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CRIMINAL LAW

COMMUNITY POLICING AND YOUTH AS ASSETS

JAMES FORMAN, JR.*

INTRODUCTION

Over a decade after it was first introduced, community policing remains the most important innovation in American policing today. Called “the most significant era in police organizational change since the introduction of the telephone, automobile, and two way radio,”¹ community policing has been supported by the past three Presidents, Congress, every major police organization, and much of the public.² A broad cross-section

* Associate Professor of Law, Georgetown University Law Center. I presented an earlier version of this paper to the law faculties at Columbia University, Fordham University, Georgetown University, New York University, University of Michigan, and Yale University, and am grateful for the comments I received. I would like to thank Akhil Amar, Michael Barr, David Cole, Arthur Evenchik, Jeff Fagan, Owen Fiss, Sam Gross, Don Herzog, Dan Kahan, Jerry Kang, Randy Kennedy, Steve Mastrofski, Jim Ryan, Mike Seidman, Reva Siegel, Gerry Spann, Bill Stuntz, Susan Sturm, and Adrien Wing for helpful comments, and Edeanna Johnson-Chebbi for help with the manuscript. Margaret Rodgers, Tamaria Kai Perry, Nicole Devero, Kristen Johnson, and Om Kakani provided first-rate research assistance.

¹ Edward R. Maguire & William Wells, *Community Policing as Communication Reform*, in LAW ENFORCEMENT, COMMUNICATION AND COMMUNITY 33, 33 (Howard Giles ed., 2002).

² Edward R. Maguire & Charles M. Katz, *Community Policing, Loose Coupling, and Sensemaking in American Police Agencies*, 19 JUST. Q. 503, 504 (2002); see also Wesley G. Skogan, *Preface* to COMMUNITY POLICING: CAN IT WORK?, at xii (Wesley Skogan ed., 2004) (community policing “is so widely known and popular with the public and city councils that it is hard to find a police chief that does not claim that his or her department is on board because they have adopted this or that community-friendly program”); WESLEY G. SKOGAN ET AL., ON THE BEAT: POLICE AND COMMUNITY PROBLEM SOLVING 21 (1999) (reporting that by 1997, fifty-four percent of police departments had adopted some type of community

of the legal academy also endorses community policing. Those who seek new ways for inner-city communities to mobilize against disorder and crime support it,³ as do others whose principal concern is reducing police abuse of minorities.⁴

In this Article, I will argue both that there is much to be said for community policing and that it has not reached its potential. The flaw, I suggest, is that a critical group—youth and young adults—has largely been left out of the new policing model. Community policing rejects the discredited “warrior” approach to policing, in which inner-city communities were viewed as implacably hostile to the policing enterprise. Yet I will show how this warrior model persists for the young, who are still viewed as targets of policing rather than as assets to it.

The bad news is that leaving young people out of this new model of policing has tremendous implications. Public safety turns, to a great extent, on what the young do and what is done to them. This is the group most likely to engage in criminal conduct, to be victims of crime, and to be targeted by police. By treating the young exclusively as threats to public order, the state creates and reinforces attitudes of hostility and opposition. This has negative consequences for public safety, because oppositional attitudes can increase law-breaking and make it less likely that citizens will provide information to law enforcement. Further, as the central representative of the state in inner-city communities, what the police do (and what they teach by what they do) has implications beyond policing. The alienation generated by the warrior model creates costs that are borne not just by youth themselves, but by their neighbors and the rest of society.

The good news is that the warrior model of policing the inner-city young is built on premises that are faulty, and therefore can be corrected. Despite the powerful image of urban youth as threats, most delinquent and

policing and another twenty-eight percent were in the process of doing so).

³ See Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1527-30 (2002); Tracey L. Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593 (2002).

⁴ See DAVID COLE, NO EQUAL JUSTICE 192-94 (1999); CHARLES OGLETREE ET AL., BEYOND THE RODNEY KING STORY: AN INVESTIGATION OF POLICE CONDUCT IN MINORITY COMMUNITIES 127-30 (1995); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 1010 (1999) (advocating “a race-conscious community policing model”); see also PETER ELIKANN, SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW 193-97 (1999) (arguing that community policing is a preferable alternative to incarceration-oriented approaches for adolescent offenders); THE L.A. COUNTY SHERIFF’S DEP’T, A REPORT BY SPECIAL COUNSEL JAMES G. KOLTS 285 (July 1992) (“[W]e view the immediate, Department-wide implementation of community policing as our single most important recommendation for reduction of excessive force claims.”).

criminal conduct is concentrated among a small percentage of young people. The rest—the majority—are law-abiders. Moreover, they are the principal victims of the law-breaking minority. They therefore have a profound stake in keeping their neighborhoods (and themselves) safe. Coupled with their interest in reducing police abuse and harassment, this gives the young powerful incentive to participate in the community policing enterprise.

Moreover, just as the warrior model alienates young people from the police and society, community policing offers to do the opposite. A growing body of empirical research establishes that people's satisfaction with the legal system, including the police, is determined not by whether they are satisfied with the outcome of the decision, but instead by whether they believe the process was fair. These findings have powerful implications for community policing. Not all community policing is equal, as I will explore. But some versions offer citizens the opportunity to participate in regular group deliberations with neighbors and local officers to set community policing priorities. To date, young people have not generally been involved in this type of policing. But a model that included the young would place them alongside other community members and officers in trust-engendering deliberations regarding matters of community safety. This process would, in turn, increase law enforcement's legitimacy in their eyes, by increasing their respect for the process of police decision-making.

This Article proceeds in four parts. In Section I, I will outline how community policing developed out of dissatisfaction with the antagonism caused by the warrior model. Because community policing is a term that has been used to describe quite disparate concepts, in this Section I will define what I mean by it. I will also emphasize what I view as the enormous potential of community policing to increase local regulation of law enforcement. I will do this by contrasting community policing to what I call the "judicial control" model, in which judges attempt to regulate police conduct through enforcement of the Fourth Amendment.

In Section II, I will describe how community policing has failed to change the way the inner-city young are policed. Young people are less likely than older citizens to be involved in the community meetings and other venues where the community policing agenda is set. Further, they are more likely to be stopped, disrespected, and illegally searched by the police on the streets. I will then turn to the rhetoric regarding the young, and argue that here too they appear solely as threats and objects of intervention. I will suggest that part of the reason for this portrayal is that community policing gained currency just as youth crime, especially youth homicide,

increased dramatically. Because our national imagination was fixed on the image of the adolescent and post-adolescent “super-predator,” it was difficult to see that same group as potential assets to the community policing agenda.

In Section III, I will justify my claim that we should view youth as assets, and I will explore the costs of our failure to do so. First, I will describe the investment the young have in influencing police behavior and fighting crime. Second, I will outline society’s stake in using all mechanisms at its disposal—including law enforcement—to reinforce bonds of trust and faith in law’s legitimacy among the inner-city young. Drawing on sociological research, I will suggest that many youth and young adults in urban areas are “walking a tightrope,” between what Elijah Anderson has called “street” and “decent” values.⁵ Perhaps the greatest evil of warrior policing is that, because it is perceived as illegitimate and unfair, it encourages its targets to adopt street values. On the other hand, I will argue, the state has the power to increase law’s legitimacy by adopting policing practices that are perceived as procedurally fair.

In Section IV, I describe in greater detail what a model of community policing that engages young people would look like. Through an examination of novel and promising policing experiments in Chicago and Boston, I will outline the model’s core principles. I will also describe some potential pitfalls, and discuss how they might be avoided.

I. THE POTENTIAL OF COMMUNITY POLICING

A. BACKGROUND TO COMMUNITY POLICING

Community policing grew out of a variety of sources,⁶ but of central importance was the growing consensus in the 1970s and 1980s that police-community relationships in many cities had become untenable.⁷ Many departments and individual officers had long subscribed to the “warrior model” of the detached, aloof crime-fighter who daily battles the hostile

⁵ ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE AND THE MORAL LIFE OF THE INNER CITY* 35-65 (1999).

⁶ A comprehensive history of community policing has not yet been written. What I offer here is a highly truncated summary. Existing historical summaries include Debra Livingston, *Police Discretion and Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 565-78 (1997), and Maguire & Wells, *supra* note 1, at 33-39.

⁷ See, e.g., Jack R. Greene, *Community Policing and Organization Change*, in *COMMUNITY POLICING: CAN IT WORK?*, *supra* note 2, at 30, 35 (describing minority communities’ alienation from police in the 1960s).

enemy—the public.⁸ Indeed, it was something of a matter of faith in many city forces that citizens were inalterably opposed to the police, and therefore would never cooperate regardless of what the police did. William Westley's 1970 study, for example, found that seventy-three percent of officers believed that the public was "against the police" or "hates the police." Thirteen percent believed that "some are for us, some against us," while only twelve percent believed that the public "likes the police."⁹ Similarly, a Kerner Commission study found that most big city policeman believed that the public saw them as "brutal, annoying, and inconsiderate."¹⁰

Community policing gained further support when police officials confronted new criminological findings demonstrating the inadequacy of many traditional police tactics.¹¹ This research, conducted principally in the 1970s, questioned the value of increasing the number of patrol officers, showed the limited utility of random and saturation patrol, and cast doubt on the efficacy of rapid response to 911 calls. Moreover, it suggested that police officers spent relatively little time fighting violent crime, and instead spent the bulk of their shifts passively patrolling and providing other services. Finally, the research showed that most crimes are not solved by investigation, but rather because an offender is arrested immediately on the scene or the police are given specific identifying information such as a name, address, or license plate number. In total, the research undermined many of policing's core assumptions, thereby creating an opening for reformers to offer new approaches.¹²

⁸ GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 82-85 (1996).

⁹ WILLIAM WESTLEY, *VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM AND MORALITY* 93 (1970); see also WESLEY G. SKOGAN & SUSAN M. HARTNETT, *COMMUNITY POLICING, CHICAGO STYLE* 79 (1997) (less than twenty percent of Chicago officers believed that police-citizen relations were very good, about half believed that people do not respect the police, over seventy percent thought that citizens do not understand the problems of the police, and over eighty percent said that most people do not know how difficult the job of police is); JAMES Q. WILSON, *THINKING ABOUT CRIME* 117 (Rev. ed. 1983) ("The view of many big city police officers seems to confirm the 'war' theory of police-community relations. Data gathered at least as far back as 1960 suggest that most big-city officers see the citizenry as at best uncooperative and at worst hostile.").

¹⁰ W. Eugene Groves, *Police in the Ghetto*, in *SUPPLEMENTAL STUDIES FOR THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 103, 106 (1968).

¹¹ For a review of the research discussed in this paragraph, see JEROME SKOLNICK & DAVID BAYLEY, *THE NEW BLUE LINE: POLICE INNOVATION IN SIX AMERICAN CITIES* 3-5 (1986).

¹² Some of the early reform efforts—upon which community policing today is built—include team policing, community crime prevention, problem-oriented policing, and fear reduction strategies. Wesley G. Skogan & Jeffrey A. Roth, *Introduction to COMMUNITY*

With crime and fear of crime rising, community relations at a low, and research questioning the efficacy of the current approaches, some within policing circles began to conclude that the warrior strategy was failing.¹³ But replacing the warrior strategy required a paradigm shift that was not entirely easy. It meant questioning the entrenched belief that the public—especially minority residents of inner cities—was implacably hostile to the policing enterprise. This required police to recognize that although inner-city residents were more critical than were other Americans, substantial majorities nonetheless held generally favorable views of police.¹⁴ Even more profoundly, it meant understanding that even those who were critical did not want less policing—they generally wanted more, and better, protection.¹⁵ As the Kerner Commission found, “[t]he strength of ghetto feelings about hostile police conduct may even be exceeded by the conviction that ghetto neighborhoods are not given adequate police protection.”¹⁶

The recognition of this reservoir of community support for policing was connected to a broader understanding that even high-crime communities are made up principally of law-abiders. Community policing was built on the import of these findings, and its challenge was to replace the warrior model with one premised on the notion that the police and community could become co-producers of public safety, rather than hostile antagonists.¹⁷

B. DEFINING COMMUNITY POLICING

But exactly what is community policing? This definitional issue arises

POLICING: CAN IT WORK?, *supra* note 2, at xviii-xxiii.

¹³ KELLING & COLES, *supra* note 8, at 85.

¹⁴ SAMUEL WALKER ET AL., *THE COLOR OF JUSTICE: RACE, ETHNICITY AND CRIME IN AMERICA* 91 (2000).

¹⁵ For a thoughtful discussion of how black citizens balance the desire for additional police presence with concerns about unfettered police discretion, see generally Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S. CAL. L. REV. 1219 (2000).

¹⁶ NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, *REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 307 (1968); see also George L. Kelling, *Acquiring A Taste for Order: The Community and Police*, 33 CRIME & DELINQ. 90, 94 (1987) (“Despite the contrary belief of some citizens and police that minority residents do not respect police, the great majority do. . . . They believe that police have not been a tangible presence, engaged with citizens to develop neighborhood peace and security.”).

¹⁷ Cf. SUSAN MILLER, *GENDER AND COMMUNITY POLICING* 194 (1999) (“Community policing programs often adopt the language of the business world, which entails seeing residents as ‘customers’ who are ‘invested’ in the joint production of community stability.”).

because the term has come to refer to a wide variety of police tactics.¹⁸ For Tracey Meares and Dan Kahan, two of community policing's leading advocates, it can mean neighborhood prayer vigils, gang loitering ordinances, and "order maintenance" strategies, in which police aggressively prosecute offenses such as panhandling, vagrancy, or prostitution.¹⁹ In the press, community policing can mean officers playing basketball with kids in housing projects and smiling at babies.²⁰

These tactics, however, are just that—tactics. At its core, community policing is not a set of tactics, but instead is an organizational strategy for running a department. In its most promising form, this strategy has two essential elements. First, it requires that citizens, at the neighborhood level, meet regularly with police to jointly define neighborhood crime problems and set police priorities.²¹ This consultation serves four functions: (1) it allows neighborhood residents to express their concerns and needs; (2) it gives police a forum to educate citizens about neighborhood crime issues; (3) it allows citizens to state complaints about the police themselves; and

¹⁸ David Bayley was one of the first to point out that community policing "means different things to different people—public relations campaigns, shopfront and mini-police stations, rescaled patrol beats, liaison with ethnic groups, permission for the rank-and-file to speak to the press, Neighborhood Watch, foot patrols, patrol-detective teams, and door-to-door visits by police officers." David H. Bayley, *Community Policing: A Report from the Devil's Advocate*, in *COMMUNITY POLICING: RHETORIC OR REALITY* 225, 225 (Jack Greene & Stephen D. Mastrofski eds., 1988). More recent evaluations of community policing indicate that Bayley's analysis remains true today. See Jeffrey A. Roth et al., *Trends in the Adoption of Community Policing*, in *COMMUNITY POLICING: CAN IT WORK?*, *supra* note 2, at 4 ("Reasonable people could (and still do) argue over" the proper objectives and strategies of "real community policing."); Skogan & Roth, *supra* note 12, at xvii (Although "police chiefs report that they are moving toward" community policing, "[w]hat they say they are doing when they do community policing varies a great deal. . ."); see also Michael E. Buerger, *The Challenge of Reinventing Police and Community*, in *POLICE INNOVATION AND CONTROL OF THE POLICE: PROBLEMS OF LAW, ORDER AND COMMUNITY* 103, 104-5, 108-11 (David Weisburd & Craig Uchida eds., 1993).

