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### Law Enforcement in Subordinated Communities: Innovation and Response 2008 Survey of Books Related to the Law - Policing and Race

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#### Recommended Citation

Richard Delgado, *Law Enforcement in Subordinated Communities: Innovation and Response 2008 Survey of Books Related to the Law - Policing and Race*, 106 Mich. L. Rev. 1193 (2007).

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# LAW ENFORCEMENT IN SUBORDINATED COMMUNITIES: INNOVATION AND RESPONSE

Richard Delgado\*

CITIZENS, COPS, AND POWER: RECOGNIZING THE LIMITS OF COMMUNITY. By *Steve Herbert*. Chicago and London: University of Chicago Press. 2006. Pp. ix, 180. Cloth, \$40; paper, \$16.

RACE AND POLICING IN AMERICA: CONFLICT AND REFORM. By *Ronald Weitzer* and *Steven A. Tuch*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, and São Paulo: Cambridge University Press. 2006. Pp. xi, 225. Cloth, \$70; paper, \$28.99.

POLICE INNOVATION: CONTRASTING PERSPECTIVES. Edited by *David Weisburd* and *Anthony A. Braga*. Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, and São Paulo: Cambridge University Press. 2006. Pp. xx, 367. Cloth, \$85; paper, \$37.99.

## INTRODUCTION

Policing styles and policy reform today exhibit a ferment that we have not seen since the turbulent sixties. The reasons propelling reform include some of the same forces that propelled it then—minority communities agitating for a greater voice, demands for law and order—but also some that are new, such as the greater premium that society places on security in a post-9/11 world.

Three recent books discuss this new emphasis on styles of policing. Each centers on policing in minority communities. Steve Herbert's *Citizens, Cops, and Power: Recognizing the Limits of Community*<sup>1</sup> examines the innovation known as community policing and concludes, based on extensive interviews and surveys, that the approach is conceptually flawed. Herbert finds that the hope that police could form cooperative arrangements, especially with communities of color, is largely vain.

Ronald Weitzer and Steven Tuch's *Race and Policing in America: Conflict and Reform*<sup>2</sup> is similarly based on survey research and personal interviews. It documents a continuing racial divide in which white

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respondents exhibit a much more favorable attitude toward the police than do blacks or Latinos.

The Weisburd and Braga collection, *Police Innovation: Contrasting Perspectives*,<sup>3</sup> contains pro and con chapters on a number of emerging avenues to policing, including the harsh “broken windows” approach and the softer community-policing and “hot spots” models. With extensive comments by the editors concluding each of the sections, the book emerges with a somewhat more positive view of policing innovation than do the other two under review.

Published by a major press, each of the books is likely to prove influential in a debate about race, crime, and policing that shows no sign of abating. Even though major crime has declined somewhat in recent years (Weisburd & Braga, p. 349), public alarm remains high, in part because of post-9/11 insecurities, but also because politicians stir up fears and implicitly play to crime’s racial dimension.<sup>4</sup>

My thesis is that recent efforts to toughen responses to crime, including the “broken windows” theory of policing, have produced a countering response in those sectors of the minority community of intense interest to the police. This response, which appears to be unplanned and spontaneous, substitutes a rough type of people’s justice for the official, uniformed version. And, unfortunately for police innovators, the response is often as effective, and inventive, as the official version.

After outlining and describing the three books, I will discuss a number of manifestations of this response, which essentially aim at nullifying the police. In the black community, a campaign against snitching—complete with T-shirts, rap songs, and extra-official pressure—aims to secure total noncooperation with the police, especially regarding enforcement of the drug laws. In the Latino community, a somewhat similar movement seeks to subvert the immigration laws through asylum churches and towns, and efforts by church groups and white sympathizers to leave water, food, and other essential supplies in the desert for the use of undocumented Latinos heading north. Also in the Latino community, folk tales called *corridos* celebrate the exploits of drug dealers and *coyotes* (human smugglers) who outwit the cops. These three movements, which have sprung up quite separately, evidence a growing conviction among some communities of color that the police are essentially an invading force, unresponsive to the community’s needs, and thus illegitimate.

These developments show that a growing segment of the minority community believe that some conventionally defined criminals are simply

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4. E.g., Weisburd & Braga, pp. 4–11. For a discussion of the way politicians use 9/11, terrorism, immigration, and similar fear-inducing phenomena to secure the public’s support, see MANUEL GONZALEZ & RICHARD DELGADO, *THE POLITICS OF FEAR: HOW REPUBLICANS USE MONEY, RACE, AND THE MEDIA TO WIN* (2006).

ordinary individuals trying to make a living, while the police are an alien force—precisely the opposite, in other words, of the usual perception. Both movements, consciously or not, build on predecessors such as the Black Panthers (“no justice, no peace”), Martin Luther King (*Letter from Birmingham Jail*<sup>5</sup>), and, in our time, Paul Butler (jury nullification) and Regina Austin (a politics of identification versus a politics of respectability).

