EXHIBIT F

Fordham Urban Law Journal

Street Stops and Broken Windows: Terry, Race, and Disorder in New York City

Jeffrey Fagan[*]   Garth Davies[†]

[*]Columbia Law School
[†]Rutgers University

Street Stops and Broken Windows: Terry, Race, and Disorder in New York City

Jeffrey Fagan and Garth Davies

Abstract

This article explores patterns of police "stop and frisk" activity across New York City neighborhoods. While "Broken Windows" theory may account for higher stop and frisk activity for "quality of life" crimes, the authors suggest neighborhood characteristics like racial composition, poverty levels, and extent of social disorganization are strong predictors of race- and crime-specific stops. The authors consider whether street-stops in various neighborhoods comply with the Terry standard of reasonable suspicion as insight into the social and strategic meaning of policing. Their empirical evidence suggests policing focuses on policing poor people in poor places. Their strategy departs from "Broken Windows" theory by concentrating on people and not disorder. They suggest racially disparate police targeting raises concern about legitimacy of law, weakens citizen cooperation with police, and undermines the social goals of policing.

STREET STOPS AND BROKEN WINDOWS: *TERRY*, RACE, AND DISORDER IN NEW YORK CITY

Jeffrey Fagan and Garth Davies*

Patterns of "stop and frisk" activity by police across New York City neighborhoods reflect competing theories of aggressive policing. "Broken Windows" theory[1] suggest that neighborhoods with greater concentration of physical and social disorder should evidence higher stop and frisk activity, especially for "quality of life" crimes.[2] However, although disorder theory informs quality of life policing strategies, patterns of stop and frisk activity suggest that neighborhood characteristics such as racial composition, poverty levels, and extent of social disorganization are stronger predictors of race- and crime-specific stops. Accordingly, neighborhood "street stop" activity reflects competing assumptions and meanings of policing strategy. Furthermore, looking at the rate at which street stops meet Terry *standards of reasonable suspicion[3] in various neighborhoods provides additional perspective on the social and strategic meanings of policing. Our empirical evidence suggests that policing is not about disorderly places, nor about improving the quality of life, but about policing poor people in poor places. This strategy contradicts the policy rationale derived from Broken Windows theory, and deviates from the original emphasis on communities by focusing on people. Racially disparate policing reinforces perceptions by citizens in minority neighborhoods that they are under non-particularized suspicion and are therefore targeted for aggressive stop and frisk policing. Such broad targeting raises concerns about the legitimacy of law, threatens to weaken citizen participation in the co-production of*

---

1. James Q. Wilson & George L. Kelling, *The Police and Neighborhood Safety: Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29-38 (using the analogy of a broken window to describe the relationship between disorder and crime).

2. *Id.*

3. Terry v. Ohio, 392 U.S. 1 (1968) (establishing *reasonable suspicion*, as opposed to the higher quantum of proof of *probable cause*, as the constitutional standard to govern stop and frisks).

security, and undercuts the broader social norms goals of contemporary policing.

When it comes to debating theories of crime and law, some people pretend that race does not matter at all, while others accord it undue, if not determinative, significance.[4] Unfortunately, recent events in policing seem to tip the balance of reality toward the latter view. There is now strong empirical evidence that individuals of color are more likely than white Americans to be stopped, questioned, searched, and arrested by police.[5] This occurs in part because of their race, in part because of heightened law enforcement intensity in minority communities, in part because of the temptation among law enforcement officers to simply "play the base rates" by stopping minority suspects because minorities commit

---

4. *See generally* RANDALL KENNEDY, RACE, CRIME, AND THE LAW (1997) (exploring the impact of race relations on criminal law and criminal justice); *see also* Kim Taylor-Thompson, *The Politics of Common Ground*, 111 HARV. L. REV. 1306 (1998) (emphasizing the role of race in criminal justice issues through a critical review of RACE, CRIME, AND THE LAW).

5. United States v. New Jersey, No. 99-5970 (MLC) (D. N.J. Dec. 30, 1999) (consent decree) (establishing the state of New Jersey's consent to comply with various procedures and policies to remedy racial profiling by the state police), http://www.usdoj.gov/crt/split/documents/jerseysa.htm; U.S. GEN. ACCOUNTING OFFICE, RACIAL PROFILING LIMITED DATA AVAILABLE ON MOTORIST STOPS, GAO-GGD-00-41, 7-13 (2000), *available at* http://www.gao.gov/AIndexFY00/title/tocR.htm; CIVIL RIGHTS BUREAU, OFFICE OF THE ATTORNEY GEN. OF THE STATE OF N.Y., THE NEW YORK CITY POLICE DEPARTMENT'S "STOP & FRISK" PRACTICES 89 (1999) [hereinafter OAG REPORT]; DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM, 34-41 (1999) (describing the explicit use of race in criminal profiles by police departments in Maryland, Colorado, Louisiana, and New Jersey); Sean Hecker, *Race and Pretextual Traffic Stops: An Expanded Role for Civilian Review Boards*, 28 COLUM. HUM. RTS. L. REV. 551, 551 (1997); Kris Antonelli, *State Police Deny Searches are Race-Based; ACLU Again Challenges I-95 Stops*, BALT. SUN, Nov. 16, 1996, at 18B; David Kocieniewski & Robert Hanley, *Racial Profiling Was The Routine, New Jersey Finds*, N.Y. TIMES, Nov. 28, 2000, at A1; Barbara Whitaker, *San Diego Police Found to Stop Black and Latino Drivers Most*, N.Y. TIMES, Oct. 1, 2000, at A31; Jim Yardley, *Studies Find Race Disparities in Texas Traffic Stops*, N.Y. TIMES, Oct. 7, 2000, at A12. Similar patterns of stops, searches, and arrests of citizens have been observed in London. *See generally* DAVID SMITH ET AL., POLICE AND PEOPLE IN LONDON: VOLUME I: A SURVEY OF LONDONERS 89-119, tbl.IV.3 (1983) (showing racial disparity in police contacts with black citizens in London). The London survey was conducted in 1981-82, with a stratified random sample of 2420 Londoners ages fifteen and older. Minorities were over-sampled to ensure adequate representation in the study. Overall, 16% of Londoners were stopped in the twelve months preceding the survey. West Indians were slightly more likely to be stopped than whites (18% as compared with 14%), and Asians were least likely to be stopped (5%). The average number of stops was twice as high for West Indians (0.56) compared with whites (0.21) or Asians (0.8). The average number of arrests per person stopped was also far greater for West Indians (3.19) than for whites (1.46) or Asians (1.59). *Id.*

more crimes, and in part because of the tacit approval of these practices given by their superiors.[6]

Whether the legal system should consider race in its every day decision-making is a hotly contested and much-litigated issue.[7] Yet the modern practice of racial policing should surprise no one. Racial profiling is often defended as a useful means to detect criminal behavior.[8] The legal system has long used race as a signal of increased risk of criminality. Examples include: immigration exclusion and other discrimination against Chinese immigrants in the 19th century;[9] the racialization of the debate on the passage of the Harrison Narcotics Act;[10] the internment of the Japanese during World War II;[11] border interdictions to halt illegal immigration;[12]

---

6. *See generally* STATE POLICE REVIEW TEAM, OFFICE OF THE ATTORNEY GEN. OF THE STATE OF N.J., INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING (1999) (admitting that New Jersey State Police officers engaged in racial profiling, but also that profiling is part of the culture of the State Police), *available at* http://www.state.nj.us/lps/intm_419.pdf (Apr. 20, 1999); *see generally* Jeffrey Goldberg, *The Color of Suspicion*, N.Y. TIMES MAG., June 20, 1999, at 51 (examining various perspectives on racial profiling).

7. Brandon Garrett, *Standing while Black: Distinguishing* Lyons *in Racial Profiling Cases*, 100 COLUM. L. REV. 1815, 1816 n.5 (2000) (reviewing recent lawsuits and investigations of racial profiling). Consent decrees stemming from racial profiling have been signed in many cases. *E.g.*, United States v. New Jersey, No. 99-5970 (MLC) (D. N.J. Dec. 30, 1999) (consent decree entered); Memorandum of Agreement, Between the United States Department of Justice, Montgomery County, Maryland, the Montgomery County Department of Police, and the Fraternal Order of Police, Montgomery County Lodge 35, Inc., Jan. 14, 2000, http//www.usdoj.gov/crt/cor/Pubs/mcagrmt.htm; United States v. City of Pittsburgh, No. 97-0354 (W.D. Pa. Apr. 16, 1997) (consent decree entered); United States v. City of Steubenville, C2-97-966 (S.D. Ohio Sept. 3, 1997) (consent decree entered), http://usdoj.gov/cit/split/documents/steubensa.htm; United States v. City of Los Angeles, No. 00-11769 (C.D. Cal.) (consent decree entered). For reviews of consent decrees involving police departments generally, see Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 815 (1999); Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Right*, 100 COLUM. L. REV. 1384 (2000).

8. KENNEDY, *supra* note 4, at 145-46 (discussing race as a predictor of criminality). For a review of the historical uses of ethnic and racial exclusion in the United States based on attributions of greater danger to ethnic minorities, see generally SAMUEL WALKER ET AL., THE COLOR OF JUSTICE: RACE, ETHNICITY AND CRIME IN AMERICA (2d ed. 2000).

9. Yick Wo v. Hopkins, 118 U.S. 356 (1886) (inferring intentional discrimination against Chinese citizens from disparate enforcement of an ordinance banning laundries).

10. Harrison Narcotics Act, ch. 1, 38 Stat. 785 (1914); *see also* DAVID F. MUSTO, THE AMERICAN DISEASE 65 (1973) ("Cocaine raised the specter of the Wild Negro, opium the devious Chinese . . . .").

11. Korematsu v. United States, 323 U.S. 214 (1944) (finding forced internment troubling but ultimately upholding its constitutionality).

FORDHAM URBAN LAW JOURNAL [Vol. XXVIII

racial components of drug courier profiling;[13] and the so-called Carol Stuart stops in Boston.[14]

Generally, courts have refused to disallow the use of race as an indicia of criminality.[15] Most courts have accepted this practice, so long as (1) race alone is not the rationale for the interdiction, and (2) it is not done for purposes of racial harassment.[16] This practice has been reflected in case law as the sound exercise of "professional judgment" by police officers.[17]

---

12. United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 (1976) (affirming the U.S. Border Patrol's right to conduct checkpoint stops of vehicles near the Mexican border with or without reasonable suspicion).

13. United States v. Harvey, 16 F.3d 109, 115 (6th Cir. 1994) (Keith, J., dissenting) ("African-Americans are more likely to be arrested because drug courier profiles reflect the erroneous assumption that one's race has a direct correlation to drug activity.").

14. MASS. ATTORNEY GEN.'S OFFICE, REPORT OF THE ATTORNEY GENERAL'S CIVIL RIGHTS DIVISION ON BOSTON POLICE DEPARTMENT PRACTICES (Dec. 18, 1990) (reporting results of an investigation into allegations that, in violation of constitutional mandates, the Boston Police Department "rounded up" African American men in the wake of the murder of Carol Stuart, a white woman).

Shortly before this article went to press, a sharply-divided United States Court of Appeals for the Second Circuit declined to reconsider its ruling upholding its dismissal of *Brown v. City of Oneonta*, 221 F.3d 329 (2000). The plaintiffs in *Brown* alleged that police unconstitutionally swept the 10,000-resident town and stopped and inspected the hands of black men after an elderly woman alleged she had been attacked in her home by a young black male who cut his hand during a struggle.

> The panel reaches a grave conclusion by holding that the police act constitutionally under the Fourteenth Amendment when, based on a witness's predominantly racial description, they stop every young African American male in town to determine whether he can exclude himself from a vague class of potential suspects that has been defined in overwhelmingly racial terms.

Brown v. City of Oneonta, — F.3d — (2d Cir. 2000), *available in* 2000 WL 1855047.

15. *See* Whren v. United States, 517 U.S. 806 (1996). In *Whren*, the U.S. Supreme Court ruled that as long as an officer observes a traffic violation, a traffic stop is constitutional, even if the officer has no intention to enforce the law the driver violated. Even if purely pretextual, a racially-motivated stop is constitutional under the Fourth Amendment if also motivated by a second, non-racial factor. The Court did state, however, that a stop motivated by race alone would violate Fourteenth Amendment protections. *Id.* at 813. COLE, *supra* note 5, at 39-40 (citing the extraordinarily high concentration of minority complainants in unsuccessful federal appellate cases involving pretextual traffic stops). *See also Harvey*, 16 F.3d at 115 (Keith, J., dissenting); KENNEDY, *supra* note 4, at 14 ("Racist perceptions of blacks have given energy to policies and practices (such as racial exclusion in housing, impoverished schooling, and stingy social welfare programs) that have facilitated the growth of egregious crime-spawning conditions that millions of Americans face in urban slums and rural backwaters across the nation.") (citation omitted).

16. *See Whren*, 517 U.S. at 813.

17. Although courts may be reluctant explicitly to identify and endorse the use of race as a proxy for criminal behavior, the factual underpinnings of many cases reveal tacit judicial approval of racial profiling. *E.g.*, Papachristou v. City of Jacksonville, 405

Contemporary criminal justice theory and practice accord with this view, but substitute sociological language for the more formal legal endorsement of race-based practices. In New York City, law enforcement strategies emphasize the aggressive patrol of areas containing manifestations of physical and social disorder. Thus, police aggressively enforce laws on public drinking and loitering. They also actively patrol neighborhoods with empty lots, abandoned cars, and dilapidated buildings. Collectively, these strategies are based on the "Broken Windows" theory, named after the influential essay on the contagious effects of unchecked signs of disorder.[18]

Beginning in 1994, officials altered the police strategies in New York City to address low-level disorder problems that might invite more serious crime problems.[19] These signs of disorder often are more prevalent in urban neighborhoods with elevated rates of pov-

---

U.S. 156 (1972) (reviewing the enforcement of a vague vagrancy ordinance against two black men accompanied by two white females); Florida v. J.L., 529 U.S. 266 (2000) (reviewing the adequacy of a stop and frisk based on an anonymous informant's description of a "young black male" wearing a plaid shirt and carrying a gun).