¹⁹ Kahan, *supra* note 3, at 1527-30 (order maintenance strategies); Meares, *supra* note 3, at 1612-19 (prayer vigils); Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 *LAW & SOC'Y REV.* 805, 819-21 (1998) (gang loitering ordinances).

²⁰ Michael Massing, *The Blue Revolution*, *THE N.Y. REVIEW OF BOOKS*, Nov. 19, 1998, at 32, 33 (describing 1996 Time Magazine cover story).

²¹ LORIE FRIDELL ET AL., *POLICE EXECUTIVE RESEARCH FORUM, RACIALLY BIASED POLICING: A PRINCIPLED RESPONSE* 100 (2001) ("Police department efforts to provide significant means for community input into police operational and policy decisions are the backbone of community engagement."); Maryann Wycoff, *The Benefits of Community Policing: Evidence and Conjecture*, in *COMMUNITY POLICING: RHETORIC OR REALITY*, *supra* note 18, at 103, 105 ("It is the commitment to *listening* to citizens (as opposed simply to talking to them) and to taking seriously citizens' definitions of their own problems that distinguish the better programs of today from 'community-relations' programs of the 1960s and 1970s.").

(4) it gives police a chance to report back on what actions they have taken and what successes (or not) they have had.²² The second critical element is that, citizens, again at the local level, take responsibility for helping to address the problems that they have identified.²³

The distinctiveness of my definition becomes clear when it is contrasted with how others have described community policing. Consider, for example, David Cole's account:

[Community policing], already under way in many departments across the country, tries to make the police an integral part of the neighborhoods they serve through more decentralized police stations, more foot patrols, and regular meetings with citizens in the community. Where such programs develop effective channels for communication between the police and the community about their respective needs, the programs can play an important role in restoring community trust and overcoming the adversarial relationships too many police departments have with disadvantaged communities.²⁴

In Cole's account, no one "channel of communication" is regarded as primary. What's said at "regular meetings" is not necessarily more significant than what is said when officers talk to citizens while on foot patrol or informally at decentralized police stations. In my account, by contrast, these informal contacts matter,²⁵ but formal, deliberative meetings between police and community residents are the heart of the matter.²⁶

Chicago, which I will discuss in additional detail in Section IV, has

²² Maguire & Katz, *supra* note 2, at 510-11.

²³ KELLING & COLES, *supra* note 8, at 168; William Geller, *As a Blade of Grass Cuts Through Stone: Helping Rebuild Urban Neighborhoods Through Unconventional Police-Community Partnerships*, 44 CRIME & DELINQ. 154 (1998); Wesley G. Skogan, *The Community's Role in Community Policing*, NAT'L INST. OF JUST. J., AUG. 1996, at 31, 34.

²⁴ COLE, *supra* note 4, at 192-93.

²⁵ See *infra* text accompanying notes 76-78.

²⁶ Many police programs that call themselves community policing do not systematically involve community residents in the process of establishing policing priorities and tactics. Jeffrey Fagan and Garth Davies have argued that the New York Police Department abandoned such a community-centered practice in favor of one where community needs and standards were defined by police leadership, relying on a sophisticated data driven management accountability system known as Compstat. Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race and Disorder in New York City*, 28 FORDHAM URB. L. J. 457, 472 (2000); see also Skogan & Roth, *supra* note 12, at xxiii ("New York's model also did not feature any community input into identifying problems or setting police priorities, ignoring the concept of partnership that figures so prominently in the community policing paradigm."). Michael Buerger warned that such an approach is not atypical; too often community policing "is no more than a unilateral police decree, defining the police relationship to the public in symbolic form only, without any necessary change in police practice or structure." Buerger, *supra* note 18, at 105; see also Greene, *supra* note 7, at 50 (warning that police may not have changed their practices, but instead "effectively repackaged their efforts with a community and problem-oriented label").

perhaps the most thoroughly developed (and thoroughly evaluated) community policing program. In the Chicago Alternative Police Strategy (CAPS), community policing is implemented principally through “beat meetings,” where citizens and police from a particular neighborhood meet regularly to discuss and define community crime and order problems. In addition, Chicago employs “District advisory committees,” where selected neighborhood representatives meet regularly with District commanders to discuss neighborhood conditions and police responses.²⁷

As I have mentioned, a variety of tactics can emerge from this organizational strategy. For example, citizens often say what matters most to them are neighborhood disorder issues—which can include anything from abandoned cars to rowdy teenagers. In other neighborhoods, the problems might include loitering outside an un-staffed recreation center, chronic drug dealing on a particular corner, or unsolved robberies.²⁸ Sometimes citizens wish to complain about the tactics of individual police officers, including racial profiling, stopping of innocent young people in the neighborhood, or disrespecting neighborhood residents.²⁹ In each of these cases, community policing gives citizens a way to raise these issues directly with police and one another, a process for collective deliberation, and a mechanism to prompt both government and collective community action.³⁰

C. COMMUNITY POLICING AS REGULATION

This description of community policing highlights one of its greatest, and at the same time most underappreciated, virtues—it provides a way to achieve meaningful community-based regulation of a broad swath of police conduct. Such community-based regulation is not the only way to influence police behavior; indeed, it has not been the principal mode of regulation with which the legal academy has been interested. The focus of the legal scholars has traditionally been on what I call the “judicial control” model of regulating police. But I will argue here that community policing has the potential to regulate police more effectively than does the traditional model.

²⁷ SKOGAN & HARTNETT, *supra* note 9, at 110-60.

²⁸ ARCHON FUNG, EMPOWERED PARTICIPATION: REINVENTING URBAN DEMOCRACY 153-58, 179-210 (2004) (describing beat meetings in three Chicago neighborhoods).

²⁹ Jenny Berrien & Christopher Winship, *An Umbrella of Legitimacy: Boston's Police Department-Ten Point Coalition Collaboration*, in SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 200, 216 (Gary S. Katzmann ed., 2002); Jeffrey Fagan, *Policing Guns and Youth Violence*, 12 CHILDREN, YOUTH, AND GUN VIOLENCE 133, 137 (2002), at www.futureofchildren.org.

³⁰ This process does not always work equally well. In Section IV, I discuss institutional arrangements that impact the effectiveness of this process.

The judicial control model of regulating the police is premised on judicial oversight of police-citizen contacts, principally through enforcement of the Fourth Amendment's prohibition against unreasonable searches and seizures.³¹ Defenders of the judicial control model typically criticize the post-Warren Court for cutting back on Fourth Amendment protections, and argue that police over-reaching and abuse requires more vigilant judicial enforcement of the Fourth Amendment.³²

This approach has not gone unchallenged. Some of community policing's staunchest defenders take the opposite perspective, arguing that pervasive judicial regulation has hamstrung police, who they say need more discretion.³³ George Kelling, for example, says that community policing is "inherently proactive," and that such a preventive approach to crime fighting has inevitable consequences for police departments and local governments.

The main consequence is that police strategy shifts from a reactive and inherently passive model to a preventive interventionist model that reopens policy issues about police handling of the homeless, drunks, drug dealers and users, the emotionally disturbed, and minor offenders that many believed had been addressed once and for all during the period following the 1960s. This strategic change takes police to the edge, or even over the edge, of constitutional law—at least as it has been interpreted over the past 30 years.³⁴

Though I am advocating a form of community policing, I do not do so on the grounds that police need license to go "over the edge . . . of constitutional law."³⁵ I do not share the view of community policing

³¹ There are innumerable examples of this approach. Some of the most thoughtful include BERNARD HARCOURT, *THE ILLUSION OF ORDER* (2001); Albert W. Alschuler & Stephen Schulhofer, *Antiquated Procedures or Bedrock Rights?: A Response to Professors Meares and Kahan*, 1998 U. CHI. LEGAL F. 215; David Cole, *Foreword: Discretion and Discrimination Reconsidered: A Response to the New Criminal Justice Scholarship*, 87 GEO. L.J. 1059 (1999); David Harris, *Frisking Every Suspect: The Withering of Terry*, 28 U.C. DAVIS L. REV. 1 (1994); and Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333 (1998).

³² See Cole, *supra* note 31, at 1071; Lenese Herbert, *Bete Noire: How Race-Based Policing Threatens National Security*, 9 MICH. J. RACE & L. 149, 157 (2003); Yale Kamisar, *In Defense of the Search and Seizure Exclusionary Rule*, 26 HARV. J. L. & PUB. POL'Y 119, 122-25 (2003).

³³ See Dan M. Kahan & Tracey L. Meares, *Foreword: The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998). For Kahan and Meares, the modern criminal procedure regime tightly constrains police "and subject[s] them to stringent judicial monitoring." *Id.* at 1168. They argue that while such an approach may have made sense in the historical context in which it arose, it no longer does. *Id.* at 1166-71.

³⁴ GEORGE L. KELLING, U.S. DEP'T OF JUSTICE, "BROKEN WINDOWS" AND POLICE DISCRETION 9 (1999).

³⁵ *Id.*

advocates who argue that the judiciary has over-regulated police. To the contrary, I argue that the police are under regulated in some important ways. In fact, my suggestion is that both sides of this debate overstate how much the Fourth Amendment matters to what happens on the street. The pro-discretion camp overstates the extent to which judicial decisions have limited police discretion. And the pro-regulation camp overstates the extent to which the Fourth Amendment can ever effectively regulate police-citizen encounters. What both sides overlook is how much of what the police do is beyond the Fourth Amendment's constraints. The truth is that no matter how vigorously it is enforced, the Fourth Amendment governs a small slice of policing.

To see the limits of regulation via the Fourth Amendment, consider the following scenario presented by Tracey Maclin, a leading proponent of the judicial control model. His article, *Race and the Fourth Amendment*, opens with a description of an incident that he says is "illustrative of the low-visibility, high-tension police confrontations that often occur in black neighborhoods and with black men:"

It was 72 degrees and sunny in Homestead, a town just south of Pittsburgh

At 3:10 in the afternoon, the police and the young black men standing on Amity are playing the usual cat-and-mouse game. Two officers in a cruiser drive slowly past the men and stare, silently sending the word: don't hang too long. The men shrug the police off, walking casually away, but only until the car is out of sight. Then they regroup.

The game continues for the rest of the day and into the night. Police drive quietly by three more times. On the fourth pass, they order the men to move or "somebody's going to jail."

Finally, two of the men give it up and leave for home. On the way, police stop and search them. An officer notices a marijuana cigarette on the sidewalk and asks where it came from. The men say they don't know. The police let them go.

A half-hour later, officers stop three more of the original group on Amity Street and pat them down.

No arrest is made. But the message has been sent.³⁶

From the perspective of the men in this example, and others like them, the episode raises numerous issues, in addition to the legality of the officers' decision to search them. Why were the police in that neighborhood? Why were they patrolling in that manner? How long did the police have the men under surveillance, and why? What remedies exist,

³⁶ Maclin, *supra* note 31, at 333 n.1.

since the men were searched but not arrested? What are the mechanisms to hold the officers accountable? What opportunities are there for community members to complain to these officers or their supervisors about their conduct? What structures exist to facilitate policy change based on that dialogue? And what crime and disorder is going unaddressed while the officers are playing this “cat and mouse game”?

Despite the breadth of issues raised, a focus on judicial enforcement of the Fourth Amendment requires Maclin to propose a solution that is quite narrow—he suggests that once a defendant has raised evidence of race-based targeting, the government should be forced to provide a race-neutral explanation for the stop.³⁷ Because this is regulation under the Fourth Amendment, Maclin is limited to focusing on the moment of the stop or seizure of the citizen. But as the example makes clear, from the citizen’s perspective, the stop or seizure, while significant, is not all that matters.

One response to the problem I have identified is to offer a vision of the Fourth Amendment that would sweep more than simply the stop itself into the inquiry. For example, one reading of “search” would include the period of purposeful surveillance that preceded the stop in Maclin’s example.³⁸ *Terry v. Ohio* does not indulge this reading—remember that in *Terry* the officer watched Mr. Terry for ten to twelve minutes before actually making physical contact with him, but the Court implied that the Fourth Amendment did not come into play until the officer touched Terry.³⁹ But even if the Court were to view the matter differently than it did, this broader view of “search” to include surveillance would only help a little. Much police conduct, including most of what upset the men in Maclin’s example, would remain beyond reach of effective enforcement of the Fourth Amendment.

Perhaps even worse than the fact that it covers only stops, the judicial control model has almost nothing to say about the largest category of illegal stops—those that uncover no incriminating evidence. Because such searches rarely get reviewed in court, there has long been a question of how common they are. Though many familiar with policing have always

³⁷ *Id.* at 340-41. I must stress that I do not intend to single out Maclin for criticism. Instead, I am simply using this example as a way to highlight an endemic tendency in the Fourth Amendment literature: to describe the problem (discriminatory policing) and the solution (tighter judicial regulation of Fourth Amendment seizures) with little discussion of whether the proposed solution would in fact remedy the problem.

³⁸ Akhil Reed Amar, *Terry and Fourth Amendment First Principles*, 72 ST. JOHN’S L. REV. 1097, 1102-04 (1998); see also William J. Stuntz, *Privacy’s Problem and the Law of Criminal Procedure*, 93 MICH. L. REV. 1016, 1021 (1995) (arguing the importance of the right not to be stigmatized by being singled out and treated as a suspect).