These events suggest that heavy-handed enforcement of unpopular laws breeds resentment, particularly in outsider communities, canceling out any gains from terror, deterrence, and higher arrest rates. They also suggest, as two of the books do obliquely, that society needs to respond to crime and disorder not merely by increasing police presence, incarceration, and harsher laws and sentences, but by constantly re-evaluating the role of law and law enforcement in a diverse society.

### I. RECENT BOOKS ON POLICE AND POLICING

Three recent books on police and policing focus on innovations that aim to improve on what police have been doing all along. In the conventional approach, the police patrol areas (usually in cars), respond to calls, and try to arrive on the scene quickly enough to arrest offenders or at least to collect evidence while it is fresh (Weisburd & Braga, pp. 5–9). Because of a widespread belief that this approach is yielding fewer and fewer gains, reformers have been proposing new approaches of two broad types. The community policing model aims to share the burden of policing with the community itself. By securing the cooperation of the residents of a neighborhood, the thinking goes, the police will be more effective in controlling crime and disorder (Weisburd & Braga, pp. 5–18). A second approach aims to use current police resources toward time-honored ends, but more effectively than in the past (Weisburd & Braga, pp. 5–18).

The first of the books, *Citizens, Cops, and Power: Recognizing the Limits of Community*, by Steve Herbert, analyzes community policing in West Seattle and concludes that this approach is largely doomed to failure. Another, *Race and Policing in America: Conflict and Reform*, by Ronald Weitzer and Steven Tuch, focuses on the role of race in policing. They conclude that the black and white communities view the police in starkly different terms, with distrust and suspicion running much higher in black and Latino communities than in white ones. A third collection, *Police Innovation: Contrasting Perspectives*, edited by David Weisburd and Anthony Braga, considers a number of approaches to policing, most of them of the get-tough variety, finding that few of them offer the silver bullet to reducing crime, much less winning citizens’ cooperation.

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5. Martin Luther King, Jr., *Letter from Birmingham City Jail*, reprinted in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* (1963), at 289 (James M. Washington ed., 1986). The letter also appears in *MARTIN LUTHER KING, JR., I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 83 (James M. Washington ed., 1992).

### A. *The Tug of Community*

The brightest hope for counteracting heavy-handed police actions has been the community policing policy project. Steve Herbert's *Citizens, Cops, and Power* begins by reminding readers how strongly the idea of community attracts us and how deeply ingrained the urge is for a rich life together.<sup>6</sup> In our times, writers such as Michael Sandel, Alistair McIntyre, and Charles Taylor have embraced community and challenged the atrophied, shrunken vision of society composed of jealous, rights-guarding individuals that is implicit in many liberal accounts of the state (Herbert, pp. 3–5, 145).

Community policing, the subject of Herbert's book, is one dimension of this idealistic approach. In this form of policing, which, according to Herbert, is becoming widespread,<sup>7</sup> the police aim to improve their connection with citizen groups and decentralize their operations so that small groups of neighbors make decisions about the kind of policing they want and are prepared to accept. Often patrolling on foot, the police seek input and information from those citizens—meeting with them both formally—for example, in a high school auditorium for biannual sessions—and informally, through daily contacts on the streets. Officers work the same beat for long periods of time so that they can become friendly with the local residents and earn their trust (Herbert, pp. 4, 77–78, 94–95, 134–40, 144).

In pursuit of the same policy, police administrators push decision making down to lower levels so that the officers closest to the action make key decisions about what areas and activities to focus on. Community policing speaks the language of partnership and cooperation. It aims at having the police and the community solve problems—such as loitering, noise, gangs, abandoned cars, and break-ins—collectively and in ways that local residents believe will be effective (Herbert, pp. 4, 77–78, 94–95, 134–40, 144; Weisburd & Braga, pp. 27–73).

But are distressed neighborhoods really communities? If so, who speaks for them? Can the police really hear and take seriously what ordinary citizens say, given what we know about police norms and culture? Can “community” be oppressive, a form of veiled majoritarianism, so that struggling, overworked members of an inner-city neighborhood, for example, are apt instinctively to realize it will do little to solve their problems? (Herbert, pp. 145–46).

