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Norms, Legitimacy and Law Enforcement

In a series of articles I have explained the relevance of sociological theory to crime policy.¹ Specifically I have sought to use a sociological explanation of why certain areas have high crime rates in order to make crime policy recommendations. The theory on which I have relied, social disorganization theory,² postulates that the structural and cultural organization of neighborhoods can either facilitate or hinder crime occurrence. By paying attention to these phenomena, I have argued that the state, through its criminal policy, can usefully harness norms in order to help residents of high-crime communities help themselves resist and control crime.³

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¹ See Tracey L. Meares, *Charting Race and Class Differences in Attitudes Toward Drug Legalization and Law Enforcement: Lessons for Federal Criminal Law*, 1 BUFF. CRIM. L. REV. 137 (1997) [hereinafter Meares, *Charting Race*]; Tracey L. Meares, *It's a Question of Connections*, 31 VAL. U. L. REV. 579 (1997) [hereinafter Meares, *Connections*]; Tracey L. Meares, *Place and Crime*, 73 CHI.-KENT L. REV. 669 (1998) [hereinafter Meares, *Place and Crime*]; Tracey L. Meares, *Social Organization and Drug Law Enforcement*, 35 AM. CRIM. L. REV. 191 (1998) [hereinafter Meares, *Social Organization*].

² While the classic theory is referred to as "social disorganization theory," I prefer the moniker "social organization theory." All communities are organized in certain ways—the question is whether a community is organized in such a way that facilitates crime control. Thus, it is more accurate to use the term differential social organization rather than discussing whether communities are organized or not. See Meares, *Social Organization*, *supra* note 1, at 195 (explaining differential social organization); Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social-Disorganization Theory*, 94 AM. J. SOC. 774, 777-82 (1989) (explaining the same).

³ See *infra* text accompanying notes 13-22.

Because social organization theory focuses on places and not people, missing from this theory is an explanation of why individuals decide to break the law in the first place. Social organization theory focuses on the infrastructure of relationships in a community (what I have referred to elsewhere as norm highways),⁴ and it specifies how ideas, norms, and values that are centered around compliance can be promoted and promulgated. But social organization theory's explanation of crime persistence in certain areas does not specify the *content* of the norms, values, and ideas pertaining to compliance that are facilitated by certain organizational structures. The content of the norms of compliance must be supplied elsewhere.

The purpose of this essay is to supply such a theory. This essay provides an argument for making the structural and cultural theories of sociology I have discussed in other work relevant to the individual by providing an explanation of why individuals comply with the law. Social psychologists have determined quite persuasively that the inclination that people have to voluntarily comply with the law is governed much more by norm-based reasons than by instrumental ones.⁵ It logically follows that policies that harness norms, as opposed to those policies that attempt to achieve compliance by targeting the consequences of failing to obey, will produce useful crime policy.

Social psychology drives my argument here, but to make the theory more vivid, I will rely on two metaphors. I intend these metaphors to capture contrasting aspects of law enforcement policy that utilizes norms of legitimacy to produce compliance rather than policy that emphasizes coercion implemented through hierarchical relationships between government officials and the governed to achieve the same goal. To illustrate the former mode of law enforcement policy, I look to the metaphor of "Quakerism," and to illustrate the latter I look to the metaphor of "Puritanism." As I explain below, these designations are meant to be evocative rather than completely descriptive, and by using them I do not intend to incorporate the entirety of each religious practice into my discussion of law enforcement. Rather, I use these metaphors to capture the structural features of programs that are either more (or less) consistent with the idea of achieving norm-

⁴ See Meares, *Place and Crime*, *supra* note 1, at 676 (explaining the concept of the "norm highway").

⁵ See *infra* text accompanying notes 23-33.

based voluntary compliance and enhanced social organization of high-crime communities and not historical fact. Specifically, when I invoke “Quakerism” I mean to emphasize horizontal relationships between government authorities and individuals as well as trust in authorities to produce compliance; and when I point to “Puritanism,” I am referring to an ethic of criminal policy which emphasizes hierarchical relationships between government authorities and individuals governed as well as coercion to produce compliance.

I will first explain a sociological theory of crime persistence in certain areas in order to make clear the centrality of norms in the variance of crime rates in certain areas. Then I will turn to an explanation of a norm-based theory of why people obey the law. In this Part I will argue that relationships between law enforcement authorities and the people matter more than consequences imposed by authorities to produce compliance with the law, in part because the desire of individuals to comply with the law is powerfully connected to their self-esteem.⁶ Next I will motivate the social psychological theory through the introduction of the metaphors “Quakerism” and “Puritanism.” Through these metaphors I hope to make more vivid the policy implications of the sociological and psychological theories laid out in Parts one and two. Part three explains the relevance of these ideas to criminal policy by providing examples of criminal law policy that draw upon the Quaker ethic.

NORMS AND CRIME RATES (OR NORMS AND CRIME PERSISTENCE)

In my work I have focused on formulating crime policy for high crime, minority and poor areas of cities. One important question to answer in this work has been: Why do some communities exhibit high crime rates while others do not? As an answer, I have looked to social disorganization theory. This is a theory developed by Clifford Shaw and Henry McKay to explain why juvenile delinquency remained high in certain areas of central cities over time despite population turnover.

In Shaw and McKay’s classic work, they maintained that low economic status, ethnic heterogeneity and residential mobility led to the disruption of community social organization, which, in

⁶ See *infra* text accompanying notes 41-44; see also Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338 (1997).

turn, accounted for variation in crime and delinquency rates in a given area.⁷ To support this theory, the researchers demonstrated that high rates of juvenile delinquency were specific to certain areas in the cities they studied and that these rates persisted over time despite population turnover. This finding motivated the researchers to reject individual-level explanations of delinquency and focus instead on the features of the communities in which the juveniles lived in order to explain the high crime rates.⁸

Contemporary researchers have applied Shaw and McKay's insights to the longstanding problematic observation that African-Americans are under criminal justice system control out of proportion to their representation in the general population.⁹ Shaw and McKay's community organization analysis focuses on the community as the unit of analysis rather than the individual. This shift in focus accentuates the problems with attempts to explain criminal involvement on the basis of racial group.¹⁰ Instead, the community-based view emphasizes the critical nature of contextual assessments of the involvement of different groups in the criminal justice system.

Such contextual analyses have been spurred by poverty researchers who have documented that major differences often exist between the ecological contexts in which poor African-Americans typically reside on the one hand, and those in which poor whites typically reside on the other. Poor white families tend to reside in communities that feature more family-stable contexts than poor black families.¹¹ Indeed, Professors Robert

⁷ See generally CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (rev. ed. 1969).