The "professional judgment" of Detective McFadden provided the basis for his stop and search of the defendant in *Terry v. Ohio*, 392 U.S. 1, 28 (1968). What has been lost in the *Terry* discourse in the ensuing years is the explicit racial component of the events. Terry was African American, McFadden was white. McFadden's "professional judgment" concerning Terry was based on the racial incongruity of Terry being observed outside a storefront in a commercial district far from the areas of Cleveland where most African Americans lived. Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 966 (1999). *But see Terry*, 392 U.S. at 5-7 (detailing the suspicious activity the *Terry* defendants engaged in after Detective McFadden, a thirty-nine year veteran of the police department, first observed them and felt "they didn't look right to [him] at the time").

In *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), the Court noted that although an individual's presence in a "high crime area" does not meet the standard for a particularized suspicion of criminal activity, a location's characteristics are relevant in determining whether an individual's behavior is sufficiently suspicious to warrant further investigation. Since "high crime areas" often are areas with concentrations of minority citizens, this logic places minority neighborhoods at risk for elevating the suspiciousness of its residents. *See e.g.*, DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993).

18. Wilson & Kelling, *supra* note 1, at 31. *See generally* GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES (1996).

19. Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 292 (1998); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 556 n.14 (1997); Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?*, 34 GA. L. REV. 1273, 1273 (2000).

FORDHAM URBAN LAW JOURNAL [Vol. XXVIII

erty and social fragmentation.[20] Accordingly, the implementation of Broken Windows policies was disproportionately concentrated in minority neighborhoods and conflated with poverty and other signs of socio-economic disadvantage. Thus, what was constructed as "order-maintenance policing" ("OMP") was widely perceived among minority citizens as racial policing, or racial profiling.[21] The fact that its principle tactic was an aggressive form of stop and frisk policing involving intrusive *Terry* searches,[22] and that at least two deaths of unarmed citizens of African descent were linked to OMP,[23] further intensified perceptions of racial animus.[24]

---

20. WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 59 (1990); Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOCIOLOGY 603, 622-30 (1999); Stephen W. Raudenbush & Robert J. Sampson, *Ecometrics: Toward a Science of Assessing Ecological Settings, with Application to the Systematic Social Observation of Neighborhoods*, 29 SOCIOLOGICAL METHODOLOGY 1 (1999).

21. OAG REPORT, *supra* note 5, at 74; David Kocieniewski, *Success of Elite Police Unit Exacts a Toll on the Streets*, N.Y. TIMES, Feb. 15, 1999, at A1 (discussing reactions of citizens to aggressive policing in New York City); Kit R. Roane, *Minority Private-School Students Claim Police Harassment*, N.Y. TIMES, Mar. 26, 1999, at B5 (citing complaints by minority students of indiscriminate and frequent police harassment).

22. There is an irony here about the use of such citizen detentions and searches as a crime fighting tool. The *Terry* decision itself located the frisk less as an investigative aid than as a protection for the patrolling officer: "The frisk . . . was essential to the proper performance of the officer's investigatory duties, for without it the answer to the police officer may be a bullet." Terry v. Ohio, 392 U.S. 1, 8 (1968) (citation omitted). That the stop and frisk engenders animosity was made explicit in the original *Terry* decision. The Supreme Court in *Terry* noted that a frisk "is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and is not to be undertaken lightly." *Id.* at 17. The Court also noted that *Terry* stops had the potential to inflict psychological harm: "Even a limited search . . . constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Id.* at 24-25.

23. David Jackson, *Winning War on Crime Has a Price Giuliani Alienates Many in New York City's Black and Hispanic Communities*, DENVER POST, Apr. 20, 2000, at A23 (discussing the shootings by the New York City Police Department ("NYPD") of Amadou Diallo and Patrick Dorismond); Symposium, *Is Our Drug Policy Effective? Are There Alternatives?*, 28 FORDHAM URB. L.J. 3, 95 (2000) ("[A] team of undercover police approached a man [Patrick Dorismond] . . . even though they had no reason to believe that he was involved in any criminal activity.").

24. Citizens who are stopped and frisked based on a profiling or racial policing strategy understand that they have been singled out because of their race. These encounters have been termed "race-making situations." David R. James, *The Racial Ghetto as a Race-Making Situation: The Effects of Residential Segregation on Racial Inequalities and Racial Identity*, 19 LAW & SOC. INQUIRY 407, 420-29 (1994). The outrage of many minority citizens over the NYPD's policing of aggressive stop and frisks reflects not only the emotional harm from being targeted because of one's race, but also the fear that such situations can escalate into dangerously violent encounters. *See generally* David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving*

Moreover, by explicitly linking disorder to violence, OMP (as informed by Broken Windows theory) further focused police resources and efforts on the neighborhoods with the highest crime and violence rates.[25] That these were predominantly minority neighborhoods further reinforced the disproportionate exposure of New York City's minority citizens to policing. Thus, this construction of disorder broadened the concept to include places where violent and other serious crimes were most likely to occur. Those places tended to be ones with the highest concentrations of socially-disadvantaged minority populations.

In this paper, we assess empirical evidence designed to sort out these competing claims about the underlying theoretical basis for New York City's aggressive policing policy. We analyze patterns of stop and frisk activity to assess whether practice reflected the place-based strategies embodied in Broken Windows theory, or if instead, practice was focused on the social markers of race and disadvantage. We ask whether, after controlling for disorder, the city's stop and frisk policy is, in fact, a form of policing that disproportionately targets racial minorities. We begin by reviewing the history and evolution of these policies, showing the links between race, Broken Windows theory, and aggressive policing. In Part II, we review evidence of the racial skew in policing as reported in recent studies. In Part III, we offer the results of empirical tests of data conducted on trends and patterns of policing to resolve these competing claims about the motivating theories for the observed patterns. We find little evidence to support claims that policing targeted places and signs of physical disorder, and show instead that stops of citizens were more often concentrated in minority

---

While Black" Matters, 84 MINN. L. REV. 265, 273 (1999). The shared danger of profiling encounters reflects the concept of "linked fate" among residents of minority neighborhoods. "Linked fate" refers to the empathy that people have with family and friends. It can also exist among strangers. In the African American community, linked fate has its foundation in the fact that the life chances of African Americans historically have been shaped by race. MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 77 (1994). Linked fate suggests that when race over-determines an individual's life chances, it is much more efficient for that individual to use the relative and absolute status of the group as a proxy for individual utility. The long history of race-based constraints on life chances among blacks generates a certain efficiency in evaluating policies that affect minority individuals. *Id.*

25. OAG REPORT, *supra* note 5, at 53 (citing N.Y. CITY POLICE DEP'T, POLICE STRATEGY NO. 1: GETTING GUNS OFF THE STREETS OF NEW YORK (1994) (explicitly linking disorder to violence and rationalizing the concentration of order-maintenance policing ("OMP") strategies in the city's neighborhoods with the highest crime rates) [hereinafter POLICE STRATEGY NO.1].

neighborhoods characterized by poverty and social disadvantage. In Part IV, we conclude by returning to the theoretical arguments supporting current police policies. In this last section, we address claims about the positive link between aggressive policing and the prospects for creating social norms changes to restore social regulation of behavior. The counterfactual of crises in legitimacy provides the context for concluding remarks on race and policing in New York.

I. Disorder and Aggressive Policing in New York City

A. From Theory to Practice: Broken Windows and Order-Maintenance Policing

As stated, the policy of aggressive stop and frisk practices reflects theoretical and strategic innovations derived from what has become popularly known as Broken Windows theory.[26] The originators of the Broken Windows theory, James Q. Wilson and George L. Kelling, argued that police should address minor disorders to strengthen police-citizen interactions, and consequently, informal social control.[27] For Wilson and Kelling, signs of physical and social disorder invite criminal activity.[28] Disorder indicates to law-abiding citizens that their neighborhoods are dangerous places, leading to their withdrawal from informal social control and regulation.[29] The theory suggests that there is a tipping point at which disorder trumps order by defeating the willingness of citizens to interact with the police and with each other to co-produce security. Accordingly, disorder invites more disorder in a contagious process that progressively breaks down community standards and also sug-

---

26. Wilson & Kelling, *supra* note 1, at 31. For excellent reviews, see Livingston, *supra* note 19, at 578 (discussing the relationship between Broken Windows theory and current policing practices); Harcourt, *supra* note 19, at 301-08 (critiquing Broken Windows theory and empirical research claiming to support the link between disorder and crime); Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 Law & Soc'y Rev. 805 (1998) (discussing the link between social norms theory and law enforcement policies).

27. Wilson & Kelling, *supra* note 1, at 31; Livingston, *supra* note 19, at 576; Waldeck, *supra* note 19, at 1255.

28. Wilson & Kelling, *supra* note 1, at 32. They define "minor" disorder to include such problems and crimes as littering, loitering, public drinking, panhandling, teenage fighting on street corners, and prostitution. They also mention signs of physical disorder, including abandoned cars—with broken windows, naturally—and dilapidated buildings, also with broken windows.

29. *Id.* at 33 ("In response to fear, people avoid one another, weakening controls.").

gests to would-be criminals that crime will not be reported. Disorder ultimately invites criminal invasion.

Broken Windows theory comports well with social norms theories. In this framework, individuals form social norms through interactions with others in social spaces, creating norms of either legal or illegal behavior in their communities.[30] Wilson and Kelling argue that when police focus on repairing or removing these disorder problems, they combat crime by promoting the types of social interactions among law-abiding citizens that strengthen the dynamics of social regulation and produce security and social control.[31] To restate this in terms of Broken Windows theory, disorder conveys a social message that there is no effective social regulation of behavior in a neighborhood with such visible and prevalent signs of disorder.[32] In turn, disorder communicates the absence of restraints to others who may interpret this as either tolerance of, or an invitation to, criminal behavior. Thus, as both disorder and criminal behavior spread, they communicate a mutually reinforcing social norm regarding crime and social disorder, all the while communicating danger to those who would attempt to reinforce social norms that oppose crime and disorder.

Empirical support for Broken Windows and disorder theories of crime is reported by Wesley Skogan in an analysis of survey data collected in 1977 and 1983 in six cities.[33] Additional empirical support is reported by George L. Kelling and Catherine M. Coles.[34] Bernard Harcourt, however, reanalyzed Skogan's data and failed to replicate the results, citing numerous inconsistencies and errors in measurement.[35] Dan Kahan attributes New York City's crime decline in the 1990s to the adoption by its police department of a tactical strategy based on Broken Windows theory, although em-

---

30. Meares & Kahan, *supra* note 26, at 805. For an illustration based on ethnographic research, see ELIJAH ANDERSON, CODE OF THE STREET (1999).

31. Wilson & Kelling, *supra* note 1, at 35; ANDERSON, *supra* note 30, at 32; *see also* Harcourt, *supra* note 19, at 302-3. *See generally* Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165 (1996).

32. *See generally* Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995) (discussing the construction of social meaning); Ellickson, *supra* note 31.

33. SKOGAN, *supra* note 20. Surveys were conducted in Atlanta, Chicago, Houston, Newark, Philadelphia, and San Francisco. His basic model was a regression analysis predicting robbery rates from measures of social and physical disorder, controlling for characteristics of the cities derived from social disorganization theory: poverty, residential stability, and racial heterogeneity.

34. *See generally* KELLING & COLES, *supra* note 18.

35. Harcourt, *supra* note 19, at 312-39.

pirical and conceptual assessments of the crime decline contest that view.[36] Empirical work by Robert Sampson and Jacqueline Cohen provide indirect support for a Broken Windows model of policing by focusing on factors that influence perceptions of the tolerance of disorder, especially higher arrest ratios (relative to the crime rate).[37] Despite the implicit developmental and deontological underpinnings of Broken Windows theory (and corresponding social norms theories), none of the supportive studies included prospective tests of the effects of disorder on changes in crime rates in subsequent periods. In fact, all these studies rely on cross-sectional research that is unable to determine whether the observed relationships are temporally-ordered and therefore causally related, or if they are simply correlations whose causal order is unknown.[38]

The most comprehensive empirical test of the underlying premise of Broken Windows theory—that disorder gives rise to higher crime rates—was a study of disorder in Chicago neighborhoods by Robert Sampson and Stephen Raudenbush.[39] Rather than rely on either official records or self-reports, the researchers constructed highly reliable measures of social disorder from a randomized schedule of videotaping of locations. They combined these disorder measures with reports of social control mechanisms from a random sample of 3864 residents in 343 neighborhoods, and both self-reported and official records of crime. Sampson and Raudenbush re-

---

36. Dan M. Kahan, *Between Economics and Sociology: The New Path of Deterrence*, 95 MICH. L. REV. 2477, 2488 n.63, n.65 (1997). Kahan states that the decline in crime must be attributable to the new policing strategy: order-maintenance policing. *Id. But see* Jeffrey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. CRIM. L. & CRIMINOLOGY 1277, 1285-86, 1289-91(1998) (claiming that changes in crime rates are actually predictable cyclical changes in violence rates, and that only gun crime rates have changed); ANDREW KARMEN, NEW YORK MURDER MYSTERY 13-24 (2000) (discussing competing causal claims for the decline in New York City's homicide rate from 1991-98, but finding insufficient evidence to support any single explanation).

37. Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC. REV. 163, 175-79 (1988) (reporting that more aggressive stop and frisk enforcement produces higher arrest ratios that, in turn, communicate a high punishment likelihood to would-be law violators).

38. For a general discussion of this type of validity threat in cross-sectional, non-experimental research designs, see generally THOMAS D. COOK & DONALD T. CAMPBELL, QUASI-EXPERIMENTATION DESIGN AND ANALYSIS ISSUES FOR FIELD SETTINGS (1979); KENNETH ROTHMAN, MODERN EPIDEMIOLOGY (1986); LEON ROBERTSON, INJURY EPIDEMIOLOGY (1992).

39. Sampson & Raudenbush, *supra* note 20 (reporting results of an observational survey of physical and social disorder in Chicago neighborhoods and its weak association with crime rates).

ported that social interactions and social controls among neighbors are more closely related to crime than is disorder, while these social processes—which they term "collective efficacy"—are unrelated to disorder. Similar to Harcourt's re-analysis of the Skogan data, Sampson and Raudenbush also discredit the relationship between crime and disorder.[40]

These empirical doubts about the efficacy of Broken Windows theory have not stopped its influence on American policing. The development of police strategies that operationalize Broken Windows theory proceeded apace in the past two decades.[41] It was widely translated into a police strategy known as "order-maintenance policing," or OMP.[42] At the same time, Broken Windows theory stimulated a body of academic writing on the subject of order maintenance.[43]

Under OMP, police aggressively enforce laws against social disorder with "zero tolerance" that requires arrest for any law infraction.[44] Widely viewed as an adaptation of an earlier movement

---

40. *Id.* at 603.