Herbert addresses many of these caveats in his opening chapter (Herbert, pp. 7–8). And his intensive study of West Seattle, a mixed-race, blue-collar neighborhood with a strong sense of identity and a neighborhood feel,<sup>8</sup> demonstrates that these concerns are not just hypothetical—they shadow

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6. Herbert, pp. 3–5, 145 (reiterating the attractiveness of this ideal, which includes friendliness, togetherness, mutual support, cooperation, care, and compassion).

7. See Herbert, p. 4 (labeling community policing as “the stated practice of police departments across the United States”).

8. Herbert, pp. 7–8 (describing the demography and physical layout of his sample area).

even the most promising and determined of police programs taking this form (Herbert, pp. 7–8).

In West Seattle, a working-class neighborhood of neat houses, located across the harbor from the city of Seattle on a hilly stretch of land, the police and local residents alike began with high hopes. Local residents readily agreed that they shared many problems in common. Moreover, most of them enjoyed good, cordial relations with each other (Herbert, pp. 7, 15, 31). Yet Herbert's study, consisting of interviews, participant observation, and ride-alongs carried out over many months, showed that community policing did not deliver on its promises (Herbert, pp. 9–12, 135).

Despite shared concerns, many local residents did not want to invest heavily in their neighborhood or to "act in a politically robust manner" (Herbert, p. 13). Although they enjoyed knowing their neighbors' names and greeting each other on the street or sidewalk (Herbert, pp. 7, 15, 31–35), they were pessimistic about the chances of making a difference or getting the police to act on their concerns.<sup>9</sup> Herbert's interviews and observation confirmed their skepticism: although the police nominally bought into community policing, they were not really ready to relinquish power to the community or even listen carefully to what it was saying (Herbert, pp. 5, 14, 29–31).

Herbert lays much of the blame for this failure on structural problems inherent in the situations of both groups. Working-class people did not have the time or energy to attend evening meetings with the police month after month. Life for most of them was competitive, impersonal, and harried. Some members of "the community" were there only transiently. The few activists who did have the time and energy to participate in police-citizen meetings were retired, underemployed, or otherwise ill-equipped to represent the others. These problems afflicted the poorer areas of West Seattle even more than they did the more affluent ones.<sup>10</sup>

On the other side of the relationship, the police, by reason of their training and culture, were ill-equipped to hear and take seriously citizens' concerns. Seeing themselves and their culture as separate from that of the citizens, the police resisted sharing authority and expertise with them and treated meetings mainly as opportunities to secure the citizens' cooperation with their traditional crime control mission. Any greater degree of citizen participation would come at the expense of the police's conviction that they alone understood how to deal with crime and delinquency and that they alone possessed the expertise to do it. The police, in their own view, are professionals; citizens, mere adjuncts to the work of policing. The police

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9. Herbert, pp. 40–41, 115–33 (describing citizens' frustration with the police); Herbert, pp. 135, 147 (describing the author's pessimism).

10. Herbert, pp. 32–33, 41–62 (discussing transience, exhaustion, lack of time, and other such constraints on citizens' ability to participate in community policing); Herbert, p. 135 (reiterating the role of social class); Herbert, pp. 145–46 (expressing pessimism that any urban neighborhood will enjoy success with community policing and positing that it can even increase inequality).

believe, for example, that they know when a group of kids is up to no good and that ordinary citizens do not.<sup>11</sup>

In the view of the police in West Seattle, crime was a matter of a few bad apples, not a community problem with roots in broad social conditions such as poverty and inadequate jobs (Herbert, pp. 95, 106–08). The public's role was to provide information on the bad apples, so the police could arrest them (Herbert, pp. 95, 106–08). Although cops gave lip service to community input, they really did not believe in it and urged each other to pay it little heed. Their masculine culture prizes risk taking and decisive action (Herbert, pp. 97–98). Community work is, for many cops, slow, soft, "touchy feely," and feminine. The typical police-citizen interaction requires that the officer take charge, assert authority, and dictate the terms of who speaks, stands where, and does what.<sup>12</sup> The drive for safety and control supersedes everything else. A patrol car is the safest, fastest way to survey an area for crime. A bicycle is dangerous, an inadequate barrier to the various kinds of danger that can break out. Foot patrols are even worse (Herbert, pp. 99–100).

Devolving political authority to the local level also turned out to disproportionately benefit the wealthier, more advantaged neighborhoods, where education and political engagement went together (Herbert, pp. 59–61, 137–38, 146). The police also paid closer attention to the voices of West Seattle's more affluent set.