⁸ See *id.* at 174.

⁹ See Robert J. Sampson & Janet L. Lauritsen, *Racial and Ethnic Disparities in Crime and Criminal Justice in the United States*, in *ETHNICITY, CRIME AND IMMIGRATION: COMPARATIVE AND CROSS-NATIONAL PERSPECTIVES* 311 (Michael Tonry ed., Crime and Justice Series Vol. 21, 1997); see also Tracey L. Meares, *Race and Crime (Including Ethnicity)*, in *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES* (forthcoming 2001).

¹⁰ Sampson & Lauritsen, *supra* note 9, at 344 (pointing out that heterogeneity of black neighborhoods undermines attempts to explain involvement in crime by race so that it is "racial stereotyping that assigns the blacks a distinct or homogeneous character, allowing simplistic comparisons of black-white group differences in crime.").

¹¹ See MERCER L. SULLIVAN, "GETTING PAID": YOUTH CRIME AND WORK IN THE INNER CITY (1989); Robert J. Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 *AM. J. SOC.* 348 (1987).

Sampson and William Julius Wilson have noted, “racial difference in poverty and family disruption are so strong that the ‘worst’ urban contexts in which whites reside are considerably better than the *average* context of black communities.”¹²

In terms of social organization theory, these different contexts translate into different levels of capacity of neighborhoods to resist and reduce crime. This is in large part because ecological contexts affect the extent to which neighborhood residents exert social control—informal mechanisms rather than formal regulation imposed by police and courts—to achieve public order.

A community’s exertion of social control is just another way of referring to how a community enforces norms. Norm enforcement is easier when individuals in a community have social linkages and trust one another. Individuals who reside in communities in which there are few social linkages and where distrust is rampant will have difficulty exerting social control over one another. Empirical work bears this out. While ecological factors such as poverty, joblessness and family disruption are associated with crime, criminologists have shown that such factors are mediated by community-type social capital factors such as prevalence of friendship networks, participation in formal and informal organizations like churches and PTAs and the like.¹³ Such social structural factors provide the linkages along which norms of law abidingness can travel. They are “norm highways.”¹⁴

It is critical to understand, however, that the norms on social highways can travel in any direction. There is no necessary reason why community norms must be directed toward the project of crime control. In fact, one can easily imagine tight social networks supporting criminogenic conduct on a community-wide basis. However, according to Sampson and his colleagues, when neighborhoods with strong social structures also demonstrate the feature of “collective efficacy,”¹⁵ then both factors, the structural

¹² Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality*, in *CRIME AND INEQUALITY* 37, 42 (John Hagan & Ruth D. Peterson eds., 1995) (emphasis added).

¹³ See Sampson & Groves, *supra* note 2; see also Meares, *Social Organization*, *supra* note 1, at 203-205.

¹⁴ See Meares, *Place and Crime*, *supra* note 1, at 676.

¹⁵ See Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 *SCI.* 918, 919-20 (1997) (measuring collective efficacy by combining a scale of “informal social control,” which was measured by asking individuals about the likelihood that their neighbors could be counted on to

as well as the cultural norm-based efficacy notion, work together to reinforce the capacity of a community to control crime.¹⁶

Because social capital factors appear to matter more to explaining high crime rates in communities than individual-level factors, it makes sense to engineer crime policy that takes account of this reality. The social capital thesis calls into question policies that attempt to control crime simply by manipulating an individual's calculus regarding whether "crime pays" in the particular instance. In fact, deterrence-based strategies directed toward individual law breakers may even exacerbate the very activity the strategy purports to curb.¹⁷ For example, if lawmakers choose to address illegal drug selling by increasing the number of those convicted for drug selling and by increasing prison sentences for those convicted of such activity (which is basically the current American approach to drug crimes), then one expected consequence is that more individuals will be imprisoned for longer periods of time. Although the standard economic conception of crime suggests that this strategy should make a dent in the level of illegal drug activity,¹⁸ social organization theory's emphasis on social capital and norms suggests that this strategy will backfire. The highest numbers of those caught under this approach will tend to be street-level dealers, who are not evenly distributed throughout a city, but who are geographically concentrated in disadvantaged, minority neighborhoods.¹⁹ Removal of

intervene in various ways if (i) children were hanging out on a street corner during school hours; (ii) children were spray-painting graffiti on a local building; (iii) children were showing disrespect to an adult; (iv) a fight broke out in front of their house; (v) the fire station closest to home was threatened with budget cuts, and a scale of social cohesion and trust, which was measured by asking residents how strongly they agreed with statements such as: "People around here are willing to help their neighbors" and "people in this neighborhood do not share the same values." (reverse coded)).

¹⁶ See *id.*

¹⁷ See Meares, *Social Organization*, *supra* note 1, at 205-11.

¹⁸ See Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 349 (1997) (citing Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968); Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193 (1985); and explaining that the expected utility of criminal activity should decrease if either the expected severity of punishment or the likelihood of detection increases).

¹⁹ See William J. Stuntz, *Race, Class, and Drugs*, 98 COLUM. L. REV. 1795 (1998) (stating an argument regarding the geographical segmentation of the drug market); see also ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* (1999) (discussing participation by disadvantaged minorities in illegal drug markets rather than formal labor markets); John M.

these individuals in large numbers from their communities will be associated with higher levels of joblessness, low economic status, and family disruption, which in turn will disrupt the social structural and cultural determinants of community-based social control.²⁰

Norm-based strategies do not depend so much on manipulating the price of formal punishment that illegal drug sellers see; rather, such strategies emphasize the promotion of changes to social organization structures in communities that will both limit opportunities for law breakers to engage in illegal conduct and provide incentives for law abiders to promulgate and pass on values that are inconsistent with law breaking. The best norm-based strategies will maximize social organization benefits without visiting as high a cost on disadvantaged communities as high rates of imprisonment do. Drug enforcement strategies, such as reverse drug stings,²¹ redistribute enforcement costs to communities that have the capacity to absorb the consequences of possible imprisonment. These, and strategies that attempt to disrupt illegal drug markets without relying at all on imprisonment, such as using loitering ordinances to make it difficult for drug buyers to find street sellers,²² can address illegal drug markets without concentrating the costs of imprisonment on the communities least prepared to absorb those costs.

