PLACE AND CRIME

TRACEY L. MEARES*

Although this is a symposium dedicated to the discussion of race and crime, I don't really want to talk about race and crime—at least not directly. I want to talk about crime in places—inner city communities. It is through the lens of *place* that the question of race and crime, as well as class and crime, is better understood.[1] My discussion of place and crime will take on the connection between race and crime in a very nuanced fashion. Specifically, I will lay out a theory that engages the connections between law and the social sciences. The theory I will explore here helps to explain both the disproportionate numbers of both minority offenders processed by the criminal justice system and minority victims counted by it. The theory does more: it explains why the arguments that both promote and attack current visions of law enforcement are hampered by a myopic focus on individual law breakers that condemns both sides to ineffectiveness.

The relevant theory is a sociological conception of crime first advanced over fifty years ago. In 1942, Clifford Shaw and Henry McKay, two researchers from the Chicago School of sociology, argued in a seminal work that the structure of communities matters more in explaining the occurrence of delinquency than do the individual characteristics of offenders.[2] According to Shaw and McKay's *social organization* theory, individual factors often connected with crime—such as low economic status or unemployment—do not themselves significantly impact crime. Rather, community-level structures—such as the prevalence of friendship networks, participation by community residents in formal organizations like PTAs and churches, and community-wide supervision of neighborhood teen peer groups—mediate

* Assistant Professor, University of Chicago Law School. I am grateful to Emily Buss, Dan Kahan, Randall Kennedy, and Richard McAdams for comments on an earlier draft. The Russell Baker Scholars Fund provided financial assistance.

1. It should become clear shortly that even the notion of place and crime is somewhat too reductionist. The community-centered theory that I will advance here looks to a geographical notion of community, which is obviously concerned with place, but the theory also looks to the communities that individuals can create and maintain through social networks. Because these networks sometimes exceed neighborhood boundaries, even the concept of place and crime can be too limiting.

2. *See* CLIFFORD R. SHAW & HENRY D. MCKAY, JUVENILE DELINQUENCY AND URBAN AREAS (rev. ed. 1969); *infra* text accompanying notes 6-9.

the impact of these factors on crime. Put another way, the structure of the community in which an individual lives interacts in important ways to either facilitate or retard that individual's criminal or delinquent behavior. Because they promoted the connection between community level structures and crime over the relevance of individual dispositions to offend, Shaw and McKay doubted the efficacy of deterrence models driven by formal state-imposed sanctions.

Shaw and McKay's skepticism of formal deterrence models motivates my critique of the current approach to law enforcement. The current "law and order"[3] approach to crime control often adopted by politicians seeking to curry public favor relies heavily on increasing the severity and prevalence of formal sanctions for criminal offending. Mandatory minimum prison sentences for retailing very small amounts of drugs and so-called "three strikes" laws are two examples. Law and Order Cheerleaders claim that the incentives of *individual* law breakers to engage in criminal conduct can be shaped by raising the probability and severity of state-imposed sanctions. In contrast, the social organization explanation of crime emphasizes the importance of social control through the generation, promulgation, and transmission of effective community norms among individuals who live together and interact with each other.[4] The major problem with the Cheerleaders' approach is that they typically prescribe policies that too often end up destroying the very foundations of community conduits that can promote crime-fighting goals through the private enforcement of norms.

3. This term is, of course, a simplification. The views of this group fall along a spectrum that includes Massachusetts governor William Weld, whose comments regarding crime control suggest a completely punitive bent, *see* J.W. Mason, *The gulag society*, IN THESE TIMES, Aug. 19, 1996, at 34 (quoting William Weld: "prison should be like a tour through the circles of hell"), and John DiIulio, who has argued in favor of longer prison sentences to address the expected crime wave to be caused by a coming generation of "super predators" as a way to improve norms of civility. *See* WILLIAM J. BENNETT ET AL., BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS (1996). As will become clear, the social organization approach that I advocate here shares DiIulio's concern with shaping of norms; however, I disagree with his reliance on the use of prison sentences to effectuate the goal. Thus, I use the term "Law and Order Cheerleaders" to emphasize the fact that those who support this approach believe that there is a very close connection between law enforcement policy that emphasizes formal state sanctions and crime reduction.

4. In this way, the social organization model of crime connects up with an emerging body of work that emphasizes the importance of investigating the interrelationship between law and norms and, more specifically, the potential for law to regulate behavior indirectly by manipulating the norms that constrain (or enhance) human action. Lawrence Lessig has referred to this work as the "New Chicago School." *See* Lawrence Lessig, *The New Chicago School*, 27 J. LEG. STUD. (forthcoming June 1998).

Law Enforcement Skeptics[5] attack the Cheerleaders' approach to criminal law policy. Many Skeptics maintain that the continuing problematic existence of racial discrimination in the administration of law enforcement undermines the legitimacy of the massive levels of imprisonment prescribed by the Cheerleaders. Skeptics also highlight the negative consequences that flow from the disproportionate involvement of people of color in the criminal justice system. As a remedy, some Skeptics have proposed policies that emphasize racial redistribution of law enforcement outcomes. Social organization theory reveals the Skeptics' approach to be misguided, however, because racial redistribution of law enforcement outcomes can be an unfortunately limited remedy to the problems that the Skeptics perceive. Like Cheerleaders, Skeptics make formal state sanctions central to their argument to the exclusion of the importance of private norms. In addition, Skeptics fail to see that minority and non-minority offenders are rarely similarly situated once the community context that produces offenders is considered. By too quickly prescribing programs that rely on extending less law enforcement to places that desperately need it to enhance the ability of inner city communities to exert social control over neighborhood residents, the Skeptics' approach undermines crime fighting goals in inner city communities.

To sum up, current criminal law policy has had extremely detrimental effects on the residents of poor inner city communities, many of whom are people of color. Too many of the residents of these communities are offenders, and too many are victims. The solution offered by proponents of the current criminal law enforcement regime is more law and order. Their opponents disagree with the proponents' heavy reliance on prison sentences, and they advocate withdrawal of law enforcement from racial minorities as a group. Both sides make a similar mistake: each spends too much energy and time focusing on arguments that address law breakers directly. Neither side constructively engages the needs of law abiders by taking on the project of reinforcing norms of law abidingness in the inner city. Thinking about place and crime can address the negative consequences produced by the excesses of both sides of this important debate.

5. This term, too, is a simplification meant to distinguish those who advocate greater equality in the distribution of "negative law enforcement" between minorities and non-minorities from those who are Law and Order Cheerleaders. By negative law enforcement I mean the discretion of law enforcement agents to underenforce or to refrain from enforcing the law. Thus, positive law enforcement would refer to the decision of law enforcement agents to pursue criminal sanction through arrest, prosecution, etc.

The rest of this essay comes in four parts. The next part briefly lays out the connection between social organization theory and the often-noted conundrum of race and crime. The hypothesis of the theory is straightforward: when structures of community social organization are prevalent and strong, crime and delinquency should be less prevalent, but when community structures are weak there will be more crime and delinquency. This hypothesis is very relevant to the race and crime inquiry. Residential segregation by race and class, historically supported by state action, ensures that many of the structurally weakest inner city communities are also overwhelmingly minority. Parts II and III evaluate two prominent and opposing approaches to law enforcement policy. The first approach to law enforcement policy emphasizes the importance of deterring crime in inner city communities through the application of formal state sanctions. The second approach emphasizes the removal of these same sanctions from minority groups with a goal of equality in the exposure of both minorities and non-minorities to law enforcement outcomes. Parts II and III explain how the social organization view of crime can illuminate the flaws in both of these approaches. The last section of this essay argues that law enforcement is critical to the social organization improvement project—but not law enforcement as usual. What is necessary is a new direction for law enforcement policy that is attendant to the connection between place and crime while addressing some of vexing issues of race and crime.

I. THE THEORY

Several decades ago, Clifford Shaw and Henry McKay demonstrated that high rates of juvenile delinquency were specific to geographical location and, moreover, that these high rates persisted in the same areas over many years regardless of population turnover. Shaw and McKay concluded that if crime stayed relatively stable even when those who offended changed substantially, then there had to be something about the communities in which the individuals lived, as opposed to the individuals themselves, that ignited crime. The researchers looked to factors such as community-level rates of poverty, the ethnic heterogeneity of communities, and the levels of residential mobility to explain variations in crime and delinquency.[6]

After being virtually ignored for almost two decades, this theory has recently enjoyed renewed prominence. Modern proponents of

6. *See* SHAW & MCKAY, *supra* note 2.

Shaw and McKay's theory define social organization as the extent to which residents of a neighborhood are able to maintain effective social control and realize their common values.[7] These scholars look to factors such as family disruption, urbanization, and unemployment, in addition to low economic status, ethnic heterogeneity, and residential mobility, in order to predict the breakdown of social organization.[8] There are three important dimensions of neighborhood social organization often discussed in the literature: (1) the prevalence, strength, and interdependence of social networks; (2) the extent of collective supervision that the residents exercise and the personal responsibility they assume in addressing neighborhood problems; and (3) the level of resident participation in formal and informal organization such as churches, block clubs, and PTAs.[9] 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.

It should be obvious, then, that the conditions that characterize poor, minority, inner city communities fit into the social organization model of crime. In urban areas, many poor people of color live in conditions of concentrated poverty and unemployment that predict the breakdown of community social processes, which in turn produce crime. Unlike other poor Americans, African Americans who are poor often live in poor communities.[10] The overwhelmingly poor communities in which many poor African Americans live are marked

7. I rely on the definition advanced by Professors Robert Sampson and William Julius Wilson. *See* WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 20 (1996); Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social-Disorganization Theory*, 94 AM. J. SOC. 774, 777-82 (1989); William Julius Wilson, *The 1994 Nora and Edward Ryerson Lecture, Crisis and Challenge: Race and the New Urban Poverty*, U. CHI. REC., Dec. 8, 1994, at 2.

8. *See* 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); *see also* Robert J. Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 AM. J. SOC. 348 (1987) (discussing the effect of family disruption on crime independent of joblessness and welfare receipt).

9. *See* Sampson & Wilson, *supra* note 8; Sampson, *supra* note 8.