Even though upper-income neighborhoods benefited more from community policing, no one received the police service they desired. Upper- and lower-income people alike desired more police services, but were frustrated at most citizen-police encounters. When they called to report a crime, for example, the 911 operator would interrupt and ask irrelevant or unanswerable questions (Herbert, pp. 128–29). The police department and city government were a bureaucratic maze, making even the filing of a police report or complaint a frustrating experience.<sup>13</sup> Urging citizens who have had experiences like these to take community policing seriously was a recipe for disappointment.

Herbert concludes that community review boards are the only aspect of community policing that has any chance of success.<sup>14</sup> He also points out that nothing prevents us from making an effort to address some of the root causes of crime and disorder, such as poor schooling, rundown housing, and lack of jobs or other forms of opportunity.<sup>15</sup> But he warns against placing

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11. Herbert, pp. 14, 63–109 (discussing police autonomy, machismo, and sense of possessing a unique expertise).

12. Herbert, pp. 100–02 (reiterating the police's drive for authority); Herbert, pp. 139–40 (describing a "get tough" ethos among police that conflicts with the ideal of community policing).

13. Herbert, pp. 128–30 (describing the impenetrable maze citizens confront in dealing with the police).

14. Herbert, pp. 14, 139, 144, 145 (reporting that the community policing approach is not working and urging more "oversight").

15. Herbert, pp. 138–39, 142 (urging a more nurturing state), 144 (urging attention to basic economic security for each citizen).

excessive confidence in community policing as a means of delivering those goods.

### B. Community and the Black-White Divide

Why has community policing not delivered on its promises? One reason may be that America is deeply divided by race.<sup>16</sup> Ronald Weitzer and Steven A. Tuch, both of whom teach sociology at George Washington University, write about the racial divide in attitudes toward police and policing in *Race and Policing in America: Conflict and Reform*. Their studies found that many whites basically like and trust the police, while many minorities fear and distrust them.<sup>17</sup> Many black Americans, for example, reported being victimized or mistreated by a cop. Virtually every black or Latino knew someone who had experienced an unpleasant encounter with a police officer. Very few whites did (Weitzer & Tuch, pp. 1–4). One consequence of this divide is that African Americans and Latinos expressed much less willingness than whites to cooperate with the police, such as by testifying at a criminal trial (Weitzer & Tuch, p. 2). This distrust also threatened to hamper recruitment of officers of color (Weitzer & Tuch, p. 2).

Forty percent of blacks and Latinos reported that they feared a stop and arrest despite being completely innocent (Weitzer & Tuch, p. 2). For whites this fear ran much lower. Many minorities were certain that the police engaged in selective enforcement, singling out exuberant black youth, for example, for questioning or even arrest on trumped-up charges (Weitzer & Tuch, pp. 4–5).

Weitzer and Tuch found that the police sometimes use an authoritarian and brusque manner as a control device and dismiss complaints that they are insulting or uncivil as a failure on the part of civilians to understand the difficulty of being a frontline cop (Weitzer & Tuch, pp. 4–5). This aspect of police culture eventually becomes self-reinforcing. Police develop a we-they attitude and an adversarial stance with regard to the public, especially in poor, minority, and crime-ridden communities. They feel embattled and self-righteous, seeing themselves as a thin blue line defending civilized values and decency (Weitzer & Tuch, pp. 4–5).

Over time, whites and blacks come to view police and policing “in strikingly different terms” (Weitzer & Tuch, p. 5). Blacks especially are more likely than others to believe that the police are unaccountable, abusing citizens and treating minorities harshly (Weitzer & Tuch, p. 5).

In an introductory chapter, Weitzer and Tuch review various theories, including group position theory (which they favor) to explain the guarded relations between police and the minority community (Weitzer & Tuch, pp.

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16. This division does not cut neatly, for example, along black-white lines, but across all groups of color and even ethnic whites. See, e.g., JUAN F. PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* (2d ed. 2007).

17. Weitzer & Tuch, pp. 1–6, 70–73 (summarizing racially disparate beliefs about the incidence of police misconduct); Weitzer & Tuch, pp. 119–23 (summarizing racially disparate beliefs about racial profiling). The authors surveyed over 1400 subjects. Weitzer & Tuch, p. 43.