The strategies just mentioned employ the collective forms of social control that exist, at some level, in every community. In places where crime is rampant, private social control is often weak, and government programs can be used to enhance private social control. It is critical to see, however, that these strategies work primarily by changing or addressing the social structure of neighborhoods in some way. They do not address the actual substance of the inclination that individuals have (or do not have) to obey the law. This is because the foundation of these strategies lies in social organization theory, which provides an explanation

Hagedorn, *Homeboys, Dope Fiends, Legits, and New Jacks*, 32 *CRIMINOLOGY* 197, 197-219 (1994).

²⁰ For an extended discussion, see Meares, *Social Organization*, *supra* note 1, at 205-211; *see also* Jeffrey Fagan & Tracey Meares, *Punishment, Deterrence and Social Control: The Paradox Of Punishment in Minority Communities* (2000) (unpublished manuscript, on file with author), *available at* <http://papers.ssrn.com/paper/taf?ABSTRACT_ID=223148>.

²¹ *See* Meares, *Place and Crime*, *supra* note 1, at 695-98.

²² *See infra* text accompanying notes 70-80.

of how social structure can generate particular species of social capital that can be directed toward crime reduction.

One suspects, however, that if a useful theory of compliance were attached to the social structural theory of crime reduction, then even more gains for crime control could be achieved.

NORMS AND COMPLIANCE

Do people obey the law because they fear the consequences if they do not? Or, do they obey the law for other reasons? Focusing on the former question, economists have looked primarily to deterrence theory to explain compliance.²³ The foundations of this theory are well-known. People rationally maximize their utility, and they, therefore, shape their behavior in response to incentives and penalties associated with the criminal code.²⁴ This view suggests that compliance is instrumental. This view also fuels the current trend toward “get tough on crime” approaches, which feature policies such as truth-in-sentencing, long sentences for drug offending, and so-called “three-strikes-and-you’re-out” sentences.

Social psychologists have offered another view of compliance with the law. By pointing to normative bases for compliance rather than instrumental ones, these researchers have connected voluntary compliance with the law to the fact that individuals believe the law is “just” or because they believe that the authority enforcing the law has the right to do so.²⁵ These factors are considered normative because individuals respond to them differently from the way they respond to rewards and punishments. In contrast to the individual who complies with the law because she is responding to externally imposed punishments, the individual who complies for normative reasons does so because she feels an *internal* obligation.²⁶ It is “[t]he suggestion that citizens will voluntarily act against their self-interest [that] is the key to the social value of normative influences.”²⁷

Compliance that flows from one’s belief that a law is just is

²³ For examples, see sources cited *supra* note 18.

²⁴ See THE COLLECTED WORKS OF JEREMY BENTHAM: AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (J.H. Burns & H.L.A. Hart eds., Clarendon Press 1996) (discussing the classic explanation of this relationship); see also Kahan, *supra* note 18, at 349-50 (collecting additional sources).

²⁵ See TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3-4 (1990).

²⁶ See *id.* at 24.

²⁷ *Id.*

different from compliance that follows a belief that authorities have the right to dictate proper behavior, even though both of these categories for compliance are normative. Psychologist Tom Tyler refers to reasons for compliance situated within the former category as morality-based, and he calls the latter category of reasons for compliance legitimacy-based.²⁸ Research shows morality to be the more powerful of the normative reasons for compliance.²⁹ However, I will focus on legitimacy for two reasons. First, legitimacy, an amalgamation of perceptions that individuals hold of the law and authorities that enforce it, is rather uniquely in government control compared to the development of personal morality. This is not to say that governmental authorities have no influence over the development of an individual's morality,³⁰ but, it is clear that the role of government is indirect and that personal morality starts to develop at an early age when a child spends more time with parents and parent-directed caretakers.³¹ Moreover, there are legal constraints on what may be the most effective methods for government to utilize in shaping personal morality of citizens.³² Second, legitimacy is a more stable basis for voluntary compliance than is personal morality—at least

²⁸ See *id.* at 3-4.

²⁹ See *id.* at 57-64 (stating that regression analyses indicate that between deterrence, peer disapproval, personal morality, and legitimacy, personal morality is most strongly correlated with compliance).

³⁰ Schools are an obvious location of government-based influence on the development of childhood and adolescent morality. For an excellent discussion of the role of the state in forming the religious identity of children and adolescents (which clearly impinges on moral development), see Emily Buss, *Without Peers? The Missing Piece in the Courts' (and the Philosophers') Analysis of Parents' Free Exercise Claims to Educational Control*, U. CHI. L. REV. (forthcoming 2000).

³¹ An exhaustive review of the relevant social psychology literature is beyond the scope of this essay. However, many sources point to the early age at which children develop personal morality. See DEVELOPMENTAL PSYCHOLOGY: AN ADVANCED TEXTBOOK 448-451 (Marc H. Bornstein & Michael E. Lamb eds., 3d ed. 1992) (explaining that while an important part of the development of childhood morality is respect for authority, even young children will state that they will be fair to a friend even if their parents told them not to); see also Elliot Turiel, *The Development of Morality*, in 3 HANDBOOK OF CHILD PSYCHOLOGY: SOCIAL, EMOTIONAL, AND PERSONALITY DEVELOPMENT 863, 863-932 (Willim Damon & Nancy Eisenberg eds., 5th ed. 1998) (explaining that the family, peers and culture all bear on the moral development of a child, but the family is the primary influence for young children).

³² For example, one potentially very effective state inculcation of morality (that also happens to favor the state) could be the codification of *Romans* 13:1-2, which states:

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the

from the government's perspective. While greater legitimacy translates into more compliance whether or not compliance is in the personal interest of an individual, one's personal moral schedule may or may not be in line with authoritative dictates.³³

While legitimacy is not as important to compliance as is morality, there is empirical work demonstrating that legitimacy matters more to compliance than instrumental factors, such as sanctions imposed by authorities on individuals who fail to follow the law or private rules. For example, in a study designed to test compliance directly, Tyler used regression analyses to test the relative impact on the compliance of respondents of legitimacy, public deterrence, peer disapproval, and personal morality. He found that the regression estimate for legitimacy on compliance was about five times greater than the estimate for deterrence.³⁴ Other studies exploring the relationship between legitimacy and behavior related to compliance such as acceptance of arbitration awards,³⁵ and decision acceptance and rule following in business settings³⁶ have found that legitimacy has a profound impact on behavior.

authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves.

This move would obviously contradict the strictures against state establishment of religion found in the First Amendment to the United States Constitution.

³³ See TYLER, *supra* note 25, at 4 (using the example of the war in Vietnam and explaining that those who believed in the legitimacy of government fought in the war regardless of their beliefs in favor or against the conflict, while those who did not believe in the morality of the war illegally dodged the draft).