41. For example, Commissioner William Bratton had earlier implemented an OMP strategy while head of the New York City Transit Police, called the Clean Car Program ("CCP"). The strategy focused on ridding New York City's subway cars of graffiti. Maryalice Sloan-Hewitt & George L. Kelling, *Subway Graffiti in New York City: "Gettin' up" vs. "Meanin' it and Cleanin' it," in* SITUATIONAL CRIME PREVENTION: SUCCESSFUL CASE STUDIES 242, 244-45 (Ronald V. Clarke, ed., 2d. ed. 1997).

42. Livingston, *supra* note 19, at 632.

43. *E.g.,* George L. Kelling, *Order Maintenance, the Quality of Urban Life, and Police: A Line of Argument, in* POLICE LEADERSHIP IN AMERICA 296 (William A. Geller ed., 1985); Carl B. Klockars, *Order Maintenance, the Quality of Urban Life, and Police: A Different Line of Argument, in* POLICE LEADERSHIP, *supra,* at 309; Carl B. Klockars, *Street Justice: Some Micro-Moral Reservations: Comment on Sykes,* 3 JUST. Q. 513 (1986); Gary W. Sykes, *Street Justice: A Moral Defense of Order Maintenance Policing,* 3 JUST. Q. 497 (1986) [hereinafter *Street Justice*]; Gary W. Sykes, *The Functional Nature of Police Reform: The "Myth" of Controlling the Police,* 2 JUST. Q. 51 (1985). *But see generally* Jack R. Greene & Ralph B. Taylor, *Community-Based Policing and Foot Patrol: Issues of Theory and Evaluation, in* COMMUNITY POLICING: RHETORIC OR REALITY, 195, 201-03 (Jack R. Greene & Stephen D. Mastrofski eds., 1988) [hereinafter COMMUNITY POLICING].

44. Definitions of the crimes that constitute disorder vary, but generally include: unlicensed peddling and vending, public drunkenness and open drinking, vandalism (including graffiti), public urination, loitering, littering, panhandling, prostitution, and menacing misbehavior. The latter often is symbolized by "squeegee" men who solicit money in return for unsolicited cleaning of motorists' windshields at stop lights. Cracking down on squeegee men represents the type of OMP enforcement that most closely expressed popular conceptions of the policy. KELLING & COLES, *supra* note 18, at 14-15; Livingston, *supra* note 19, at 553-54; Harcourt, *supra* note 19, at 297; Wilson & Kelling, *supra* note 1; WILLIAM BRATTON & PETER KNOBLER, TURN-AROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC 214 (1998) (discussing the NYPD's policy to rid the city of the squeegee people); William J. Brat-

FORDHAM URBAN LAW JOURNAL [Vol. XXVIII

toward "community policing,"[45] OMP advocates active engagement with and arrest of law violators. In more traditional community policing, police pursued ameliorative measures that also were consistent with Broken Windows theory, but avoided coercive encounters with citizens on the street.[46] These ameliorative measures were consistent with Broken Windows tenets that police should focus equally on protecting communities as well as protecting individuals.[47] Although community policing and OMP both derive from a social norms basis, the implementation of OMP in New York moved in a very different direction, exchanging amelioration of physical disorder for interdiction of social disorder.

Sarah Waldeck claims that this exchange resolved a conflict that arose in the occupational subculture of policing with the advent of community policing.[48] In addressing non-crime problems, police were reluctant to adhere to a new set of markers for performance and competence based on social interactions with law-abiding citizens.[49] By emphasizing the aggressive pursuit of social disorder, or disorderly persons, police returned to the more comfortable performance indicators of stops and arrests, while restoring to the workplace their traditional cultural dichotomy of "disorderly people and law abiders."[50] Thus, for example, while New York City police identified only seventy-five "squeegee" people,[51] the expanding definition of disorder meant that more and more people were disorderly and subject to aggressive police attention.

---

ton, *The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & Pol'y 447, 447-48 (1995); N.Y. City Police Dep't, Police Strategy No. 5: Reclaiming the Public Spaces of New York 10-12 (1994) [hereinafter Police Strategy No. 5].

45. Livingston, *supra* note 19, at 562-91. While OMP emphasizes arrest, other forms of community policing eschew arrest in favor of building community contacts. *E.g.*, Wesley G. Skogan & Susan M. Hartnett, Community Policing, Chicago Style 8, 55-56 (1997).

46. These include, for example, cleaning up trash-strewn lots, painting over graffiti, and assisting housing inspectors to address code violations. *E.g.*, Livingston, *supra* note 19, at 584 (citation omitted); Herman Goldstein, Problem-Oriented Policing 134 (1990); George L. Kelling & Mark H. Moore, *From Political to Reform to Community: The Evolving Strategy of Police*, in Community Policing, *supra* note 43, at 3 (Jack R. Greene & Stephen D. Mastrofski eds., 1988); Stephen D. Mastrofski, *Community Policing as Reform: A Cautionary Tale*, in Community Policing, *supra* note 43, at 47, 67.

47. *See* Livingston, *supra* note 19, at 583 n.162.

48. Waldeck, *supra* note 19, at 1267-69.

49. *See id.* at 1267.

50. *Id.* at 1268, 1278.

51. Bratton & Knobler, *supra* note 44, at 214.

It is important to remember that Wilson and Kelling's original social science construction of Broken Windows theory had little to do with social disorder, especially with the aggressive interdiction of disorderly persons. Thus, as we shall see next, the evolution of OMP in New York resulted in a policy and style of policing that violated the subtle connection that Wilson and Kelling drew between crime and disorder, and that deviated in many important ways from its underlying social norms paradigm. As we show below, the exchange of physical disorder for social disorder signified nothing less than a theoretical paradigm shift from the original construction of Broken Windows theory to the more traditional and problematic policing of social disorganization.

B. Violence, Disorder, and Order-Maintenance Policing in New York City

Many observers have noted that OMP in New York City has eschewed (what is for police) the more esoteric dimensions of community policing targeted at physical disorder, for an aggressive policy of arrest and other traditional law enforcement tactics aimed squarely at social disorder. While remaining true to the origins of Broken Windows theory, there were strategic and tactical reasons to reconstruct the Broken Windows theory in this way.

Whereas community policing implies a partnership between police and community, the interpretation of community needs is one of the wild cards of the theory.[52] The partnership required that the parties respond both to a neighborhood's priorities regarding crime and to the more traditional police functions of detecting and deterring criminal behavior.[53] Community policing, then, often appeared to be a Solomonesque split between traditional police goals focusing on major crimes (e.g., murder and armed robbery) and the goals of community residents concerned with chronic low-level crimes and disorder problems.[54]

However, in shifting from community policing to OMP, police strategy in New York City redirected its strategic focus from remedying physical disorder to policing social disorder. The rationale for this shift from physical to social disorder was the theory that low-level crime—social disorder—nurtures and facilitates more serious crime.[55] George L. Kelling and Catherine M. Cole conceptu-

---

52. *See* Skogan & Hartnett, *supra* note 45, at 8.
53. BRATTON & KNOBLER, *supra* note 44, at 94-95.
54. *See generally* Goldstein, *supra* note 46.
55. Wilson & Kelling, *supra* note 1, at 34.

alized OMP as a cooperative variant on community policing: the enforcement of standards of conduct jointly defined by citizens and police.[56] Even so, this strategic shift did not necessarily imply a tactical change toward aggressive policing. Moreover, this tactical shift departed sharply from the Wilson and Kelling and the Kelling and Coles models of Broken Windows, as well as most contemporary models of community policing.[57] As conceptualized by Kelling and Coles, OMP involved the enforcement of these standards "through non-arrest approaches—education, persuasion, counseling, and ordering—so that arrest would only be resorted to when other approaches failed."[58]

The origins of the tactical shift are revealed in strategy documents issued by the New York City Police Department ("NYPD") in 1994.[59] According to the analysis by the Office of the Attorney General of the State of New York ("OAG Report"), these policies remain in effect today.[60] First, *Police Strategy No. 5, Reclaiming the Public Spaces of New York*,[61] articulates a reconstructed version of Broken Windows theory as the driving force in the development of policing policy. It states that the NYPD would apply its enforcement efforts to "reclaim the streets" by systematically and aggressively enforcing laws against low-level *social* disorder: graffiti, aggressive panhandling, fare beating, public drunkenness, unlicensed vending, public drinking, public urination, and other low-level misdemeanor offenses.[62]

Second, *Police Strategy No. 1, Getting Guns Off the Streets of New York*,[63] formalized the strategic focus on the eradication of gun violence through the tactical measure of intensifying efforts to seize illegal firearms. Homicide trends in New York City since 1985 provided strong empirical support for emphasizing gun violence in enforcement policy.[64] Nearly all the increases in homi-

---

56. KELLING & COLES, *supra* note 18, at 22-23.

57. *See* SKOGAN, *supra* note 20; Goldstein, *supra* note 46.

58. KELLING & COLES, *supra* note 18 at 23.

59. OAG REPORT, *supra* note 5.

60. *Id.* at 56-59.

61. POLICE STRATEGY No. 5, *supra* note 44.

62. This aggressive approach to low-level disorder was "the linchpin of efforts now being undertaken by the New York City Police Department to reduce crime and fear in the city." *Id.*

63. POLICE STRATEGY No. 1, *supra* note 25.

64. *See* ROBERT C. DAVIS & PEDRO MATEU-GELABERT, VERA INST. OF JUSTICE, RESPECTFUL AND EFFECTIVE POLICING: TWO EXAMPLES IN THE SOUTH BRONX 2, 3 fig.1a (1999) (charting "Homicides (Murder & Non-Negligent Manslaughter), 1978-1997") [hereinafter VERA REPORT].

cides, robberies, and assaults during this period were attributable to gun violence.[65] The political fallout of the homicide crisis lasted for several years more. The homicide crisis was a critical theme in the mayoral election campaign of 1993, and focused the attention of the incoming Giuliani administration's crime-control policy on gun violence.[66]

These two policies, articulated within a relatively brief period in the first few months of the new administration, explicitly cemented the marriage of OMP and "gun-oriented policing"[67] within policy. The logic of this approach was articulated in a series of documents and statements. "By working systematically and assertively to reduce the level of disorder in the city, the NYPD will act to undercut the ground on which more serious crimes seem possible and even permissible."[68] These tactical shifts were intended to raise the stakes for criminals who carried guns: "Stopping people on minor infractions also made it riskier for criminals to carry guns in public."[69] The policy assumed, quite explicitly, that would-be offenders would be deterred from carrying guns since they would be more likely to be stopped for minor crimes or infractions.

The net effect of this marriage was that Broken Windows theory was implemented out of context. Not only was Broken Windows theory recast from physical to social disorder, but community policing and disorder policing both were separated from the theory, reinvented, and implemented with very different tactics.[70]

First, the NYPD version of disorder policing rejected the emphasis on alternatives to arrest and prosecution—essential tenets of the original Broken Windows theory.[71] Although correcting disorder was the focus of policing, the tactic to achieve it was arrest, the most traditional of law enforcement tools. People who committed disorder offenses were questioned and checked for outstanding

---

65. Fagan et al., *supra* note 36, at 1289, 1298, 1304.

66. *See* ELI SILVERMAN, NYPD BATTLES CRIME: INNOVATIVE STRATEGIES IN POLICING 95 (1999); BRATTON & KNOBLER, *supra* note 44, at 219-20. *See generally* KARMEN, *supra* note 36.

67. Fagan et al., *supra* note 36, at 1322.

68. POLICE STRATEGY NO. 5, *supra* note 44.

69. VERA REPORT, *supra* note 64, at 1.

70. Waldeck, *supra* note 19, at 1274-75 n.89; *see also* Bratton, *supra* note 44, at 463-64. This version of community policing eschewed social work functions antithetical to the traditional definition of policing. These tactics robbed rank-and-file police of the activities—searches and arrests—that not only were the staple of police productivity, but also the stepladder to status on the force and advancement within the department. Among police administrators, the emerging paradigm of community policing took away their primary method of keeping order.

71. Waldeck, *supra* note 19, at 1274.

warrants. Those without identification were taken to a precinct, and many were held until fingerprint checks were completed.[72] In other words, disorder policing was used not to disrupt the developmental sequence of disorder and crime, but instead disorder offenses became opportunities to remove weapons and wanted criminals from the streets.

Second, community policing also was reinvented in this marriage. Community standards were no longer identified through structured and systematic interactions between police and community leaders. Instead, the NYPD turned to its sophisticated data-driven management accountability system—Compstat—to identify community needs. The result was that the locus of the standard-setting process shifted from police-community partnerships to precinct commanders.[73] Presumably, precinct commanders were still involved in their communities, developing plans and setting priorities for enforcement.[74] However, the precinct commanders, who continued to meet with community groups, were now accountable to the NYPD's operational hierarchy for both their successes and their failures to produce declining crime rates.[75] As a result, precinct commanders set the crime-fighting priorities for that precinct and developed overall plans of action, based on meeting NYPD priorities, rather than the standards set in cooperation with communities.[76]

C. Disorganization and Disorder: Competing Theories of Place and Crime

For decades before Broken Windows, criminological theories emphasized the notion of "place."[77] In the 1920s, Clifford Shaw

---

72. *Id.* at 1279. These tactics were developed and widely implemented in the transit police under Bratton's leadership in the early 1990s. BRATTON & KNOBLER, *supra* note 44, at 152.