8–16). Group position theory posits that whites benefit from harsh policing that keeps minorities in line, as in the former South Africa. In this theory, it is practically inevitable that minorities come to see the police as agents of domination (Weitzer & Tuch, pp. 8–16). This theory accurately predicts the attitude toward police that Weitzer and Tuch document. One aspect of this negative attitude is the frequent complaint that the police give minority neighborhoods inadequate services and protection when they are the victims of crime, but lavish attention on them when they believe they are the source of crime, especially crime that victimizes whites (Weitzer & Tuch, pp. 8–16).

Subsequent chapters cover the types of police mistreatment that minorities report, including unwarranted stops, verbal abuse, excessive force, profiling of drivers, and corruption.<sup>18</sup> These chapters also detail how media images strengthen the black-white divide by reinforcing each group's perception: minorities', that they are victimized and preyed upon; whites', that cops are aligned with their interests in law and order.<sup>19</sup> A chapter on police reform highlights that African Americans and Latinos like the idea of community policing, greater accountability of the police, and racial diversification of police forces.<sup>20</sup> Minorities believe that the police should explain the reasons for stops and apologize for obvious errors (Weitzer & Tuch, p. 174). They also favor, unsurprisingly, sensitivity training for the police and punishment for abusive cops (Weitzer & Tuch, p. 176). A concluding chapter reviews other studies that show similar gaps in trust and perceived racism and that confirm the two authors' view that "minority views have not improved" (Weitzer & Tuch, pp. 178–89). Minorities perceive that the police represent and defend white group interests, while whites see the police as fair or, at worst, guilty of "racial discrimination" (Weitzer & Tuch, pp. 178–86, 189). Whites also saw little, or less, need for police reform. As we enter the twenty-first century, as the authors put it, "relations between police and minority citizens remain troubled" (Weitzer & Tuch, p. 189).

### C. *Innovations in Policing*

A smartly edited volume by David Weisburd and Anthony A. Braga—*Police Innovation: Contrasting Perspectives*—considers eight innovative strategies in policing that aim to address some of the problems that the first two volumes identify, including distrust, excessive force, and a view of the

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18. See Weitzer & Tuch, pp. 25–30, ch. 2 (describing all these sources of discontent over police services in minority communities); Weitzer & Tuch, ch. 3 (describing disparate treatment of individuals by reason of their race). "Race is a major fault line . . ." Weitzer & Tuch, p. 123.

19. E.g., Weitzer & Tuch, pp. 20–21, 73, 164–65.

20. See Weitzer & Tuch, ch. 4 (describing various programs, including community policing, and measures—such as civilian review boards—to increase accountability, that are popular with blacks and Latinos).

police (sometimes shared by the police themselves) as an alien, invading force. As will be seen, this view has serious real-world repercussions.<sup>21</sup>

Pro and con chapters by leading authorities consider the merits and demerits of various overlapping approaches to policing, including community policing (Weisburd & Braga, pp. 27–73), the “broken windows” strategy,<sup>22</sup> the problem orientation,<sup>23</sup> the pulling-levers approach,<sup>24</sup> third-party policing,<sup>25</sup> hot spots concentration,<sup>26</sup> “Compstat,”<sup>27</sup> and evidence-based policing.<sup>28</sup> In many cases written by authors who had a hand in developing a particular strategy, the “pro” chapters proceed forcefully and knowledgeably. Similarly, many of the “con” chapters are authored by writers who have been leading critics of a given approach.

An introductory chapter asks why so much innovation is taking place in policing right now. The answer, according to the editors, is historical: we are suffering a crisis of confidence stemming from the urban riots of the sixties through the eighties, Vietnam, and a series of police-triggered racial cataclysms that have put policing in the center of national consciousness (Weisburd & Braga, pp. 1–4). At the same time, studies have been calling into question some received wisdoms such as patrolling reduces crime; a quick response is better than a slow one; increasing the number of police will reduce the amount of crime, and more efficiently. Traditional police practices did not seem to be working. Between 1973 and 1990 crime rose steadily (Weisburd & Braga, pp. 6–10).

The decade of the 1990s was an age of innovation (Weisburd & Braga, pp. 9–13). A federal office for community policing began operating in 1994; soon most large cities practiced a version of it. Most of the other new approaches that Weisburd and Braga discuss also began around that time. Yet none of those approaches seems to have delivered on its promises. Chapter Four, by William H. Sousa and George L. Kelling, entitled “Of ‘broken

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21. See *infra* Part II (describing the forms of community alienation and resistance that can result).

22. Weisburd & Braga, pp. 77–114; see also notes 28–44 and accompanying text.

23. Weisburd & Braga, pp. 117–52. The problem approach aims to focus police attention on solving crime and disorder, not filing reports or other “procedural” tasks. It works to identify “why things are going wrong and to frame responses.” Weisburd & Braga, p. 133 (emphasis omitted).