³⁴ Specifically, the regression estimates are .11** for legitimacy and .02 (not significant) for deterrence. *Id.* at 59 (Table 5.1). Both of these estimates of reliability adjusted. To put these estimates in perspective, note that the estimates for the impact of age and sex on compliance are .24*** and .26***, respectively. *Id.*

³⁵ See E. ALLAN LIND ET AL., OUTCOME AND PROCESS CONCERNS IN ORGANIZATIONAL DISPUTE RESOLUTION (American Bar Foundation Working Paper No. 9109, 1991) (finding that the decisions of parties to accept or reject arbitration awards were strongly related to procedural justice (legitimacy) judgments perceptions and that outcome favorability judgments operated only through procedural justice judgments); ROBERT J. MACCOUN ET AL., ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM (1988) (finding that the probability of litigants in cases involving auto claims in New Jersey courts accepting arbitrator's award correlated with legitimacy and outcome favorability).

³⁶ See T.R. Tyler & R. Schuller, A Relational Model of Authority in Work Organizations: The Psychology of Procedural Justice (1990) (unpublished manuscript, on file with the American Bar Association) (noting that procedural justice was the most consistent predictor of decision acceptance, rule following, turnover intention and grievance filing); P. Christopher Earley & E. Allan Lind, *Procedural Justice and Participation in Task Selection: The Role of Control in Mediating Judgments*, 52 J. PERSONALITY & SOC. PSYCHOL. 1148 (1987) (examining the influence of the fairness of

Importantly, the argument is *not* that instrumental means of producing compliance have no effect. In each of the studies cited here, deterrence or outcome-based judgement influenced compliance or related behavior in some way. Still, this work suggests either that legitimacy is typically more important or just as important to compliance as instrumental reasons are. This is more good news because relying only on carrots and sticks to produce compliance can be a costly strategy. Programs featuring rewards and punishments can be costly because instrumental means of producing compliance are not self-sustaining. Authorities must be willing to maintain mechanisms of instrumental compliance. For example, if deterrence is to be produced by maintaining a certain probability of detection of rule-breakers, then authorities must be willing to devote resources to maintenance (or increase) of the desired level of police to ensure that the requisite probability of detection is met. Therefore, instrumental means of producing compliance *always* depend on resource limits. Legitimacy as a means of producing compliance, in contrast, does *not* always depend on resource limits because legitimacy can be acquired simply by changing procedures and practices of current officials in ways that require almost no additional resources. For example, some research indicates that police who regularly treat arrestees with courtesy are more likely than those who do not to be viewed as legitimate.³⁷ While police officers may not like to be told to be more polite to arrestees, this research suggests that law enforcement gains could be achieved more cheaply than through more instrumental means simply by telling officers to “be nice.”

Once established, legitimacy can support acceptance of decisions as long as authorities are viewed as legitimate. We should, therefore, expect greater compliance in communities where police treat arrestees with greater respect than communities where police do not, even if the former community does not hire any more police officers.

So far, I have suggested that legitimacy is one of the keys to engendering greater compliance. I will later argue that legitimacy is a key substantive norm that must be transmitted along

task assignment procedures on individual's acceptance of assignments and finding acceptance influenced by procedural justice measures).

³⁷ See Raymond Paternoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 L. & SOC'Y REV. 163, 176-182 (1997); TOM R. TYLER & YUEN J. HUO, *TRUST AND THE RULE OF LAW* (forthcoming 2001).

norm-highways in a community to ensure that a community has the capacity to resist and control crime. But to this point, an operational definition of legitimacy is lacking. What does it mean to say that “authorities have the right to dictate proper behavior?” Social psychology again provides assistance.

Researchers in this field have outlined very distinct and crisp models of legitimacy—models that can be empirically tested and so are more useful to the policymaking enterprise than philosophical notions of what is “right” and “just.” One model defines legitimacy in terms of maximizing self-interest. This work suggests that people will evaluate authorities as legitimate when authorities make decisions that benefit them in the long run.³⁸ While the self-interest approach has been found to have great explanatory power, it has also been found to be incomplete.³⁹ One limitation of this approach is the extent to which it fails to make sense of the fact that individuals confer legitimacy on officials even in the face of repeated negative outcomes. Another limitation is the inability of the self-interest perspective to account for the fact that people appear to care very deeply about the way they are treated by authorities quite apart from the outcome of particular encounters. These limitations suggest that a theory relying on norms rather than outcomes—specifically, a theory dictating that authorities will be perceived as legitimate as long as their actions conform to certain norms whether or not decisions are personally favorable to the perceiver, will better explain real world behavior.

Psychologists Allan Lind and Tom Tyler have developed a theory of procedural justice that *does* account for the regular conference in legitimacy in the face of repeated negative outcomes and the fact that people care a great deal about how they are treated by governmental authorities. They argue that processes that lead up to an outcome are important indicators to individuals about how the authority in question views the group to which the evaluator perceives herself belonging. This is called the “group value” model to distinguish it from the more instrumental process control approach.⁴⁰ Tyler and Lind explain that procedu-

³⁸ See, e.g., JOHN W. THIBAUT & HAROLD H. KELLEY, *THE SOCIAL PSYCHOLOGY OF GROUPS* (1959).

³⁹ See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 228-30 (1988) (explaining the weakness of the self-interest model of procedural justice).

⁴⁰ See *id.* at 221-42.

ral justice may have a greater impact than other justice theories of legitimacy because the use of procedures regarded as fair by all parties facilitates the maintenance of positive relations among group members, preserving the fabric of society, even in the face of the conflict of interest that exists in any group whose members have different preference structures and different beliefs concerning how the group should manage its affairs.⁴¹ Putting this point another way, procedures might be considered more “trait-like”⁴² than outcomes, which are variable, or which may be extremely indeterminate in a particular case. For example, while it may not be obvious how a particular case should come out, it is almost always clear how parties should proceed and be treated in that particular case.

The latter point drives the relational view of procedural justice. Individuals care about how they are treated by government authorities because treatment provides important indicators to individuals about how the authority in question views the group to which the individual evaluator perceives herself belonging.⁴³ In order to make this assessment, individuals focus on three factors: standing, neutrality and trust.⁴⁴ By standing, researchers are referring to indications that the authority recognizes an individual’s status and membership in a valued group, such as polite treatment and treatment that accords dignity and respect, such as concern for rights.⁴⁵ Neutrality refers to indications that decisions in which the perceiver is not made to feel as if she is less worthy

⁴¹ See *id.* at 7-40; see also JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* 67 (1975).