³⁹ 392 U.S. 1, 19 n.16 (1968).

suspected that a substantial percentage of searches are unconstitutional, there has been little empirical data on the subject. One of the problems with the data is that the rate of unconstitutional searching has typically been analyzed by examining the results of suppression motions.⁴⁰ But searches that lead to suppression motions are a tiny (and likely unrepresentative) sample of all searches. That sample does not include, for example, searches that do not lead to arrests or those in which prosecutors dismiss cases (and cases occasionally are dismissed precisely because the prosecutor concludes the stop was bad).

More recent studies have tried to overcome these problems. For example, New York and federal officials recently looked at the stop and frisk practices of New York police officers. Though they found that a remarkably high fifteen percent of searches were unconstitutional, they relied on data from the officers themselves, which was frequently lacking and raised questions of bias and selective reporting of facts.⁴¹

The best attempt to address these data flaws is a ground breaking new study by Jon Gould and Stephen Mastrofski, which relies on direct observation of officers in the field.⁴² In this study, researchers rode with officers in a medium-sized American city the authors dubbed Middlesberg. They took notes of what they and the officers saw, and teams of experts later evaluated the constitutionality of the searches. Evaluators resolved all doubts in favor of the officers (for example, when an officer said that he saw a “furtive gesture” that the researcher did not see, the gesture was recorded as having occurred).⁴³ Still, Gould and Mastrofski found that thirty percent of the searches they witnessed were unconstitutional.⁴⁴ Moreover, in a finding that I shall return to, when younger suspects (defined as those under the age of thirty) were searched, they were more likely to be searched unconstitutionally (and the difference was of statistical significance).⁴⁵

What role do courts play in monitoring these searches? For the

⁴⁰ An example of such a study is Thomas Y. Davies, *A Hard Look at What We Know (and Still Need to Learn) About the “Costs” of the Exclusionary Rule: The NIJ Study and Other Studies of “Lost” Arrests*, 3 AM. B. FOUND. RES. J. 611 (1983).

⁴¹ CIVIL RIGHTS BUREAU, OFFICE OF THE NEW YORK ATTORNEY GENERAL, THE NEW YORK CITY POLICE DEPARTMENT’S “STOP & FRISK” PRACTICE: A REPORT FROM THE OFFICE OF THE ATTORNEY GENERAL 160-62 (1999); Benjamin Weiser, *U.S. Detects Bias in Police Searches*, N.Y. TIMES, Oct. 5, 2000, at A1.

⁴² Jon B. Gould & Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 CRIMINOLOGY & PUB. POL’Y 315 (2004).

⁴³ *Id.* at 319.

⁴⁴ *Id.* at 331.

⁴⁵ *Id.* at 339.

reasons I indicated above, very little. The searches were all warrantless, so there was no *ex ante* judicial oversight.⁴⁶ Like the men in Maclin's example, the majority of those searched illegally did not possess incriminating evidence to suppress and were not charged. Though in theory they could sue for damages, the researchers found only two or three cases where the invasion was egregious enough to support a civil claim.⁴⁷ As Gould and Mastofksi put it, "[t]he abuses are, by analogy, a steady drumbeat of droplets rather than a torrential deluge."⁴⁸

If the Fourth Amendment has little to offer those who are unconstitutionally searched but not charged with crimes, it has nothing at all to say about an even less visible problem—police verbal disrespect of citizens. Recall the men in Maclin's example, who the police ordered to move or "somebody's going to jail." Belittling remarks, illegitimate orders, and cursing, are all—as much as unconstitutional searches—part of what *Terry* called "[t]he wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain."⁴⁹ Like unconstitutional searches (and for much the same reasons) there is limited empirical data on this phenomenon. However, a recent study of St. Petersburg, Florida, and Indianapolis, Indiana, provides some important information.⁵⁰ Field researchers there observed interactions between police and suspects and recorded disrespectful police behavior.⁵¹ Disrespect included things such as name calling, derogatory statements, belittling comments, slurs, cursing, or interrupting the citizen (except in an

⁴⁶ *Id.* at 335.

⁴⁷ *Id.* Many have remarked on the inadequacy of civil remedies in cases where police behavior is illegal but insufficiently damaging to support a lawsuit. See OGLETTREE ET AL., *supra* note 4, at 68 ("[C]ases of misconduct involving verbal abuse or humiliation, short-term detention after a false arrest, or minor injuries are not likely to be litigated at all."); Angela J. Davis, *Race, Cops and Traffic Stops*, 51 U. MIAMI L. REV. 425, 442 n.108 (1997) (tiny percentage of police misconduct cases that are referred to the ACLU result in action); Pamela S. Karlan, *Race, Rights and Remedies in Criminal Adjudication*, 96 MICH. L. REV. 2001, 2011-12 (1998) (inadequacy of damages and injunctions as remedies to police misconduct); David Rudovsky, *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, 3 J. CONST. L. 296, 352-55 (2001) (difficulty of using civil and administrative remedies to redress police harassment); David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1998 SUP. CT. REV. 271, 325 (same).

⁴⁸ Gould & Mastofksi, *supra* note 42, at 334.

⁴⁹ *Terry v. Ohio*, 392 U.S. 1, 14 (1968).

⁵⁰ Stephen D. Mastofski et al., *Police Disrespect Toward the Public: An Encounter-Based Analysis*, 40 CRIMINOLOGY 519 (2002).

⁵¹ Citizens were defined as suspects if officers identified them as suspects, or interrogated, searched, cited, or otherwise treated them as such. *Id.* at 529.

emergency).⁵² Being argumentative by itself was not considered disrespect.⁵³

Researchers found that police were disrespectful in nine percent of interactions with suspects.⁵⁴ There are two additional findings of particular importance to this discussion. First, as I will return to later, police were more likely to be disrespectful to the young and to citizens in neighborhoods of concentrated disadvantage.⁵⁵ Second, and of direct relevance to the current discussion of the limits of the Fourth Amendment, is the question of race and police mobilization. Recall again the police-citizen encounter described in Maclin's example. It began when "two officers in a cruiser dr[o]ve slowly past the men and stare[d], silently sending the word: don't hang too long." Why were the police in that neighborhood, and why were they patrolling like that? This example raises the issue of police mobilization—which neighborhoods do police patrol, who do they pay particular attention to, who do they decide to question? Mobilization is then of fundamental importance because all subsequent police-citizen interactions flow from it.

If police mobilize to engage minority citizens as suspects more often than they do whites, or if they mobilize to engage young males as suspects more often than they do others, then stops, searches, disrespect, and similar acts are likely to fall upon that group more often. This is so even if the police are no more disrespectful to the blacks (or young men) who they stop. This is what the St. Petersburg/Indianapolis study discovered. In fact, the researchers found that the police were more likely to be disrespectful to the whites they stopped than to the minorities. But, because police mobilized against minority suspects at much higher rates, an individual minority citizen living in one of those cities was much more likely to be stopped and disrespected than was his or her white counterpart.⁵⁶

To sum up, the judicial control model has little relevance to a large chunk of what matters in policing. It places no limits on, among other things, which neighborhoods police are deployed to, who they choose to watch, and how they talk to the citizens they stop. It neither effectively deters unconstitutional searches from occurring,⁵⁷ nor does it offer a remedy for the overwhelming majority of unconstitutional stops and searches once they have happened. These limitations, when compared to the scope of

⁵² *Id.* at 529-30.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 539.

⁵⁶ *Id.* at 543.

⁵⁷ See *supra* text accompanying notes 42-48.

police conduct that citizens can themselves regulate under some community policing models, make community policing a project worth exploring.⁵⁸

II. POLICING YOUTH: WARRIORS STILL

Given the core principles I mentioned earlier, community policing's legitimacy and efficacy depend on community involvement that is both broad and deep. Community policing also requires a re-orientation in thinking, so that officers begin to see community members as allies, rather than enemies. In this Section, I will discuss whether community policing has achieved those goals. I will begin by reviewing community policing's efforts to secure the involvement of a representative cross-section of neighborhood residents. The evidence here is mixed: while recent initiatives have seen high participation rates in the poorest neighborhoods, there is still a significant age bias, with younger residents less involved in community policing. I will then examine policing toward the young, and demonstrate how they continue to be policed exclusively as threats to order. Finally, I turn to a discussion of the rhetoric around youth and crime, and outline how community policing's vision of citizens as assets has not yet extended to young people.

A. WHO PARTICIPATES IN COMMUNITY POLICING?

Early research on community policing initiatives in practice showed consistent disparities in participation rates. Wesley Skogan's review of Houston's early program revealed that it favored racially dominant groups and established interests, while renters, African-Americans, and Hispanics benefited the least.⁵⁹ Skogan found similar results in Chicago and Minneapolis community programs in the 1980s. In those programs, whites and higher income, long-term residents of single family homes were more likely than others to get involved.⁶⁰ Jerome Skolnick and David Bayley reached similar conclusions in their study of community policing in Santa Ana, California.⁶¹

Community policing often relies on neighborhood organizations for its implementation. This can have race and class implications, because participation rates in local groups tends to be higher among married

⁵⁸ As I discuss *supra* in text accompanying notes 21 to 30, and *infra* Part IV, the full breadth of police conduct can appropriately be put on the agenda at neighborhood police-community beat meetings.

⁵⁹ WESLEY G. SKOGAN, *DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS* 106-09 (1990).

⁶⁰ *Id.* at 148, 167.

⁶¹ SKOLNICK & BAYLEY, *supra* note 11, at 31.

citizens, those with a higher socio-economic status, and homeowners with children.⁶² In addition, some research indicates that neighborhood organizations in wealthier and whiter neighborhoods are more likely to invest in community policing initiatives than similar groups in predominantly black and Hispanic neighborhoods.⁶³

In Houston's community policing program, for example, citizen meetings were almost all held in a part of the neighborhood dominated by owner occupied single-family homes. Not surprisingly, participation rates were lower for blacks, who generally lived in another part of the neighborhood in rental property.⁶⁴ Against this backdrop, Skogan cautioned that,

[t]he police are likely to get along best with the factions that share their outlook. The "local values" they represent are those of some of the community, but not all. In heterogeneous neighborhoods, some residents can easily become the targets of the programs, and are not likely to be happy about that.⁶⁵

More recent evidence suggests, however, that it is possible to achieve high rates of community policing participation in lower income and minority neighborhoods. Chicago's CAPS program invested heavily in mass media and community organizing, including a staff of organizers that publicized the program by visiting churches, neighborhood groups, and individual residences.⁶⁶ As a result, seventy-nine percent of Chicagoans knew about CAPS in 1998.⁶⁷ Moreover, the beat level findings from Chicago reveal that neighborhoods with greater percentages of black residents or poor residents participate at equal or greater rates than others.⁶⁸ Significantly, the most important predictor of beat attendance rates is the level of crime in a neighborhood, with citizens in high-crime neighborhoods

⁶² See, e.g., Stephen D. Mastrofski, *Community Policing as Reform: A Cautionary Tale*, in *COMMUNITY POLICING: RHETORIC OR REALITY*, *supra* note 18, at 47, 51 (Neighborhood organizations "are not a microcosm of the neighborhoods they are alleged to represent. They, like all social institutions, are heavily influenced by the distribution of power, status, and wealth within their domain.").

⁶³ SKOGAN & HARTNETT, *supra* note 9, at 139, 147, 239.

⁶⁴ SKOGAN, *supra* note 59, at 106-09.

⁶⁵ *Id.* at 109.

⁶⁶ FUNG, *supra* note 28, at 75.

⁶⁷ *Id.*

⁶⁸ Wesley Skogan examines data from 1998 and finds that attendance was higher in predominately black neighborhoods than in predominately white ones, and higher in low-income areas than wealthier ones. WESLEY SKOGAN ET AL., U.S. DEP'T OF JUSTICE, PUBLIC INVOLVEMENT: COMMUNITY POLICING IN CHICAGO 20-22 (2000). Archon Fung takes data from 1995 and 1997 and finds that a neighborhood's percentage of black or Hispanic residents, like its income level, had no statistically significant impact on beat meeting attendance rates. FUNG, *supra* note 28, at 109-11.

being the most likely to attend meetings.⁶⁹ These findings run contrary to those of earlier community policing studies.⁷⁰ They also contradict the notion that individuals in disadvantaged neighborhoods lack either the resources or the desire to participate in local democratic institutions.

Chicago's success at securing participation from historically disconnected groups raises important questions, which I will return to in Section IV. For present purposes, though, there is one less hopeful result from Chicago. As with other community policing efforts, younger Chicago residents are still less likely to attend beat meetings or sit on District advisory committees. In practice, most residents who attend beat meetings are middle aged and older.⁷¹ The same holds true with the District advisory committees.⁷² The absence of the young has, at times, undermined the effectiveness of local community policing initiatives. In one Chicago neighborhood, for example, citizens organized anti-drug marches, but their efforts were short-lived and ineffective. Residents themselves cited the absence of youth involvement as among the reasons for the failure.⁷³ Another reason the absence of young people matters is that their satisfaction with the police differs from older residents. For example, seventy-four percent of Chicago residents over sixty-five reported that, on average, the police were doing a good job. By contrast, only forty-five percent of those

⁶⁹ FUNG, *supra* note 28, at 109-11; SKOGAN ET AL., *supra* note 68, at 20.

⁷⁰ At the same time, other aspects of the Chicago findings confirm earlier research showing that class can influence participation rates. For example, within individual beats, home owners were significantly more likely to attend meetings than non-homeowners. Wesley G. Skogan, *Representing the Community in Community Policing*, in COMMUNITY POLICING: CAN IT WORK?, *supra* note 2, at 57, 60. Residents with more education also were more likely to attend beat meetings; for example, in beats where thirty percent of the residents were college educated, seventy-five percent of participants reported having a college degree. *Id.* at 62. Race also played an influence: although beats with greater numbers of blacks had participation rates as high or higher as other beats, Latino participation remained low, except in beats where Latinos were a large majority of the residents. *Id.* Finally, beat meeting attendance was unrepresentative in one other important respect. Those who attended beat meetings typically were more likely than their non-attending neighbors to be satisfied with the quality of police services in the neighborhood. *Id.* at 67. Interestingly, what Skogan calls the "optimism gap" is particularly large for African-Americans. Fifty-nine percent of blacks who attended meetings were satisfied with the police, while only forty-two percent of non-attenders were satisfied, a seventeen percent difference. *Id.* at 68-69. For whites, the gap was only nine percent and for Latinos it was fourteen percent. *Id.* Unfortunately, the design of this particular research project does not allow us to know the direction of the causation arrow. Namely, are satisfied neighbors more likely to attend meetings, or does meeting attendance produce satisfaction?

⁷¹ SKOGAN & HARTNETT, *supra* note 9, at 114.

⁷² *Id.* at 149.