10. My analysis of crime and place will focus on issues that pertain primarily to the experiences of African Americans. I do this for two reasons. First, in urban areas, it is rare for other groups to experience both the levels of isolation, conditions of poverty, and racial segregation that African Americans experience. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993). Second, crime data distinguishing African Americans from non-African Americans is much better than data pertaining to criminal involvement and victimization of other groups. It should be obvious, however, that the framework on which I rely generalizes.

by unemployment, family disruption, and residential instability.[11] Non-African Americans who are poor and live in urban areas are unlikely to reside in such desolate conditions.[12] This means that the "same" poor individuals from different urban communities face different challenges. The premise of social organization theory is that differentially organized communities will be able to implement varying levels of social control over residents.

Recent studies provide empirical confirmation of the theory's predictions. In a study of data from the British Crime Survey, a nationwide survey of England and Wales conducted in 1982 and 1984 by the British government, Professors Robert Sampson and Byron Groves were able to demonstrate that the largest overall effect on personal violence offending rates came from unsupervised teen peer groups.[13] Moreover, the data revealed that unsupervised teen peer groups also had the largest overall effects on both victimization by mugging and stranger violence. Importantly, the effect of unsupervised peer groups, a community-level social process, on crime was much larger than the *direct* effect of socioeconomic status on crime. This finding provides critical support of the social organization hypothesis which emphasizes the centrality of community characteristics, rather than individual traits to predict crime. More recently, Sampson, Stephen W. Raudenbush, and Felton Earls reported in a breakthrough study of 8,872 residents in 343 neighborhoods in Chicago that indicia of social cohesion among neighbors is linked to reduced levels of violence.[14] Again, this newer study confirms the findings in the Sampson and Groves study that community poverty does not inevitably lead to crime.

11. This point has been made by numerous authors employing different approaches of evaluation. *See, e.g.*, ELIJAH ANDERSON, STREETWISE: RACE, CLASS, AND CHANGE IN AN URBAN COMMUNITY (1990); JOHN HAGEDORN, PEOPLE AND FOLKS: GANGS, CRIME AND THE UNDERCLASS IN A RUSTBELT CITY (1988); CHRISTOPHER JENCKS, RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS (1992); ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE: THE STORY OF TWO BOYS GROWING UP IN THE OTHER AMERICA (1991); NICHOLAS LEMANN, THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA (1991); MASSEY & DENTON, *supra* note 10 (1993); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 20-62 (1987).

12. *See* Sampson & Wilson, *supra* note 8, 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.").

13. *See* Sampson & Groves, *supra* note 7, at 782-800.

14. Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, SCIENCE, Aug. 15, 1997, at 918. This study examined neighborhoods in a way that ensured diversity by race, ethnicity, and class. *See id.* at 919.

While the relationship between the structural determinants of weakened social processes and crime is an incredibly important facet of social organization theory, the role of culture is also important. The theory predicts that cohesive communities are better able to engage in informal social control that can lead to lower levels of crime than communities that are not cohesive. But cohesive communities exert social control by realizing common values centered on law abidingness that are reinforced among a community's residents through daily conduct and discourse. Cultural organization in a community facilitates social control. Communities are culturally organized when they are able to settle on common values. In contrast, a community with low levels of cultural organization will have wide ranging, diverse, and fragmented community values and norms. While the notion of living in a community with complete homogeneity of culture and ideas may seem undesirable to many, it is difficult to argue against the homogeneity of norms that prevent violent, law-breaking conduct. Unfortunately, fragmented and diverse values that lead to law-breaking conduct flow predictably from weak community organizational structures such as infrequent participation in formal organizations, low levels of teen peer group supervision, and the like. Recent urban ethnography helps to make this point.

In his book *Streetwise*, sociologist Elijah Anderson describes in great detail the clash between the "decent" values (norms associated hard work, family life, the church and law-abiding behavior) held by some families in the urban community that Anderson calls "Northton" and the "streetwise" values (norms associated with drug culture, unemployment, little family responsibility, and crime) held by others.[15] Anderson explains that the diffusion of norms in Northton was correlated with a weakening in Northton's community-level structures.[16] Anderson's research reveals that neither streetwise values nor decent values held sway in Northton, and it is this conclusion that is important for the point I want to make here. Though many of Northton's residents continued to adhere to decent values, even as the structural factors that typically predict community cohesion began to weaken, these residents did so in a world where they were forced to negotiate simultaneously a significant and rival set of values—the streetwise code of conduct—in their daily lives. Competition between streetwise and decent values made it more difficult for law-abiding

15. *See* ANDERSON, *supra* note 11.
16. *See id.* at 56-111.

Northton residents to achieve and reinforce a common set of values among all residents in a community.

Thus, both structural organization and cultural organization in neighborhoods help to explain the crime that occurs in them. They are critically intertwined. Structural organization of neighborhoods is like a system of "norm highways." The condition of this infrastructure will either facilitate or hinder the transmission of community values that can support law-abiding behavior.

If neighborhood characteristics matter more to the occurrence of crime than factors such as poverty, as social organization theory predicts is the case,[17] then the challenge for those who think about criminal law policy is how to implement programs that help reinforce community structures and facilitate transmission of law-abiding norms. This challenge brings us to the limits of Shaw and McKay's theorizing. These members of the old Chicago School of sociology assumed that market forces, relatively independent of government intervention, naturally produced crime-facilitating community structures.[18] They were wrong. Law does matter, and government clearly can implement polices that are destructive of the social processes and norms that promote social organization. Analysis of the experiences produced by the ecological context of urban inner city life through the lens of social organization theory suggests that law enforcement policies that are beneficial to highly organized communities (and often non-poor) may not work as well in communities that are disorganized

17. This is not to say, of course, that poverty is irrelevant. Neighborhood poverty, and other neighborhood demographic characteristics, can detrimentally affect community social organization factors, which in turn directly affect crime.

18. Robert J. Bursik explains Shaw and McKay's market-based ecological theory this way: "Shaw and McKay . . . assumed that a competitive open market naturally made certain areas of the city more attractive for settlement and, in turn, more residentially stable than others. They argued that this process led to variation in ability of neighborhoods to regulate themselves, which in turn led to variation in rates of delinquency." Robert J. Bursik, *Political Decisionmaking and Ecological Models of Delinquency: Conflict and Consensus*, *in* THEORETICAL INTEGRATION IN THE STUDY OF DEVIANCE CRIME: PROBLEMS AND PROSPECTS 105, 105 (Steven F. Messner et al. eds., 1989). So the idea was that recent immigrants would enter into areas which were least attractive and, therefore, least expensive, gradually moving to more stable areas of the city. *See id.* at 106. This model is incomplete in a world in which government policy can make a large impact on ability of a neighborhood to organize itself. Bursik points to the exogenous impact on structure of a community of the introduction of a large public housing project. *See id.* Here and elsewhere I focus on the impact to community structure of criminal law policy. *See* Tracey L. Meares, *Social Organization and Drug Law Enforcement*, 35 AM. CRIM. L. REV. 191 (1998) [hereinafter Meares, *Social Organization and Drug Law Enforcement*] (establishing the relevance of community social organization to an assessment of the efficacy of drug law enforcement); *see also* Tracey L. Meares, *It's a Question of Connections*, 31 VAL. U. L. REV. 579 (1997) [hereinafter Meares, *It's a Question of Connections*] (describing improvement through redistribution of social capital from neighborhood teen peer groups to community adults with an interest in transmission of norms of law abidingness).

and poor. The rest of this essay is devoted to building a case for law enforcement policies that are reparative of community social organization in the communities most in need of them.

II. RACE AND CRIME AND LAW AND ORDER

This exposition of the social organization explanation of crime should make clear that the approach to crime control favored by Law and Order Cheerleaders—increasing the prevalence, and more typically, the severity of formal sanctions for offending—is potentially beneficial. While the theory articulated above presumes that lower crime levels will be a consequence of the interaction of a community's individuals with each other (friendship networks), with institutions (formal organization participation), and with children and teens (community supervision of teen peer groups), nothing about the structure of the argument assumes a one-way process. Empirical studies demonstrate that factors of community guardianship can lead to lower violent crime rates, but it also makes sense that lower crime rates themselves should make residents more willing to engage in community guardianship in the first place. In other words, there is a feedback loop between crime rates and community structure enhancement.

The question, therefore, is whether the law and order approach to crime control lowers crime rates enough to produce a social organization boost, which in turn, will generate long-term crime reduction. Cheerleaders claim that their law and order program benefits minority inner city residents by addressing and reducing the high levels of crime residents experience.[19] A statement made by former Attorney General William Barr concerning heavy penalties for certain drug offenders is representative. "The benefits of increased incarceration would be enjoyed disproportionately by Black Americans."[20] Barr's comment likely resonates with those Black Americans who are unable to leave poor inner city communities for safer communities and may desire assistance from the state to create that distance by removing offenders.

19. John J. DiIulio, Jr., *My Black Crime Problem, and Ours*, CITY JOURNAL, Spring 1996, at 14 (pointing to numerous Black leaders speaking about the problem of Black-on-Black crime and the importance of law enforcement addressing this issue). For an argument reflecting the sentiments of the Cheerleaders, see Randall Kennedy, *The State, Criminal Law, and Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255 (1994). "Blacks subject to a relatively heavy punishment for crack possession are burdened by it, [but] their law-abiding neighbors are helped by it insofar as the statute deters and punishes drug trafficking in their midst." *Id.* at 1273.

20. MICHAEL TONRY, MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA 36 (1995) (quoting Barr).

Unfortunately, there is a basis for skepticism towards the belief that a program that depends entirely on the power of formal sanctions will generate the levels of crime reduction necessary to generate social organization improvement. First, with respect to drug law enforcement specifically, there is the problem of relying on formal sanctions to generate substantial reduction of drug offenses through incapacitation, specific deterrence, and general deterrence.[21] But more generally, and importantly for our purposes here, there are reasons to believe that the racial asymmetry generated from high levels of punishment of inner city offenders is ultimately likely to undermine the goal of crime reduction. As the key concern of this symposium is the link between race and crime, I shall focus on the race-specific reasons that undermine the ability of a law and order program to effect substantial crime reduction in inner city communities. These reasons fall into three general categories: *stigma, linked fate, and multiple roles.*

It appears fairly clear that the disproportionate involvement of minorities (African Americans in particular) in the criminal justice system generally stigmatizes all minorities, whether they are categorized as law breakers or law abiders.[22] This point is an unremarkable one. Less obvious is the link between the stigmatization of minority law abiders and their commitment to law-abiding conduct. By referring to "commitment to the law" here, I mean to adopt a normative view of compliance whereby a social group promotes respect for government authorities and commitment to adopted laws as key values to pass on to other members of the group. It is likely that stigmatization of minority law abiders through law enforcement programs that generate extremely racially disproportionate incarceration rates can undermine commitment to the law by minority law abiders by fostering a perception of illegitimacy of government among members of the stigmatized minority group. If I am correct about the connection between stigmatization of minority law abiders and attenuation in perceptions of government legitimacy among members of this group, then the efficacy of law and order programs in weakly socially organized communities will be compromised.