⁴² See Joel Brockner & Phyllis Siegel, *Understanding the Interaction Between Procedural and Distributive Justice: The Role of Trust*, in *TRUST IN ORGANIZATIONS: FRONTIERS OF THEORY AND RESEARCH* 390, 404 (Roderick M. Kramer & Tom R. Tyler eds., 1996).

⁴³ Researchers in social psychology do not uniformly agree about the explanatory power of group value theory. Some researchers believe that individuals confer legitimacy on government officials when the processes to which they are subjected allow them the most control over outcomes. See, e.g., THIBAUT & WALKER, *supra* note 41. Researchers in the psychology of justice field agree, however, that the Tyler and Lind thesis is extremely important. Thus researchers do not question the theory’s validity; rather, they question the extent to which it explains everything.

⁴⁴ See Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, in 25 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 115, 158-160 (Mark P. Zanna ed., 1992).

⁴⁵ See *id.* at 153 (collecting studies); see also Tom R. Tyler, *What is Procedural Justice?: Criteria Used By Citizens To Assess the Fairness of Legal Procedures*, 22 *L. & SOC’Y REV.* 103, 129 (1998) (discussing importance of recognition of citizen’s rights).

than others because of bias, discrimination and incompetence.⁴⁶ And trust refers to the extent to which a perceiver believes that the authority in question will act fairly and benevolently in the future.⁴⁷ Of course, individuals making assessments do not disaggregate their assessments in terms of these factors; rather, they come to conclusions about authorities by considering information that is *relevant* to these factors. Researchers have been able to disaggregate the various factors for purposes of analysis.⁴⁸

It should be clear, then, that a legitimacy-based law enforcement policy will necessarily make relevant those who are typically considered law breakers, as well as those who are not. A legitimacy-based program of law enforcement will focus more on persuasion than it will focus on punishment. And, in order to persuade, authorities will have to pay attention to the creation of the necessary social capital that engenders trust relationships between governors and the governed. Such trust cannot be created simply by emphasizing rewards and punishments, for those strategies assume that all individuals care about is the “bottom line”—an assumption that is contrary to the group value theory of procedural justice and much empirical evidence. In fact, an assumption that compliance is typically created only by threats of coercion backed up with punishment is fundamentally inconsistent with trust.

QUAKERS AND PURITANS⁴⁹

Research in psychology indicates that an individual’s willingness to voluntarily comply with the law is connected to the manner in which governmental authorities treat the individuals. What matters is whether individuals think that authorities think that individuals count as manifested in the way that authorities behave. Thus, the group value theory of legitimacy predicts that those who are treated politely, with respect, and in an egalitarian fashion will be more likely to comply with the law than those subject to rules enforced through coercive methods under a hier-

⁴⁶ See Tyler & Lind, *supra* note 44, at 157.

⁴⁷ See Tom R. Tyler, *Trust and Democratic Governance*, in TRUST AND GOVERNANCE 269, 270 (Valerie Braithwaite & Margaret Levi eds., 1998).

⁴⁸ See Tyler, *supra* note 45.

⁴⁹ I am indebted to a discussion with Professor Lawrence Sherman during a National Institute of Justice Professional Conference meeting on Crime Policy in the 21st Century in May 1999 for inspiring these metaphors.

archical structure of relationships between authorities and the governed.

The importance of egalitarianism and mutuality of respect between government authorities and the governed to the theory of voluntary compliance considered against the formal punishment emphasis of official crime policy, drives my choice of “Quakerism”⁵⁰ and “Puritanism” as metaphorical touchstones to illustrate the features of law enforcement policy that will best harness the power of norms on the one hand and policies that do not on the other. By considering both of these religious metaphors I hope to crystallize what might otherwise be an abstract discussion of psychological and sociological theory.

I mean the notion of Quakerism to capture the importance of horizontal relationship between government and citizens to a program of normative law enforcement. The differences and similarities between Quakers and Puritans fill volumes of historical research, but one basic difference between the two groups was the Quaker subscription to a sort of radical equality of relationship among church members.⁵¹ Perhaps the best (and best-known) illustration of the egalitarian nature of the Quaker religion is in the structure of the Quaker meeting. Unlike more typical churches, which were arranged with a raised pulpit in the front and pews before the pulpit, and which followed a strict liturgy, Quaker meeting houses⁵² had no pulpit, and chairs on which members sat were arranged in a circle or in a square so that everyone could see one another. There was no liturgy. Instead, members spoke when they were moved to speak. Everything about the Quaker meeting emphasized the *horizontal* relationship among members.⁵³

In contrast, the structure of the Puritan church was much more

⁵⁰ In the choice of the term “Quaker,” I am mindful that the term itself has a somewhat derogatory origin. See LEO DAMROSCH, *THE SORROWS OF THE QUAKER JESUS: JAMES NAYLOR AND THE PURITAN CRACKDOWN ON THE FREE SPIRIT* 29 (1996). The original self-description of the Quakers was “Children of the Light” and then “Friends,” a term which members use to refer to themselves to this day.

⁵¹ See 3 HUGH BARBOUR & J. WILLIAM FROST, *THE QUAKERS* 43 (1988) (noting that Quakers refused titles preferring to “humble everyone equally rather than honoring everyone equally.”).

⁵² Quakers did not call the building in which they met a church—that term was reserved for the body of individuals who met together. See DAMROSCH, *supra* note 50, at 39. Instead the members referred to the building in which they met as the meeting house. See *id.*

⁵³ See E. DIGBY BALTZELL, *PURITAN BOSTON AND QUAKER PHILADELPHIA: TWO PROTESTANT ETHICS AND THE SPIRIT OF CLASS AUTHORITY AND LEADERSHIP*

hierarchical. The church demanded fidelity to specially-trained ministers who were to congregations, "as parent and children, shepherd and sheep, rulers and ruled."⁵⁴ Thus, a key feature of Puritanism was the *vertical* relationship between the church leader and the congregants, and it was the church leaders who imposed the well-known Puritan discipline.⁵⁵

These popular conceptions of Puritanism and Quakerism operate as metaphors to give meaning and color to otherwise bland and abstract notions of the centrality of horizontal relationship to normative law enforcement and vertical relationship to law enforcement that relies on instrumental means to produce compliance. Substituting law enforcement agents for church leadership, we can see that enforcement techniques suffused with a "Puritan" ethic will rely on positional hierarchy to produce compliance. We can also see how coercion readily fits with hierarchical authority. A "Puritan" police officer attempting to establish order among a group of youths in a high crime neighborhood will likely adopt an attitude of "Obey me because I said so." If the youths fail to obey, such an officer will immediately resort to force in the form of an arrest because his authority has been challenged. In this way, the Puritan police officer establishes order through hierarchical order supported by coercion.