73. BRATTON & KNOBLER, *supra* note 44, at 233.

74. *See id.*

75. *Id.*

76. OAG REPORT, *supra* note 5, at 54-56. According to the Report, accountability was implemented through Compstat meetings. Compstat ("comparison statistics") is a system of electronic computer mapping of weekly crime statistics within precincts and larger police commands. Monthly Compstat sessions focus on analysis of specific crime issues of any of the eight patrol boroughs. Each patrol bureau spans eight to ten precincts. Commanders are asked to explain, often on the spot and in front of an audience of the commissioner and other high ranking department personnel, changes in crime trends in their areas. *Id.*

77. "Place" in the criminological literature is an enduring concept that alternately refers to neighborhoods, larger sections of cities, or other aggregates of areas. *See generally* CLIFFORD R. SHAW & HENRY D. McKAY, JUVENILE DELINQUENCY AND

and Henry McKay showed that high rates of juvenile crime were persistent in specific neighborhoods over time, despite changes in the racial and ethnic composition of the persons who lived there. Shaw and McKay concluded that place, not the characteristics of the persons who live there, is implicated in crime. Factors such as poverty rates, a downward skewed age distribution, racial and ethnic heterogeneity, and population turnover (residential mobility) explain variations in crime rates across neighborhoods. Shaw and McKay defined the conditions that produced persistently elevated juvenile crime rates as social disorganization.[78]

Recent revisions to this theory emphasize the social organization—the actions of residents within neighborhoods to produce social control and realize their shared values—as protective against high crime rates. Robert Sampson, Stephen Raudenbush, and Felton Earls reported in a study of residents in 343 Chicago neighborhoods that social cohesion among neighbors is linked to lower levels of violence, net of poverty rates, demography, or other socioeconomic factors.[79] This dynamic conceptualization of neighborhood emphasizes social interactions among neighborhood residents, including:

> (1) the strength and interdependence of social networks; (2) the efficacy of collective supervision that residents exercise; (3) the personal responsibility they assume in addressing neighborhood problems; and (4) the level of resident participation in formal and informal organization such as churches, block clubs, and

---

Urban Areas: A Study of Rates of Delinquency in Relation to Differential Characteristics of Local Communities in American Cities (rev. ed. 1969) (presenting data on the stability of delinquency rates in Chicago neighborhoods across generations of residents of changing composition); Robert J. Bursik Jr. & Harold G. Grasmick, Neighborhoods and Crime: The Dimensions of Effective Community Control (1993) (articulating a systemic theory of delinquency that includes elements of the physical attributes of neighborhoods, their social composition and demography, and the institutions that are influential for the people who live there); *Robert J. Sampson & Janet Lauritsen, Violent victimization and offending: Individual-, Situational-, and Community-Level Risk Factors, in* Understanding and Preventing Violence 1 (Albert J. Reiss Jr. & Jeffrey A. Roth, eds. 1994) (reviewing empirical studies that show a relationship between individuals and communities or neighborhoods and delinquency rates).

78. Shaw & McKay, *supra* note 77, at 383-87. Recent studies show that these factors are stable explanations over time of variations in crime and violence rates across cities and larger ecological aggregates. Kenneth Land et al., *Structural Covariates of Homicide Rates: Are There any Invariances Across Time and Space?*, 95 Am. J. Soc. 922 (1990).

79. Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, Science, Aug. 15, 1997, at 918 (examining neighborhoods in a way that ensured diversity by race, ethnicity, and class).

PTAs. The idea is that community-level social processes such as the level of supervision of teenage peer groups, the prevalence of friendship networks, and the level of residential participation in formal organizations, mediate the link often noted between individual-level factors, such as race and socioeconomic status, and crime.[80]

As Tracey Meares and others point out, the conditions that characterize poor, minority, inner-city communities generally conform to a place-based social organization model of crime. In urban areas, many poor people of color live in conditions of residential segregation, concentrated poverty, and unemployment that predict the breakdown of community social processes,[81] which in turn predict elevated crime rates.[82] For example, many poor African Americans live in the overwhelmingly poor communities marked by unemployment, family dislocation, and high residential turnover.[83] The challenges to social control in socially disorganized neighborhoods are greater for blacks and Hispanics than for whites.[84]

Social disorganization also predicts social and physical disorder. Both theoretically and empirically, disorder and disorganization are confounded. In the study of Chicago neighborhoods by Sampson and colleagues, they included in regression models measures traditionally associated with social disorganization theory to predict disorder in census tracts.[85] Neighborhood characteristics including concentrated disadvantage[86] and weak social ties (collective efficacy) were significant predictors of the rates of disorder. Disorder, however, did not predict rates of homicide, and only

---

80. Tracey Meares, *Place and Crime*, 73 CHI.-KENT L. REV. 669, 673 (1998); *see also* Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality, in* CRIME AND INEQUALITY 37, 45-48 (John Hagan & Ruth D. Peterson eds., 1995); Sampson et al., *supra* note 79.

81. MASSEY & DENTON, *supra* note 17, at 130-31.

82. Sampson & Wilson, *supra* note 80; *see also* Robert J. Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 AM. J. SOCIOLOGY 348 (1987) (discussing the effect of family disruption on crime independent of joblessness and welfare receipt).

83. MASSEY & DENTON, *supra* note 17, at 166-67; WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 20-62 (1987); JAMES SHORT, POVERTY, ETHNICITY AND VIOLENT CRIME (1997).

84. Meares, *supra* note 80, at 673-74; Sampson & Wilson, *supra* note 80, at 42 ("[R]acial differences in poverty and family disruption are so strong that the 'worst' urban contexts in which whites reside are considerably better than the average context of black communities."). *See generally* Sampson et al., *supra* note 79.

85. Sampson & Raudenbush, *supra* note 20, at 633-36, and tbl.6.

86. *Id.* This measure included tract-level rates of poverty and unemployment, single parent households, and receipt of public assistance. Racial concentration of blacks was a moderate contributor to the empirical derivation of this construct.

weakly predicted rates of robbery. After controlling for these neighborhood characteristics, the relationship between disorder and crime disappeared for four of their five empirical tests.[87]

Accordingly, social disorganization predicts crime and disorder, but disorder does not predict crime after controlling statistically for the effects of social disorganization. Sampson and colleagues conclude that: "Contrary to the Broken Windows theory . . . the relationship between public disorder and crime is spurious" for most crimes, and is weakly associated only with the crime of robbery.[88] Disorder is only a moderate predictor of robbery, and it co-varies with other neighborhood characteristics such as concentrated disadvantage. Disorder may have a cascading effect on antecedents of crime—encouraging business migration, for example—but it has very weak indirect effects on crime itself. Sampson and colleagues concluded that disorder takes a back seat to other factors, including structural disadvantage and social ties, in explaining crime rates. Controlling crime through disorder policing is, in their words, "simplistic and largely misplaced."[89] Disorder policing, or OMP, leaves the causes of crime untouched.

II. AGGRESSIVE POLICING: OMP, STREET STOPS, AND RACE

Under the tactical shift to order-maintenance policing in New York City, patrol was reinvented to include pro-active interdiction of persons suspected of violating both minor and serious crimes.[90] The importance of stop and frisk interventions to crime fighting was never formally acknowledged in official documents, but has been discussed in detail by the policy's architects and theorists. Kelling and Coles claim that for OMP to be successful, patrol officers should intervene in observed or suspected low-level disorder.[91]

Critics claim that OMP tactics increased the opportunity for pretextual stops leading to searches and arrests.[92] Stops for minor

---

87. *Id.* at 637.

88. *Id.* at 603, 636-37.

89. *Id.* at 638.

90. OAG REPORT, *supra* note 5, at 56-57.

91. KELLING & COLES, *supra* note 18, at 243-48; OAG REPORT, *supra* note 5, at 57; Waldeck, *supra* note 19, at 1282-83; *accord* James Q. Wilson, *Just Take Their Guns Away*, N.Y. TIMES MAG., Mar. 20, 1994, at 47 (stating that police should make street stop and frisks in order to find persons carrying illegal weapons, without stating a legal or practical rationale for these stops).

92. Waldeck, *supra* note 19, at 1282 ("Nor is there any doubt that the police use quality-of-life offenses as excuses to fish for drugs, guns, or evidence of a more serious crime.").

crimes or infractions were easier to justify under a lower constitutional standard (i.e., "reasonable suspicion") than stops for more serious offenses. Accordingly, OMP stops provided opportunities for police to check for warrants, and, again under reasonable suspicion standards, search suspects for contraband or weapons, and make arrests. Many such offenses—such as public drinking or loitering—take place in public, making their observation easier and an encounter with the putatively offending citizen more likely.

The result was a vast increase in misdemeanor arrests, but also a sharp decline in their quality and sustainability in court. OMP has been activated through vast increases in misdemeanor arrests of adults, increasing from 129,404 in 1993 (the year prior to OMP implementation) to 181,736 in 1996, and 215,158 in 1998.[93] But the evidentiary quality of arrests suffered as their number rose. As arrests increased under OMP, the rate at which prosecutors declined to pursue these cases rose dramatically. In 1998, prosecutors dismissed 18,000 of the 345,000 misdemeanor and felony arrests, approximately twice the number dismissed in 1993.[94] Overall, more than 140,000 cases completed in 1998 ended in dismissals, an increase of 60% compared with 1993.[95] Prosecutors say that refusals to prosecute as well as the high dismissal rate can indicate a decline in the quality of arrest.[96] Many of the declined cases, known as "declined prosecutions" or "D.P.s" in the court, came from predominantly minority neighborhoods, the focus of OMP efforts.[97] The punitive component of the D.P.s. and dismissed arrests—being taken into custody, handcuffed, transported, booked, often strip-searched, and jailed overnight—impregnates these events with its own social meaning quite different from the origins of Broken Windows theory.

---

93. DIV. OF CRIMINAL JUSTICE SERVS., STATE OF N.Y., CRIMINAL JUSTICE INDICATORS: NEW YORK CITY, 1995-1999, *at* http://criminaljustice.state.ny.us/crimnet/cjsa/areastat/areastat.htm (using search parameters: "Region: New York City," years 1995-1999) [hereinafter CJI: NEW YORK CITY].

94. Ford Fessenden & David Rohde, *Dismissed Before Reaching Court: Flawed Arrests Rise in New York*, N.Y. TIMES, Aug. 23, 1999, at A1 (citing the sharp rise in the number of arrests that prosecutors declined to prosecute in 1998). The number of cases rejected by prosecutors rose by 41% in the Bronx and 23% in Manhattan, even as the crime rate declined sharply in the same year. Approximately fifty persons each day were arrested and booked, but then released—many spending a night in jail before their cases were dismissed. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

Analyses of 1998 police stop and frisk reports—UF-250s— showed that OMP policing had drifted from street stops in quality of life crimes to widespread stops of citizens in search of guns.[98] Stop and frisk actions became the primary method for removing illegal handguns from the street. The OAG Report showed that from January 1998 through March 1999, weapons possession was suspected in more than one-third of documented stop and frisk encounters.[99]

The OAG Report also showed that the reconstructed OMP policy was implemented in a manner that was not race-neutral. The OAG Report showed that stops were disproportionately concentrated in the city's poorest neighborhoods, neighborhoods with high concentrations of racial minorities. Table 1 below shows the percentage of stops, according to the distribution of minority populations in the precincts. In precincts with the highest concentrations of minorities, stops of black and Hispanic suspects were highest (by percentage), as might be expected. However, in the thirteen precincts with the lowest minority populations,[100] stops of blacks and Hispanics were well above what their population percentage would predict. In those precincts, 30% of the persons "stopped" were black, more than ten times greater than their percentage of the overall population of those precincts.[101] Hispanics comprised 23.4% of the persons "stopped," more than three times their population share. Whites make up 80% of the population of those precincts, but only 41.5% of the persons "stopped." Even in precincts where neighborhoods had the lowest minority concentration, whites were stopped less. The pattern invokes an enduring empirical fact in criminological research: police officers are more likely to treat as suspicious persons who seem out of place from their surroundings.[102] To police officers, race serves as a marker of

---

98. OAG REPORT, *supra* note 5, at tbl.I.B.3.

99. *Id.* The Street Crime Unit was disproportionately responsible for the use of stop and frisk actions to search for guns. During the fifteen month study period in the OAG Report, the Street Crime Unit ("SCU") had a "particular emphasis on recovering illegal firearms." Its 435 officers (out of nearly 40,000 in the NYPD) effected more than 10% of all documented stop and frisk encounters citywide. *Id.* at 58-59.

100. *Id.* at tbl.I.A.2.

101. *Id.* The OAG Report established the population of each precinct, using census data for day and night populations. *Id.* at 96.

102. JONATHAN RUBINSTEIN, CITY POLICE 225 (1973); John van Maanen, *Working the Street: A Developmental View of Police Behavior, in* THE POTENTIAL FOR REFORM OF CRIMINAL JUSTICE 83, 118 (Herbert Jacobs, ed. 1974).

478   *FORDHAM URBAN LAW JOURNAL* [Vol. XXVIII

where people "belong," and racial incongruity as a marker of suspicion.[103]

TABLE 1. DISTRIBUTION OF STOPS BY RACE OF SUSPECT AND RACIAL COMPOSITION OF PRECINCT (MANDATED REPORT STOPS ONLY)[104]

% Hispanic Population in Precinct	% Black Population in the Precinct		
	Over 40%	10% to 40%	Under 10%
Over 40%	57.0	38.0	17.1
	38.8	55.1	67.0
	3.3	4.9	10.1
	(4)	(11)	(3)
20% to 40%	74.6	31.6	29.5
	19.2	52.0	40.8
	2.9	12.7	22.3
	(2)	(6)	(6)
10% to 20%	84.8	56.9	22.9
	11.0	22.2	40.1
	2.9	18.2	26.3
	(8)	(9)	(5)
Less than 10%	91.6	74.7	30.0
	4.6	8.0	23.4
	2.0	15.4	41.5
	(6)	(2)	(13)

Legend

% Black Suspects
% Hispanic Suspects
% White Suspects
(Number of Precincts)

Racial incongruity is one of several patterns observed in the OAG Report that depict the racial component of OMP in New York. The ratio of 9.5 stops of black citizens for each arrest made was 20% higher than the 7.9 ratio for whites.[105] Such higher stop-arrest ratios suggest either that stops for blacks were pretextual and largely unfounded, or that police were less discriminating or skillful in assessing "suspicion" for minority citizens.

Stops, alone or in proportion to the population, tell only part of the story. The NYPD points out, for example, that the higher stop

---

103. Stephen Mastrofski et al., *Race and Every-Day Policing: A Research Perspective*, Presented at the 12th International Congress on Criminology, Seoul, Aug. 24-29, 1998. Anthony C. Thompson reminds us that racial incongruity was one of the markers that aroused the suspicion of Officer McFadden in the original *Terry* case. *See generally* Thompson, *supra* note 17, at 962-73 (discussing the racial dimensions of the original *Terry* case and the centrality of race to Fourth Amendment jurisprudence).