21. I have explored this issue in greater detail elsewhere. *See* Meares, *Social Organization and Drug Law Enforcement*, *supra* note 18.

22. *See* Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781, 790-92 (1994) (describing the phenomenon); *see also* Dinesh D'Souza, *Myth of the Racist Cabbie*, NAT'L REV., Oct. 9, 1995, at 36; Walter E. Williams, *The Intelligent Bayesian*, NEW REPUBLIC, Nov. 10, 1986, at 18.

Scholars have noted that discrimination undermines minority citizen perceptions of the fairness of the criminal justice system, but very few link these perceptions to predictions about behavior of minority group members.[23] Moreover, while it is true that the link between perceptions of legitimacy of government and compliance with the law has long been discussed in social science literature,[24] there has been little empirical support for the point.[25]

Recent work by psychologist Tom Tyler, however, systematically explores the connection between citizen perceptions of fairness and legitimacy and compliance, and this work supports the claim that extreme racial asymmetry in punishment can undermine compliance with law among minority groups. Tyler's work shows that compliance with the law is strongly related to a citizen's perceptions of legitimacy of government.[26] His study of the experiences, attitudes, and behavior of a random sample of citizens in Chicago demonstrates that perceptions of legitimacy independently contribute to compliance. Moreover, Tyler shows that this perception has a greater impact on compliance than fear of sanction.[27]

Tyler advances a normative view of compliance with the law that promotes the fact that people tend to comply with the law because they believe that authorities have the right to dictate proper behavior to them—that they believe that authorities are legitimate.[28] The nor-

23. For a notable exception, see Katheryn K. Russell, *The Racial Hoax as Crime: The Law as Affirmation*, 71 IND. L.J. 593 (1996). Professor Russell argues that perceptions of unfairness in the system support a theory of defiance whereby Black men especially become alienated from "mainstream" values and become law breakers. *See id.* at 607-11; *see also* TOM R. TYLER, WHY PEOPLE OBEY THE LAW 34-35 (1990) (citing charts identifying a connection between political alienation and support for revolutionary behavior). The link between perceived unfair treatment and protest reactions is an important point; however, here I would like to focus on the ways in which stigma and perceptions of unfairness can affect the conduct of those who are generally law abiding. A normative view of law-abiding behavior depends heavily on the content of norms passed among members of a group and the extent to which that information is transmitted. In my view, the key negative consequence of perceptions of unfairness of the criminal justice system on law-abiding members of minority groups is that such perceptions lessen the strength of norms that dictate the legitimacy of government, which, in turn, will affect compliance with the law.

24. *See* TYLER, *supra* note 23, at 22-27 (summarizing research).

25. *See id.* at 27.

26. *See id.* at 64. "People who regard legal authorities as legitimate are found to comply with the law more frequently." *Id.*

27. *See id.* at 64-68. A caveat is in order. Professor Tyler explored adherence to laws that would not be considered by most to be serious crimes if broken—speeding and parking violations, shoplifting, and the like. *See id.* at 40. Tyler's focus is on compliance with the law by those generally considered to be law abiding. As the social organization approach to law enforcement focuses on the behavior of law abiders, I think it is appropriate to use Tyler's research as the foundation of my argument here.

28. *See id.* at 24-26. Professor Tyler also notes that people may also comply with the law because they believe that the law dictates behavior that accords with their own sense of personal

mative view of compliance, in contrast to an instrumental one, emphasizes the importance of the social influence of groups on individuals. According to the normative view, when a person receives information about government authorities from her peers indicating that government authorities have not treated people like her fairly, she will be less committed to compliance.

Professor Tyler also shows that experience-based assessments of both distributive fairness[29] and procedural fairness[30] matter a great deal to perceptions of legitimacy and compliance. The disproportionate representation of minorities in prisons is linked to notions of distributive and procedural justice in a fairly obvious way. If members of a minority group do not believe that the prison sentences that members of their group receive are fairly distributed then they may conclude that the policy that produces the unfair distribution is illegitimate.[31] If minority group members reach this conclusion because the law and order program produces asymmetrical incarceration rates, then Tyler's model predicts that members of the group are less likely to comply with the law.

The stigmatization of law-abiding minority group members that is intimately related to racially disproportionate incarceration and minority group perceptions of (il)legitimacy connects up with this discussion. Disproportionate incarceration of African Americans is an important "race-making" factor.[32] Just as the existence of ghettoes (the ultimate referent of the consequences of race, place, and crime) can define and stereotype African Americans in a negative light, prisons in which half of the inmates are African Americans define and stereotype African Americans as criminal offenders. Both ghettoes and predominantly African-American prisons are physical constructs

morality. Tyler warns that personal morality is "double-edged" because it may or may not comport with the dictates of legal authorities. *See id.* at 25-26.

29. Tyler explains that the concept of distributive fairness emphasizes the ways in which "citizens evaluate public policies by examining the extent to which they distribute government benefits and burdens fairly." *Id.* at 73.

30. "According to theories of procedural justice, citizens are not only sensitive to what they receive from the police and the courts but also responsive to their own judgments about the fairness of the way police officers and judges make decisions." *Id.* at 73 (citations omitted).

31. Empirical work indicates that Blacks are much more likely than Whites to believe that courts are much too harsh on criminal offenders. *See, e.g.*, Tracey L. Meares, *Charting Race and Class Differences in Attitudes Toward Drug Legalization and Law Enforcement: Lessons for Federal Criminal Law*, 1 BUFF. CRIM. L. REV. 137, 155 (1997).

32. I borrow this term from Professor David James, who has written of the ghetto as a "race-making situation." David James, *The Racial Ghetto as a Race-Making Situation: The Effects of Residential Segregation on Racial Inequalities and Racial Identity*, 19 L. & SOC. INQUIRY 407, 420-29 (1994) (reviewing MASSEY & DENTON, *supra* note 10).

that sustain and nourish an African-American identity tied up with criminal and deviant behavior and in opposition to "mainstream" (read "law abiding") American identity. Ghettoes and prisons institutionalize race, and because race becomes the marker of the identity (that is created by place), it necessarily affects all African Americans, whether or not they reside in inner city neighborhoods of concentrated poverty or in prisons. As a result, many African Americans must endure suspicion by both minorities and non-minorities alike, poor service, refusals of service, and perhaps most importantly for my argument here, erroneous arrests and accusations by the police. In the minds of some law enforcement agents, Black skin is considered a factor to use to decide whether an individual should be considered a criminal suspect.[33]

For obvious reasons, erroneous arrests are likely to undermine the particular individual's assessment of the legitimacy of the state. But even more important for this discussion, erroneous arrests affect how an individual subjected to them *discusses* the legitimacy of government with his or her friends. This effect is critical to the normative view of compliance with the law. While the individual to which I have just referred may not argue vigorously that government deserves *no* respect, at the same time, she is much less likely to vigorously and positively *promote* government. This is a negative consequence for a norm-driven view of compliance, particularly in communities where the community structure predicts higher crime levels. To see why, consider again the discussion of cultural organization in a community.

Weak structural social processes facilitate diversity in values and norms governing law-abiding conduct, as Elijah Anderson's work demonstrates. Residents of many inner city communities must negotiate the clash of inconsistent value systems that dictate acceptable behavior. When the strength of signals supporting government legitimacy wanes, we should expect the level of commitment to compliance to wane as well. Signals supporting law-breaking behavior, on the other hand, even while fewer in number than those supporting law-abiding conduct, may be very strong. This phenomenon is likely connected to the relative strength of social networks among commu-

33. *See* RANDALL KENNEDY, RACE, CRIME, AND THE LAW 140-41 (1997) (citing numerous examples of individuals stopped by police most likely because of race); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIAMI L. REV. 425 (1997) (discussing the problem of Black motorists being stopped disproportionately due to race); David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544 (1997) (same).

nity sub-groups. Teen peer groups, for example, may not be large in number, but the norms that are generated and transmitted among members of these cohesive groups may be very strong compared to the norms generated and transmitted among more numerous but weakly connected adults. This means that adults interested in transmitting law-abiding norms to youths in a community through intergenerational transfer may lose in the norm transmission competition to teen peer groups.[34] Tyler's work shows that when there are fewer positive signals of government legitimacy within a group to support compliance, opinions of peer groups will take their place.[35] When peer group opinions support law breaking, there will be a net loss of compliance among members of the stigmatized group. In sum, the potential for stigma creation generated by the racially asymmetrical distribution of prevalent and long sentences prescribed by Law and Order Cheerleaders to allay the problems that minority crime victims experiences undermines the deterrent potential of these sentences where its needed most. Law-abiding African Americans in poor communities, then, must bear the costs of stigma in exchange for few benefits.

The detrimental impact that racially asymmetrical punishment can have on the law and order approach's potential for social organization improvement through crime reduction is exacerbated by two factors: the effect of linked fate among all African Americans and the fact that many inner city community members occupy multiple roles as both "law breakers" and "law abiders."

Linked fate refers to the empathy that people have with family and friends. But 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.[36] The long history of race-based constraints on life chances among Blacks generates a certain efficiency in evaluating policies that affect minority individuals. Many African Americans may use what political scientist Michael Dawson calls the "black utility heuristic" to determine what in their best interests. The heuristic allows an individual to determine what is in her individual interests by relying on what

34. For a pictorial description of this process see Meares, *It's a Question of Connections*, *supra* note 18, at 592.

35. *See* TYLER, *supra* note 23, at 63-64.

36. *See* MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 77 (1994) (explaining the linked fate concept as a means of explaining the way that African Americans perceive what is in their individual self interest.).

is in the best interests of the group.[37] Whether familial, social, or racial group links are considered, the outcome is likely to be the same. Minority residents of the inner city are less likely to condemn the law breakers among them when they experience critical bonds with them. This bonding process clearly undermines the crime reduction power of the law and order approach to law enforcement.