The "Quaker" police officer, who achieves order through leverage of mutual respect engendered by horizontal relationships will not be so quick to rely on force because such coercion is inconsistent with the ethic. This officer, when attempting to establish order, will speak to the youths in a way that signals respect, expecting that the youths will reciprocate. This officer must be confident that merely because she has asked, the youths will move because she has given away some of the power that flows from hierarchy. Such an officer will rely on trust rather than threat of coercion for assurance of compliance because the maintenance of hierarchy to achieve control through instrumental means itself conveys a message of distrust.

The notion of giving away power in a situation in which police

103 (1979) (noting that "[f]rom the beginning, then, the Quakers were levelers of authority rather than levelers of wealth.").

⁵⁴ DAMROSCH, *supra* note 50, at 38.

⁵⁵ See EVERETT EMERSON, *PURITANISM IN AMERICA 1620-1750*, at 29 (1977) (noting that Cambridge University-trained Puritan ministers eagerly taught Puritan values which emphasized a Church discipline that was associated in the minds of many with high moral standards and law and order).

confront youth might cause some to think that the horizontal nature of the Quaker ethic is simply ill-suited to today's policing. Should not the police officer who needs to establish order among the youths I have just mentioned be able to use force and arrest the youths if necessary? Coercion and force and reliance on hierarchical position is simply necessary to maintain control, and to allow otherwise would lead to anarchy. Note, however, that the Quaker ethic I have just described does not outlaw arrest and force. Rather, it simply suggests that use of that force is not *always* necessary to maintain order. Because of the potential for the constant use of force to undermine perceptions of legitimacy of government authority, such force should be used sparingly. An example helps to make the point. Analysis of interview data of offenders arrested for domestic violence demonstrates that when police conducted arrests taking time to listen to both the offender and the victim, as well as not handcuffing the offender in front of the victim or using physical force to effect the arrest, there was a lower risk of repeat offending.⁵⁶ These aspects of the arrest procedure were associated with procedural fairness in the eyes of the offender, and those arrests exhibiting more procedural fairness produced offenders with a risk of 25% of repeat offending compared to a 40% for those arrested with lesser indicia of procedural fairness.⁵⁷ The point is that ideally force should not be necessary, but when force (arrest) is used the arrest itself should be conducted in a way that comports with procedural fairness.

Note, too, that the Quaker ethic I have just explained does not have to do away with hierarchy altogether. Authorities that engender trust might expect (and achieve) deference from citizens who might well disagree with them.⁵⁸ However, it is important to see that what I have called the Puritan instrumental means of producing compliance *depends* on hierarchy in a way that the Quaker-like approach does not. In fact, the Quaker ethic holds out the promise of a meeting of the minds between authorities and citizens that is more remote under the alternative approach. Creation of relationships and support of dialogue between au-

⁵⁶ See Raymond Paternoster, et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 L. & SOC'Y. REV. 163, 176-182 (1997).

⁵⁷ See *id.*

⁵⁸ See Tyler, *supra* note 47, at 277 (explaining the deference model and pointing to deference to authoritative decision regarding the legality of abortion despite views that abortion is immoral).

thorities and citizens can lead to governance through consensus.⁵⁹ These two processes are by no means mutually exclusive. As Tyler's work shows, people think they should obey legitimate authorities, *and* they think that following rules is the morally right thing to do.⁶⁰ Thus, an approach that encourages individuals to trust governmental authorities, which is likely to lead to deference, is also likely to lead to greater opportunities for consensus, as trust is built through the establishment of relationships.

NORM-BASED LAW ENFORCEMENT

What would law enforcement policy suffused with the Quaker ethic look like? In this section I will point to various existing policies that exhibit different aspects of Quakerism in law enforcement. The examples are meant to be neither representative nor exhaustive. Nevertheless, each example holds out great promise for law enforcement reform.

RESTORATIVE JUSTICE

The recent trend toward greater emphasis on restorative rather than retributive justice in the administration of juvenile justice exhibits several features of Quakerism. Restorative justice emphasizes the relationship between the offender and the victim rather than the relationship between the offender and the state.⁶¹ Scholars of restorative justice innovations typically key in on the fact that these innovations provide victims of crime with a more prominent role in the justice process than does the traditional justice system.⁶² What makes the restorative justice innovations Quaker-like has less to do with the victim-centeredness of the

⁵⁹ See IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 111-12 (1992).

⁶⁰ See TYLER, *supra* note 25.

⁶¹ See Mark S. Umbreit, *Mediating Conflict Among Victims and Offenders*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 56 (Michael Tonry & Kate Hamilton eds., 1995).

⁶² See PETER MARSH & GILL CROW, *FAMILY GROUP CONFERENCES IN CHILD WELFARE* 42 (1998); Jennifer Michelle Cunha, *Family Group Conferences: Healing the Wounds of Juvenile Property Crime in New Zealand and the United States*, 13 *EMORY INT'L L. REV.* 283, 297 (1999); *id.* at 57 (noting that victim-offender mediation programs give the victim a stake in the process); see also DAVID MOORE ET AL., *A NEW APPROACH TO JUVENILE JUSTICE: AN EVALUATION OF FAMILY CONFERRING IN WAGGA WAGGA: A REPORT TO THE CRIMINOLOGY RESEARCH COUNCIL* (1995), available at <<http://www.aic.gov.au/rjustice/jjustice/ chapter2.pdf>> (emphasizing, in chapter 2, the role of the victim in family conferencing).

process and has more to do with how the increased participation of victims is achieved.

While there are several incarnations of restorative justice, family group conferencing is most illustrative of the argument of this essay. Typically a juvenile offender is referred by the court to a mediation process after wrongdoing is admitted. The mediator determines whether the offender and the victim are willing to meet face-to-face, and if so, a conference is scheduled.⁶³ The participants in the conference typically include the young offender and his or her family and supporters, the victim and his or her family and supporters, a police officer and a youth advocate.⁶⁴ The participants sit in a circle and the discussion proceeds by first having the offender speak, then the victim, and finally reaching a disposition through consensus.⁶⁵ No lawyers are allowed.