24. Weisburd & Braga, pp. 155–87. Pulling levers is a variation of the problem approach, that aims to develop a variety of strategies, including social services and community resources to stop offenders, particularly youthful ones, from continuing to offend. Weisburd & Braga, p. 16.

25. Weisburd & Braga, pp. 191–221. Third-party policing seeks to mobilize the resources of third parties, such as civil ordinances and civil courts, to confront crime and disorder. Weisburd & Braga, p. 17.

26. Weisburd & Braga, pp. 225–63. Hot spots policing uses empirical evidence to locate clusters of crime in discrete hot spots—neighborhoods and intersections—and concentrate police attention there. Weisburd & Braga, p. 17.

27. Weisburd & Braga, pp. 267–301. Compstat reorients the police hierarchy and organization to first empower and then hold accountable the next level down of each link through the entire chain of command. Weisburd & Braga, pp. 17–18.

28. Weisburd & Braga, pp. 305–38. Evidence-based policing seeks to apply science to as many facets of policing as possible. Weisburd & Braga, pp. 18, 305.

windows,' criminology, and criminal justice" is typical. The chapter begins by observing that leftists and many in the black community dislike the "broken windows" approach. It nevertheless asserts that "broken windows" theory (in which city officials crack down on visible signs of decay and disorder) is a key component of most other forms of policing, including the community variety (Weisburd & Braga, pp. 77–81, 93–97). For example, approaches such as "Compstat" and pulling levers (treated elsewhere in the volume) work in similar fashion, by strengthening accountability in policing (in the case of Compstat) or by cracking down on gangs and other known criminal elements (in the case of pulling levers) (Weisburd & Braga, p. 92).

They trace the origin of the "broken windows" approach to a 1982 *Atlantic Monthly* article by James Q. Wilson and George L. Kelling (one of the two authors of the chapter).<sup>29</sup> The premise of "broken windows" is that criminals feel comfortable and emboldened when neighborhoods look run down. Police thus counter by cracking down on visible signs of disorder, such as broken windows, graffiti, public urination, and prostitutes and panhandlers loitering conspicuously on streets and corners. The neighborhood soon begins to look "respectable" and criminals leave for elsewhere (Weisburd & Braga, pp 77–80, 85–91).

The approach takes issue with the reigning liberal "systems" model of criminogenesis, according to which crime comes from racism, poverty, and other forms of social injustice (Weisburd & Braga, p. 81). If, as liberals assert, these are the root causes of crime, the solution is straightforward: to fix the problem, one improves schools, prepares young people for jobs, provides opportunities for recreation, and supplies a minimum family income. This was the agenda of the 1960s and 1970s and the Great Society programs associated with that era (Weisburd & Braga, pp. 81–82).

When crime increased anyway, conservative, economics-minded social scientists suggested the "broken windows" approach. The idea was that broken windows frightened and demoralized law-abiding citizens. Shuttered in their houses, they would be less prone to observe and report criminal behavior occurring on the streets to the police (Weisburd & Braga, pp. 81, 83–84). This led to more serious crime. In response, "broken windows" theory attempted to manage and reduce the outward signs of disorder and quash incidents of incivility. Research appears to show that it works and might be more effective than vague social-betterment programs that require a long period of time to show results (Weisburd & Braga, pp. 86–88). "Broken windows" received national attention when New York City Mayor Rudolph Giuliani and New York City Police Chief William Bratton endorsed it and later linked it with the dramatic reduction in crime that that city experienced in the late nineties and early 2000s (Weisburd & Braga, pp. 80, 85–86). Many residents, particularly those in the upper- and middle-income brackets, appear to like it, and it seems to reduce some major crime.

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29. James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29.

A “con” chapter by Ralph B. Taylor challenges all these premises. “Broken windows” policing exhibits little efficacy when judged by careful social science standards (Weisburd & Braga, pp. 99–103, 110). And if fixing deteriorated properties does reduce crime, landlords and housing inspectors produce the gains, not the police (Weisburd & Braga, p. 102). Arresting young people for spitting on sidewalks, talking loudly, or even urinating in alleyways demonizes youth and heightens inequality (Weisburd & Braga, p. 103). Zero-tolerance policing merely encourages the aggressive police tactics that caused the legitimacy gap in the first place. With public trust in the police already low, police crackdowns on relatively minor offenses increase public suspicion of the police and deter citizen cooperation (Weisburd & Braga, pp 103, 110).