The multiple roles that many inner city residents play with respect to the categories "law breaker" and "law abider" also undermine the efficacy of the Cheerleaders' preferred plan for crime control. By multiple roles I mean to refer to the fact that the lines between law breakers and law abiders are not so clean and clear as the Cheerleaders suppose. Multiple roles are inevitable in poor, structurally weak communities where it is not uncommon for law-abiding citizens to decry law breaking even as they rely on law breakers for necessary goods such as money and security. If there are few well-paying employment opportunities in poor communities, drug trafficking offers the promise of work and monetary benefits.[38] Families that to do not condone illegality might believe that they have to choose between a shrinking social safety net or the illegal proceeds of drug transactions to feed and clothe children. Multiple roles are inevitable for another reason. In many cases victims in poor communities are themselves law breakers in the more conventional sense. Some individual victims in high crime inner city neighborhoods, especially young men, are not always victims. Instead, they oscillate between being a victim in one instance and an offender the next.[39]

The ambiguity surrounding the terms law breaker and law abider in weakly organized inner city communities can confound the Cheerleaders' aims. When lines cannot be easily drawn between law abiders and law breakers, a regime tethered to the power of formal sanctions to produce deterrence will be forced to raise the price of crime very

37. *See id.* at 10-11 (explaining 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).

38. There are numerous accounts of the importance of drug selling as an important economic activity in inner city communities. *See, e.g.*, PETER REUTER ET AL., MONEY FROM CRIME: A STUDY OF THE ECONOMICS OF DRUG DEALING IN WASHINGTON, D.C., (RAND Drug Policy Research Center No. R-3894-RF, 1990); WILSON, *supra* note 8; Sudhir Alladi Venkatesh, *The Social Organization of Street Gang Activity in an Urban Ghetto*, 103 AM. J. SOC. 82 (1997).

39. The fact that young males in the inner city are victims and offenders in serial transactions is not remarkable given the violence that occurs between rival gang members. For example, between 1987 and 1992, the average annual rate of handgun victimization among Black males aged 16 to 19 was 39.7 out of 1000—four times that of White men in the same cohort. *See* BUREAU OF JUSTICE STATISTICS, NO. NCJ-147004, YOUNG BLACK MALE VICTIMS: NATIONAL CRIME VICTIMIZATION SURVEY (1994).

high indeed to insure differentiation between the two groups. Raising the price of crime through increasing the severity of sanctions and perhaps the certainty of sanctions, though, creates an extreme risk of asymmetry in punishment that can undermine crime reduction through stigma generation.

Importantly, these race-based reasons for being skeptical of the efficacy of the law and order program are reinforced by the fact that crime and victimization is concentrated in *places*. What this means is that even while the law and order approaches produces crime reduction benefits for some communities, it is much less likely to do so where the benefits are most needed precisely because it requires the removal and involvement in the criminal justice system of a substantial segment of the inner city population. This kind of entanglement with the criminal justice system inevitably results in the elevation of family disruption, unemployment, low economic status, and disincentives to invest in human capital—all precursors to social organization disruption.[40] Cheerleaders, therefore, confound their own ends by generating social organization disruption even as they attempt to solve it.

III. Race and Crime and Law Enforcement Skepticism

Law Enforcement Skeptics, concerned primarily about the extreme racial asymmetry in punishment fueled by the Law and Order Cheerleaders' approach to crime control, call for less law enforcement. Admittedly, Skeptics do not argue for such a position directly, but their plans for reducing racial asymmetry in law enforcement outcomes basically have this effect. Skeptics are understandably concerned about the existence of, and grave potential for, racial discrimination throughout the criminal justice system. Many conclude that there are simply too many minority individuals behind bars. This conclusion leads Skeptics to promote equal distribution of law enforcement outcomes by race either by prosecuting more Whites, fewer minorities, or both. The reasoning behind this approach supports even, as the prescribed remedy for a successful constitutional defense of selective prosecution would require, allowing a minority defendant who is admittedly guilty to escape punishment entirely.[41]

40. See Meares, *Social Organization and Drug Law Enforcement*, *supra* note 18, for a detailed explanation of the connection between removal and social organization disruption.

41. *See, e.g.*, Armstrong v. United States, 116 S. Ct. 1480 (1996) (denying discovery claim filed by criminal defendants seeking to squash prosecution on grounds that prosecution was racially selective); *see also* Richard McAdams, *Race and Selective Prosecution: Discovering the*

Law Enforcement Skeptics do not see this result as negative, as Professor Paul Butler's recent statement in the *UCLA Law Review* suggests: "[W]hat's good enough for white people is good enough for African Americans."[42] Butler is referring here to the fact that many White law breakers escape punishment all of the time. If Whites are systematically sheltered from subjection to drug law enforcement (as the incarceration statistics suggest), then why shouldn't Blacks be similarly sheltered?[43] After all, Butler notes, "the white community does not appear to suffer dire consequences from [the] relaxation of prosecution of victimless crime."[44]

Butler has advocated a widely publicized program of racially selective jury nullification, primarily in cases involving "victimless" crimes (he characterizes drug offenses as victimless), to balance the racial scales with respect to imprisonment.[45] In another recent piece, Butler calls explicitly for affirmative action in law enforcement.[46] The concept is simple: compared to Whites, Blacks receive much too much attention from law enforcement authorities. To rectify this imbalance, it is necessary to scale back the application of law enforcement among Blacks, and in some cases, disable the application of law enforcement (such as in drug possession cases) until the numbers of Blacks prosecuted, incarcerated, etc., reflect the numbers of Whites subjected to these treatments. Butler recommends six proposals for affirmative action in criminal law as a race-conscious remedy designed to correct the racial imbalance of Blacks involved in the criminal justice system: (1) retribution must be prohibited from justifying punishment of African Americans; (2) rehabilitation must be the primary justification for Black punishment; (3) Black criminal defendants

Pitfalls of Armstrong, 73 CHI.-KENT L. REV. 605 (1998) (criticizing *Armstrong* for blocking meritorious selective prosecution claims).

42. Paul Butler, *The Evil of American Criminal Justice: A Reply*, 44 UCLA L. REV. 143, 154 (1996).

43. Butler notes that "African Americans do not disproportionately use illegal drugs, yet they comprise more than seventy percent of people incarcerated for such conduct." Paul Butler, *Affirmative Action and the Criminal Law*, 68 U. COLO. L. REV. 841, 884 (1997). These statistics suggest that Blacks are incarcerated at numbers all out of their proportion to use, providing support for Butler's argument supporting the restriction of prosecution of Blacks who possess drugs. But these numbers also reveal the dangers of aggregation. *See infra* text accompanying notes 54-57.

44. Butler, *supra* note 42, at 154.

45. *See* Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995); *see, e.g.*, Patricia Cohen, *One Angry Man: Paul Butler Wants Black Jurors to Put Loyalty to Race Above Loyalty to the Law*, WASH. POST, May 30, 1997, at B1; Clarence Page, *Overriding Law to Create Justice*, BALT. SUN, Nov. 16, 1995, at 29A; *When Jurors Ignore the Law*, N.Y. TIMES, May 27, 1997, at A16.

46. *See* Butler, *supra* note 43.

should have Black majority juries authorized to sentence them; (4) Black defendants must not be subject to a death sentence in an interracial homicide case; (5) Blacks must be arrested, tried, and sentenced for drug crimes in proportion to their actual commission of these offenses; (6) by the year 2000, the prison population should look like America.[47]

In the same vein, Professor Angela Jordan Davis has written of the role that prosecutors play in generating racial disproportion in criminal justice system processing.[48] She notes that the causes of this disproportion range from intentional discrimination to the racially disparate impact of policies that create greater hurdles for those who are poor than those who are not. Davis argues that the bottom line is that racial disproportion in processing affects Black people to a greater extent than it affects Whites, and she argues that prosecutors have an obligation to do something to remedy the problem. Davis advocates the use of racial impact studies in prosecution offices as a method of making prosecutors more sensitive to racial disproportion in their charging practices. Specifically, Professor Davis charges the prosecutor to take action to balance racially prosecutions once the prosecutor determines through the use of racial impact studies that there is a large difference between African-American arrest rates and the percentage of African Americans in a city or county's population.

Clearly, these Skeptics' primary goal is to even out the racial balance sheet by equalizing the distribution of the "benefit" of negative law enforcement.[49] To be sure, they are not in favor of equalizing the racial balance sheet without looking beneath the numbers. Professor Butler, for example, is very concerned about violent crime. He is not troubled by the fact that minority offenders who disproportionately engage in violent crimes will be disproportionately subject to punishment. Butler "writes off" violent criminal offenders, stating that the nullification program he suggests should not be applied to them.[50] Similarly, Professor Davis's racial impact studies are to determine not only disproportionate arrest rates, but also whether African Ameri-

47. *See id.* at 877-88.

48. *See* Angela Jordan Davis, Race and Prosecution: The Power and Privilege of Discretion, (Aug. 22, 1997) (unpublished manuscript, on file with the *Chicago-Kent Law Review*).

49. If the application of traditional formal law enforcement sanctions is considered "positive" law enforcement, then we can call withdrawal of these sanctions "negative" law enforcement. I place the word benefit in quotes on purpose. Whether negative law enforcement constitutes a benefit is a very ambiguous issue for reasons I will detail in more depth *infra*.

50. *See* Butler, *supra* note 45, at 719 (arguing that African Americans who kill other African Americans should not have access to the benefits of nullification because "the black community cannot afford the risks of leaving this person in its midst").

cans commit the crime in question at a greater rate than Whites do.[51] If there is evidence of greater minority offending, then Professor Davis would not require the prosecutor to divert from the usual course of prosecution.

What does social organization theory have to say about these approaches? For one thing, the theory suggests that a program that has as its primary goal the reduction of racial disparity in formal sanctions holds potential for social organization improvement over the proscribed course of action advocated by Law and Order Cheerleaders.

For example, while the Cheerleaders' reliance on very prevalent and increasingly severe prison sentences can undermine the structural components of social organization in communities where the treatment's application is concentrated, the Skeptics' approach of reducing the numbers of minority offenders sent to prison (especially for nonviolent offenses) would at least tend to stanch these effects. It is likely that the Skeptics' program to reduce the numbers of minorities sent to prison by equalizing their numbers with those of Whites processed by the system would not overtly contribute to family disruption or impair offenders' incentives to accumulate human capital in the way that saddling someone with a felony conviction predictably will.[52]

Moreover, reducing racial disparity in convictions could positively enhance perceptions of government legitimacy among members of minority groups by reversing the conditions that support stigmatization of minority law abiders. Decreases in the stigmatization of all members of a minority group should be associated with higher levels of commitment to government legitimacy. Greater normative commitment to government legitimacy should, according to Professor Tyler's theory, promote greater compliance with the law, which would contribute to a community's organization around norms of law abid-

51. *See* Davis, *supra* note 48. Even though Professor Davis's plan focuses on African Americans, there is little reason why her program could not be generalized to other minority groups.