⁷³ *Id.* at 175.

under the age of thirty felt the same way.⁷⁴

The Chicago research documents that youth and young adults do not attend community policing meetings or participate in other official activity. But another way to measure community policing's effectiveness is to look at more informal police-citizen contacts—in neighborhoods, stores, and on street corners.⁷⁵ The absence of these informal contacts between police and inner-city young people has long been of concern, and was documented by the Kerner Commission over forty years ago. After surveying beat officers regarding who they talked to, the Commission concluded that officers were likely to know store-keepers and shop-owners by name, but were detached from neighborhood young people.⁷⁶

These informal contacts matter to community policing, because they are one way for officers to learn citizen perceptions of neighborhood problems. They also are important to fighting crime and disorder, for they are part of how police learn about who is doing what, and who can be relied on.⁷⁷ Especially in light of the substantial evidence that police perceive minority youth as hostile and threatening,⁷⁸ it is critical that the police have the sort of individualized information that lessens their need to rely on group stereotypes.

The available research, however, suggests that the same age disparities

⁷⁴ Skogan, *supra* note 70, at 69. Age disparities regarding police satisfaction raise (but do not answer) questions about the argument that inner-city elders and young people share a 'linked fate,' so that burdens imposed on younger people are borne by a community's elders. See Kahan & Meares, *supra* note 33, at 1176 ("The pervasive sense of 'linked fate' between the majority of inner-city residents and the youths affected by curfews and gang-loitering ordinances furnishes a compelling reason not to second-guess the community's determination that such measures enhance rather than detract from liberty in their communities."). I am not suggesting that the linked fate argument does not have force; indeed, I think it does. Rather I believe that more research is in order to clarify areas where the link exists, where it does not, and precisely how it operates. Further, it is worth pointing out that age differences do not always cut in predictable ways. For example, older Chicago residents actually tended to see fewer crime problems than younger ones. Young people between the ages of eighteen and twenty-nine were twice as likely as those over sixty-five to say that street crime was a big problem in their neighborhood. Skogan, *supra* note 70, at 65. The disparity was almost as wide for burglary. *Id.*

⁷⁵ See *supra* text accompanying notes 18-26, where I argue that these informal contacts, while important, are not a substitute for formal, deliberative meetings between police and neighborhood residents.

⁷⁶ Groves, *supra* note 10, at 112.

⁷⁷ This point is compellingly made in a variety of police ethnographies. For example, see Chapter 5 of JONATHAN RUBINSTEIN, *CITY POLICE* (1973).

⁷⁸ John Hagan & Ruth D. Peterson, *Criminal Inequality in America: Patterns and Consequences*, in *CRIME AND INEQUALITY* 14, 24-25 (John Hagan & Ruth D. Peterson eds., 1995).

that mark participation rates in the formal arenas also exist in the informal ones. Roger Parks and his colleagues studied community policing in St. Petersburg and Indianapolis, with a particular focus on how patrol officers and community policing specialists chose to spend their time. Their findings were not dissimilar to the Kerner Commission's: they found that community policing specialists were less likely to initiate contact with young people (defined as under twenty-nine), and were more likely to initiate contact with those who represent organizations—including local business, government or not-for-profit agencies, and neighborhood groups.⁷⁹

These findings led Parks to conclude that

[c]ommunity policing specialists, largely freed of responsibility to respond to radio calls and empowered to select members of the public whom they would encounter, were more likely than patrol generalists to engage "good citizens," persons whose social status or immediate circumstances remove them from that class of people and conditions which contribute to the "tainted" character of police work.⁸⁰

These finding echoes the Houston officer who told James Wilson and George Kelling that he liked community policing because, "[t]raditionally, police officers after about three years get to thinking everybody's a loser. That's the only people you're dealing with. In community policing you're dealing with the good citizens, helping them solve problems."⁸¹ The St. Petersburg and Indianapolis findings suggest that people under the age twenty-nine were disproportionately not "good citizens" with whom these officers sought contact.

B. POLICING YOUTH: PRACTICE

Not only are inner-city young people absent from community policing's agenda-setting forums, they are still generally policed as they had been under the warrior model—as threats to public order. Age persists as one of the most reliable variables indicating a likelihood of negative interaction with police. As I have mentioned, when they are stopped by police, the young are (statistically significantly) more likely to be both disrespected⁸² and illegally searched.⁸³ Similarly, a recent study of police use of force found that officers were (statistically significantly) more likely

⁷⁹ Roger Parks et al., *How Officers Spend Their Time With The Community*, 16 JUST. Q. 483, 514 (1999).

⁸⁰ *Id.*

⁸¹ James Q. Wilson & George L. Kelling, *Making Neighborhoods Safe*, ATLANTIC MONTHLY, Feb. 1989, at 46, 52.

⁸² Mastrofski et al., *supra* note 50, at 532, 539.

⁸³ Gould & Mastrofski, *supra* note 42, at 338-39.

to use force on males, nonwhites, the young, and the poor.⁸⁴

These statistical studies echo what other researchers have observed. For example, William Chambliss' observational research with Washington, D.C.'s Rapid Deployment Unit (RDU) caused him to conclude:

The RDU patrols the ghetto continuously looking for cars with young black men in them. They are especially attentive to newer-model cars . . . based on the belief that they are the favorite cars of drug dealers. During our observations, however, the RDU officers came to the conclusion that drug dealers were leaving their fancy cars at home to avoid vehicular stops. It thus became commonplace for RDU officers to stop any car with young black men in it.⁸⁵

One of the officers with whom Chambliss talked explained such tactics: "This is the jungle. . . . We rewrite the constitution every day down here. . . . If we pull everyone over they will eventually learn that we aren't playing games anymore. We are real serious about getting the crap off the street."⁸⁶

Despite my familiarity with the empirical and anecdotal evidence, I was nonetheless shocked to personally confront similar police practices.⁸⁷ A charter high-school that I helped to start, called the Maya Angelou School, is located in a neighborhood, and on a corner, long known for substantial drug activity.⁸⁸ During the spring of 2001, for reasons that neither the students, staff, nor I were ever to learn, police became particularly active on our corner.

Neither I nor any of the teachers were ever stopped. Our kids, on break between classes, were not so lucky. On numerous occasions, officers arrived at the corner in front of the school, threw students against the wall, and searched them. These searches were not polite encounters. Teens were forced to spread their legs, faces against the school wall or a squad car, hands behind their heads. They were then searched by officers, who felt

⁸⁴ William Terrill & Stephen D. Mastrofski, *Situational and Officer-Based Determinants of Police Coercion*, 19 JUST. Q. 215, 236 (2002).

⁸⁵ William Chambliss, *Policing the Ghetto Underclass: The Politics of Law and Law Enforcement*, 41 SOC. PROBS. 177, 179 (1994).

⁸⁶ *Id.*

⁸⁷ I relate these incidents and student reactions to them in greater detail in James Forman, Jr., *Children, Cops, and Citizenship: Why Conservatives Should Oppose Racial Profiling*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 150 (Marc Mauer & Meda Chesney-Lind eds., 2002).

⁸⁸ The Maya Angelou Public Charter School was founded in 1997, and today serves 185 students, many of whom had not succeeded in traditional schools. For more detail about the school, see James Forman, Jr., *Foreword, Separate but Unequal: The Status of America's Public Schools*, 8 MICH. J. RACE & L. 151 (2002), or the school's website at www.seeforever.org.

every area of their body. At no point during these searches did the officers recover any drugs, and none of the students was found in violation of the law as a result of the stops.

This was not a neighborhood with community policing; beat officers did not attend regular meetings with area citizens.⁸⁹ Nonetheless, school staff did their best to raise the issue with the local precinct. It was remarkably difficult to find any officer or supervisor who would claim responsibility for this corner, and the staff who tried remained pessimistic that their complaints ever got through. Their worst fears were realized a few weeks later when another officer chased one of our male students into the school, wrestled him to the ground, and searched him. Staff later found out that the officer explained his actions by claiming that he “knew this kid” and believed he was bad, likely carrying drugs. No drugs were found.

Two weeks later, after one of our students refused to leave the corner in front of our school (the student was in compliance with school rules and D.C. law, taking a short break between classes), an officer grabbed the student and began to arrest him and place him into a police van. Only after a staff person came outside did the officer let the student go. As demoralizing as these police actions were individually and collectively for students, I was struck then (and still am) by what the students wanted in response: they did not want to sue, and they were not especially interested in the quasi-adjudicative citizen complaint review process. They wanted to talk to the officers and a supervisor, and to do so quickly, in the hope that the searches would stop.⁹⁰

C. POLICING YOUTH: RHETORIC

The warrior model in practice has been accompanied by rhetoric regarding the inner-city young which portrays them exclusively as threats to order. Consider James Q. Wilson and George Kelling—in discussing sources of fear in inner-city neighborhoods, they argue that, “law-abiding citizens who are afraid to go onto streets filled with graffiti, winos, and loitering youths yield control of these streets to people who are not frightened by these signs of urban decay.”⁹¹

There are two features of this formulation that are important to note. First, in juxtaposing “law-abiding citizens” with “loitering youths,” Wilson

⁸⁹ For a discussion of the Chicago CAPS program, which operates in this fashion, see *supra* text accompanying notes 21-27 and *infra* Part IV.

⁹⁰ For a discussion of how community policing might provide a framework for such a conversation, see *infra* Part IV.

⁹¹ Wilson & Kelling, *supra* note 81, at 48.

and Kelling define the youth as not law abiding. Indeed, their presence is a sign of “decay.” Second, in juxtaposing “afraid” citizens with “loitering youth,” the authors define the young people themselves as not “afraid,” and presumably, therefore, not interested in improving public safety.

My point is not to single out Wilson or Kelling. Their description of youth as threats, not assets, is typical. For Sykes, for example, youth appear only as “youthful male ‘trouble-makers’” who “loiter on street corners, harass elderly citizens, intimidate passersby and generally add to the fear and uncertainty of urban life”⁹² For these young people, he concludes, “the police become the only institution available for remedy.”⁹³ Skogan, for his part, writes of “congregating bands of youth” who violate “widely approved standards of public conduct.”⁹⁴

In one sense, it should not come as a surprise that the young are defined as hostile enemies, hardly likely to be co-producers of public safety. Recall the warrior model of policing: in it, the entire inner city is defined in such a manner. Yet this view of the young as threats was being elaborated at precisely the same time as many (including some of the same authors) were finally beginning to reject that vision of the inner city as a whole. Why are young people in the inner city still largely viewed as threats when the rest of the inner city is, at least in part, beginning to overcome that stigma?⁹⁵

Has the inner-city minority community *writ large* been rescued from its historical association with criminality by identifying an even more marginal sub-group on which to pin the blame? That view would garner some support from Tim Hope’s suggestion that modern community crime control programs require an outsider, against whom community members can mobilize in defense.⁹⁶ Perhaps the young have become such outsiders, but I suggest we consider another possibility as well, one that is attentive to

⁹² Gary W. Sykes, *Street Justice: A Moral Defense of Order Maintenance Policing*, 3 JUST. Q. 497, 506-07 (1986).

⁹³ *Id.*

⁹⁴ SKOGAN, *supra* note 59, at 2.

⁹⁵ One response to this question is the straightforward proposition that youth commit a disproportionate share of crime. I discuss this issue, and its implications, in Section III.A. Another response, which is beyond the scope of this article to address, would be that Americans have a deep-seated investment in demonizing inner-city young black men. See, e.g., N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315 (2004) (describing historical creation and perpetuation of belief in black male criminality).

⁹⁶ Tim Hope, *Community Crime Prevention*, in BUILDING A SAFER SOCIETY: STRATEGIC APPROACHES TO CRIME PREVENTION 67-68 (Michael Tonry & David P. Farrington eds., 1995).

the particular historical context in which community policing gained traction.

Community policing's growth in the early 1990s occurred alongside a dramatic rise in homicides committed by those between the ages of sixteen and twenty-four.⁹⁷ Moreover, demographic data indicated that this age cohort was growing in size. The combination of more young people, and more violent young people, gave rise to predictions that crime by the young would increase at even greater rates in the early twenty-first century. The Justice Department, for example, predicted that the number of juvenile arrests for violent crimes would double between 1992 and 2010.⁹⁸ Criminologist James Alan Fox warned that "[w]e are facing a potential bloodbath of teenage violence in years ahead that will be so bad, we'll look back at the 1990s and say those were the good old days."⁹⁹ In an article entitled *Why Kids Are Ruining America*, author Bret Easton Ellis argued that

things have changed drastically in the last 20 years, to the point where one can only really chuckle in grim disbelief. Cheating on exams? Smoking cigarettes? Shoplifting? You wish. Murder, rape, robbery, vandalism: the overwhelming majority of these crimes are committed by people under 25, and the rate is escalating rapidly.¹⁰⁰

Some criminologists cast doubt on these predictions.¹⁰¹ In fact, crime by the young began to decline precipitously in 1994.¹⁰² Yet that news was largely lost against the backdrop of the "super-predators" theme that had already captured America's attention.¹⁰³ William Bennett, John DiIulio, and John Walters argued that "today's bad boys are far worse than yesteryear's and tomorrow's will be even worse than today's."¹⁰⁴ As a result, they said, "America is now home to thickening ranks of juvenile 'super-predators'—radically impulsive, brutally remorseless youngsters,

⁹⁷ Alfred Blumstein, *Violence by Young People: Why the Deadly Nexus?*, NAT'L INST. JUST. J., Aug. 1995, at 3.

⁹⁸ Howard N. Snyder et al., *Juvenile Offenders and Victims: 1996 Update on Violence*, JUVENILE JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention), 1997, at 5.

⁹⁹ Melissa Rossi, *Why Kids Are Running America*, GEORGE MAG., June/July 1996, at 98.

¹⁰⁰ Bret Easton Ellis, *Why Kids Are Ruining America*, GEORGE MAG., June/July 1996, at 97.

¹⁰¹ Philip J. Cook & John H. Laub, *The Unprecedented Epidemic in Youth Violence*, 24 CRIME & JUST. 27, 28, 52 (1998).

¹⁰² Howard N. Snyder, *Juvenile Arrests 2001*, JUVENILE JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention), Dec. 2003, at 1.

¹⁰³ *Id.* at 52.