All eight sections demonstrate similar standoffs, with each side marshaling different sets of social science evidence and different sets of long- and short-term advantages and disadvantages for each approach. A concluding chapter by the editors (who also contribute several of the substantive chapters) contains a useful chart illustrating the relationship of the various innovations (Weisburd & Braga, p. 341), offers the editors’ comments on what seems to work and what does not, and discusses police reaction to new strategies (Weisburd & Braga, Conclusion).

They come to a surprising, and somewhat paradoxical, conclusion: community policing is the innovation that evokes the greatest degree of resistance by the police (Weisburd & Braga, pp. 346–47). It also ranks lowest in efficacy, if one measures efficacy by crime prevention and arrest rate. It does, however, earn high marks for community acceptance, for improving relations with the public, and enhancing the felt legitimacy of the police (Weisburd & Braga, pp. 342–46). Aggressive zero-tolerance and “broken windows” policing rated lowest on the latter scores, while its efficacy as a crime prevention strategy was only modest (Weisburd & Braga, pp. 342–44). The police liked hot spots policing, because it was familiar and did not depart from the hierarchical, incident-driven standard in use everywhere. They also approved of “broken windows” policing for many of the same reasons (Weisburd & Braga, pp. 346–47). How well—or badly—these approaches play out with the community is the subject of the next Part.

## II. THE COMMUNITY’S RESPONSE: TWO FORMS OF RESISTANCE

If community policing, despite its attractiveness to blue collar and minority communities, does not reduce crime, while “broken windows” and other tough-minded approaches do the exact opposite—reduce crime slightly while generating resistance in subordinated communities—what explains the apparent paradox?

One possibility is that these goals—legitimacy and rapid crime reduction—are in conflict, at least in outsider communities. It may be that they conflict with each other because efforts to toughen responses to crime can easily produce countering responses among members of marginalized communities. A countering response may take the form of indigenous

movements aiming to nullify the official policing effort and substitute radically different norms. I discuss three such responses—the recent anti-snitching campaign in poor, black communities,<sup>30</sup> and a parallel movement in the Latino community to frustrate enforcement of the immigration laws and to celebrate those who evade the reach of immigration enforcement.<sup>31</sup>

These movements suggest that elements of the minority community can easily come to identify more with lawbreakers than with those who enforce the law. This identification, which has long historical roots,<sup>32</sup> suggests that merely increasing police presence and imposing tougher sentences is unlikely to reduce crime or secure a community's cooperation. For the same reason, community policing that takes the form of veiled majoritarianism and insists that civilians in marginalized communities take on police attitudes and functions is unlikely to make many inroads. The lesson these indigenous movements suggest is that fully effective policing, like effective government, requires constant negotiation between the state and those whom it would govern. The three books under review reinforce this lesson.

### A. *The Anti-Snitching Movement*

Of the two movements, the anti-snitching movement has attracted the most attention. While witness intimidation is as old as organized crime,<sup>33</sup> and youth culture has long protected its own, a new form of resistance has recently surfaced in inner-city neighborhoods. This version—which sprang up around 1999 and features rap songs, T-shirts, at least one homemade DVD, and slogans depicting the police in unflattering terms—created consternation in society at large, especially in law enforcement circles.<sup>34</sup> High school students and college fraternity members long have practiced non-cooperation with the authorities when it comes to enforcement of rules against copying homework, borrowing course papers, and drinking. But

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30. See *infra* Section II.A (The Anti-Snitching Movement). This movement, as the name implies, aims to counter effective policing by withholding cooperation in the form of testifying against local residents, especially youth, charged with crime.

31. See *infra* Section II.B (Immigration Resistance and the Rise of the Antihero). This movement, like the anti-snitching campaign, seeks to frustrate enforcement of the immigration laws by showing solidarity with, and offering material aid to, illegal entrants. For a discussion on how Latino youth often rally around new arrivals, see David Gonzalez, *Raising Young Voices for Illegal Mexican Immigrants*, N.Y. TIMES, July 16, 2007, at A12.

32. See *infra* Section II.D (Predecessor Movements). These movements in minority communities were similar; they both resisted oppression and unfair laws.

33. See David Kocieniewski, *With Witnesses at Risk, Murder Suspects Go Free*, N.Y. TIMES, Mar. 1, 2007, at A1 (describing anti-snitching movement); see also PEREA ET AL., *supra* note 16, at 1124 (discussing history and current status of snitching); Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645 (2004).