52. A felony conviction on one's record makes it incredibly difficult to compete in the formal labor market where it often becomes necessary to reveal such information on a job application. But more than this, a felony conviction can inhibit an offender's desire to invest in human capital that can open up new job possibilities. Moreover, when an offender makes the decision to refrain from further human capital investment, he weakens existing relationships he has with people who will be less likely to depend on him because his ability to provide them with benefits through interaction is compromised. Additionally, the individual who decides not to make further investments in education, skills, and training cuts himself off from potential useful relationships with others who have no incentive to form relationships with him in the first place. Increasing the percentage of those with felony convictions in the community population compromises the generation of social capital that can be directed toward crime reduction. *See* Meares, *Social Organization and Drug Law Enforcement*, *supra* note 18.

ingness. Thus, the racial redistribution program potentially can address the attacks on the social structure of inner city communities launched by the law and order program, and it can also promote cultural organization around law-abiding norms in communities that desperately need this help.

These all are admittedly positive effects. Still, it is necessary to ask how likely it is that these positive effects will be produced by the Skeptics' program of racial redistribution in punishment. I have already demonstrated that social organization theory exposes the flaws in the Cheerleaders' preferred approach. The theory also reveals the problems in the Skeptics' racial redistribution remedy. The Cheerleaders pay insufficient attention to the racial distribution of punishment, but Skeptics pay too much attention to it. The key issues that must be addressed are the *heterogeneity of minority groups* and *policy vacuums*.

Consider heterogeneity first. Racial disparities in the criminal justice system are often measured at highly aggregated levels. Skeptics engage these disparities at similarly aggregated levels. Professor Davis, for instance, imagines racial impact studies taking place at the county level. And Professor Butler's proposals are, in some cases, national. Moreover, Skeptics pay little attention to the background differences of offenders. Professor Butler proposes to equalize the number of Blacks incarcerated for possession of drugs with the number of Whites incarcerated, regardless of the particular circumstances of the case. What is important to him is that each individual has been convicted of felony drug possession, and that is all that is relevant. Skeptics treat each individual offender as if he or she were interchangeable with all of the other members of the group. All of the individuals of a racial group are aggregated together into one "community."

There is certainly good reason to discuss groups in terms of a "Black community" and a "White community." The idea of linked fate advanced earlier provides both a theoretical and an empirical foundation for referring to Blacks in this way. Linked fate cuts across boundaries and contexts, providing a basis to define a community with little reference to background characteristics of the community's individual members. Similarly, there is growing literature that discusses

racial solidarity among White Americans that are reinforced by law,[53] lending theoretical support to the notion of a White community.

However, while there often are many similarities among individuals who can be lumped together into "raced" communities, there often are differences among these individuals that matter a great deal to the discussion of crime. For example, the statistics regarding drug use to which Professor Butler refers aggregate felony drug use of all kinds—from marijuana usage to heroin usage.[54] Most jurisdictions in this country vary punishments for certain types of drugs;[55] moreover, there is no reason to suspect that the usage rates of various drugs within different racial groups will be the same. The *1992 National Household Survey on Drug Abuse* indicates that the usage rate of hallucinogens in the past year by Whites 18-25 years old was ten times higher than the rate for Blacks the same age.[56] Therefore, to say that Blacks use illegal drugs in proportion to their representation in the population does not tell us much about what we really need to know. What we really need to know is the usage rate of the drugs most likely to subject an individual to incarceration.

Of course, the heterogeneity in usage rates would have to be outrageously high to justify the fact that over 70% of those incarcerated (meaning those sentenced either to a jail or prison term) for felony drug possession were Black. But this number, too, reveals the danger of aggregation. When the pools of Whites and Blacks convicted of felony drug offenses in 1992 (the year of data on which Butler relies) are compared, it turns out that almost the same percentages of Blacks and Whites were incarcerated for felony drug possession—74% of

53. *See, e.g.,* Cheryl I. Harris, *Whiteness As Property*, 106 HARV. L. REV. 1707 (1993); Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1003 (1995).

54. *See* Butler, *supra* note 43, at 884; Butler, *supra* note 45, at 719.

55. Florida, California, Texas, New York, and Illinois, five states known to have sizable illegal drug problems, all have widely varying penalties for possession of and trafficking in narcotics and marijuana. *See, e.g.,* N.Y. PENAL LAW §§ 220.00-221.55, 70.00-70.40 (McKinney 1998 & Supp. 1998) (New York penalties for possession and sale of narcotics to those for possession and sale of marijuana); TEX. HEALTH & SAFETY CODE ANN. §§ 481.112-481.121 (West Supp., 1998), TEX. PENAL CODE ANN. §. 12.21-12.35 (West Supp. 1998) (same for Texas); FLA. STAT. ANN. §§ 893.13, 775.082 (West Supp. 1998) (same for Florida); CAL. HEALTH & SAFETY CODE §§ 11350, 11352, 11357, 11360 (same for California); 720 ILL. COMP. STAT. ANN. 570/401, 570/402, 550/4, 550/5 (West Supp. 1998), 730 ILL. COMP. STAT. ANN., 5/5-8-1, 5/5-8-3 (West Supp. 1998) (same for Illinois).

56. *See* SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., OFFICE OF APPLIED STUDIES, NATIONAL HOUSEHOLD DRUG ABUSE SURVEY: MAIN FINDINGS 1992, at 77 tbl.5.5 (Jan. 1995).

Blacks and 75% of Whites.[57] Skeptics are much less concerned about within-group treatment than they are concerned about the extent to which Blacks occupy the total pie of individuals incarcerated for felony drug possession. In 1992 that rate was 55%, not 70%.[58] Not a number to be proud of, to be sure, but a number that is substantially lower than the Skeptics claim. Although Whites and Blacks have similar within-group rates of incarceration for felony drug possession, there is a difference in the treatment of the two groups of drug offenders. Blacks are more likely to go to prison, while Whites are more likely to go to jail.[59] This is a difference that could be driven both by the offenders' background characteristics (such as whether he or she had a criminal record) and the type of drug the offender possessed (was the drug crack cocaine or marijuana?).

Skeptics do not get bogged down in these details. But the social organization approach to crime control demands attention to details that are often produced by place. Race *and* place are important. It is because both race and place are important that the social organization view of community is more confined than the notion of community that the Skeptics rely on. Though the social organization view of community is not *wholly* bound by a narrow concept of space, as friendship networks and the overlapping contexts for norm enforcement that participation in formal organizations creates can and do exceed the confines of neighborhood boundaries, some conception of space and place limits the relevant community. The social organization-based analysis of law enforcement efficacy depends on taking seriously the notion of a community created by linked fate, but the social organization view cannot stop there.

The Black community is heterogeneous, and the Black urban poor are more likely than wealthier Blacks to reside in communities whose social organization predicts social control difficulties. The Skeptics' racial redistribution program, in order to be congenial to the social organization view of crime reduction, must produce reductions in incarceration of minorities at higher levels in the specific areas that are the most weakly organized because those places are damaged the most through high rates of removal under the law and order approach

57. *See* SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 501 tbl.5.50 (Kathleen Maguire & Ann L. Pastore, eds. 1996) [hereinafter SOURCEBOOK]; *see also* CORAMAE RICHEY MANN, UNEQUAL JUSTICE: A QUESTION OF COLOR 36-45 (explaining the importance of within-group comparisons as contrasted with between group comparisons).

58. *See* SOURCEBOOK, *supra* note 57, at 498 tbl.5.46.

59. *See id.* at 501 tbl.5.50.

to crime control. Nothing about the racial redistribution programs reviewed so far, however, requires racial redistribution of law enforcement outcomes to be allocated so that the structurally weakest places receive most of the negative law enforcement benefit. In fact, it is likely that the places in which offending is highest will produce the lowest percentage-wise reductions in incarceration if the Skeptics' approach is followed.

Current incarceration rates of drug offenders can help illustrate my point. According to the *1991 Survey of Prison Inmates*,[60] the largest chunk of Black drug offenders incarcerated in state prisons were those with less than a high school education convicted of a trafficking offense. These individuals are much more likely than those with more education to have come from circumstances of concentrated poverty—the *places* to which I devote much of my attention.[61] Trafficking, not felony possession, drives the incarceration rates for prison.[62] Imprisoned drug traffickers come from all walks of life—educated, and non-educated, minority and non-minority. But the *Survey of Prison Inmates* reveals that those who are more educated are more likely than those who are less educated to be imprisoned for possession. This is true for Blacks and Whites. Of course, this piece of data is to be expected. Drug trafficking is an important economic activity for unemployed residents of weakly organized inner city communities.[63] No one should be surprised that minority residents of these communities are much more likely to engage in—and be caught—dealing drugs than minority residents of wealthier more stable communities.

The upshot of this point should be clear, however. By overlooking the real heterogeneity of the Black community, the Skeptic program of racial redistribution of incarceration rates for drug possession through withdrawal of law enforcement is much more likely to redound to the benefit of more educated (and wealthier) Blacks than

60. The survey is compiled by the Bureau of Justice Statistics ("BJS") and is available at the BJS web site. Bureau of Justice Statistics, *Survey of State Prison Inmates, 1991* (visited Apr. 2, 1998) <http://www.ojp.usdoj.gov/bjs/abstract/sospi91.htm> [hereinafter *1991 Survey of Prison Inmates*]. The latest date for which the Survey is available is 1991. It is critical to use the Survey for my analysis, because unlike other more recent data, it is possible to do individual level analyses that enables a researcher to categorize data by race, class, offense category etc. Aggregate data do not allow such analysis.

61. Education level is considered to be a fairly good proxy for class. Many of the hyperpoor areas in inner cities are characterized by high rates of low educational attainment.

62. Those imprisoned for trafficking comprise 70% of all imprisoned drug offenders. *See 1991 Survey of Prison Inmates*, *supra* note 60.

63. *See supra* note 38.

less educated (and poorer) ones.[64] Social organization improvement, though, depends on programs geared toward the needs of the most disadvantaged. Like affirmative action programs to promote more diverse racial representation in construction contracts and admissions to institutions of higher learning, a program that racially redistributes the benefit of negative law enforcement with respect to drug possession offenses are likely to "cream" the most advantaged minorities from the pool of those eligible to receive this benefit.[65] This is true even though one would expect affirmative action in the criminal law, unlike other affirmative action programs, to deal almost by definition with the marginalized.