The structure of the conferences themselves clearly implicate the Quaker metaphor. Sentences are not imposed by state officials who sit above everyone else and who control the show. Instead, all of the participants sit on the same plane facing one another in a facsimile of the radical egalitarian structure of the Quaker meeting. The state official who is present (the police officer) is given no special power role. The officer sits in the circle just as everyone else. And it is the group together (including the offender), not the state's representative alone, who work out the disposition. The participation of offender in her own sentencing is another Quaker feature. In contrast to the traditional sentence, which relies on threat of coercion to insure that an offender carries out a sentence (revocation of probation, for example), restorative justice imposes sentences that the offender herself agrees to and thinks is fair.

Studies of various restorative justice programs reveal many successes. There are extremely consistent reports of victim satisfaction with restorative justice experiences.⁶⁶ Offenders have been found to respond to restorative justice programs because they perceive them as just.⁶⁷ Of course, the social psychology reviewed above provides reason to be hopeful that these percep-

⁶³ See Umbreit, *supra* note 61, at 57-58.

⁶⁴ See Cunha, *supra* note 62, at 302.

⁶⁵ See *id.* at 304.

⁶⁶ See *id.* at 317-18; see also John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 19-20 (collecting studies).

⁶⁷ See *id.* at 26-27.

tions will translate into greater voluntary compliance. There are a limited number of studies indicating that restorative justice processing is associated with lower reoffending levels when participants are compared to those in control groups, but more work must be done to verify this effect.⁶⁸

Of course it is not enough to point to the satisfaction of the offender and the victim to determine success of a criminal justice innovation. The theory of social organization reviewed above makes the larger community central to the enterprise of crime resistance and reduction, and the theories of legitimacy also reviewed here depend on social capital as well. There appear to be advantages in this regard from pursuing restorative justice, as there is some evidence of "microcommunity building,"⁶⁹ the creation of social bonds that facilitate social organization and a resulting transmission of norms conducive to social control.

Clearly more research must be done to verify these effects, but the research thus far is promising. Moreover, there are few areas of social policy that are in greater need for reform than juvenile justice.

COMMUNITY PARTICIPATION IN POLICING

Generation of participation by stakeholders in criminal justice processes is a feature of Quaker-like law enforcement that should enhance legitimacy of government. The previous section explained a method of creating more participation of relevant actors in sentencing of juveniles. A key aspect of creating participation was the leveling of authority between government officials and the governed. This section features another law enforcement process that invites greater participation of community members in the policing process. Like restorative justice, the process described requires government officials to cede some of their exclusive power to enforce laws.

In an attempt to address the complaints of residents concerned about gang violence and open-air drug selling, the City of Chicago has recently adopted an ordinance that empowers police officers to approach groups of people involved in gang loitering or narcotics-related loitering, inform those individuals that they are engaged in prohibited loitering, order the individuals to disperse

⁶⁸ See *id.* at 27-30.

⁶⁹ See *id.* at 37-38 (describing an incident that brought women together across a cultural and class divide).

from within sight and hearing of the place which the order was issued, and inform the individuals ordered to disperse that they will be subject to arrest if they fail to obey the order or return to the area during the next three hours.⁷⁰ This ordinance is a revised version of another anti-gang loitering ordinance adopted by Chicago.⁷¹ The original ordinance was struck down by the Supreme Court as unconstitutionally vague.⁷² While the original ordinance defined loitering as staying in one place “with no apparent purpose,”⁷³ the revised ordinance defines gang loitering as “remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.”⁷⁴ Similarly, narcotics-related loitering means “remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to facilitate the distribution of substances in violation of the Cannabis Control Act or the Illinois Controlled Substances Act.”⁷⁵ The definitions of both types of loitering incorporate specific language from both Justice Stevens’ opinion for the plurality and Justice O’Connor’s concurrence, which was joined by Justice Breyer.

While the original anti-gang loitering ordinance was designed in a way that should have enhanced the social organization of communities with compromised ability to engage in suppression of crime,⁷⁶ the revised ordinance contains language that has both social organization benefits and legitimacy benefits. Consider social organization first. The sociology explained above suggests that law enforcement strategies that depend on imprisonment of a large number of geographically concentrated individuals should be avoided if possible. Of course, some criminal offenses demand imprisonment, such as murder or robbery. But other offenses likely are better dealt with through norm-focused strategies. Open-air drug selling is an example. The anti-gang,

⁷⁰ See CHICAGO, ILL., CODE §§ 8-4-015 and 8-4-017 (2000).

⁷¹ CHICAGO, ILL., CODE § 8-4-015 (added June 17, 1992).

⁷² *City of Chicago v. Morales*, 527 U.S. 41 (1999).

⁷³ See CHICAGO, ILL., CODE § 8-4-015 (1992).

⁷⁴ CHICAGO, ILL., CODE § 8-4-015(d)(1) (2000).

⁷⁵ CHICAGO, ILL., CODE § 8-4-017(c)(1).

⁷⁶ For an explanation, see Meares, *Place and Crime*, *supra* note 1; Meares, *Social Organization*, *supra* note 1.

anti-narcotics loitering ordinance adopted by Chicago empowers police officers to disrupt drug markets without arresting large numbers of low-level dealers who retail in open areas and who are concentrated in minority, poor areas of the City. These dealers depend on confederates to stand in strategic areas to advertise the drugs they are selling to the many buyers who come from outside the particular community in which the drugs are sold—often the suburbs. Without the “advertisers” these outsiders cannot find the dealers. So, enforcement of the anti-narcotics provision of the ordinance can disrupt the market without arrest and potential subsequent conviction and imprisonment of the dealer. This is a social organization benefit. Additionally, the original ordinance invalidated by the Supreme Court also possessed the benefit of disruption of drug markets without relying on imprisonment of geographically concentrated drug dealers, another social organization benefit.

The new ordinance is extremely innovative in the way in which enforcement areas are designated. The designation process should enhance the legitimacy of the ordinance’s enforcement according to social psychological theory. Unlike an ordinance prohibiting disorderly conduct, police officers are not allowed to enforce this ordinance anywhere and at any time. The City Council recognized that drug selling and gang clashes are intimately bound up in place. Therefore, the ordinance provides that the Superintendent of Police shall designate areas of the city for enforcement by written directive.⁷⁷ In order to make this designation, the ordinance also provides that the Superintendent “shall consult as he or she deems appropriate with persons who are knowledgeable Such persons may include . . . elected and appointed officials of the area; community-based organizations; and participants in the Chicago Alternative Policing Strategy (CAPS) who are familiar with the area.”⁷⁸ Because of the controversy surrounding the original ordinance, it is clear that there is no question that the Superintendent will deem it appropriate to consult with community groups; the real issue is how that consultation will be carried out.⁷⁹

The consultation provision provides a key opening for in-

⁷⁷ See CHICAGO, ILL., CODE §§ 8-4-015(b), 8-4-017(b).