104. OAG REPORT, *supra* note 5, at tbl.I.A.2.

105. *Id.* at tbl.I.B.2.

rate for minorities reflects higher participation of blacks and Hispanics in crimes, especially in the city's highest crime neighborhoods. Using crime data on race- and crime-specific arrest rates within precincts, the OAG Report estimated the extent to which race- and crime-specific stops were predicted by crime, or whether actual stop rates exceeded the predicted stop rates. The results show that crime rates only partially explain stop rates overall, and fail to explain the rates at which minority citizens are "stopped" by the NYPD. After controlling for race- and crime-specific crime rates and the population composition of the precinct, the results showed that black and Hispanic citizens were significantly more likely to be stopped than were white citizens.[106] The overall differences between races were statistically significant, and were significant specifically for stops where the suspected crime was either violence or weapons possession.[107]

Table 2 illustrates the exponentiated coefficients—or comparative odds—from these models, showing the magnitude of the differences for each race- and crime-specific stop rate. This table only includes stops where reports were mandated by NYPD policy. The results are divided into three sections, according to the precinct's black population. This display illustrates the importance of concentration effects. Each coefficient shows the stop-rate adjusted for the crime rate, disaggregated by race of suspect and suspected crime. In other words, each table shows the rate at which blacks, Hispanics, and whites were "stopped" in proportion to the rate at which they were arrested for each crime type. Comparing the coefficient by race illustrates the magnitude of the differences between races.

---

106. *Id.* at tbl.I.C.1.
107. *Id.*

TABLE 2. LOG ODDS OF RACE- AND CRIME-SPECIFIC STOP RATES, CONTROLLING FOR 1997 RACE- AND CRIME-SPECIFIC ARREST RATES, BY BLACK POPULATION IN PRECINCT (MANDATED REPORT STOPS ONLY)[108]

Race of Suspect	Black Population in Precinct: Less Than 10% Suspected Crime			
	Violent	Weapon	Property	Drug
Black	0.37	2.17	0.26	0.10
Hispanic	0.32	1.87	0.39	0.11
White	0.11	0.97	0.33	0.10

Race of Suspect	Black Population in Precinct: From 10% to 40% Suspected Crime			
	Violent	Weapon	Property	Drug
Black	0.36	2.12	0.25	0.09
Hispanic	0.31	1.83	0.38	0.10
White	0.17	0.95	0.32	0.10

Race of Suspect	Black Population in Precinct: Greater Than 40% Suspected Crime			
	Violent	Weapon	Property	Drug
Black	0.30	1.76	0.21	0.08
Hispanic	0.26	1.52	0.31	0.09
White	0.14	0.79	0.27	0.08

For example, Table 2 shows that in precincts where the black population was less than 10%, blacks were 2.17 times more likely to be stopped for weapons offenses compared to the arrest rate for blacks for that crime. Whites were 0.97 times more likely to be stopped compared to the arrest rate for whites for that crime. Comparing the coefficients, blacks were more than twice as likely (2.17/0.97) to be stopped as whites for weapons offenses, relative to their race-specific arrest rates for that crime.

The comparisons throughout this table show the elevated rates at which blacks and Hispanics were stopped for suspected violence and weapons offenses as compared to stop rates for whites. In precincts with more than 40% black population, the black-white ratios were still more than twice as high for violent crimes (0.3/0.14) and nearly three times higher (1.76/0.79) for weapons offenses. The Hispanic-white ratios in these precincts were comparably disproportionate for stops for violent crimes (0.26/0.14) and for weapons offenses (1.52/0.79). The disparities were confined to these two crime types. The coefficients were either comparable or lower for

108. *See id.* at Appendix tbl.1.C.1.

whites where stops related to alleged drug or property crimes, regardless of precinct demography.

The higher-than-predicted stop rates of minorities suggest that the police had cast suspicion more often—than would be predicted by their crime participation—on the city's minority population.[109] Although race may not be determinative in the decision to stop a suspect, race certainly appeared to be a motivating factor in the patterns of stop and frisk interventions. The prominence of race in the decision to stop citizens may not rise to the threshold of racial profiling, but it does seem to create a racial classification of "suspicion."

To assess whether that suspicion met *Terry* standards of "reasonable suspicion," the OAG Report examined the stop rationales articulated by police officers on the UF-250 stop report form. The researchers examined the reasons that police officers provided for "stopping" civilians, and estimated the rate at which the reasons, as stated, met Fourth Amendment standards of "reasonable suspicion." The narrative rationales for "stops" came from a citywide sample of 10,000 coded and analyzed UF-250 forms from eight precincts plus a supplemental sample of cases across all precincts.[110] The narratives were coded into sixty-seven categories, and the OAG staff then determined whether the stated rationale in each category met *Terry* standards of "reasonable suspicion."[111] These codes were then collapsed into seven categories, or rationales, which were determined as either meeting or failing to meet *Terry* standards.[112]

Table 3, adopted from the OAG Report, shows that in nearly two-thirds of the stops, the articulated "reasonable suspicion" for the stop met *Terry* standards, and that racial disparities were small. However, stops of black suspects more often failed to meet *Terry*

---

109. *Id.* at 126-27.

110. *Id.* at 135-36. The researchers coded rationales for a citywide sample plus a supplemental sample of specifically chosen precincts. For the individual precinct sample, a purposive sample of eight precincts was selected—the 79th, 42nd, 30th, 43rd, 33rd, 107th, 72nd, and the 19th—based on variation in stop rates and population parameters. For each precinct, approximately half of the UF-250 forms were randomly sampled. In all, 4383 UF-250 forms were randomly sampled for the citywide analysis, including 3282 stops where reports were "mandated." *Id.* at 158-60.

111. *Id.* at 145, tbl.II.A.1.

112. *Id.* at 135-60, tbl.II.A.2. Categories where rationales were sufficient to meet *Terry* standards were: (1) crime observed, (2) suspect fit description, (3) weapon observed, (4) suspicious activity plus other criterion behavior. Categories where rationales failed to meet *Terry* standards included: (1) suspicious activity and (2) suspect in wrong place. *Id.* at tbl.II.A.2.

standards (15.4%) than did stops of whites (11.3%). In contrast, there were only minimal differences between stops involving Hispanic and whites suspects.

TABLE 3. ASSESSMENT OF *TERRY* RATIONALES FOR STOPS BY RACE OF SUSPECT, CITYWIDE SAMPLE (MANDATED REPORT STOPS ONLY)[113]

Assessment of Reasonable Suspicion Standard	Race of Person Stopped				
	Black	**Hispanic**	**White**	**Other**	**Total**
Facts, as stated, articulate reasonable suspicion	1,172	690	192	60	2,114
	64.3%	65.4%	60.4%	69.8%	64.4%
Facts, as stated, do not articulate reasonable suspicion	281	133	36	9	459
	15.4%	12.6%	11.3%	10.5%	14.0%
Insufficient information	370	232	90	17	709
	20.3%	32.7%	28.3%	19.8%	21.6%
Total	1,823	1,055	318	86	3,282

The pattern of evidence in the OAG Report suggests that race evidently became a factor in "everyday policing" in New York City under OMP. Working within a legally permissible but lower standard of "reasonable" racial discrimination, where a second motivating factor (such as "reasonable suspicion") may be present, police over-stopped black and Hispanic citizens relative to their crime participation, well in excess of their white neighbors, and more often without constitutional justification. Black citizens in particular tend to generalize these experiences, with potentially toxic consequences for their perception of the legitimacy of the law.[114] Disproportionate stops of black citizens is an important "race-making" factor,[115] generalized through the sense of linked fate that many blacks share.[116] It conveys social stigma and under-

---

113. *See id.* at tbl.II.B.4.

114. Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 386 (1998) ("Blacks correctly see pretextual traffic stops as another sign that police officers view blacks, particularly black males, as criminals who deserve singular scrutiny and treatment as second class citizens."). *See generally* David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 571 (1997).

115. This term is borrowed from Professor David James, who has written of the ghetto as a "race-making situation." James, *supra* note 24, at 420-28.

116. DAWSON, *supra* note 24, at 77 (using the "linked fate" concept to explain the way that African Americans perceive what is in their individual self interest). Experiences such as "stop and frisk" encounters could easily undermine the social meaning of the OMP strategy. *Id.* at 80-84; *see also* JEFFREY FAGAN & TRACEY L. MEARES, PUNISHMENT, DETERRENCE AND SOCIAL CONTROL: THE PARADOX OF PUNISHMENT IN MINORITY COMMUNITIES (2000) (discussing how the perceived illegitimacy of the criminal justice system in the African American and Hispanic communities has kept

mines the perceived and attributed legitimacy of law and legal institutions necessary to promote compliance with the law. The harm to individuals stopped but not arrested cannot be discounted in a social framework where events and experiences are linked in this manner.[117]

III. RESOLVING COMPETING THEORETICAL CLAIMS ABOUT STOP AND FRISK ACTIVITY: EMPIRICAL RESULTS

Returning to OMP in New York City, then, we can ask whether the emphasis on disorder was, in fact, a strategy focused on policing poor people rather than disordered places. Of course, at the neighborhood level, race interacts with other neighborhood factors, ones that also correlate with social and physical disorder.[118] In the reconstructed Broken Windows theory that informed OMP in New York City, social disorder, or person-focused tactics, replaced physical disorder, or place-based tactics. Empirical evidence shows that the epidemiology of stop and frisk actions in turn was concentrated among minority persons in poor neighborhoods.[119] Accordingly, it appears that place was switched for race in the reality of OMP. Thus, what began as policing informed by a nuanced Broken Windows theory, in fact reflects criminological theories focused on social disorganization.

This raises two questions for understanding the racial patterns of policing. First, what are the net effects of race on patterns of policing after we control for disorder? If OMP was in fact targeted at disorder, race differences at the neighborhood level should disappear after we introduce measures of disorder. Unlike, for example, race-explicit drug-courier profiles, OMP should be racially and facially neutral once we control for the level of disorder in the neighborhood.

---

crime rates steady despite harsher sentencing), http://papers2.ssrn.com/paper.taf?abstract-id=223148.

117. William J. Stuntz, *Terry's Impossibility*, 72 ST. JOHN'S L. REV. 1213, 1218 (1998) (summarizing harms from encounters of innocent citizens with police, including violations of privacy, public shame at being singled out and treated like a criminal suspect, the emotional damage of discrimination, and the potential for police violence and physical injury).

118. Sampson & Raudenbush, *supra* note 20. *See generally* ROBERT J. BURSIK, JR. & HAROLD GRASMICK, NEIGHBORHOODS AND CRIME: THE DIMENSIONS OF EFFECTIVE COMMUNITY CONTROL (1993).

119. OAG REPORT, *supra* note 5, at 92-94 (citing New York City Police Commissioner Howard Safir's statement that minorities are more likely to be "stopped" because they live in high crime neighborhoods with an increased police presence).

Second, if disorder itself is predicted by neighborhood or ecological characteristics, factors that also are correlated with race, are these other factors significant predictors of stop and frisk patterns after we control for disorder? While some neighborhood characteristics are correlated with disorder, these factors also are part of competing theoretical explanations, explanations that are based on characteristics of persons, rather than places. Accordingly, we question whether OMP produces the dramatic racial disparities reported in the OAG Report because of the characteristics of people who live in the neighborhood, or whether these disparities reflect policing targeted in fact at disorder. Analytically, we can compare these two explanations to estimate the ecological locus of racial policing. The results of this competition follow, where we present findings of empirical tests designed to assess these competing claims about the theoretical meaning of OMP in New York City.

A.   Social and Physical Disorder

Data on the social organization and physical characteristics of neighborhoods were obtained from the 1999 New York City Housing and Vacancy Survey ("HVS").[120] The HVS is sponsored by the New York City Department of Housing Preservation and Development ("HPD")[121] to comply with New York State and New York City's rent regulation laws. It is conducted every three years with respondents in a stratified random sample of New York City housing units. The sample is based on housing units recorded in the decennial census, and updated every three years as part of the enumeration process preceding the HVS. The HVS emulates the population dimensions of the decennial census and generates measures of household and person characteristics for the city.[122]

---

120. U.S. CENSUS BUREAU, DEP'T OF COMMERCE, 1999 NEW YORK CITY HOUSING AND VACANCY SURVEY (1999), *at* http://www.census.gov/hhes/www/nychvs.html [hereinafter NYC HOUSING SURVEY].

121. THE GREEN BOOK: OFFICIAL DIRECTORY OF THE CITY OF NEW YORK (2000) (providing names and contact information for HPD). The Department of Housing Preservation and Development is responsible for setting and administering housing policy in the city, including development of urban renewal programs, enforcement of civil codes for housing, management of city-owned properties, rehabilitation of abandoned buildings, and construction of low-income housing.

122. NYC HOUSING SURVEY, *supra* note 120, at Overview, http://www.census.gov/hhes/www/housing/nychvs/overview.html. Differences between the 1999 HVS and the 1990 census include interviewing procedures, staff experience and training, processing procedures, sample design, the sampling variability associated with the HVS and the sample data from the census, and the non-sampling errors associated with the HVS and the census.

The sample includes "vacant available for rent" units as well as occupied units. Both public and privately owned housing units, as well as in rem units,[123] are included. The public-use data set is made available by the U.S. Census Bureau, and includes weights to generate estimates of households and persons for the city. The response rate in the 1999 survey sample of 18,180 was 94%. Interviews were conducted between January and May, 1999 by "field representatives" hired by HPD.[124]

Measures of physical disorder and social structure were aggregated from individual-level responses in the HVS to sub-boroughs. The residential location of each respondent is coded to the borough (county) and the *community district* ("CD"), or sub-borough. CD's are administrative units of each borough; there are fifty-five in the city. Members of the councils of each CD meet periodically to assist city agencies in zoning and other regulatory planning functions. Sub-boroughs include one or two police precincts.

Measures of physical disorder in the sub-borough were computed from responses to items regarding the physical condition of the dwelling and the neighborhood. Respondents were asked to report whether there was damage or disrepair in the exterior walls and windows, stairwells and stairways, and floors. Respondents also were asked to report generally on the condition of other dwellings in their neighborhood: the presence of broken or boarded up windows, and whether the building was "deteriorated" or "dilapidated."[125] Responses were aggregated to the sub-borough level to measure the percentage of housing units with these characteristics.