This argument should not be read as a claim that racial redistribution of negative law enforcement will have no effect in weakly organized communities. It certainly may have some effect. Neither is this critique a claim that redistribution of law enforcement outcomes is a bad idea. Quite the contrary, my point is that Law Enforcement Skeptics aren't *aggressive enough* in their thinking. Getting out of Egypt is not the same as getting out of Egypt *and* getting to Canaan.[66]

This Biblical allusion brings me to the second potential problem with Skeptics' approach. Their program concentrates on removing substantial quantities of formal sanction from the Black community. Yet, they advocate no positive program to help regenerate inner city communities plagued by crime. Their approach produces programmatic *vacuums* in inner city communities, and these vacuums are the evidence of the lack of aggressiveness in their thinking.

The reality is that many residents of inner city communities desire levels of policing in their neighborhoods that are higher than they currently receive. Their desire for more policing is not surprising. Certainly the prevalence of drug retailing and use in inner city communities is one reason behind it. Drug dealing behind closed doors in the suburbs is fundamentally different from open-air drug

64. Other reasons why this might be true is that it is unlikely that this program will be implemented without any regard to the individual offender's background and characteristics. While the poor drug possessor receives intensive probation, the middle class one receives probation and family monitoring.

65. *See, e.g.*, WILSON, *supra* note 7, at 197 (arguing that "creaming" prevented the masses of disadvantaged Blacks from having access to broad avenues of upward mobility); WILSON, *supra* note 11, at 112-18, 146-47 (1987) (same); Deborah C. Malamud, *Class-Based Affirmative Action: Lessons and Caveats*, 74 TEX. L. REV. 1847, 1861 n.51 (1996) (citing numerous sources in support of Wilson's argument).

66. I am referring, of course, the story of the Israelites exodus from Egypt recounted in the Bible. Once the Israelites left Egypt, it took them forty years to make what should have been a ten day trip to the Promised Land, Canaan.

dealing in inner city communities that too often are structurally weak and have difficulty maintaining social control. Open-air drug dealing is more likely than covert dealing to attract street violence. It also makes people fearful. Each of these predictable effects of open-air drug dealing compromises community cohesion. Many suburban communities contain social buffers that allow them to absorb the negative consequences of the drug dealing and use that occurs there, so the failure to actively pursue those guilty of felony drug possession in socially cohesive suburbs will make much less of a difference in those communities. In crime-filled inner city communities, social buffers are thin. Simply taking away law enforcement among those who possess drugs from these places does little to address the problems that the existence of open-air drug dealing and other issues of disorder can fuel. In this world, it is strange to consider withdrawal of law enforcement a benefit.

As one of the main theses of this essay is that too much law enforcement in a weakly organized community can generate social organization disruption, it may seem that my argument is now at cross purposes. Lowering the exposure of minority individuals to law and order-type law enforcement may indeed reduce the harm that this approach imposes on too many poor neighborhoods. But the real issue is whether simply reducing the prevalence of law and order-type law enforcement in weakly organized communities will promote community regeneration. That is the challenge that the social organization view poses to Skeptics.

Skeptics have an answer for this challenge. They maintain that there is no hope of addressing crime in poor minority communities until social policy addresses income inequality. They conclude, like sociologist Douglas Massey, that high crime is inevitable when minority groups are residentially segregated by race and class and also experience high rates of poverty.[67] Massey puts his hopes primarily in legal strategies that promote residential desegregation, and Skeptics

67. A particularly rigid version of this view can be found in Douglas S. Massey, *Getting Away With Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203, 1223-24 (1995). Massey argues that high crime is the inevitable outgrowth of the social conditions created by class and race segregation and high rates of Black poverty. *See id. But see* John J. DiIulio, Jr., *Comment on Douglas Massey's* Getting Away With Murder: Segregation and Violent Crime in Urban America, 143 U. PA. L. REV. 1275 (1995) (criticizing Massey's view).

join Massey and other sociologists who promote greater attention to "root causes" to address crime in inner cities.[68]

Providing inner city residents with more jobs and better housing is part of social organization improvement of inner city communities, but these macrolevel social programs are not the exclusive means of social organization improvement. The Skeptics' view of the value and benefits of law enforcement for inner city communities is unduly narrow. Because one of the main factors that predicts social organization disruption is crime itself, as well as the fear of crime, then law enforcement that promotes security is an important component of a program to improve social organization. But the Skeptics do not see this point. Like the Law and Order Cheerleaders, Skeptics confine their view of law enforcement to the deterrent effects of formal sanctions. Skeptics note that the potential to purchase deterrence through formal sanctions is slim, so they give up on law enforcement and limit their arguments for government intervention to massive social programs to redistribute wealth. The reality is that the political will to enact these programs is lower than at any point in the last thirty years. When Skeptics focus the bulk of their time and on advocacy of these macrolevel social programs to exclusion of other options, they engage in an exercise in futility.

Skeptics should embrace what social organization theory makes clear—government can do more than attempt to price an individual offender out of criminal behavior by raising formal sanction levels. Government can, through law enforcement policies consistent with social organization improvement, enhance inner city community residents' ability to more effectively transmit and promulgate norms that promote compliance with the law. This view of law enforcement has as its goal the manipulation of the community social structures that generate social capital directed toward law abidingness. Importantly, this view of law enforcement has as its target law abiders instead of law breakers.

IV. Race and Crime and Social Organization Improvement

To address the problems that occur when traditional forms of law enforcement are concentrated in poor, inner city neighborhoods, and to address the excesses of a position that attempts to counteract the

68. *See, e.g.*, Sampson & Wilson, *supra* note 8, at 37-54 (calling for macrolevel social programs to improve housing and provide jobs for residents of communities of concentrated poverty).

negative consequences of the law and order approach through racial redistribution that likely disables law enforcement in communities that desperately need it, we must adopt a place-centered vision of law enforcement—one that encourages law-abiding residents of inner city communities to engage in private social control through the promulgation and transmission of norms. In other words, law enforcement that is conducive to social organization improvement is the key.

The last part of this essay provides a road map to construct the "norm highways" necessary for social organization improvement through law enforcement. Three principles will be emphasized here. First, the social organization disruption effects of law enforcement should be redistributed away from poor, inner city communities. This means that policy makers should keep racial distribution of law enforcement effects in mind, but they should do so within a spatial context. Second, law enforcement policy should attempt to redistribute social capital away from youths and teens towards adults who are in the best position to promulgate and transmit law-abiding norms in inner city communities with crime problems. And, last, and perhaps most important (and controversial), we must be willing to accept that the law abider-focused social organization improvement model of law enforcement may not look at all like any type of law enforcement that we've ever seen. Such a model likely involve explicit and strong relationships between the police and organizations that have not typically worked with the police in the past in poor, minority neighborhoods, such as the church.

A. Racial and Spatial Redistribution of Law Enforcement Outcomes

Law enforcement policies that generate high levels of incarceration of geographically concentrated offenders will inevitably lead to family disruption, unemployment, and low economic status. These are the factors that disrupt the community-level social processes that provide law-abiding individuals with incentives to build the important networks that reinforce the crime-fighting potential of law-enforcement policies. With respect to some offenses, such as violent crimes, the benefits of removing offenders from the community may well outweigh the social organization disruption consequences, for the prevalence of violent crime generates fear that can lead to residential withdrawal from community life. If the removal of violent offenders is

linked to the reduction of violent crime, a social organization benefit should follow.

However, in the many cases involving non-violent,[69] consensual crimes such as drug possession or low-level drug retailing, the negative consequences of removal of non-violent offenders on community level social organization is more clear. Removal of large numbers of these offenders will confound rather than enhance crime fighting goals for at least two reasons. First, because non-violent offenders are more numerous than violent offenders, large scale removal of non-violent offenders will inevitably have a large impact on inner city community social structures. In absolute terms, removal of non-violent offenders will have a greater impact on a community's population and social structures. Second, because those considered law abiders in the communities in question often rely in some ways on the law-breaking conduct of non-violent offenders, removal of these offenders will be detrimental to these families.

If law enforcement could be re-engineered in certain contexts so that the negative consequences of it were not visited upon weakly organized communities, there would be obvious benefits. First, the confounding effect of the law and order approach in the inner city community would be lessened. Second, this benefit would not be purchased at the expense of removing law enforcement from crime-hampered neighborhoods. The question, then, is how can this be done?

Start with drug law enforcement. Law and Order Cheerleaders focus their attention on the low-level retail dealer. There is nothing irrational about this. Most people think that those who sell drugs are more culpable than those who simply use or possess them.[70] The standard economic approach to deterrence suggests that we should penal-

69. Note that drug offending is a particular species of non-violent crime in that the victims are often outside of the relevant transaction. This is obviously not the case with theft and burglary, two crimes typically considered non-violent. At the same time, individuals who steal sometimes do so to help their families, and these offenders are much more numerous than violent offenders. The social organization thesis suggests that removal should be used very sparingly—even in cases involving theft and burglary, but it is true that the case for non-removal is less strong here as compared to the case for non-removal of non-violent drug offenders.

70. For example, 75% of the respondents to a national survey conducted by Gallup in 1996 stated that criminal penalties should be more severe for drug sellers than for drug users. *See* THE GALLUP ORGANIZATION, THE OFFICE OF NATIONAL DRUG CONTROL POLICY, CONSULT WITH AMERICA: A LOOK AT HOW AMERICANS VIEW THE COUNTRY'S DRUG PROBLEM 34 (March 1996). Interestingly, African Americans were more likely than other groups to believe that drug users should be punished more harshly than drug sellers. *See id.* at 33.

ize more heavily those activities we'd like to deter most,[71] and if cost is a consideration then it makes sense to target geographically concentrated sellers rather than geographically dispersed buyers. The problem with this strategy, I've suggested, is that targeting low-level retailer drug sellers in the ghetto will concentrate negative effects of law enforcement in weakly organized communities, which, in turn, will lead to social organization disruption.