¹⁰⁴ WILLIAM J. BENNETT ET AL., BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS 26-27 (1996).

including ever more preteenage boys, who murder, assault, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders.”¹⁰⁵

These themes also loomed large in mass media coverage, with national magazines running stories such as *Now for the Bad News: A Teenage Timebomb*,¹⁰⁶ *Children Without Pity*,¹⁰⁷ and *A Generation of Stone Killers*.¹⁰⁸ Indeed, even as crime began to decline, media coverage of crime increased.¹⁰⁹ This finding is especially important given that most people’s opinions about crime come from what they see or read in the news, rather than from their own personal experience.¹¹⁰ Given such media focus, it is not surprising that most people believed that youth crime was rising even when it was declining.¹¹¹

Some have argued that the fervor surrounding the threat of violence by the young during this era amounted to a “moral panic”—a period in which a publicized incident or series of incidents triggers an intense community reaction, an exaggerated sense of threat, and collective hostility toward the offenders.¹¹² Whatever the name assigned, I would suggest that this was a particularly inopportune historical moment to expect that the public, police, or policy-makers would be likely to embrace a vision of policing that emphasized young people as assets to public order.

III. YOUTH AS ASSETS TO COMMUNITY POLICING: WHAT’S AT STAKE?

To this point, I have suggested (in Section I) that community policing has potential both to mobilize residents toward community crime prevention and to regulate police conduct. I have specifically argued that

¹⁰⁵ *Id.* at 27.

¹⁰⁶ Richard Zoglin, *Now for the Bad News: A Teenage Timebomb*, TIME, Jan. 15, 1996, at 52.

¹⁰⁷ Nancy Traver, *Children Without Pity*, TIME, Oct. 26, 1992, at 46.

¹⁰⁸ Scott Minerbrook, *A Generation of Stone Killers*, U.S. NEWS & WORLD REP., Jan. 17, 1994, at 33.

¹⁰⁹ LORI DORFMAN & VINCENT SCHIRALDI, OFF BALANCE: YOUTH, RACE AND CRIME IN THE NEWS 10 (2001), available at <http://www.buildingblocksforyouth.org/media/media.html>.

¹¹⁰ *Id.* at 4 (seventy-six percent of the public say they form their opinions about crime from the media and twenty-two percent base them on personal experience); see also Ernestine S. Gray, *The Media—Don’t Believe the Hype*, 14 STAN. L. & POL’Y REV. 45, 48-49 (2003) (collecting polling data).

¹¹¹ DORFMAN & SCHIRALDI, *supra* note 109, at 3-4. For a thoughtful discussion of how violent crime on local news can exacerbate implicit racial bias, see Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. (forthcoming 2005).

¹¹² Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 807 (2003).

community policing has greater potential for regulating the police than does the model of judicial enforcement of the Fourth Amendment. At the same time, I have outlined (in Section II) that inner-city young people are still policed under the pre-community policing warrior model. I concluded Section II by outlining some assumptions we make about the young that I believe perpetuate the warrior model's continued application to this group.

In Section III.A, I will turn to evidence suggesting that our existing assumptions are wrong, and argue that we have every reason to believe that inner-city young people can be assets to the community policing project. Further, in Section III.B, I will explore why it is so urgent that law enforcement engage in this project. There is a values battle underway in inner-city areas, and law enforcement currently is on the wrong side. Finally, in Section III.C, I will suggest that this need not be the case, and I will discuss how law enforcement can be in the business of strengthening the legitimacy of its own authority.

A. THE SILENT MAJORITY

But what of the reality that young people are disproportionately likely to commit crimes? Youth is correlated with offending to such a great extent that criminologists refer to an "age-crime curve." The teens and early to mid-twenties are the prime offending years for most violent crimes, and the tendency to commit crime declines as people get older.¹¹³

This fact may not tell us as much as it might appear, however. We must first consider, of course, that the existence of an age-crime curve tells us very little about the likelihood that a particular young person is a criminal. Consider my earlier example of the searches at the Maya Angelou School. Imagine three black males—a student aged seventeen, a graduate aged twenty-three, and a teacher aged fifty—all standing in front of the school. Knowing nothing else, it would be reasonable to assume that the seventeen and twenty-three year-olds were more likely than the fifty year old to, say, be selling drugs. But for purposes of this discussion, that is not what matters. Instead, what is important is that the seventeen and twenty-three year-olds are much more likely not to be selling drugs than to be doing so.¹¹⁴

¹¹³ See Blumstein, *supra* note 97, at 3; Cook & Laub, *supra* note 101, at 35-37.

¹¹⁴ My argument here finds analogy in the racial profiling literature, where many have pointed out that although blacks are arrested for a disproportionate amount of crime, the overwhelming majority of black citizens are never arrested for a crime. COLE, *supra* note 4, at 42; DAVID A. HARRIS, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK 106 (2002); Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781, 791-92 (1994). This argument should

As it turns out, despite the existence of an age-crime curve, the majority of criminal activity is concentrated among a small portion of the young. This was first documented in Marvin Wolfgang's landmark study, *Delinquency in a Birth Cohort*.¹¹⁵ Wolfgang tracked 10,000 Philadelphia boys through childhood, adolescence and into adulthood. He found that a small group of boys committed the majority of serious and violent juvenile crime. Chronic offenders constituted six percent of the cohort, but were responsible for fifty-one percent of all offenses and about two-thirds of all violent crime. In a study of a second Philadelphia birth cohort, researchers found that seven percent of the boys committed sixty-one percent of homicides, seventy-five percent of rapes, seventy-three percent of robberies, and sixty-five percent of all aggravated assaults.¹¹⁶ Subsequent studies have confirmed these original findings.¹¹⁷ For drug offenses, for example, less than five percent of youth commit seventy-five percent of sales.¹¹⁸ A related line of research has found that although many violent juvenile offenders live in high-risk neighborhood, "the majority of youth who live in such environments are not involved in serious delinquency."¹¹⁹

In addition to the fact that offending is highly concentrated among a

be distinguished from two related arguments common to the racial profiling debate: (1) that the costs of racial profiling outweigh its benefits (I make a form of this argument *infra* note 147), and (2) that racial profiling is wrong because it is immoral or unconstitutional, regardless of whether it works. See, e.g., COLE, *supra* note 4, at 42 ("[O]ur nation's historical reliance on race for invidious discrimination renders suspect such consideration of race today, even if it might be 'rational' in some sense."); RANDALL KENNEDY, RACE, CRIME AND THE LAW 146-47 (1997) (Even "[i]f taking race into account in making determinations of suspicion is a rational adaptation to the racial demographics of criminality," courts should carefully scrutinize police use of race because "[r]ace is different" and "the making of racial distinctions has proved to be more destructive and more popularly distasteful than other lines of social stratification."); Jerry Kang, *Thinking Through Internment: 12/7 and 9/11*, 27 AMERASIA J. 43, 49 (2002) (Even if a particular racial profiling policy can be justified on utilitarian grounds, "aren't moral principles embedded in our Constitution supposed to trump utilitarian calculations?").

¹¹⁵ MARVIN E. WOLFGANG ET AL., *DELINQUENCY IN A BIRTH COHORT* (1972).

¹¹⁶ PAUL E. TRACY ET AL., *DELINQUENCY CAREERS IN TWO BIRTH COHORTS* 280 (1990).

¹¹⁷ SERIOUS & VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS 25-28 (Rolf Loeber & David P. Farrington eds., 1998) (summarizing studies); Barbara Bennett Woodhouse, *Youthful Indiscretions: Culture, Class Status, and the Passage to Adulthood*, 51 DEPAUL L. REV. 743, 744-45 (2002).

¹¹⁸ Johnson et al., *Concentration of Delinquent Offending: Serious Drug Involvement and High Delinquency Rates*, 21 J. DRUG ISSUES 205, 206, 222 (1991).

¹¹⁹ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, REPORT TO CONGRESS ON JUVENILE VIOLENCE RESEARCH 9 (1999); see also Steven D. Levitt & Lance Lochner, *The Determinants of Juvenile Crime* 13 (2000) (unpublished manuscript) (on file with author) (self-report data indicating that seventy-four percent of males ages 15-19 do not report a major violent or property crime).

few offenders, there is yet another reason to see the law-abiding majority as potential assets to community policing's public safety project. Polling data suggests that both public safety and police conduct are issues that matter to the young. Chicago residents aged eighteen to twenty-nine were *more likely* than older residents to say that street crime and burglaries were big problems in their neighborhood.¹²⁰ In *Between Hope and Fear*, a 1995 survey, almost half of urban African-American students, and seventy-two percent of those who live in neighborhoods defined as at-risk, reported that they or their friends had been "hassled by the police when [they] weren't doing anything wrong."¹²¹ In a 1999 survey, two-thirds of youth said that they felt their streets were "dangerous" and "full of gangs."¹²² Half said they therefore curtailed activities.¹²³ *Between Hope and Fear* reached similar conclusions: forty-four percent of all urban students, and sixty-two percent of African-American urban students, said that neighborhood crime was a serious problem.¹²⁴

In line with these results are findings that the majority of inner-city youth hold lawbreakers in low regard. For example, in a Washington, D.C. survey eighty-two percent said that they "did not at all admire" a person who sold drugs.¹²⁵ Similarly, seventy-eight percent of urban African-American teens characterized gangs as "violent and destructive."¹²⁶

These attitudes about crime are not surprising when we consider that teens and young adults are the group most at risk of criminal victimization (including crime by their age peers, as well as by those older than them).¹²⁷ These victimization levels provide some reason to suspect that some young people would consider participating in a community policing program. Recall that Chicago's current community policing initiative sees highest

¹²⁰ See *supra* note 74.

¹²¹ THE NATIONAL TEENS, CRIME AND THE COMMUNITY PROGRAM, BETWEEN HOPE AND FEAR: TEENS SPEAK OUT ON CRIME AND THE COMMUNITY 97 (1995) [hereinafter BETWEEN HOPE AND FEAR]; see also *infra* text accompanying notes 151-54 for a discussion of how younger citizens are more likely to believe they have been victims of racial profiling.

¹²² Karen Pittman, *Youth Engagement*, 8 YOUTH TODAY 55, 55 (1999).

¹²³ *Id.*

¹²⁴ BETWEEN HOPE AND FEAR, *supra* note 121, at 32.

¹²⁵ PETER REUTER ET AL., MONEY FROM CRIME: A STUDY OF THE ECONOMICS OF DRUG DEALING IN WASHINGTON, D.C. 82-83 (1990).

¹²⁶ BETWEEN HOPE AND FEAR, *supra* note 121, at 103.

¹²⁷ DORFMAN & SCHIRALDI, *supra* note 109, at 22; Regina Austin, "The Black Community," *Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769, 1781 (1992); see also Joy D. Osofsky, *Addressing Youth Victimization 2* (Office of Juvenile Justice and Delinquency Prevention 2001) (juveniles are twice as likely as adults to be victims of crime).

participation rates in neighborhoods with the most violent crime.¹²⁸ This finding suggests that the desire to achieve personal and community safety is sufficiently powerful to generate participation even among groups that are disproportionately disengaged.¹²⁹

B. THE VALUES BATTLE

By this point, many readers will have identified a tension in my argument. On the one hand, I have just argued that many of the inner-city young are law-abiding citizens, disproportionately victimized by crime, and for that reason potential allies in a project to ensure community safety.¹³⁰ On the other hand, I have suggested already—and will do so more forcefully in the pages to follow—that current police practices toward inner-city youth engender hostility and alienation that undermines community order. I embrace this tension; indeed, in many respects, its existence is the heart of my argument. As I explore in this Section, young people in the inner-city communities operate in a complicated world of competing values and conflicting norms. “Decent” and “street” attitudes and behaviors co-exist within the same neighborhood, and often, within the same person.¹³¹ But my claim is that the presence of these conflicting attitudes—some of which are hostile to law enforcement—does not mean that an effective community policing relationship cannot be reached. Instead, it makes the need for such more urgent.

Elijah Anderson’s research suggests that “street” and “decent” values are in tension within a neighborhood. As Anderson argues, “in underclass communities, conventionality and the street culture wage a constant battle for the hearts and minds of the younger residents, and this dichotomy has

¹²⁸ See *supra* text accompanying notes 68-69 and *infra* text accompanying note 175.

¹²⁹ See SKOGAN ET AL., *supra* note 68, at 22. The evidence that younger people are less likely to be civically engaged is substantial. ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 247-48 (2000). There is one piece of data that cuts the other way: the 1990s saw a substantial increase in volunteering and community service by young people. *Id.* at 265.

¹³⁰ See *supra* Part III.A.

¹³¹ The terms “decent” and “street” come from sociologist Elijah Anderson. For Anderson, characteristics of decent families include hard work, thrift, self-sacrifice, politeness, a consideration for neighbors’ well-being, a focus on child-rearing and educational success for children, and acceptance of mainstream culture and values. Characteristics of street families include disorganized lives, lack of consideration for others, a superficial sense of family and community, idleness, incivility, the inability to remain committed to a job, a willingness to resort to violence to settle disputes, inattention to the demands of child-rearing, and a rejection of mainstream culture and values. ANDERSON, *supra* note 5, at 35-65.

become an organizing principle."¹³² Moreover, those who work in or study inner-city communities know that this tension can exist within the same individual.¹³³ In the words of the principal for the high school serving Chicago's Robert Taylor housing project, "folks think you got good and bad around here, but you got good and bad in the same person. That's what you see if you stay around here long enough."¹³⁴ Or, as the director of a program for inner-city youth explains, many teens are "walking the fence and could fall on either side."¹³⁵

Even many gang members, the group we might reasonably assume had most rejected conventionality, indicate being torn between a street and a decent orientation.¹³⁶ For example, John Hagedorn found that there were four types of members among the Milwaukee gangs he studied.¹³⁷ First, were the "new jacks," the most committed to the gang life style, who viewed the drug business as a career. At the other end of the spectrum were "legits," who over the course of their adolescence and young adulthood left gang life and adopted legitimate lifestyles. The third category was "dope fiends," who were addicted to drugs and were involved in drug selling as a way to sustain their habit. The final group was "homeboys," who alternated between conventional jobs and drug selling. Hagedorn found that homeboys were the majority of Milwaukee gang members. They tended to be unskilled, insufficiently educated, and had met with limited success in the conventional labor market. They were not committed to a gang lifestyle, nor were they committed to conventionality. Instead, they moved back and forth between legal work and drug selling.¹³⁸

Homeboys by and large expressed "conventional aspirations; their core values centered on finding a secure place in the American way of life."¹³⁹ Many clung to the dream of settling down and leading legitimate lifestyles,

¹³² *Id.* at 287.

¹³³ ANDERSON, *supra* note 5, at 153, 237-289; DONALD BRAMAN, *DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA* 149-51 (2004).