To avoid redundancy among the disorder variables, a principle components factor analysis with varimax rotation[126] was completed to reduce the variables to a single dimension. The model yielded

---

123. In rem housing units are housing units that are acquired and owned by the City of New York following tax forfeitures or failure to pay other charges such as correcting violations of the housing codes. NYC Housing Survey, *supra* note 120, at H-2, Definitions of Rent Regulation Status, http://www.census.gov/hhes/www/housing/nychvs/defin99.html.

124. NYC Housing Survey, *supra* note 120, at Overview. Interviews were conducted to elicit information about the demographic characteristics of each household member, and the housing characteristics of the dwelling.

125. NYC Housing Survey, *supra* note 120, at Glossary, http://www.census.gov/hhes/www/housing/nychvs/gloss99.html. For vacant units, responses were recorded by the HPD field representatives.

126. "Varimax rotation" is a statistical procedure that permits the extraction of distinct factors or dimensions from a set of highly correlated variables, and assumes that the factors do not overlap statistically or conceptually. Gerhard Arminger et al., Handbook of Statistical Modeling for the Social and Behavioral Sciences 205-6 (1995).

one factor explaining 85.9% of the variance. Factor coefficients ranged from 0.865 to 0.959, indicating uniform loading and high multicollinearity. Because of its conceptual clarity and importance to the construction of "physical disorder," we used the "broken windows" variable as the measure of disorder.[127]

Measures of social disorganization were computed using similar procedures. Both household and person characteristics were constructed by aggregating individual responses to sub-boroughs. Means and variances for the measures are shown in Appendix A, *infra*. A principle components factor analysis with varimax rotation was again completed and yielded three factors that explained 74.0% of the variance. The first factor describes neighborhoods characterized by concentrations of persons with low education, persons under- or unemployed, households receiving public assistance, households with Hispanic residents, and female-headed households. These neighborhoods also were characterized by low white population. The second factor describes neighborhoods with high racial fragmentation (racial heterogeneity)[128] and high concentrations of male population. These neighborhoods also were characterized by low black population. The third factor describes neighborhoods characterized by high concentrations of immigrants and residential mobility.[129]

These three factors reflect the classic dimensions of social disorganization.[130] The variables within factors were highly correlated, again permitting selection of specific variables to represent each factor. For conceptual clarity and theoretical specificity, we chose specific variables as measures of social disorganization: the percent of households with one or more persons receiving public assistance, racial fragmentation, and residential mobility.[131] Because of the importance of immigration to the social composition of New York City,[132] we included as a predictor the percentage of house-

---

127. Analyses available from authors.

128. *See* CHARLES LEWIS TAYLOR & MICHAEL C. HUDSON, WORLD HANDBOOK OF POLITICAL AND SOCIAL INDICATORS 216 (2d ed. 1972). Racial fragmentation is a measure of the racial heterogeneity within an area, and is computed as:
$$1 - ((P)^2)$$
Where P = proportion of each race within the spatial unit.

129. *Id.*

130. SHAW & McKAY, *supra* note 77, at 183-89; SHORT, *supra* note 83, at 55; *see* Sampson & Lauritsen, *supra* note 77, at 1, 51-75; Meares, *supra* note 80, at 673.

131. SHAW & McKAY, *supra* note 77, at 32, 37, 205.

132. I. M. Miyares & K. S. Gowen, Recreating Boundaries: The Geography of Latin American Immigrants to New York City, CLAG YEARBOOK 2431 (1998); *see* Arun Peter Lobo et al., *Immigration to the New York Metropolitan Region in the*

hold heads who were born outside the U.S. We also included two additional measures that are predictors of crime rates at the community level: the housing vacancy rate[133] and the percentage of housing units in the area that are public housing.[134]

Finally, we included a global measure of crime in the sub-borough: the count of 1997 arrests within each precinct, aggregated to the sub-borough. Arrest counts, published in the OAG Report,[135] were obtained by the OAG from the New York State Division of Criminal Justice Services. State crime counts include "finger-printable" crimes, or crimes that are punishable by jail or prison sentences.

B. Stops and Arrests

Counts and rates of stops and arrests within precincts were compiled from data published by the OAG.[136] In addition to stop counts, the ratio of stops to arrests was computed for each precinct and each type of crime. Cases involving stops that occurred from January 1998 - March 1999 were included. The data tables were compiled by the OAG from files created by the NYPD from UF-250 forms.[137] UF-250 forms are completed by officers following

---

1990's, in MIGRATION WORLD, Volume XXVII, No. 5. (1999); ARUN PETER LOBO ET AL., THE NEWEST NEW YORKERS 1990-1994: AN ANALYSIS OF IMMIGRATION TO NYC IN THE EARLY 1990s (1996); I. M. Miyares, *Little Odessa: Brighton Beach, Brooklyn: An Examination of the Former Soviet Refugee Economy in New York City,* 19 URB. GEOGRAPHY 518 (1998).

133. *See* Ralph B. Taylor, *The Impact of Crime on Communities,* 539 THE ANNALS OF THE AMER. ACAD. POL. & SOC. SCIENCE 28 (1995).

134. *E.g.,* TAMARA DUMANOVSKY ET AL., THE NEIGHBORHOOD CONTEXT OF CRIME IN NYC's PUBLIC HOUSING PROJECTS (1999) (manuscript on file with author); TERENCE DUNWORTH & AARON SAIGER, NAT'L INST. OF JUSTICE, SUMMARY: DRUGS AND CRIME IN PUBLIC HOUSING: A THREE-CITY ANALYSIS, at viii (1994); Harold Holzman, *Criminological Research on Public Housing: Toward a Better Understanding of People, Places and Spaces,* 42 CRIME & DELINQUENCY 361 (1996).

135. OAG REPORT, *supra* note 5, at tbl.I.C.3; *see also id.* at 120 n. 25 (explaining that arrest counts for 1997 were used—instead of 1998 arrest data—to avoid autocorrelation between stops and arrests that both occurred in 1998). Arrest counts are preferable to crime complaint data, since many types of crime (such as drug crimes or minor property crimes) are not reported in citizen complaints to the police. *Id.* at 121. In addition, complaints often include crimes with no suspect information, while arrests include information on the demographic characteristics of the suspect. *See id.*

136. *Id.* at tbl.I.C.3. Race-specific rates for the total number of stops were computed from the percentages included in the table. The race-specific ratios of stops to arrests were computed from data in tbl.I.B.1 and I.B.2, and Appendix tbl.I.B.1 and I.B.2. tbl.I.B.2 also included data on weapons stops by race.

137. *Id.* at 88.

488   *FORDHAM URBAN LAW JOURNAL* [Vol. XXVIII

each stop event.[138] Both global stops and arrests were analyzed, as well as stops where the suspect was alleged to have a weapon. Weapons stops were analyzed separately because of the heavy emphasis on the control of gun violence in the formulation and implementation of NYPD policy.[139]

The analyses included only stops where a UF-250 form was mandated. NYPD policy mandates that officers complete a UF-250 under four specific circumstances: when (1) force is used in the course of the stop; (2) the suspect is frisked (i.e., pat down) and/or searched during the course of the stop;[140] (3) the suspect is arrested; or (4) the suspect refuses to identify him or herself.[141] Non-mandated reports also were submitted during this time, but compliance with reporting requirements when reports were not mandated was uneven, raising reliability problems in assessing the consistency of these reports across precincts.[142]

---

138. *Id.* at 63 (describing the UF-250 form and the NYPD policies regulating the filing of these reports). Although initially designed as a tool for investigation, completion of the UF-250 form has been required by the NYPD Patrol Guide since 1986. *Id.* at 65. In 1997, the police commissioner assigned a high priority to filing UF-250s. N.Y. CITY POLICE DEP'T, PATROL GUIDE: PROCEDURE NO. 116-33 (effective Nov. 14, 1986) (detailing policy police officers, in certain circumstances, to document stop and frisk street encounters on the UF-250 form) [hereinafter PATROL GUIDE].

139. For a discussion of the policy, see POLICE STRATEGY No. 1, *supra* note 25, and OAG REPORT, *supra* note 5, at 53. The memo described the NYPD's plan to reduce gun violence by intensified efforts to find and seize illegal firearms. Guns and violent crime also were a primary focus of the NYPD's Street Crime Unit ("SCU"), an elite unit of plain-clothes officers tasked to "hot spots" of concentrated criminal activity. The SCU's "mission" is to "effect the arrests of violent street criminals, with a particular emphasis on recovering illegal firearms." OAG REPORT, *supra* note 5, at 53 n.32 (citing Police Commissioner Howard Safir, Statement Before the New York City Council Public Safety Committee (Apr. 19, 1999)) [hereinafter Safir Statement].

140. That is, searches inside his or her clothing.

141. PATROL GUIDE, *supra* note 138; OAG REPORT, *supra* note 5, at 63-64.

142. Analyses in the OAG Report show that whites were over-represented in cases involving non-mandated reports. OAG REPORT, *supra* note 5, at 95 n.9. Although whites comprised 12.9% of all cases and 10.4% of cases where reports were required, whites comprised 19.3% of cases where a form was not mandated. However, completion of non-mandated reports varied from precinct to precinct, when compared as a ratio to the number of stops with mandated reports. *See id.* at tbl.I.A.1. The OAG Report constructed two scenarios to explain the racial disparity in non-mandated reports. In one scenario, "the police completed non-mandated UF-250's for 'stops' of minorities and non-minorities at the same rate, but [found] that 'stops' of whites were less likely to rise to the more intrusive level of force, a frisk or an arrest." *Id.* at 95 n.9. In the second scenario, "the police were more likely to . . . complet[e] a UF-250 form . . . in a non-mandated situation when the person 'stopped' was white." *Id.* In either scenario, analyzing only mandated report cases—which by definition are more intrusive—would show greater racial disparity than would an analysis of all cases. *Id.*

C. Results

Two dimensions of police stops of citizens were computed to test the hypothesis that crime rates alone do not explain differences in stop rates by race or type of crime. First, comparisons of stop rates by race and type of crime are shown in Table 4.[143] Stop rates by race and type of crime are shown, and the overall race-specific crime rate is shown as a basis of comparison. We used the 1997 race-specific crime counts to compute a per capita stop rate over the fifteen month interval. The results show large disparities by race. Stop rates were nearly five times higher for blacks compared to non-Hispanic whites, and four times higher for Hispanics.[144] The citywide stop rate is heavily weighted by the concentration of stops among blacks and Hispanics. The disparities by race are consistent across crime types, and the heaviest disparities between stops of black and white citizens. For violence and weapons, stops of blacks occur at a rate ten times higher than the rate for whites, and more than twice as high as the rate for Hispanics. Disparities remain for other crime types, but are narrower. Comparisons of race-specific stop rates per 1000 population to arrest rates per 1000 population show that blacks and Hispanics were stopped at rates higher than their arrest rates.

---

143. *Id.* at 120 n.25 (describing types of crimes). Crimes were reported using four generic crime categories. *Violent crimes* included robbery, assault, homicide, kidnapping and sex crimes. *Weapons crimes* included arrests for both gun and other illegal weapons. *Property crimes* included larceny and burglary. *Drug crimes* included both possession and sale offenses. *Id.*

144. The OAG analysis constructed four categories of race from the eight recorded on the NYPD documentation in the UF-250 data: white, black, Hispanic white, Asian, American Indian, other, unknown. OAG REPORT, *supra* note 5. We use four: black, white, Hispanic, and other. The UF-250 form has no category for black Hispanics, so we were unable to determine whether officers classified black Hispanics as black or Hispanic, or whether officers were consistent in their classification decisions. *Id.* The NYPD classification is based on officers' observations, the Census Bureau classification is based on self-report. In constructing race-specific population rates from the HVS for the sub-boroughs, we classified both white and black Hispanics as black, consistent with classifications in the U.S. Census. The construction of the Hispanic classification from census data involves a two-stage process regarding both race and ethnicity. Once race is determined, a secondary question asks whether the individual identifies himself or herself as a person of "Hispanic origin."

FORDHAM URBAN LAW JOURNAL [Vol. XXVIII

TABLE 4. RACE-SPECIFIC AND CRIME-SPECIFIC STOP RATES PER
1,000 PERSONS, CRIME RATES PER 1,000 PERSONS, AND RACE-
SPECIFIC POPULATION CITYWIDE[145]

Type of Crime	Stop Rate: Citywide	Stop Rate: Black	Stop Rate: Hispanic	Stop Rate: White	Stop Rate: Other
Violent	3.2	7.5	3.5	0.7	1.0
Property	2.0	3.1	2.6	1.1	0.9
Drug	1.4	2.7	1.8	0.6	0.3
Weapon	7.6	18.0	8.7	1.3	1.8
Quality of life offenses	1.3	1.8	1.5	0.1	0.5
All offenses	17.1	22.6	20.0	4.8	5.2
Total arrests	104,847	53,472	31,454	16,776	3,145
Arrest rate per 1,000 persons	14.1	29.0	15.1	6.0	4.4
1999 population	7,428,162	1,845,306	2,089,149	2,775,637	718,070

These differences are consistent with significant differences reported in the OAG Report.[146] Controlling for race- and crime-specific crime rates and population, that report showed that stop rates for blacks and Hispanics were significantly higher than the stop rates for whites.[147] These effects were most acute for stops for weapons and violent crimes.[148]

The second measure of police stop activity is the ratio of stops to arrests by race and type of crime. Once police officers decide to stop a citizen, the outcomes of those stops—including whether a frisk or search is conducted, and whether an arrest is made—should not differ by race. Presumably, the "reasonable suspicion" articulated in *Terry v. Ohio* and incorporated into both the formal training and professional judgment of police officers,[149] should lead to stops with race-neutral outcome probabilities. In other words, there is no rationale for police to exercise discretion differently by race that would lead to a higher rate of "false positives" for any racial group. Accordingly, stop rates should reflect a similar efficiency and strategic allocation of police efforts across races.

---

145. OAG REPORT, *supra* note 5, at tbl.I.A.1, tbl.I.A.5; DEP'T OF CITY PLANNING, CITY OF N.Y., 1990-99 POPULATION CHANGE ESTIMATES, *available at* http://www.ci.nyc.ny.us/html/dcp/pdf/9099pop.pdf.

146. OAG REPORT, *supra* note 5, at 94-95. Citywide, blacks constituted 50% of the total "stops" and 51% of the arrests for the covered period. Hispanics constituted 33% of all "stops" and 30% of all arrests. Whites constituted 13% of all "stops" and 16% of all arrests. However, this evidence of proportionality masks differences by neighborhood. *Id.* at 95 n.9, 123.

