the sidewalk, smaller groups usually reconstituted themselves on neighbors' lawns and porches, safe havens from the police who did not venture onto private property to control crowds. From the sanctuary of nearby yards, enraged neighbors continued to taunt their new black neighbors, to shout their disapproval at the police, and to throw cans, stones, or bottles toward the targeted house.”

3. In 1910, African American home-owning rates were among the highest in the country at 36%. Only 2.4% of African Americans owned their homes in New York (Laslet, 1996; Bunch, 1990: 103).
4. I am indebted to Ira Glasser (2000) for making this analogy.
5. I am indebted to Gary Stewart (1998) for this analogy.

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