⁷⁸ *Id.*

⁷⁹ Gary Washburn, *Daley Pursuing Anti-Gang Law; Despite Challenges, Protests, Mayor to Keep Pushing for Loitering Ordinance*, CHICAGO TRIBUNE, Jan. 12, 2000, at 1.

creased perceptions of legitimacy of Chicago police among the communities in which this ordinance will be enforced. By its very structure the ordinance reduces the hierarchy inherent to municipal policing. This ordinance creates a partnership in the law enforcement process, and through that process creates greater accountability of the police to the members of affected communities. The structure I have described helps to create accountability in another way. By involving the city's alderman in the designation process, a circle of guardianship is produced that generates trust. Thus, participants who are already active in the CAPS process may be actively involved in the designation process, while other groups may be less involved—perhaps because they distrust the police more than CAPS participants. But the less trustful groups may well complain to their alderman,⁸⁰ who can convey their wishes to the relevant police officer. The end result will hopefully be a compromise that everyone can live with, even if not everyone is happy with it. Social psychology tells us, however, that it is the process of achieving the outcome, more than the outcome itself that really matters, and this process provides both invitations to participation as well as meaningful signals to community members that their opinions count.

COOPERATION BETWEEN THE CHURCH AND THE POLICE

There have been in the last few years an increasing number of reports of cooperation between leaders of Black churches and local law enforcement agents. Probably the best known leader engaged in this effort is the Reverend Eugene Rivers of Boston, who through his Ten Point Coalition, has been credited as being one of the most important reasons behind Boston's stunning success in curbing the number of youths murdered by guns.⁸¹

Rivers is not the only African-American pastor to engage in cooperative efforts with the police. There has been an ongoing effort in Chicago to create more ties between the pastors of African-American churches on Chicago's impoverished West side and the police. To create these bonds the commander of Chicago's highest-crime Police District tried an extremely innovative strategy. Three years ago, he facilitated a community-wide

⁸⁰ I've been told by one key city official that aldermen are much more likely to hear from the dissatisfied rather than the satisfied!

⁸¹ John Leland & Claudia Kalb, *Savior of the Streets*, NEWSWEEK, June 1, 1998, at 20.

prayer vigil. In groups of ten, the participants stood on designated corners—the same corners where lookouts often hawked their wares by calling out, “Rocks and Blows!”—and prayed. Following the prayer vigil, the whole group and over 7,000 more community residents went to a large park for a “praise celebration,” where there was music provided by a 400-member gospel choir, food, and inspirational speeches.

Importantly, it is not the vigil itself that creates the legitimacy benefits; rather, it is the organization process—the monthly meetings in the police roll call room and regular contact between ministers and police officials—that generated the social capital that drives assessments of trust. Of course, there would have been no meetings but for the prayer vigil, so the vigil is a necessary component. What I want to emphasize is that one cannot evaluate the benefits of the vigil from a before and after perspective. That approach would ignore completely the group value thesis of legitimacy. This tells us that the process of putting on the vigil was an opportunity for both the police and the ministers to begin to see themselves as part of the same group—a necessary component to trust generation.

CONCLUSION

Social organization theory makes clear the critical connection between effective law enforcement and improvement of a community’s capacity for social control. The theory highlights the importance of informal, rather than formal, social control through norms. But, the theory does not provide an account of how to generate the kinds of norms that facilitate law-abiding behavior. The social psychology of justice explained here provides such an account. I have tried to demonstrate its potential value through illustrative programs. The examples are small, but each is grounded in theory with great promise for law enforcement reform.

Our current approach to crime control is basically inconsistent with the project of improving community capacity for social control—especially the capacity of those communities that possess the highest crime rates. The United States imprisons more people than any other country in the world, and the bulk of those imprisoned are African-American males, who likely come from

urban areas.⁸² Social organization theory tells us that this approach is dangerously counterproductive.

Here I have tried to map out a new direction for policy. The map is not extremely detailed, but there is enough information to provide the foundations for a new approach. I hope that what is here is persuasive enough to convince policy makers to take a new road to crime control.

⁸² While the number of African-Americans incarcerated in state correctional facilities has long been disproportionate to the percentage of African-Americans in the population, African-Americans now comprise about *half* the state prison population. From 1980 to 1996, the number of African-American inmates in state and federal prisons rose from 145,300 to 524,800, an increase of 261 percent. See Alfred Blumstein and Allen J. Beck, *Population Growth in U.S. Prisons, 1980-1996*, in 26 PRISONS 17, 22 (Michael Tonry & Joan Petersilia eds., 1999). The incarceration rate for African-Americans rose from 554 per 100,000 persons in 1980 to 1,574 per 100,000 in 1996, an increase of 184 percent. *Id.* By comparison, the increase in Hispanic sentenced prisoners was far greater, at 554 percent, but their incarceration rate in 1996 was 690 per 100,000 residents, less than half the rate for African-Americans. *Id.* The number of white prisoners rose by 185 percent during this period, and the white incarceration rate rose by 164 percent, but at 193 per 100,000 residents were less than one-eighth the black rate. *Id.*

Critical Approaches to Property Institutions

MICHAEL A. HELLER*

Three Faces of Private Property

INTRODUCTION

Private property is a rather elusive concept. Any kid knows what it means for something to be mine or yours, but grown-up legal theorists get flustered when they try to pin down the term.¹ Typically they, actually we, turn to a familiar analytic toolkit: including, for example, Blackstone's image of private property as "sole and despotic dominion";² Hardin's metaphor of the "tragedy of the commons";³ and, more generally, the division of ownership into a trilogy of private, commons, and state forms.⁴ While each analytic tool has a distinguished pedigree and certain present usefulness, each also imposes a cost because it renders invisible many new forms of property.

This essay suggests that legal scholarship, particularly its law-and-economics branch, relies on an outdated and overly simplistic image of private property, an understanding that acknowledges just one of the many faces of private property. I will focus here on three faces—first, the possibility of creating a new ideal

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¹ BRUCE A. ACKERMAN, PRIVATE PROPERTY AND THE CONSTITUTION 98-100 (1977) (contrasting lay and technical understandings of private property).

² WILLIAM BLACKSTONE, COMMENTARIES *2.

³ Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243, 1244-45 (1968).

⁴ See, e.g., JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY 37-42 (1988).