Targeting *buyers*, however, will reverse these effects and redirect negative law enforcement consequences out of inner city communities. This is because drug buyers are much more demographically diverse than drug dealers.[72] In fact, many purchasers of drugs come from neighborhoods that are much wealthier and more socially cohesive than neighborhoods in which open-air drug markets are prevalent.[73] Buyer-targeting will, of course, expose buyers from poor, inner city communities to some punishment, but the consequences for these individuals (and thus for the community) will not approach the severe penalties typically visited upon low-level drug sellers. In Illinois, for example, buyers caught in reverse drug stings are often charged with misdemeanor drug possession, exposing the defendant to no more than six months in jail and perhaps impoundment of his or her car, while manufacture or delivery of a controlled substance is a felony.[74]

Another example of social organization improving redistribution of law enforcement outcomes involves focusing on targeting those who solicit sex workers in inner city communities. Like drug buyers, these solicitors often come from communities outside of the ones in which prostitutes openly walk the streets. Concentrating primarily on

71. *See* FRANKLIN E. ZIMRING & GORDON J. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL 204-205 (1973) (discussing Cesare Beccaria's "step-ladder" approach to punishment gradations).

72. In 1985, approximately 11.4% of current cocaine users were Black—roughly the percentage of African Americans in the population. *See* John P. Walters, *Race and the War on Drugs*, 1994 U. CHI. LEGAL F. 107, 135 cht.23 (1994). In 1988, 15.3% of current cocaine users were Black. *See id.* at 136 cht.24. By 1991, 21.8% of current cocaine users were Black. *See id.* at 137 cht.25.

73. *See* City of Chicago Community Policing home page, *Reverse Sting Nabs Drug Buyers* (visited Feb. 6, 1998) <http://www.ci.chi.il.us/CommunityPolicing/SuccessStories/Dist11.96.03b.-html> (discussing the fact that many of those nabbed in reverse drug stings conducted in Chicago's high-crime 11th Police District are suburbanites); *see also* Maria Alvarez, *Gangs, Drugs Combine For A Deadly Year In City*, HARTFORD COURANT, Jan. 1, 1995, at A1 (discussing the use of reverse drug stings as part of a multi-faceted strategy in Hartford, Connecticut); John W. Fountain, *Drug Buyers, Stay At Home: Marchers Take Message To Suburbs*, CHI. TRIB., Chicagoland Section, Sept. 30, 1994, at 1 (describing a march to a Chicago suburb by residents of Chicago's West Garfield community the day after a reverse drug sting in West Garfield collected 100 potential drug buyers, 80% of whom were from Chicago suburbs).

74. *See* 720 ILL. COMP. STAT. 570/401, 402 (West 1993 & Supp. 1997).

those who market sexual services can generate social organization disruption, but targeting solicitors can reverse these effects. Moreover, penalties can be imposed on solicitors that take advantage of the fact that they often reside in socially organized communities. Communities in which social networks are strong are fertile ground for alternative sanctions involving attempts to invoke shame. For example, in addition to impounding the solicitor's car, it may also be useful to publish that person's name and photo in the local newspaper where that person resides.[75]

Because the communities in the greatest need of social organization improvement are often overwhelmingly minority, spatially redistributed law enforcement outcomes by definition produce racial redistribution as well. The racial redistribution aspect of the law enforcement policies outlined here is very important to the social organization improvement project. While the policies mentioned here redistribute the effects of law enforcement outcomes away from inner city communities to produce a structural benefit for the community, the policies also reconstruct the "face" of the offenders in a way that contributes to cultural organization of inner city communities. By remaking the image of the criminal offender, these policies help to alleviate the constructive power of incarceration rates on the stereotypes that fuel the stigmatization of law-abiding people of color. Given the earlier discussion of the link between stigmatization of law abiders and compliance, the benefits of this process should be obvious.

B. Redistribution of Social Capital Within Inner City Communities

Youth peer group control is a critical component of community cohesiveness that can prevent crime. Here, too, law enforcement can play a role in assisting inner city residents in the task of community-based youth supervision. In poor urban communities, where the parent to child ratio is extremely low, assistance by the state in youth supervision may be critical.[76]

75. *See* Dan M. Kahan, *What Do Alternative Sanctions Mean?*, U. CHI. L. REV. 591, 632 n.158 (1996) (pointing to numerous examples of shameful publicity for men convicted of soliciting prostitutes).

76. Chicago Housing Authority ("CHA") data collected in August 1991 indicate that the ratio of individuals fifteen years old and older to those fourteen and under living in the Robert Taylor Homes and Stateway Gardens projects, two contiguous CHA housing projects, was 0.946. *See* THE CHICAGO HOUSING AUTHORITY, STATISTICAL PROFILE 10 (1992). A tabulation of 1990 census data indicates that the poorest census tract in the United States contains Stateway Gardens, and same study shows that the Robert Taylor Homes are located in one of the ten poorest census tracts. *See* Flynn McRoberts & Terry Wilson, *CHA Has 9 Of 10 Poorest Areas In U.S., Study Says*, CHI. TRIB., Chicagoland Section, Jan. 26, 1995, at 1. To put this ratio in perspective,

I have in mind loitering and curfew ordinances that keep teens from congregating at night. Teens standing on street corners are more likely to attract the ire of rival gang members, pick fights, or help friends hidden in alleys to sell drugs. By enforcing these laws, police can help adults simply by acting as additional eyes and ears in the neighborhood. By enforcing these laws police also interfere with the signals that these youths send each other by "hanging out," thus weakening the social bonds that support street gangs. When police assist adults in community guardianship and help to alleviate the pressure that teens feel to stay out at night, they play a role in redistributing social networks away from youths in a community in favor of adults in order to facilitate the transmission of law-abiding norms from a community's adults to its children.[77]

Skeptics may object that, unlike the spatial redistribution procedures described above, curfews and loitering laws do not racially redistribute law enforcement outcomes. In fact, Skeptics might argue, these laws may be enforced to a greater extent against the residents of poor, inner city neighborhoods as opposed to wealthier ones. If this is the case, Skeptics would likely conclude that enforcement of these laws is inconsistent with the goals of social organization improvement that I have already outlined.

Even if these measures are enforced to a greater extent in inner city communities than wealthy suburban ones, that is not a reason to object to them. First and foremost, inner city residents themselves often are the primary political force behind the enactment of these measures in large urban areas. These residents are entitled to make a judgment for themselves that this type of policing best meets the needs of their communities.[78] Second, the specific law enforcement strategies mentioned here can help to improve the structural components of community organization by removing signs of disorder from the neighborhood and by clearing the way for community residents to reassert neighborhood control.

A policy that is designed to redistribute social networks within communities should be sensitive to the racial impact of the law's en-

note that the same ratio for residents of Hyde Park, the Chicago community in which the University of Chicago is located, is 5.77. The data underlying this calculation are located at <http://www.cagis.uic.edu/demographics/demographics- _intro.html>, a web site run by the Anthropology Department at the University of Illinois at Chicago.

77. For a more detailed explanation of this process see Meares, *It's a Question of Connections*, *supra* note 18.

78. *See* Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong*, ATLANTIC MONTHLY, (forthcoming Aug. 1998).

forcement. Curfews, for example, should limit a police officer's discretion because these laws do not require an officer to assess conduct or determine whether a child is in a gang. Rather, curfews apply to all children out of their homes after the designated hour, regardless of their racial background. It is true that an officer could deliberately fail to enforce a curfew in a racially discriminatory manner. But that is true for all laws. There is nothing about a youth curfew on its face that invites the pernicious exercise of discretion.

Loitering ordinances, like curfews, can be designed in a way that limits pernicious police discretion. Chicago's anti-gang loitering ordinance is an example. In 1992 the Chicago City Council passed an ordinance to restrict gang-related congregations in public ways.[79] The ordinance was designed to respond to the grievances of citizens concerned about commonly occurring criminal street gang activity in their neighborhoods, such as drive-by shootings, fighting, and open-air drug dealing. By loitering in alleyway entrances and on street corners, drug dealers both solicited business and warned hidden compatriots of police patrols. Unlike the loitering ordinances of yesteryear,[80] Chicago's ordinance placed meaningful constraints on police discretion. For example, only designated officers, usually gang tactical unit members, in each police district, were permitted to enforce the ordinance. Additionally, the designated police officers were permitted to enforce the ordinance only in specified areas of a district with demonstrated, unambiguous problematic gang activity. These limits were specified by a general order implementing the legislation.[81] Finally, the alderman of each ward in Chicago reserved the power to decide whether the ordinance should be enforced in his or her district, insuring greater political accountability in the enforcement of the ordinance.

Despite the guidance to law enforcement these regulations provided, the Illinois Supreme Court struck down Chicago's anti-gang loitering ordinance as a violation of federal substantive due process.[82] The Court refused to even consider the relevance of the implementing regulations,[83] preferring instead to assume that law enforcement would be adequately cabined merely because the Court foreclosed en-

79. *See* CHICAGO, ILL., CODE § 8-4-015 (1992). This ordinance has been struck down as a violation of substantive due process. *See* City of Chicago v. Morales, 687 N.E.2d 53 (Ill. 1997).

80. *See, e.g.,* Papachristou v. City of Jacksonville, 405 U.S. 156 (1972); Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965).

81. *See* Chicago Police Department General Order 92-4 (Aug. 7, 1992) (specifying guidelines for enforcement of Chicago's anti-gang loitering ordinance).

82. *See* City of Chicago v. Morales, 687 N.E.2d 53 (Ill. 1997).

83. *See id.* at 64.

forcement of the loitering ordinance as a policy tool. Unfortunately, the Court's assumptions are wrong. Police discretion is like a balloon. Pressing in on the balloon in one area simply displaces air to another.

The upshot of this observation is that those who adopt the Illinois Supreme Court's view of liberty enhancement may advocate a position that is more, rather than less, liberty constraining at the end of the day. It may sound strange to some readers that I have argued that loitering laws enhance liberty of minority individuals in inner city communities. But consider the alternative vision of law enforcement advanced by law and order supporters—long and prevalent prison terms for even the lowest-level criminal offenders.[84] As my colleague Dan Kahan has suggested, "[t]he kids whom the police can't order off the streets today are the same ones they'll be taking off to jail tomorrow."[85]

It is thus a mistake to conclude that social organization improvement cannot take place without shifting law enforcement outcomes away from inner city communities.

C. *A New Vision for Law Enforcement*

Each of the programs I have discussed so far involves rethinking a relatively traditional approach to law enforcement in terms of social organization improvement to assist law-abiding residents of high crime neighborhoods to help themselves avert crime. The social organization approach to law enforcement is not limited to refashioning existing law enforcement, however. It goes much further. In fact, the full potential of the approach can only be redeemed by thinking about ways to bring individuals to community-level social processes and to promote methods of integrating institutions particularly suited to the task of crime reduction. Certain community institutions are in the business of generating norms that enhance the cultural organization of a community around law-abiding behavior. Schools are in this business, but there is another institution with an even clearer norm-generating mission—the church. If law enforcement agencies are able to appropriate the social capital production of the church in weakly organized communities, then there will likely be a net social organization improvement effect.