¹³⁴ SUDHIR ALLADI VENKATESH, *AMERICAN PROJECT: THE RISE AND FALL OF A MODERN GHETTO* 175 (2000).

¹³⁵ MILBREY McLAUGHLIN ET AL., *URBAN SANCTUARIES: NEIGHBORHOOD ORGANIZATIONS IN THE LIVES AND FUTURES OF INNER-CITY YOUTH* 96 (1994).

¹³⁶ FELIX M. PADILLA, *THE GANG AS AN AMERICAN ENTERPRISE* 157 (1992); JAMES SHORT & FRED STRODBECK, *GROUP PROCESS AND GANG DELINQUENCY* (1965); Jeffrey Fagan, *The Social Organization of Drug Use and Drug Dealing Among Urban Gangs*, 27 *CRIMINOLOGY* 633 (1989).

¹³⁷ John M. Hagedorn, *Homeboys, Dope Fiends, Legits, and New Jacks*, 32 *CRIMINOLOGY* 197 (1994) [hereinafter *Homeboys, Dope Fiends*]; John M. Hagedorn, *Homeboys, New Jacks, and Anomie*, 3 *J. AFR. AM. MEN* 7 (1997).

¹³⁸ Hagedorn, *Homeboys, Dope Fiends*, *supra* note 137, at 207-11.

¹³⁹ *Id.* at 209.

despite their inability to achieve it. In the words of one, when asked what he would like to be doing five years in the future: "I want to have a steady job, I want to have been working that job for about five years, and just with a family somewhere."¹⁴⁰ Another explained his similarly conventional aspirations:

Because I see a lot of brothers out here now, that's forty-three, forty-four and ain't got shit. They's still standing out on the corner trying to make a hustle. Doing this, no family, no stable home and nothing. I don't want that shit. . . . I don't give a fuck about getting rich or nothing, but I want a comfortable life, a decent woman, a family to come home to.¹⁴¹

Bobby, a student I taught at the Maya Angelou School, expressed the difficult challenge that many inner-city teens face as they attempt to straddle the line between delinquency and conventionality. In an interview for a documentary about the school, Bobby was asked about his ability to abandon his former life of intermittent delinquency, and instead commit to school and work:

My past life . . . has affected me a lot. It's got me in a confused little world. . . . Am I going to be an ignorant fool all my life, am I going to do all the bad shit that I can, or am I going to just try to do something with my life, to make it? It's like one or the other, one or the other. You can't do both. You can, but, it'll be harder. You gotta do one or the other, which one would you pick? Right now I'm trying to pick the good thing. It's easy to pick the bad thing, that's the easy way out.¹⁴²

A variety of forces in the inner city operates against this backdrop and tries to influence values, attitudes, and behaviors. This includes, on one side, teachers, counselors, church leaders, and others, who typically attempt to persuade young people to remain committed to decency. Against this group is arrayed a variety of anti social forces pressuring young people to choose crime and other irresponsible options.

As the most prominent representative of state authority in the lives of inner-city teens,¹⁴³ the police necessarily have the potential to influence this debate as well, for their actions can influence attitudes in a number of directions. Prevailing police practices in the inner city—such as gang loitering ordinances, order maintenance policing, and crackdowns on street-

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 210.

¹⁴² INNOCENT UNTIL PROVEN GUILTY (Big Mouth Productions 1997).

¹⁴³ See, e.g., Paul G. Chevigny, *Foreword* to ZERO TOLERANCE: QUALITY OF LIFE AND THE NEW POLICE BRUTALITY IN NEW YORK CITY vii (Andrea McArdle & Tanya Erzen eds., 2001) ("For a great many people—the poor and the dispossessed, the minorities, immigrants, and the thousands of others who are victims of crime, violators of city ordinances, as well as perpetrators of crime—the police are the cutting edge of government.").

level drug dealing—continue to reinforce norms of opposition.¹⁴⁴

This is clearest in the context of gang loitering ordinances, which authorize police to order the dispersal of those who appear to be gang members, and those who are with them. Such measures have been cited as reinforcing norms of law-abidingness among inner-city youth.¹⁴⁵ Yet there is reason to question this. The social norms argument for gang-loitering laws goes as follows: (1) teens in high-gang neighborhoods do not value gang membership but mistakenly believe that their peers do, and they therefore feel compelled to join gangs; and (2) the best way to attack the misperception that others value gang membership is to restrict the ability of gangs to operate visibly in a neighborhood.¹⁴⁶ There is undoubtedly some truth to both these premises. But the argument understates the costs of gang loitering ordinances. If police orders to disperse are perceived as arbitrary by neighborhood teens, or if such orders are understood to be manifestations of an approach to policing that treats youth as threats, then a willingness to defy such orders will be interpreted as a sign of strength. This will in turn raise the status of gang members in the eyes of other neighborhood youth, and reinforce hostility toward law enforcement.¹⁴⁷

Support for such a view comes from gang researchers themselves, who have long suggested that police practices, particularly those that are perceived as biased, can in fact strengthen gangs.¹⁴⁸ Bill, a Milwaukee gang member, explained how police anti gang tactics had driven him toward a gang identity:

Bill: [W]hat got me into the gangs was SH (a gang squad officer).

Interviewer: Why do you say that?

Bill: OK. I would be walking with (two of my friends) and he says, "Oh three [gang members], huh." I told him, "Man, I ain't gang-related, man." And he goes, "Oh, who you walk with is who you are."¹⁴⁹

While such tactics may have short-term benefits, over the longer term hostility toward police will rise, causing police to adopt yet harsher tactics,

¹⁴⁴ Cole, *supra* note 31, at 1091 (emphasizing extent to which discriminatory policing can "reinforce social norms that are antithetical to the law").

¹⁴⁵ See, e.g., Meares & Kahan, *supra* note 19, at 819-21.

¹⁴⁶ *Id.*

¹⁴⁷ As I indicated *supra* note 114, this form of utilitarian argument against gang loitering ordinances is similar to the arguments commonly advanced against racial profiling more generally. See, e.g., KATHERYN K. RUSSELL, *THE COLOR OF CRIME* 44-46 (1998) (emphasizing costs of racial profiling).

¹⁴⁸ JOHN HAGEDORN, *PEOPLE AND FOLKS: GANGS, CRIME AND THE UNDERCLASS IN A RUSTBELT CITY* 160 (1988) ("[W]e should not underestimate the effect police policies play in strengthening and forming gang identities."); VENKATESH, *supra* note 134, at 163.

¹⁴⁹ HAGEDORN, *supra* note 148, at 159.

which in turn will increase hostility and reduce cooperation further.¹⁵⁰

But even in jurisdictions without gang loitering ordinances, the aggressive stop and frisk practices I described earlier can have a similar impact. Consider Lee, one of the inner-city young men Elijah Anderson studied. Lee exhibits “decent” values. He gets good grades and is planning to attend community college. But he dresses like most young men in the neighborhood, some of whom are more street-oriented.

When the police cruise his drug-infested neighborhood and see him in his Timberland boots, his striped shirt, and his hooded sweatshirt, they stop him and ask him where his drugs are, and this makes him bitter. The knowledge that the wider system in the person of cops, teachers, and store managers downtown is instantly ready to lump them with the street element takes a psychological toll on boys like Lee.¹⁵¹

The psychological toll about which Anderson speaks includes increased resentment of the police themselves. For example, in a study of Washington, D.C. neighborhoods, forty percent of blacks said they believed they had been stopped by the police on the basis of their race or ethnicity.¹⁵² Yet the proportion is dramatically higher among black men between the ages of eighteen to thirty-four—seventy-three percent of this group believes it has been victimized by racial profiling at least once.¹⁵³ Moreover, personal experience is a strong predictor of attitudes toward the police. Those who believe they were stopped because of their race are significantly more likely to be dissatisfied with police and to believe that racial profiling is widespread.¹⁵⁴ Not surprisingly, then, younger respondents hold the police in a less favorable light than do older ones.¹⁵⁵

¹⁵⁰ Kahan, *supra* note 3, at 1529-30 (elaborating downsides to order maintenance policing).

¹⁵¹ ANDERSON, *supra* note 5, at 104.

¹⁵² Ronald Weitzer & Steven A. Tuch, *Perceptions of Racial Profiling: Race, Class, and Personal Experience*, 40 CRIMINOLOGY 435, 443 (2002).

¹⁵³ *Id.*; see also Brooks, *supra* note 15, at 1249-50 (younger blacks are more likely to believe that police are “gang-like”).

¹⁵⁴ Weitzer & Tuch, *supra* note 152, at 449.

¹⁵⁵ *Id.* at 448. Weitzer’s project contains a wealth of provocative findings. In a related paper, Weitzer examines attitudes about policing in a middle-class white neighborhood, a middle-class black neighborhood, and a lower-class black neighborhood. See Ronald Weitzer, *Citizens’ Perceptions of Police Misconduct: Race and Neighborhood Context*, 16 JUST. Q. 819 (1999). He generally finds that class matters more than race. He finds greater similarity in attitudes between the two middle-class neighborhoods than he does between the two black neighborhoods of different classes. *Id.* at 830-31, 834-39. For another discussion of the ways in which race and class influence perceptions of the police and the legal system, see Brooks, *supra* note 15, at 1250-51, who finds that while better-off blacks are more distrustful of the legal system generally than poorer blacks, poorer blacks are more

The resentment, in turn, has costs for community safety. The most immediate is the reluctance of many in poor and minority communities to participate in police investigations. Imagine that you are eighteen, standing outside of your school during a break from class. For no reason (that you can discern or is ever explained to you), squad cars pull up, officers come out shouting, guns drawn, and you are thrown up against the wall, elbowed in the back, legs kicked apart, and violently searched. Your books are strewn on the ground. You ask what's going on and are told to "shut the fuck up" or you will be taken downtown. When it finally ends, the officers leave, no apology, no explanation, and you are left to fix your clothes, pick up your books, and gather your pride. Now imagine that there is a crime in your neighborhood, about which you have heard a rumor. The police are looking for information. What are the chances you will cooperate?¹⁵⁶

Not only does this type of policing make it harder to gather information, it also reinforces the alienation of youth like Lee—repeated over time, it can cause youth who are straddling the line between delinquency and law-abidingness to think of themselves as delinquent.¹⁵⁷ In so doing, the police undermine the message of those who are trying to push youth towards conventionality, and reinforce the cause of those who are pushing youth toward opposition.

C. WHY POLICING MATTERS: PROCEDURAL JUSTICE

Many who have examined police practices in the inner city have argued that they can undermine the law's legitimacy in the eyes of the

distrustful of the police.

¹⁵⁶ Forman, *supra* note 87, at 158-59; see also KENNEDY, *supra* note 114, at 153 (identifying toll that hostile police-community relations take on police information gathering ability); Tracey L. Meares, *It's a Question of Connections*, 31 VAL. U. L. REV. 579, 590 (1997) ("The mutual distrust between African Americans and law enforcement officers makes it less likely that African Americans will report crimes to the police, assist the police in criminal investigations, and participate in community policing programs that lead to greater social control of neighborhoods.").

¹⁵⁷ ANDERSON, *supra* note 5, at 312-13:

The extent to which some children—particularly those who through upbringing have become most alienated and those who lack strong and conventional social support—experience, feel, and internalize racist rejection and contempt from mainstream society may strongly encourage them to express contempt for that society in return. In dealing with this contempt and rejection, some youngsters consciously invest themselves and their considerable mental resources in what amounts to an oppositional culture, a part of which is the code of the streets. They do so to preserve themselves and their own self-respect. Once they do, any respect they might be able to garner in the wider system pales in comparison with the respect available in the local system, thus they often lose interest in even attempting to negotiate the mainstream system.

Id.

policed.¹⁵⁸ There is now a growing body of social psychology research validating these concerns. Tom Tyler and others have shown that people's evaluation of the legitimacy of police and courts is based on their sense of whether authority has acted fairly.¹⁵⁹ The most counter-intuitive part of the findings is that people's assessment of the fairness of decisions is based principally on the process of decision-making, rather than on whether they received a favorable outcome.¹⁶⁰ For example, the bulk of citizens do not object to being stopped in their cars or on the streets if those stops "are handled in interpersonally sensitive ways."¹⁶¹ Similarly, among other measures of procedural justice, citizens care a great deal about voice and representation—they want the chance to have their views heard before a decision-maker who renders judgment (including the decision whether to cite or arrest the citizen).¹⁶² The other critical finding from this literature is that people's assessment of whether authorities behaved fairly influences the likelihood that they will comply with future legal directives.¹⁶³

These findings were originally taken from studies of mostly white citizens, but since have been replicated among African-Americans and Latinos. Huo and Tyler, for example, interviewed whites, Latinos, and African Americans in Oakland and Los Angeles. They measured satisfaction levels among those who had interactions with the police (either calling the police or being stopped by the police). All three ethnic groups reported similar outcomes, but African-Americans and Latinos perceived

¹⁵⁸ Forman, *supra* note 87, at 155-56; Brent Staples, *Growing Up to Fear the Law*, N.Y. TIMES, Mar. 28, 1991, at A25 ("With reason, African-Americans tend to grow up believing that the law is the enemy, because those who are sworn to uphold the law so often enforce it in a biased way."); *see also* William J. Stuntz, *Race, Class and Drugs*, 98 COLUM. L. REV. 1795, 1798 (1998) ("Apparently racist enforcement standards tend to undermine the normative force of the drug laws among targeted groups, to delegitimize the system in the eyes of those whose behavior the system seeks to influence."); MARK H. MOORE & MARK A. R. KLEIMAN, NATIONAL INSTITUTE OF JUSTICE, PERSPECTIVES ON POLICING: THE POLICE AND DRUGS 6 (1989) (stating that the current approach to drug enforcement "may alienate communities from the police rather than build effective partnerships to control drugs," and will thereby "inhibit the development of the self-defense capacities of the communities that must, in the long run, be the route to success").

¹⁵⁹ *See generally* YUEN J. HUO & TOM R. TYLER, HOW DIFFERENT ETHNIC GROUPS REACT TO LEGAL AUTHORITY (2000); TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361 (2001) [hereinafter *Trust and Law Abidingness*]; *see also* Kahan, *supra* note 3, at 1515-20 (applying procedural justice literature to outline of theory of reciprocity).

¹⁶⁰ Tyler, *Trust and Law Abidingness*, *supra* note 159, at 367-68.

¹⁶¹ *Id.* at 383.

¹⁶² Raymond Patemoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 LAW & SOC'Y REV. 163, 166-67 (1997).