147. *Id.* at tbl.I.C.1 and I.C.2.

148. *Id.* at tbl.I.C.1 and I.C.2.

149. *See* Thompson, *supra* note 17, at 971.

Table 5 shows the ratio of stops to arrests by race of suspect and suspected charge. A higher rate indicates less efficiency in stops, or an excessive rate of stops needed to affect an arrest. A high stop rate may also indicate more indiscriminate stop practices, or simply broadened suspicion of individuals based on race alone.[150] Overall, the total stop-to-arrest ratio of blacks (7.3 stops per arrest) is 58.7% higher than the ratio for non-Hispanic whites (4.6); the ratio for Hispanics (6.4) is 39% higher than the rate for non-Hispanic whites. For weapons stops, the stop-to-arrest ratio for blacks is 18.7% higher than the ratio for whites, but the ratio for Hispanics is less than 23.0% higher.

TABLE 5. RACE- AND CRIME-SPECIFIC STOP-ARREST RATIOS CITYWIDE[151]

Type of Crime	Citywide	Black	Hispanic	White	Other
Weapon	16.5	16.5	17.1	13.9	17.3
All Stops	6.5	7.3	6.4	4.6	5.5

To test whether stops were proportionate to crime rates, and to assess factors that might explain stop rates higher than would be predicted by crime rates, multivariate analyses were completed incorporating three potential explanations: the crime rate within the sub-borough (or strategic theory), disorder (or place-based theory), or social disorganization (or person-based theory). Trends in both Tables 4 and 5 confirm the emphasis on weapons stops articulated in NYPD strategy memoranda. Accordingly, separate analyses were completed on the overall stop counts, and then on stops where weapons were the suspected charge or rationale for the stop.

Table 6 shows the bivariate correlations—the correlation between two variables—among these predictors and the outcome variables.[152] Correlations were statistically significant and in the predicted directions for stops overall and stops involving non-white

---

150. One could also argue that a higher stop rate for one group may indicate "under-stops" of other groups, or a reluctance to stop more often persons of one race or another. That is an unlikely explanation, however, since the OAG Report shows that the racial distribution of stops were consistent across precincts and stable over the fifteen months. *See* OAG REPORT, *supra* note 5, at 92-110. It is unlikely that the pattern of under-documentation or depressed stop rates for whites would remain so consistent across the NYPD's many precincts and neighborhoods.

151. OAG REPORT, *supra* note 5, at tbl.I.C.1.

152. For example, stop rates for whites were negatively correlated with vacancy rates, concentrations of public assistance recipients, and housing units with broken windows.

TABLE 6. CORRELATION MATRIX (PEARSON R, P)

	Total Arrests	% in Public Housing	Vacancy Rate	% Units with Broken Windows	% Receiving Public Assistance	Racial Fragmentation	Mobility	% Immigrants
ALL STOPS								
Stops - All	.707**	.474**	.397**	.461**	.573***	.082	-.039	.418**
Stops - Blacks	.582**	.361**	.477**	.423**	.474***	-.120	-.154	.259
Stops - Hispanics	.481**	.388**	.147	.337*	.502***	.236	.142	.418**
Stops - Whites	-.107	-.155	-.337*	-.344*	-.435***	.207	.025	-.033
Stops - Other	.098	.024	-.201	-.136	-.219	.371**	.009	-.126
WEAPONS								
Stops - All	.645**	.449**	.460**	.514***	.664***	-.017	-.124	.336*
Stops - Blacks	.509**	.321*	.462**	.425***	.495***	-.157	-.201	.169
Stops - Hispanics	.518**	.447**	.255	.429***	.641***	.185	.069	.451**
Stops - Whites	.052	-.094	-.244	-.204	-.230	.200	-.015	.015
Stops - Other	.223	-.008	-.110	-.065	-.076	.316*	.080	-.092

* $p < .05$
** $p < .01$
*** $p < .001$

suspects. Stops involving whites either were not correlated with the disorder or disorganization variables, or were correlated negatively with disorganization variables.[153]

Results of multivariate tests of the relative contributions of crime, disorder, and disorganization to stop counts are shown in Table 7. A fixed effects Poisson regression analysis was used, with predictors from each of these three domains.[154] The model estimates the expected value of the number of events in relation to the causal factors and other explanatory variables of interest. The question in this analysis is whether the count of events (stops) in an area (sub-borough) is predicted by factors that might influence these events (arrest rates, social disorganization variables, and physical disorder variables). The baseline model tests the hypothesis that the race-specific stop count is proportional to the number of arrests in the area. The full model assesses whether factors beyond the arrest count predict the stop count in the area.

---

153. Overall, whites in New York City live in neighborhoods that are marked by the absence of social isolation or economic deprivation, as well as neighborhoods with lower crime rates. *See, e.g.*, JOHN MOLLENKOPF & MANUAL CASTELLS, DUAL CITY: RESTRUCTURING NEW YORK 29-31, 304-05 (1991). However, the correlation of stops of whites and crime rates in the neighborhood were not statistically significant. This may reflect the fact that whites often were stopped when they were observed in non-white neighborhoods, usually on suspicion of drugs. *Id.* This illustrates the "racial incongruity" source of disparity, where a stop is triggered by a racial "mismatch" of a person of one color moving through a neighborhood with population dominated by persons of another color. In the case of whites in non-white neighborhoods, it is often on suspicion of drug buying or possession. When black or Hispanic suspects are stopped in predominantly minority neighborhoods, it often is on suspicion of violence or weapons crimes. OAG REPORT, *supra* note 5, at 126-28, and tbl.I.C.1.

154. P. McCULLAGH & J. NELDER, GENERALIZED LINEAR MODELS 193-08 (1989); WILLIAM H. GREENE, ECONOMETRIC ANALYSIS (2d ed. 1993); PETER KENNEDY, A GUIDE TO ECONOMETRICS (3d ed. 1994). Poisson regression is an ideal method to analyze factors that predict counts of events, and determining the relationship of these counts to a set of explanatory or predictive variables. The loglinear Poisson model is the one utilized for these analyses. Standard errors are corrected for over-dispersion.

TABLE 7. POISSON REGRESSION OF RACE-SPECIFIC STOPS FOR ALL STOPS AND WEAPONS STOPS ONLY [T, P(T)]

	All Stops				Weapons Stops			
	All Suspects	Black Suspects	Hispanic Suspects	White Suspects	All Suspects	Black Suspects	Hispanic Suspects	White Suspects
Intercept	12.71***	7.74***	3.47**	6.36***	8.86***	6.51***	2.18*	4.86***
1997 Arrests	4.61***	3.24**	3.16**	.81	4.20***	3.17**	3.79***	1.41
% in Public Housing	.30	.01	.28	.95	-.80	-.43	-.68	.16
Vacancy Rate	-1.21	.88	-3.73***	-.94	-.80	.80	-3.92***	-1.08
% Broken Windows	.90	-.71	2.09*	-.49	.45	-.83	2.20*	-.26
% Public Assistance	2.54*	1.55	3.50**	-2.09*	3.97***	2.24*	5.67***	-.79
Racial Fragmentation	1.72	-.11	2.92**	1.01	1.14	-.35	3.77***	1.12
Residential Mobility	-.61	-1.44	1.66	-.23	-1.38	-1.80	.96	-.61
% Immigrant	.05	-.56	1.26	.42	-.46	-.99	1.30	.31
-2 Log Likelihood	117.1	172.5	163.3	166.7	147.4	190.7	165.6	166.1
Model Chi-Square	16431.4	27870.4	12198.4	5281.7	12888.2	18624.2	4698.5	1542.9

* $p < .05$
** $p < .01$
*** $p < .001$

The results confirm the claim that the arrest rate predicts both total stops and weapons stops in the sub-boroughs. Arrests are a significant predictor of the total number of stops, the total number of weapons stops, and both total and weapons stops for black and Hispanic suspects. However, arrests fail to predict stops for whites. In part, this may reflect the low rate of stops of whites, or the heterogeneity of the locations of white stops. That is, stops of whites may include both "racial mismatch" stops of whites in non-white areas where crime rates may be elevated, but other types of stops occur as well, most in neighborhoods of varying crime rates. Some may simply be based on descriptions from complainants, and others based on the reasonable suspicion grounds articulated in *Terry.*

Crime rates *should* predict stop rates, and should take into account any differences by race in the likelihood that a citizen should be stopped relative to his or her propensity for crime commission. However, when factors other than crime rates affect stops, we attribute these additional factors to policy, or to other tacit assumptions about race, neighborhoods, and criminality. Table 7 shows that for stops overall, factors other than crime in the neighborhood predict the stop counts. For all suspects, after controlling for crime, stops within the sub-boroughs were predicted by their poverty rates. Accordingly, policing in the city's neighborhoods appears to reflect the economic status of people rather than the physical condition of its buildings.

When race-specific stop counts are considered, both disorder and disorganization variables predict stop counts for Hispanics, but not for blacks. The concentration of dwellings with broken windows, low vacancy rates, high concentration of persons in public housing, and racial heterogeneity all predict the stop count for Hispanics. The diversity of this pattern of predictors for Hispanics reflects the heterogeneity of residential patterns and socio-economic factors for Hispanics. For whites, stops are not predicted by crime, but instead are predicted by the absence of poverty. Again, this reflects the tendency for whites to live in areas that although not necessarily affluent, are less likely to be poor.

Finally, Table 7 shows a different picture for weapons stops. For weapons stops of all suspects generally and specifically of black suspects, poverty rates predicted stop counts, after controlling for crime. As above, policing weapons is concentrated in poor neighborhoods. Stop and frisk activity targeted at weapons seems focused on the economic status of people in neighborhoods, not the

physical condition of their buildings. For stops of Hispanic suspects, weapons stops were predicted by both disorder and disorganization variables.

These patterns suggest that stop and frisk strategies have departed from their original Broken Windows underpinnings, and more closely resemble policing of poor people in poor places. How the policy in action evolved so far from its complex and nuanced theoretical origins is a potentially important tale. It is important to understand whether and how race became a marker of increased risk of criminality in this hothouse policy context, the ways in which race interacted with the social organization of policing to produce greater intensity of enforcement and over-enforcement against minority citizens, and the cultural and political dynamics that allow the conflation of race, poverty, and disorder in policing policy. These lessons await a different research paradigm, focused on the hot cognitions of police-citizen interactions, and the social contexts in which these events unfold.

IV. SOCIAL NORMS AND AGGRESSIVE POLICING

In New York, the application of Broken Windows theories through OMP strategies and stop and frisk tactics produced a style of racial policing with stigmatizing effects on minority communities. In fact, the implemented strategy departed sharply from the original design of Broken Windows theory, focusing more on the consequences of broken windows than their causes. The strategy as implemented was intensified surveillance and proactive engagement with citizens under a broad standard of "reasonable suspicion." The emphasis on persons rather than place, and the racial demography of places where OMP was most intense and active, suggest that the cues to which police responded were primarily tied to race as well as places that are defined by race. Not only is this a long way from Broken Windows theory, but it invites constitutional problems that can further distance police from minority citizens.[155] The drift from engagement with community in the co-production of security reflects two different dimensions of social norms, dimensions of both community and organization.

---

155. *See generally* OAG REPORT, *supra* note 5, at 15-44 (discussing Fourth and Fourteenth Amendment issues related to stop and frisk activity and racial profiling, respectively); Garrett, *supra* note 7, at 1829-34 (discussing equal protection issues in racial profiling cases).

A. Social Norms and Aggressive Policing Revisited

Although stop and frisk tactics likely contributed to the crime decline in New York, the precise contribution of these tactics is contested.[156] But there also is little doubt that there were social costs from the crackdown on crime that may compromise the original intent to redirect and rebuild social norms.[157] If the mechanism of decline is search, surveillance, and aggressive misdemeanor arrests, there is no causal path to declining crime that runs through order and social norms. As Harcourt observed, these efforts "have little to do with fixing broken windows and much more to do with arresting window breakers—or persons who look like they might break windows, or . . . strangers . . . or outsiders."[158]

The social norms approach underlying Broken Windows theory required that the cues of crime be removed and replaced with alternative cues that signaled order and social regulation. In the causal dynamic hypothesized by the theory, citizens engaged with police to enforce norms of orderliness, conveying a social meaning that influenced behavior of citizens in the orderly milieu.[159]

This construction of social control comports well with the dynamics of collective efficacy discussed by Sampson, Raudenbush, and Earls.[160] Citizen participation in the dynamics of informal social control, such as collective supervision of teenagers and citizen interventions in low-level crimes, are manifestations of the neigh-

---

156. Fagan et al., *supra* note 36, at 1322 (crediting the decline in gun violence in part to "gun-oriented policing" but acknowledging multiple causation by other social factors); Waldeck, *supra* note 19, at 1283-84 (citation omitted) (suggesting that the stop and frisk tactics produced a crackdown that deterred many from carrying weapons or drugs); Harcourt, *supra* note 19, at 339-40 (claiming that the huge increase in misdemeanor arrests under OMP produced a surveillance effect that depressed crime rates). *But see generally* KARMEN, *supra* note 36 (citing interactions among multiple causes for the crime decline that complicated attribution of effects to any single cause).

157. *See generally* Tom R. Tyler, *Public trust and confidence in legal authorities: What do people want from the law and legal institutions?*, in BEHAVIORAL SCIENCE AND THE LAW (forthcoming) (arguing that public views are primarily shaped by evaluating the fairness of police and court procedures). Neighborhood residents in high crime neighborhood often express satisfaction with the lowered crime rate, but greater distrust of police when aggressive stop, search, and arrest tactics are used. OAG REPORT, *supra* note 5, at 74-87.