84. This, of course, is the effect of some three strikes laws. Research indicates that an inordinate number of individuals subjected to California's three strikes laws receive life sentences for a third strike of marijuana possession. *See* Fox Butterfield, *Tough Law on Sentences Is Criticized*, N.Y. TIMES, Mar. 8, 1996, at A14.

85. Dan M. Kahan, *Curfews Free Juveniles*, WASH. POST, Nov. 14, 1996, at A21.

The Black church today is the central institution in many urban minority neighborhoods.[86] Even the poorest minority neighborhoods have church participation rates that rival the average levels in wealthier city communities.[87] Like the church, the police are another stable presence in the community. Unlike the church, the police do not enjoy a broad base of support in many high crime communities. Given their similar missions, there would seem to be a natural affinity between the church and police in high-crime neighborhoods. However, in many urban, minority neighborhoods, the institutional leaders of the predominantly Black churches have virtually no contact at all with the police. The historical role that the church has played in criticizing police for abusive behavior and for non-responsiveness to citizens is one reason for the nonexistent relationship between the two institutions. The church's special role in criticizing police makes it difficult for church leaders to act as trust intermediaries between law enforcement agents and church members. The church leaders' reluctance (or refusal) to "vouch" for police sustains an institutional resource mismatch in urban communities.

Can the police and the Black church work together in a way that enhances social organization in the inner city? Such an alliance is being constructed in a Chicago neighborhood that consistently posts the city's highest crime rates. The commander of the high crime Harrison Police district brought together over 300 churches and lead approximately 8,000 community residents in a thirty-minute prayer vigil. In groups of ten, the participants stood on designated corners—the same corners where lookouts often hawked their wares by calling out "Rocks and Blows!"—and prayed and sang and talked to each other. Following the prayer vigil, the whole group retired to a large park where there was music, food, and inspirational speeches.[88]

86. *Cf.* C. ERIC LINCOLN & LAWRENCE H. MAMIYA, THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE 154 (1990) (describing urban Black churches' increasing involvement in government programs).

87. According to a survey conducted by the Metro Chicago Information Center ("MCIC"), a research organization studying non-profit community organizations, 62% of survey participants residing in the poor West Side communities of Humboldt Park, West Garfield, East Garfield, and North Lawndale donated money to churches and other religious organizations. In contrast, 60% of survey participants living in the more wealthy North Side communities of Lincoln Park and Lake View, and 66% of participants citywide made similar contributions. *See MCIC Home Page* (updated May 27, 1997) <http://www.mcic.org/commfacts/dsurvey.html>.

88. See Gary Marx, *Cop Believes West Side Has A Prayer: Harrison Commander Uniting Thousands For Vigil Against Violence*, CHI. TRIB., Chicagoland Section, May 2, 1997, at 1, and Dave Newbart, *Residents Take Faith To Streets For Vigil: Participants Pray For West Side Peace*, CHI. TRIB., Chicagoland Section, May 4, 1997, at 1, for media accounts of the event.

According to conversations I had with several people involved with the prayer vigil, more than a few of the city officials involved were uncomfortable about the explicit association of religion with policing activity.[89] But attention to norms suggests that such an assessment is misguided. One likely consequence of the prayer vigil was that the behavior of the law-abiding residents of the high crime community was altered in a way that will improve the community's social organization.

First, a relationship between the police and the institutional leaders of many churches was established in a community where the only two stable institutions had little to do with one another. Now church leaders are excited about their new connections with police. These connections will produce social capital that the police and the church can direct toward violence control: the police will now have access to more information that will assist them in investigations,[90] and the church leaders will be assured of greater police responsiveness to criminal behavior affecting their parishioners. Second, individual churches are working together in ways that they did not before. It appears that the involvement of the state solved collective action problems that prevented churches (especially churches of different denominations) from working together to enhance community efficacy.

This kind of institutional integration between the church and the police and among the churches has and will continue to produce many benefits for the individual members of these organizations. It is likely that the relationships that residents have with each other will be strengthened. Vigil participants came from many different community churches. The commander's requirement that each corner post at least ten individuals maximized the opportunities for the members of

89. Some may resist the notion of police-sponsored prayer vigil on constitutional grounds. *Cf.* Voswinkel v. City of Charlotte, 495 F. Supp. 588 (W.D.N.C 1980) (holding unconstitutional an agreement between city and church providing that the church would furnish city with services of minister to serve as "full-time" police chaplain); Warner v. Orange County Dep't of Probation, 827 F. Supp. 261 (S.D.N.Y. 1993) (ruling that plaintiff motorist stated a cause of action for a violation of federal civil rights because probation condition required him to attend Alcohol Anonymous meetings). While it certainly is possible to imagine aspects of a police-sponsored prayer vigil that would be unconstitutional (for example, requiring police officers to attend and participate), designating every police-initiated prayer vigil unconstitutional clearly would be an unjustifiable instance of civil liberties fanaticism. *See generally* Meares & Kahan, *supra* note 78.

90. In fact, the value of information flow between church leaders and police is not confined to information about criminal incidents. For example, at a follow-up meeting that occurred three weeks after the prayer vigil, the Eleventh District's Commander insured that Police Ambassadors (officers who recruit for the Chicago Police), attended the meeting to distribute information about police qualification exams and applications to ministers. Importantly, the ministers were asked to do more than simply pass on the information to their parishioners. They were asked to function as gatekeepers to insure that the applicants would be good police officers.

various churches to meet each other. Because one aim of the vigil was to increase the participation of neighborhood residents in community policing programming, the vigil format facilitated the creation of an additional context in which neighborhood residents would be exposed to each other. This is an important point. When people interact with each other in multiple contexts, there are multiple opportunities for transmission of law-abiding norms.[91]

Evaluation of this ground-breaking program is ongoing.[92] Nevertheless, the role of social organization in nourishing community's own self-policing capacity suggests that the Harrison District's prayer vigil has the potential to be an important tool of crime reduction. What should be very clear, though, is that the social organization view of law enforcement, by embracing even prayer, goes well beyond retooling law enforcement to *transformation* of it.

V. CONCLUSION

Law enforcement is a critical part of a program to enhance social organization in inner city communities plagued by crime. Law and Order Cheerleaders get it half right by emphasizing the importance of the government's role in maintaining law enforcement. Cheerleaders are wrong, however, to tout the benefits for inner city communities of color of a crime control program based primarily on deterring individual offenders through the elevating sentences (especially sentences for non-violent offenders) and applying these sentences to greater numbers of people. The Cheerleaders' conception of law enforcement is too cramped. Cheerleaders overlook the potential for the programs they push to undermine the community-level social processes in inner city neighborhoods that generate and transmit norms of law-abiding behavior. We need much less of the law and order enforcement program.

Law Enforcement Skeptics will agree with my last statement, but they, too, get it only half right. While Skeptics support restricting the

91. See Marvin D. Krohn, *The Web of Conformity: A Network Approach to the Explanation of Delinquent Behavior*, 33 SOC. PROBS. S81, S83 (1986) (calling this process "multiplexity" and explaining it this way: "if a person interacts with the same people in differing social contexts it is likely that his behavior in one context will be affected by his behavior in another.").

92. My research analyzing the impact of the prayer vigil on Chicago's West Side communities indicates that church leaders are paying attention to the number of young men who join the church as a result of the vigil. There is some empirical research indicating a connection between church participation by young Black men and crime reduction. *See* Richard B. Freeman, *Who Escapes? The Relation of Churchgoing and Other Background Factors to the Socioeconomic Performance of Male Youths from Inner-City Tracts*, *in* THE BLACK YOUTH EMPLOYMENT CRISIS 353-376 (Richard B. Freeman and Henry J. Holzer eds., 1986)

application of law enforcement by race, they offer no alternative vision of law enforcement that will be helpful to inner city communities battling high crime levels. Instead Skeptics advocate redistributing the "benefit" of law enforcement withdrawal by race. The Skeptics, like the Cheerleaders, possess a conception of law enforcement policy that is too cramped. Skeptics overlook the potential benefit that a law enforcement with social organization improvement in mind can have for communities of color.

Law enforcement is necessary for the social organization improvement project, but law enforcement as usual is not. Our goal, instead, should be a law enforcement policy that is freed from the limited vision of producing deterrence through formal sanction while embracing the power of law-abiding residents of inner city communities to effect private social control.

STUDENT NOTES AND COMMENTS

KNAPP V. NORTHWESTERN UNIVERSITY: THE SEVENTH CIRCUIT SLAM DUNKS THE RIGHTS OF THE DISABLED

PETER M. SPINGOLA*

INTRODUCTION

On November 9, 1994, Nicholas Knapp and Northwestern University signed a National Letter of Intent. Knapp agreed to attend Northwestern on an athletic scholarship and play intercollegiate basketball for the university. At the time Knapp signed that letter, Northwestern officials were aware that on September 19, 1994, Knapp's heart had stopped following a pick-up basketball game in his high school gym. Northwestern officials also knew that when Knapp signed, it was his intention to take the floor as a member of the Wildcat basketball team.

After Knapp had enrolled at the university, Northwestern's team physician, Dr. Howard Sweeney, an orthopedic surgeon with no prior cardiovascular expertise, disqualified Knapp from playing intercollegiate basketball because of his cardiac history. Dr. Sweeney's exclusion decision prompted the school's Athletic Director, Rick Taylor, to write the Big Ten Conference and make the following statement: "Northwestern has committed to meet its scholarship obligation to Mr. Knapp, but, absent a court ruling to the opposite, will not allow the young man to participate as a team member in practice or games." In response to Taylor's letter, the Big Ten granted Northwestern leave to classify Knapp as a "medical non-counter"—an athlete whose athletic scholarship does not count against scholarship limits because that athlete never again will play intercollegiate basketball.

The Rehabilitation Act of 1973[1] was created precisely to protect people like Knapp. That statute serves to prevent institutions like Northwestern from branding qualified individuals as incapable and permanently disabled human beings, forcing them to forfeit participation in life's most major and fulfilling activities. Taylor was correct in

* B.A., Dartmouth College, 1993; J.D., Chicago-Kent College of Law, 1997. The author wishes to thank Robert A. Chapman, Lambda Legal Defense and Education Fund, Inc., Professor Howard C. Eglit, and James E. Abbott for their assistance in the writing and editing of this Comment.

1. 29 U.S.C. § 794(a) (1973).