¹⁶³ *Id.* at 192; HUO & TYLER, *supra* note 159, at 36-37.

lower levels of procedural fairness.¹⁶⁴ These groups also reported lower levels of overall satisfaction with the encounter, results that were driven by a sense of unfair process, not unfavorable outcomes.¹⁶⁵

This procedural justice research cuts both ways. On the one hand, it supports the notion that when authorities act in ways that are considered to be procedurally unfair, they undermine their own legitimacy. They also make it less likely that those who perceive they have been treated unfairly will obey the law in the future. On the other hand, it suggests that authorities have the power to increase their own legitimacy among the policed. Especially promising is the finding that although ethnic groups differ regarding whether they are treated fairly, they agree on what constitutes fair treatment. For example, Huo and Tyler measured three components of procedural fairness: (1) neutrality (“he/she treated me the same as he/she would treat anyone else in that situation”); (2) benevolence (“he/she cared about my concerns”); and (3) status (“he/she treated me with dignity and respect”). They found that for all three ethnic groups, these process measures were more important in explaining variations in perceptions of fairness than was outcome favorability.¹⁶⁶ In other words, “[w]hen people said they were treated fairly, they meant that their standards of neutrality, benevolence and status recognition had been met.”¹⁶⁷

The procedural justice literature, therefore, presents cause for optimism. A fundamental premise of this Article is that the current debilitating level of hostility between police and inner-city young people is not inevitable. The procedural justice literature supports that notion. Law enforcement cannot guarantee outcomes. At a community-wide level, the police cannot, by and large, promise only to patrol certain areas or enforce particular crimes. And at a personal level, they cannot guarantee the outcome of any individual police-citizen encounter. Process, however, is much more within their control. Moreover, as I will explore in the next Section, community policing has the potential to deliver some of the specific components of procedural fairness that researchers have found matter.

IV. YOUTH AS ASSETS TO COMMUNITY POLICING: SOME PRINCIPLES OF ENGAGEMENT

In this Section, I will discuss principles to govern a community

¹⁶⁴ HUO & TYLER, *supra* note 159, at 31.

¹⁶⁵ *Id.* at 35.

¹⁶⁶ *Id.* at 56.

¹⁶⁷ *Id.*

policing project that seriously engages young people. Though there currently are no full-fledged programs along the lines of what I am proposing, uniquely innovative community policing programs in Chicago and Boston provide some important guideposts. First, a successful program will offer participants real power over a broad scope of neighborhood public safety issues. Second, increasing the diversity of the deliberative body by adding younger participants makes it essential that the meetings be led by trained facilitators using a structured deliberation process. Finally, intermediary organizations, including churches, schools, and community non-profits will likely need to have a rule to facilitate engagement and build working partnerships.

A. POWER AND SCOPE.

As I discussed earlier, Chicago has the most thoroughly elaborated community policing program of any large city in the country.¹⁶⁸ Among its successes has been generating high levels of participation in disadvantaged neighborhoods.¹⁶⁹ Significant to that success has been that, unlike advisory commissions, community boards, or discussion groups common in many cities, in Chicago the neighborhood beat meetings have real power.¹⁷⁰ Rather than simply places to meet and talk, beat meetings are where policing priorities for the community are established.¹⁷¹ Chicago Police Department General Orders require that the police “beat teams” (typically five patrol officers and their sergeant) attend beat meetings and “give . . . special attention to the problems identified” there.¹⁷² Still, police may override the resident recommendations, both because “beat community meetings may not be representative of the entire beat, and the problems they identify may not be representative of the problems on the beat.”¹⁷³ Residents, in turn, may respond to objectionable police decisions (including the decision not to follow their recommendations) at subsequent beat meetings.¹⁷⁴ Fung cites the power afforded to citizens under the Chicago community policing model as central to its success at securing high levels of participation: “[e]ven the least well-off participate when doing so confers powers upon them to address urgent issues such as neighborhood safety.”¹⁷⁵

¹⁶⁸ See *supra* text accompanying note 26.

¹⁶⁹ See *supra* notes 68-72 and accompanying text.

¹⁷⁰ FUNG, *supra* note 28, at 4.

¹⁷¹ *Id.* at 65.

¹⁷² *Id.* (quoting General Orders).

¹⁷³ *Id.* (quoting General Orders).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 111. An intriguing parallel to community policing in this regard is the teen

Related to power is scope. By scope, I mean that the community policing agenda must include a forum for regulating police conduct. Like other citizens, neighborhood youth who come to the beat meetings will be interested in working toward safer neighborhoods. But many of them are also likely to bring concerns regarding police abuse or harassment. It is not impossible to address both crime and police behavior, but it will only happen if the space to do so is consciously created.

Boston provides some evidence that these two goals are compatible. Boston had a severe crime problem that was accompanied by high levels of hostility between police and the inner-city community. Boston tackled both simultaneously. First, Boston recognized that its homicide problem was highly concentrated: less than one percent of the adolescent and post-adolescent age group was responsible for sixty percent of the city's homicides.¹⁷⁶ By concentrating its efforts on this small group, Boston officials capitalized on the desire of many young people, even some gang members, to reduce their own exposure to violence.¹⁷⁷

At the same time, Boston enlisted community members in addressing the problem of police harassment, another issue of great concern to the community's young. Boston had previously fought gang and youth violence under the warrior model. Boston's specialized anti-gang unit had a mandate to, according to one police captain, "go in, kick butts, and crack heads."¹⁷⁸ To bridge the divide between police and community youth, Boston officials worked closely with a group of ministers of inner-city churches (the Ten Point Coalition). The ministers were an effective intermediary due to their close connections with neighborhood youth and

court movement. Teen courts are those in which teens serve as judges or juries in cases where other teens are charged with less serious offenses (e.g., shoplifting, vandalism, and disorderly conduct). See, e.g., Jeffrey A. Butts & Janeen Buck, *Teen Courts: A Focus on Research*, JUVENILE JUST. BULL. (Office of Juvenile Justice and Delinquency Prevention), 2000. The rapid growth of teen courts and their popularity with teens themselves is some evidence that teens are willing to participate in programs—even those associated with law enforcement—when such programs provide them with real influence in domains that they feel matter. Furthermore, there is a substantial youth development literature suggesting that a critical component of successful youth programs is that they offer the young the chance to "matter"—to be efficacious in their social worlds. See, e.g., NATIONAL RESEARCH COUNCIL, COMMUNITY PROGRAMS TO PROMOTE YOUTH DEVELOPMENT 103-06 (Jacquelyne Eccles & Jennifer Appleton Gootman eds., 2002).

¹⁷⁶ Berrien & Winship, *supra* note 29, at 208.

¹⁷⁷ David Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and a Theory of Prevention*, 31 VAL. U. L. REV. 449, 478 (1997) (Boston's successful effort was "due to the fact that not even gang members like being subjected to violence. . . . There was thus an important, if generally unstated shared interest between the gangs and the authorities. Both wanted the violence to stop.").

¹⁷⁸ Berrien & Winship, *supra* note 29, at 205.

long history of speaking against police abuse.¹⁷⁹

As I will discuss below, intermediaries are not the only approach. The Chicago model of direct democratic governance would provide a forum for interested youth to themselves raise concerns about police conduct in neighborhood beat meetings. But the essential lesson of the Boston story is that many youth and young adults will be concerned about crime and police conduct, and the community policing model must be capable of addressing both.

A community policing model that did this would not only have more salience for many youth and young adults, it would also reduce the likelihood that their more skeptical peers would object to their participation. Currently, many youth and young adults avoid contact with law enforcement because to be seen with the police signals to peers that one is snitching, cooperating, or otherwise helping the enemy. The stigma against participation can be counterproductive, for both parties benefit from citizen-police cooperation. The police benefit from the information that citizens provide, and citizens are better off with a police force that does not feel it needs to rely on heavy-handed tactics to gather information. Community policing might undermine the stigma against participation by making what it means to engage with law enforcement more ambiguous.¹⁸⁰ Perhaps the youth attending the beat meeting wants to provide information to the police about law-breaking, but perhaps she seeks to protest police abuse, raise concerns about a particular officer, or encourage the police to develop a more narrowly tailored profile of what constitutes a potential drug dealer. Rather than participation necessarily meaning cooperation with an alien force, as it currently does, participation under this model might well be interpreted by others as an act of community self-governance.¹⁸¹

To highlight what I mean by power and scope, let me contrast this community policing model with what historically has been meant by youth

¹⁷⁹ In this brief account of Boston's response to its youth violence crisis, I do not pretend to do justice to the complex, multiple partnerships that ultimately proved essential to the effort's success. In particular, it is worth noting that Boston invested in increased support services for young people who were in trouble or at risk of becoming so. ELIKANN, *supra* note 4, at 190-97. There is some evidence that the most successful efforts to replicate Boston's success have also included such services. FIGHT CRIME: INVEST IN KIDS, CAUGHT IN THE CROSSFIRE: ARRESTING GANG VIOLENCE BY INVESTING IN KIDS (2004) (identifying successful programs in Boston, Philadelphia, and Baton Rouge).

¹⁸⁰ Cf. Lawrence Lessig, *Social Meaning and Social Norms*, 144 U. PA. L. REV. 2181, 2186-87 (1996) (state can "ambiguate" the social meaning of conduct based on how it chooses to punish it).

¹⁸¹ Kahan, *supra* note 3, at 1537 (suggesting that those who participated in Chicago's community policing program were viewed as acting on behalf of the community, not the police).

engagement. The history of community crime prevention is littered with programs that were marked by police talking to citizens. In this regard,

anyone who has observed a variety of community crime prevention programs readily ascertains that the bulk of the communication is from the police to the citizen, explaining and selling prepackaged strategies devised without the particular neighborhood and its residents' preferences in mind. Several evaluations of these programs show that they emphasize organizing to do crime prevention, not to stimulate the neighborhood to voice its demands in matters of police business.¹⁸²

This is especially true of law enforcement programs aimed at youth. Modern community policing initiatives are not designed to engage young people on either of the axes that matter most: they neither involve them in the process of setting the neighborhood public safety agenda, nor do they provide space for them to raise concerns regarding police conduct. Instead, these programs typically involve police or other adults teaching lessons or offering services to adolescents. Typical are these programs funded by the Justice Department's Office of Community Oriented Policing Services (COPS): school based probation officers, violence prevention programs, police magnet schools (in which students have the chance to work in police stations, learn "lessons in fingerprinting, report writing and courtroom procedures," and "wear Police Academy uniforms, which foster a sense of cohesion and give them the feeling of being valued members of a peer group").¹⁸³ Whatever the merits of these programs, they serve a different purpose, and have different benefits, than the type of community policing I am emphasizing.

B. STRUCTURED DELIBERATION

Even in a relatively homogenous neighborhood, it is easy to imagine community policing meetings falling apart quickly. In heterogeneous groups, the concern is even greater. Some residents may come to the meeting with an agenda, cling to it, and refuse to compromise or deliberate. Others may try to exploit their cultural advantage or other sources of relative power. And the more heterogeneous the group—including adding younger citizens—the greater the risk that rifts will develop. As one person asked me in a conversation about this project, "what happens at your

¹⁸² Mastrofski, *supra* note 62, at 52.

¹⁸³ DYLAN PRESMAN ET AL., U.S. DEP'T. OF JUSTICE, CREATIVE PARTNERSHIPS: SUPPORTING YOUTH, BUILDING COMMUNITIES 2, 6, 9, 13-14 (2002); *see also* Jeff Slowikowski & Helen Connelly, *Community Policing and Youth*, JUVENILE JUST. BULL. (Office of Juvenile Justice and Delinquency Programs), 1999, at 4-8 (describing similar programs around the country).

community policing meeting when the grandmothers say the young guys standing on the corner at night are scary and need to go and the young guys respond, 'we are just hanging out.'"¹⁸⁴

Before addressing this quite serious concern, I should point out its limits. As a preliminary matter, it is worth noting that if such divisions exist within communities, they do so regardless of whether a wider range of neighborhood residents attend community policing meetings. Having young people at the meeting is not what causes the disagreement with the grandmothers about who should be on the street corner—it simply provides a forum for that issue to arise. Moreover, just as the disagreement pre-dates youth attendance at the community policing meeting, so does its resolution. Currently, the issues are, as we have seen, largely resolved at the expense of the young people who are not engaged in the agenda-setting process. As a result (at least in part) of their non-participation, they become targets of a police force mobilized on behalf of those constituents who are present and helping to set policing priorities.

But even if it is true that community policing meetings do not create community divisions, it is nonetheless the case that the meetings provide an opportunity for the divisions to come to the fore. There is no easy answer to the question of how to ensure effective deliberation among diverse constituencies.¹⁸⁵ But Archon Fung's detailed analysis of Chicago's community policing program in action helps provide a context in which to think about these questions. Although community policing in Chicago did not have to bridge substantial age differences (most participants were middle-aged and over), some of the neighborhoods were racially and economically diverse. Some heterogeneous neighborhoods succeeded in having effective meetings, bridging differences, and reaching a shared vision. Others did not. Typically, what made the difference was the presence (or absence) of a trained facilitator to lead the group in a

¹⁸⁴ It is worth reiterating that the discussion may go in counter-intuitive directions. Remember that young people in Chicago were more likely than older residents to perceive that street crime and burglaries were neighborhood problems. *See supra* note 74. For a discussion of the tensions that arise when police engage communities that are not of one mind, and which may not be of the same mind as the police, see generally David Thacher, *Conflicting Values in Community Policing*, 35 *LAW & SOC'Y REV.* 765 (2001).

¹⁸⁵ There is an extensive political science literature regarding the design of deliberative democratic institutions. For a recent review, see ETHAN J. LEIB, *DELIBERATIVE DEMOCRACY IN AMERICA: A PROPOSAL FOR A POPULAR BRANCH OF GOVERNMENT* 92-103 (2004); *see also* Carrie Menkel-Meadow, *The Lawyer's Role(s) in Deliberative Democracy*, 5 *NEV. L.J.* (forthcoming 2004) (describing variety of attempts to "operationalize democratic participation in contested legal and social issues").

structured, deliberative process.¹⁸⁶

As part of CAPS, Chicago hired a community-based organization to provide facilitators to neighborhoods. The facilitators spent three to six months attending a particular neighborhood's beat meetings, and trained both officers and community residents in the deliberative problem solving approach that the city hoped would guide beat meetings.¹⁸⁷ To summarize, the approach had five steps.¹⁸⁸ First, meeting participants identified and prioritized neighborhood problems, with an eye toward taking vague or general concerns and breaking them into component parts. Second, participants proposed, justified, and selected provisional strategies to respond to the problems identified in step one. Discussion and deliberation were central here, because typically more strategies were proposed than could be adopted. Step three was implementation of the strategies. The fourth step was monitoring and evaluating, in which participants would report back on the results of the implementation stage, and agree to continue, abandon, or modify the strategy originally adopted. The final step was reiteration, which encouraged the group to begin steps 1-4 over again, and invited participants to see the process as ongoing and iterative.