158. Harcourt, *supra* note 19, at 342.

159. Kahan, *supra* note 36, at 2488; Meares & Kahan, *supra* note 26, at 823.

160. Sampson & Raudenbush, *supra* note 20, at 611-612 (discussing the link between disorder and "collective efficacy"); *see also* Robert J. Sampson et al., *supra* note 79, at 919-21 (showing evidence that crime rates fluctuate according to the neighborhood's collective efficacy, independent of poverty, racial composition, and other socio-demographic factors).

borhood's "collective efficacy" that reduces crime and disorder.[161] Collective behavior of this type may involve citizen-police interactions, but often these are citizen-initiated efforts, such as "phone trees" among residents to call police and report either physical or social disorder, citizen demands to enforce housing codes to rid neighborhoods of crack houses, advocacy in court proceedings for substantive punishment for chronic disorder offenders, and collective political activity on zoning and licensing.[162] However, neither collective efficacy nor social capital is likely to be increased by policing tactics that rely almost exclusively on stopping, searching, and arresting people. Wilson and Kelling, in the original *Broken Windows* essay, did not imagine a scenario where aggressive policing—in the absence of interaction with community groups or social agencies—would create enduring forms of social interaction by citizens to prevent and control crime.[163]

The incentives for people to engage with legal actors in social regulation and the co-production of security may lie in their evaluations of their treatment by the police. Fairness and crackdowns may be inconsistent, but at least citizens know they are tradeoffs. Recent work by Tom Tyler and colleagues in a survey of residents in three Oakland, California neighborhoods suggests that citizens' evaluations of legal actors are not linked to the outcomes of their court cases or interactions with police, or on the crime rate in their neighborhood.[164] They focus instead on the fairness of their treatment from those authorities.[165] Ronald Weitzer reaches the same conclusion in a survey of residents of three neighborhoods in Washington, D.C.[166] He reports contrasting evaluations of police services in two predominantly black neighborhoods. Proactive po-

---

161. Sampson & Raudenbush, *supra* note 20, at 612.

162. *Id.*

163. The original Broken Windows theory recognized that a disorder-focused policing strategy would "only be effective if applied in conjunction with a wide variety of other police tactics" and "pursued in partnership with . . . other social agencies." Waldeck, *supra* note 19, at 1270 (citation omitted). Waldeck shows that the social norms and tactics suggested by the original Broken Windows theory diverged sharply from the traditional social norms of policing as "crime-fighters" where the officer's "basic business" is arresting offenders. *Id.*; *see* George L. Kelling, *Toward New Images of Policing: Herman Goldstein's Problem-oriented Policing*, 17 LAW & SOC. INQUIRY 539, 540 (1992).

164. TYLER, *supra* note 157. Tyler also notes that some judgments are made on vicarious experiences of neighbors and friends, an illustration of the importance of linked fate. *Id.*

165. *Id.*

166. Ronald Weitzer, *Racialized Policing: Residents' Perceptions in Three Neighborhoods*, 34 LAW & SOC'Y REV. 129, 150-52 (2000).

licing of residents of a poor, high crime neighborhood elicited less favorable reactions to police than did the more reactive and respectful treatment of citizens in an "orderly" middle-class neighborhood.[167]

Such empirical findings suggest the viability and importance of an approach to social regulation based on procedural fairness. Procedural fairness—or better treatment—promotes greater trust and confidence in the law, and higher rates of compliance.[168]

These perceptions of law and legal actors have important implications about popular attributions of legitimacy to law. People who view the law as illegitimate are less likely to obey it, and people who view police officers and judges as lacking in legitimacy are less likely to follow their directives.[169] Although the law is based on the implicit or explicit threat of sanctioning for wrongdoing, the legal system depends heavily on voluntary compliance from most citizens to set and enforce norms, and to engage with the police in social control. Hence, lower levels of legitimacy make social regulation more costly and difficult, both materially and politically. The police depend heavily on the voluntary cooperation of citizens to fight crime. Citizens report crime and criminals, informally help to police their neighborhoods, and aid the courts as jurors and witnesses. Without these cooperative acts from the public, the police risk being seen as an intrusive force imposing order. And without these acts, the meaning of order becomes detached from its social basis and loses its moral weight to influence others in the community.

A social norms approach would invite policing of public order laws in the context of corresponding and contemporaneous extra-legal social initiatives aimed at the same or parallel problems. These efforts reflect a more complex view of the interaction of crime and disorder, one that recognizes their spurious relationship to broader underlying social and physical conditions within neighborhoods. The legitimacy of the law benefits from the simultane-

---

167. *Id.* at 151. Weitzer's findings stand Broken Windows theory on its head by suggesting that the police may be reacting to the visible cues of crime and disorder, not just would-be criminals who might journey to a disorderly neighborhood to take advantage of crime opportunities. Weitzer's findings suggest that in neighborhoods with visible signs of disorder, police react with indiscriminate and widespread patterns of aggressive stops and interdiction of citizens.

168. TOM R. TYLER, WHY PEOPLE OBEY THE LAW 172-73 (1990).

169. *Id.* at 172; Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC'Y REV. 777, 793-800 (1998); TOM R. TYLER ET AL., SOCIAL JUSTICE IN A DIVERSE SOCIETY 86 (1997).

ous and aligned actions of citizens and legal actors to promote social norms. While OMP approaches might promote a temporary reduction of crime through suppression, a legitimacy-focused approach promotes construction of social networks that integrate community-level social processes with the regulation of crime and disorder.

B. Organizational Norms

Explanations of the importance of race in police decision making—up and down the hierarchy within police organizations—focus on both the occupational culture and social norms of policing.[170] Although the empirical literature on police "subculture" offers inconsistent evidence of generalizable attitudes and beliefs, several studies show that the dynamics and structure of the police workplace may work to reinforce social (behavioral) norms, perceptions, and beliefs.[171] The separation of the policing and non-policing worlds is widely acknowledged, even in the era of reform and innovation.[172] The insularity of the police workplace leads to a closed system of ideas, a reluctance to question the statements or actions of fellow officers, and "matter of fact prejudices" that are reinforced through customs, rituals, and a shared language.[173] If the workplace is where citizens "acquire 'social capital' . . . and develop ties of empathy and solidarity with their fellow citizens,"[174] then the workplace may be the appropriate locus for efforts to change social norms supporting racial policing.

---

170. *See e.g.*, STATE POLICE REVIEW TEAM, *supra* note 6, at 33-34 (1999). *See generally* Jeffrey Goldberg, *supra* note 6; OAG REPORT, *supra* note 5, at Ch. III, Part III (discussing "Police Attitudes Toward Stop and Frisk"). "A recent survey of 650 Los Angeles Police Department officers found that 25% felt that racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community." REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 69 (1991). *But see* Steve Herbert, *Police Subculture Reconsidered*, 36 CRIMINOLOGY 343, 344 (1998) (claiming that norms within police departments are influenced by bureaucratic structures).

171. *See generally* BITTNER, *supra* note 102; ANTHONY V. BOUZA, THE POLICE MYSTIQUE: AN INSIDER'S LOOK AT COPS, CRIME AND THE CRIMINAL JUSTICE SYSTEM 6-7 (1990).

172. BITTNER, *supra* note 102, at 11; *see also* JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 242 (1993) (citation omitted).

173. POLICING: A VIEW FROM THE STREET 267-70 (Peter K. Manning & John Van Maanen, eds., 1978).

174. Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEORGETOWN L. REV. 1, 4 (2000) (describing the workplace as performing crucial functions of the civil society including fostering communication, connectedness, and empathy among diverse individuals).

The skewed version of Broken Windows theory implemented by the NYPD reinforced the crime-fighting image of policing rather than the alternative norms about alternative solutions to crime problems developed carefully in other community-policing models.[175] The "crime fighting" image included stereotypes of citizens and criminals, stereotypes pregnant with racial meaning.[176] After all, the emphasis on social manifestations of disorder, with its demographic and neighborhood correlates, confounded race and disorder, giving rise to broad suspicion of criminal activity and intensified enforcement in minority neighborhoods. Despite recognizing that some citizens were law-abiding and welcomed police presence, the broad reach of stop and frisk policing risked placing many law-abiders under suspicion.

Efforts to reform the police workplace to modify social norms that emphasize race as a risk factor for crime will require complicated and sustained efforts to "admi[t] the workplace into the realm of civil society . . . ."[177] Policing as a workplace is at once both regulated by the state but also subject to hierarchy, rules, coercion, formal sanctions, and restraint. Is social norms theory applicable to changing the everyday logic and rules of policing? The shift in police function to OMP did not significantly modify core police functions, and in turn it was unlikely to modify the occupational "frame of reference" about crime and race.[178] Accordingly, the older social norms that were reinforced by those police functions and rewards that remained intact. How then, to change those norms?[179]

Many efforts to curtail racial profiling have increasingly focused the role of statistics on police stops. Legislators in seven states have passed laws requiring police to keep statistics, and similar legislation is being considered in twenty-one additional states.[180] Rep-

---

175. Waldeck, *supra* note 19, at 1269-70.

176. Thompson, *supra* note 17 at 987-89 (discussing the processes of racial and other stereotyping that may unconsciously influence stop and arrest decision making).

177. Estlund, *supra* note 174, at 5.

178. POLICING: A VIEW FROM THE STREET, *supra* note 173, at 269.

179. Professor Waldeck suggests that changes in police functions, specifically a return to the original intent of community policing and its emphasis on alternatives, will promote changes in social norms based on a different functional definition of policing. Waldeck, *supra* note 19, at 1300-01. But we propose changes that do not necessarily involve substantive modifications in police functions that are disruptive of the structural relationships within police hierarchies and workplaces.

180. An Act Concerning Traffic Stops Statistics, 1999 Conn. Acts 99-198 (Reg. Sess.); An act concerning criminal procedure; relating to the collection of information on traffic stops, 1999 Kan. Sess. Laws 2683; N.C. GEN. STAT. § 114-10 (1999); 2000 Mo. Legis. Serv. 1053 (West); An Act Relating to Motor and Other Vehicles, 1999

resentative John Conyers, Jr. (D-MI) proposed similar legislation, the National Traffic Stops Statistics Study Act of 1998, which passed unanimously in the U.S. House of Representatives but was rejected in committee by the U.S. Senate.[181] One rationale for the emphasis on data collection is that statistics can lead to transparency in policing,[182] making decisions visible and publicly accountable. Statistics may enable police departments to evaluate their strategies, or assess whether there are disparity costs that come with successes of particular strategies. Data also make officers' actions transparent, making them more accountable for their decisions. As decisions and everyday actions become more democratic, social norms from community stakeholders will be infused into police norms.

But the dynamics of organizational change following the introduction of data raises several challenges. The organizational and democratic structures within which data are introduced, how data-driven facts are evaluated, and how their meaning is interpreted require experimentation to develop open forums for both internal organizational reflection and open policy debates.[183] How information is shared with community stakeholders, whether the agenda for analysis is shared with these groups, and how the findings of data analyses are translated into concrete measures for organizational change are part of a process of community participation that can "civilize" the police workplace through transparency, leading to democratic interactions focused on data-driven facts.[184] The ex-

R.I. Pub. Laws 7164; An Act Relating to reporting information on routine traffic enforcement, 1999 Wash. Legis. Serv. S.S.S.B. No. 6683 (SN); *see also* UNIV. OF MINN. LAW SCH., INSTITUTE OF RACE AND POVERTY's RACIAL PROFILING DATA COLLECTION STATUS REPORT (indicating that bills have been introduced in Alabama, Arkansas, Florida, Iowa, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Wisconsin, and Virginia), http://www1.umn.edu/irp/ARB%20.html; Laura Gunderson, *Bill Aims to Track Racial Profiling*, PORTLAND OREGONIAN, Sept. 12, 2000 at B1 (describing proposed bill in Oregon, which following introduction, was hailed by state police and several major local police departments expressing interest in collecting data on stops).

181. *See* H.R. Rep. No. 105-435 (1998). The legislation passed unanimously in the House, but was voted down in the Senate Judiciary Committee due to opposition from police organizations. *E.g.*, Robert Cohen, *Racial profiling Allegations Spur Lawmakers to call for U.S. Study*, THE STAR-LEDGER, Apr. 14, 1999 at 7.

182. For illustrations of the uses of data to assess strategies, see Eric Luna, *Transparent Policing*, 85 IOWA L. REV. 1108, 1167-94 (2000).

183. Susan Sturm & Brandon Garrett. *Moving Beyond Racial Profiling in New Jersey*, PHILA. INQUIRER, Dec. 4, 2000, at A15.

184. Constructing these types of relationships is likely to be contested, even when consent decrees set forth a framework for data collection on stops and monitoring of

tent to which opportunities for community interaction with police are routinized and institutionalized can break down the insularity of police social norms at the top and bottom of its hierarchy.

---

statistical trends. National Public Radio ("NPR") reported that civil rights groups including the American Civil Liberties Union of Southern California, and plaintiffs in prior racial profiling litigation against the Los Angeles Police Department ("LAPD") have filed motions to be included as monitors in the consent decree involving the LAPD. *Morning Edition* (Nat'l Pub. Radio broadcast, Dec. 18, 2000) (discussing the LAPD consent decree described *supra* note 7), *audio clip of report available at* http://search.npr.org/cf/cmn/cmnps05fm.cfm?SegID=115661. In the wake of statements by President-elect Bush in the second presidential debate questioning the federal role in the reform of police departments, these groups are concerned that a court-appointed federal monitor will not effectively enforce the city's agreement. The NPR report quotes Mark Rosenbaum, legal director the Southern California ACLU, as stating that "[t]he decree fences out those individuals who have the greatest interest in the most conscientious enforcement . . . . " The NPR report quotes attorneys for the City of Los Angeles, who counter that "involving more people will lead to too much legal fighting and not improving policing. A federal judge will do the job on enforcing the court order, so no outside parties are needed." *Id.*

APPENDIX A. DESCRIPTIVE STATISTICS FOR NEIGHBORHOOD VARIABLES

Social Disorganization	Mean	Standard Deviation
% Non-Hispanic White	36.71	28.77
% Hispanic	27.34	20.50
% Black	26.77	27.00
Racial fragmentation	0.51	0.14
% Living in neighborhood < 6 months	25.57	9.32
% Living in residence < 4 years	39.81	4.60
% Immigrants	82.97	10.58
% Households with public assistance	18.88	13.81
% Not in labor force	40.76	8.19
% Worked less than 26 weeks past year	11.54	2.91
% Unemployed since 1997	38.22	8.65
% Education < less than HS graduate	27.69	12.72
Sex ratio: males: females	0.87	0.10
% Female headed households	21.71	10.97
% Population < 15 years old	22.42	6.63
Disorder		
% Dwellings with damaged exterior walls	3.24	17.71
% Dwellings with damaged exterior windows	2.80	19.11
% Dwelling with damaged stairways	5.69	23.17
% Dwellings with broken heat	13.58	34.26
% Dwellings with damaged floors	5.56	22.92
% Reporting any broken windows in neighborhood	8.89	28.46
% Reporting dilapidated buildings in neighborhood	7.78	26.79