To understand the role played by facilitators in overcoming some of the deliberation challenges I identified previously, compare two Chicago neighborhoods that participated in the community policing project. Traxton is a neighborhood divided by race, class, and geography.¹⁸⁹ On the west side of the tracks, the neighborhood is wealthier and whiter, and on the east side, while not impoverished, it is poorer and blacker. The crime problems on the east side of the neighborhood are, most objective observers would agree, more serious. However, before the arrival of a trained facilitator, west side residents dominated the unstructured, town hall style meetings—they spoke more, they articulated their concerns in a way that police could understand more easily, and they demanded (and received) more concrete police responses. At one meeting for example, a west side complaint of “noise at the pancake house” received more attention (and greater police response) than east side complaints of an unsolved homicide and intrusive police surveillance.

It would be tempting to conclude that the west side residents were determined, at all costs, to prioritize their concerns, even if they were objectively less urgent. At it turns out, this was not the case. Some months

¹⁸⁶ See LEIB, *supra* note 185, at 102 (discussing research suggesting the importance of moderators).

¹⁸⁷ FUNG, *supra* note 28, at 73.

¹⁸⁸ This process is outlined in greater detail in *id.* at 56-60.

¹⁸⁹ This summary of the Traxton experience is drawn from *id.* at 173-97.

after the meetings began, a trained facilitator (who was also a west side resident) began leading them. Using the deliberation process described above, the facilitator encouraged east side residents to state and discuss their problems, and did not allow the meeting to move on until all the problems had been identified. The principal east side concern was a drug house, which further discussion revealed had been close to the epicenter of much criminal activity, including two homicides over the previous three years. Although the issue of the noise at the pancake house was raised again, all residents—both west and east side—agreed that the drug house was the most important issue. The months that followed were similar, with the bulk of police and community attention focusing on east side problems.

Consider next Southtown, a Chicago neighborhood that faces arguably even greater challenges to effective community self-governance.¹⁹⁰ Poorer than Traxton, Southtown is also more divided—while Traxton's two halves had ignored each other, Southtown is divided between blacks and Hispanics who, at times, have been in conflict with each other. Further, relations between residents and police are even worse than relations between different groups of residents. As with Traxton, the presence of trained facilitators leading discussions would prove critical.

One particularly vexing neighborhood problem was a park and recreation center that the city had closed in response to gang violence. Despite (or more likely, because of) its closing, the park continued to be a focal point for violence. Hispanic residents originally opposed identifying the park as a top priority because it was in the black part of the neighborhood and therefore largely a "black" problem. Through a series of facilitated discussions, black residents were able to produce data to demonstrate that the park was truly an urgent crime priority. Further, they pointed out that the park was near the border with the Hispanic neighborhood and promised to make it accessible to all ethnic groups. The Hispanic participants eventually were persuaded, and blacks and Hispanics agreed that the next priority would be chosen from the Hispanic part of the community. Eventually, with the help of increased police surveillance and by lobbying the city, residents were able to re-open the park. The "Friends of the Park" group they created made good on the promise of opening the park to everyone—they began multi-cultural programming and hired two full time staff members, one Spanish speaking and one black.

While this was unquestionably a community policing success story, after six months the facilitators left. Almost immediately, the deliberative process began to break down. The facilitators had put extra effort into

¹⁹⁰ This summary of the Southtown experience is drawn from *id.* at 197-210.

ensuring Hispanic participation, but after their departure fewer and fewer Hispanic community members attended the meetings. Small decisions matter in community organizing: after the facilitators left, the remaining participants moved the meeting space to a location in the black community, further depressing Hispanic participation.

This downward spiral was matched by the steady deterioration of police-community relations. The facilitators had worked to ensure that residents identified specific problems that allowed for concrete police responses. In their absence, residents proved unable to break down their complaints in such a manner. Officers, for their part, lacked the skills to do this themselves, and instead rejected citizens' concerns as vague and unworkable. This frustrated residents, and as all sides became increasingly dissatisfied, the Southtown beat meetings fell apart.

The Traxton and Southtown experiences suggest that diverse groups—even those who see each other as the problem—can participate in effective public deliberation around community safety issues. This is good news for the youth-engaged model that I am proposing, for it is likely that young people initially will be viewed with suspicion by some community members and officers. But these examples also suggest that community members cannot do it alone. Particularly with a heterogeneous group, the presence of trained facilitators leading a structured deliberation process must be continuous and ongoing. Chicago was right to invest in facilitators; its mistake was to think that they would be able to train residents and move on to the next community. Years (indeed centuries, in some cases) of hostility, mistrust, or non-cooperation cannot be overcome in a six month training period.

I have focused on trained facilitators leading a process of structured deliberation because I believe it presents the greatest prospect of systemic success. It is nonetheless true that enlightened police leadership, guided by a series of ethical commitments, can play a similar function and bridge disagreements in heterogeneous communities. Consider David Thacher's example of former Lowell, Massachusetts, Police Chief Ed Davis.¹⁹¹ Davis, an early advocate of community policing, faced a decision about where to place a police substation. These substations were very popular with Lowell residents, and residents of the mostly white and politically well-connected Cupples Square neighborhood had mobilized effectively to demand that their area receive the next one.

¹⁹¹ For a longer discussion of this example, and for other similar instances of effective police leaders working with community partners, see David Thacher, *Equity and Community Policing: A New View of Community Partnerships*, 20 CRIM. JUST. ETHICS 3 (2001).

But Davis believed that crime rates and other concerns suggested that the substation was most needed in the nearby, largely Cambodian, Lower Highlands neighborhood. There was a community meeting scheduled on the issue; without intervention, Davis knew that the wealthier and whiter residents would turn out in great numbers and demand the substation. In response, Davis gathered all the data he could on the needs of the two neighborhoods and, with assistance, encouraged large numbers of the Cambodian community to attend the meeting. After hearing the evidence and discussing it and other concerns, the majority of the Cupples Square residents were persuaded to change their positions, and agreed that the Cambodian neighborhood needed the substation more.

This is another example that, under the right conditions, “public deliberation may filter self-regarding, individualistic demands in ways that lead to public-regarding choices.”¹⁹² As a reform model, however, it relies on the presence of particularly effective leadership that is guided by commitments to both equity and public participation. Therefore, though it is worth aspiring to, it is more difficult to institutionalize than the facilitated deliberation model I have described.

C. INTERMEDIARY ORGANIZATIONS

The community policing programs in Chicago and Boston both rely on intermediary organizations to achieve their goals. Chicago’s community policing project is an exercise in direct democracy, with citizens speaking for themselves at neighborhood beat meetings. Nonetheless, it relies on community organizers to serve as intermediaries, especially with populations that have not historically been active in politics or voluntary organizations. Community organizers play a key role in mobilizing these populations in Chicago. In addition to the massive public awareness campaign, at the grassroots level community organizers make phone calls and go door-to-door to increase awareness and participation.¹⁹³ Boston relies even more heavily on intermediary organizations—there the Ten Point Coalition of ministers plays this role and represents the interests of community residents, including young people.

The need for intermediary organizations will be especially crucial in a community policing project that seeks to engage young people, who have not historically seen high levels of civil engagement. As Southtown organizers found when working with a Hispanic community previously

¹⁹² *Id.* at 12.

¹⁹³ See *supra* text accompanying note 66; see also FUNG, *supra* note 28, at 197-206 (describing community organizing efforts in Hispanic community).

disconnected from politics, the process will require the involvement of intermediary adults who are, unlike the police, trusted. As the Southtown experience further suggests, physical location matters—to that end, places where the young already meet and form organizations are among the most promising venues. These principles suggest that schools and other youth-serving organizations may be appropriate intermediaries.

In communities with established networks of community-based organizations working with young people, such groups might be a natural choice to play the intermediary role of mobilizing the young, ensuring turnout, facilitating meetings, and gaining the trust of local police officials and other community leaders.¹⁹⁴ Though a less obvious choice, some schools also might perform this function. Schools have certain natural advantages. Students spend eighteen percent of their waking hours in school—no other institution has similar access.¹⁹⁵ Accordingly, many teachers, counselors, and coaches have already built relationships with, and earned the trust of, both current students and recent graduates. Perhaps as a result of this adult influence, students whose schools encourage community service and volunteering are more likely to participate than those from schools who do not.¹⁹⁶ Further, schools have their own stake in protecting students from both crime and unfair police targeting, as students are especially likely to fall victim to crime while going to or from school.¹⁹⁷

Moreover, some trends in education practice suggest that at least some schools want to push beyond the boundaries of the typical school function and embrace a broader agenda. The community schools movement, for example, calls for schools to become hubs for a variety of community-based resources (including health centers, family counseling groups, tutoring, and mentoring organizations, etc.).¹⁹⁸ A related movement calls

¹⁹⁴ See generally MARCIA R. CHAIKEN, U.S. DEP'T OF JUSTICE, KIDS, COPS, AND COMMUNITIES (1998) (describing efforts by youth-serving organizations to address crime and delinquency issues); MILBREY W. McLAUGHLIN, PUBLIC EDUCATION NETWORK, COMMUNITY COUNTS: HOW YOUTH ORGANIZATIONS MATTER FOR YOUTH DEVELOPMENT (2000), available at www.publiceducation.org/PENreports.asp (describing role that community-based youth-serving organizations play in youth development).

¹⁹⁵ Denise C. Gottredson et al., *The Schools, in* CRIME: PUBLIC POLICIES FOR CRIME CONTROL 149, 159 (James Q. Wilson & Joan Petersilia eds., 2002).

¹⁹⁶ VIRGINIA HODGKINSON ET AL., VOLUNTEERING AND GIVING AMONG TEENAGERS 12 TO 17 YEARS OF AGE, at 3-57 (1997).

¹⁹⁷ *Id.* at 158.

¹⁹⁸ COALITION FOR COMMUNITY SCHOOLS, COMMUNITY SCHOOLS: PARTNERSHIPS FOR EXCELLENCE 2-3 (2000), available at www.communityschools.org/pubs.coal.html; see also METRO. FORUM PROJECT, WHAT IF? 3-4 (1999), at <http://www.nsb.org/publications/whatif> (arguing that community schools should be supported as part of the "smart growth" movement).

for schools to explicitly foster a sense of civic mission in students.¹⁹⁹ Recognizing the limits of doing this simply through teaching government and history classes, this movement seeks to involve students in extracurricular activities in which students participate directly in matters of politics and local governance.²⁰⁰

In addition to traditional schools, locally controlled schools, such as charter schools, might serve as partners. Locally controlled schools arise from the same impulse as community policing: both reflect a disappointment with the failure of administrative bureaucracies to deliver basic public services, especially in urban areas. Both are premised on the notion that direct democratic governance of local institutions may, under the right circumstances, improve the quality of educational and public safety institutions.²⁰¹

Charter schools, for example, are disproportionately located in urban areas.²⁰² Many of the same teenagers who are the least likely to have been engaged in positive collaboration with law enforcement attend such schools.²⁰³ Moreover, many charter schools are started by community-based organizations and coalitions of various local constituencies, many of which have a mandate that is broader than simply education.²⁰⁴ These groups are substantially more likely than the traditional school system to welcome such opportunities for police-student collaboration, and to be willing to make their school facility and students available for meetings and other activities. In addition, the structure of the schools makes it easier for

¹⁹⁹ Cf. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (“[P]ublic education must prepare pupils for citizenship in the Republic. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation.”) (quoting C. BEARD & M. BEARD, *NEW BASIC HISTORY OF THE UNITED STATES* 228 (1968)).

²⁰⁰ David Broder, *Schools’ Civic Mission*, WASH. POST, Feb. 16, 2003, at B7. For an especially thoughtful collection of essays making the argument for civic education, see *MAKING GOOD CITIZENS: EDUCATION AND CIVIL SOCIETY* (Diane Ravitch & Joseph Viteritti eds., 2001).

²⁰¹ See, e.g., FUNG, *supra* note 28, at 2-5.

²⁰² ERICA FRANKENBERG & CHUNGMEI LEE, *THE CIVIL RIGHTS PROJECT AT HARVARD UNIV., CHARTER SCHOOLS AND RACE: A LOST OPPORTUNITY FOR INTEGRATED EDUCATION* 26-27 (2003).

²⁰³ SRI INTERNATIONAL, *EVALUATION OF THE PUBLIC CHARTER SCHOOLS PROGRAM: 2000-2001 EVALUATION REPORT* 16 (2002) (low-performing students and students from low-income communities frequently drawn to charter schools); JOE NATHAN, *CHARTER SCHOOLS: CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION* 134 (1999) (same).

²⁰⁴ JOSEPH MURPHY & CATHERINE DUNN SHIFFMAN, *UNDERSTANDING AND ASSESSING THE CHARTER SCHOOL MOVEMENT* 84-87 (2002).

them to act on these impulses.²⁰⁵ Charter and other locally controlled schools typically are less hierarchical, and more nimble. They are therefore more equipped to create effective partnerships with other organizations, including police departments and other neighborhood community safety groups.

V. CONCLUSION

This Article's central claim has been that community policing falls short of its potential as long as the young are excluded from the community policing agenda-setting process and, instead, are policed under the discredited warrior model of policing. More optimistically, I have suggested that it is possible to build on existing community policing models to develop an approach that would, for the first time in modern policing, fundamentally alter the relationship between police and the young in the inner city. One reason to be optimistic about the prospect of reform now is that crime has declined significantly in the past decade, and drops in youth crime have led the way. For example, the juvenile arrest rate for serious violent crimes fell forty-four percent between 1994 and 2001, putting it at its lowest level since 1983.²⁰⁶ It is possible that just as rising crime rates helped create an image of the young as threats, declining crime might create an opportunity to change that image, thereby allowing us to see the young as the potential assets that they are.

²⁰⁵ Judith Johnson & Alex Medler, *The Conceptual and Practical Development of Charter Schools*, 11 STAN. L. & POL'Y REV. 291, 303 (2000).

²⁰⁶ Snyder et al., *supra* note 98, at 1.