34. See Natapoff, *supra* note 33; Bob Herbert, *A Triumph of Felons and Failures*, N.Y. TIMES, Aug. 24, 2006, at A27; Jeremy Kahn, *The Story of a Snitch*, ATLANTIC MONTHLY, Apr. 2007, at 80, 86–88; Avis Thomas-Lester, *NBA Star to Aid Md. Drug Fight*, WASH. POST, Jan. 31, 2005, at B1. For examples of “Stop Snitchin” clothing items, see <http://www.StopSnitchingShirts.com> (last visited Nov. 21, 2007).

ghetto norms against cooperation with the police seemed radically different from, and more far-reaching than, those other norms and practices.

For one thing, the crimes were frequently very serious. For another, the behavior is out in the open. Mainstream radio stations play the songs. The T-shirts, some of which are decorated with silk-screened bullet holes to enforce the point, are sold openly in stores, and worn proudly.<sup>35</sup> Despite protests by chapters of the NAACP and efforts by police departments and community groups to discourage their use, the shirts remain popular.<sup>36</sup>

"Stop snitching" once meant refusing to implicate one's confederates if one were caught committing a crime. It also referred to individuals who became government informants, trading immunity from prosecution in return for turning in family, friends, and rivals.<sup>37</sup> Today, however, the message is much broader, encompassing all forms of cooperation with the police, including that of witnesses and family members. Appearing on T-shirts, street murals, and album covers by major recording companies, the message receives reinforcement from well-known rappers and is rapidly becoming a social norm, much like the disapproval that attaches to being an Uncle Tom—an appeaser of whites.<sup>38</sup>

The new norm appears to be effective. In a recent case, a bodyguard for a well-known musician was shot to death in front of twenty-five people, all of whom refused to cooperate with the investigation.<sup>39</sup> In another incident, a popular seven-year-old girl with a sunny personality was shot in the face in front of a courtyard full of twenty people, none of whom was willing to tell the police what happened.<sup>40</sup> As these cases suggest, the anti-snitching campaign targets cooperation with the police not just when the crime is minor, such as drug possession, but also when it is major, such as homicide. According to one expert, the police are able to arrest a suspect in about sixty percent of homicide cases nationwide.<sup>41</sup> In some neighborhoods, because of the unwillingness of witnesses to come forward, the "clearance rate" is much lower.<sup>42</sup> Asked for an explanation, a professor at a prominent school of

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35. Kahn, *supra* note 34, at 82; Mike Seate, *Bad-taste T-Shirts Target Suburbs*, PITTSBURGH TRIB.-REV., Mar. 20, 2007, at A1; Brent Staples, *The Hip-Hop Media—A World Where Crime Really Pays*, N.Y. TIMES, June 8, 2005, at A18. For a discussion on anti-snitching norms in mainstream college students with respect to cheating and term papers, see Warren Goldstein, *Why It's OK to Rat on Other Students*, CHRON. HIGHER ED. (Wash., D.C.), May 4, 2007, at B11.

36. See Seate, *supra* note 35.

37. See Kahn, *supra* note 34, at 82; see also Natapoff, *supra* note 33, at 650–53.

38. E.g., *60 Minutes: Stop Snitchin'* (CBS television broadcast Apr. 22, 2007) (reporting analysis of CNN anchor Anderson Cooper).

39. Some may have feared that they would be murdered. See David Kocieniewski, *Keeping Witnesses Off Stand to Keep them Safe*, N.Y. TIMES, Nov. 19, 2007, at A1 (citing more than a dozen witnesses killed in the last five years in one state alone).

40. David Kocieniewski, *A Little Girl Shot, and a Crowd That Didn't See*, N.Y. TIMES, July 9, 2007, at A1.

41. *60 Minutes: Stop Snitchin'*, *supra* note 38 (quoting Professor David Kennedy of John Jay College of Criminal Justice).

42. *Id.*

criminal justice said that “the root cause is a long-standing belief that law enforcement is the enemy.”<sup>43</sup> This oppositional stance came about because of heavy-handed police tactics originally associated with the war on drugs, but which now extends to all aspects of police work, even to solving violent crimes like murder.<sup>44</sup>

From one perspective, the anti-snitching norm is a rational response to tough approaches such as “broken windows.” Young African American men are repeatedly singled out for police suspicion, particularly in connection with drug-related offenses, even when they are completely innocent and merely walking with friends or driving to work.<sup>45</sup> Worrying about others cooperating with the police could add to community-wide feelings of insecurity and beleaguering. Tipping off the police can also provide an easy means for individuals and gangs to settle scores with each other. As under Communist regimes in Eastern Europe, maintaining a large number of informants can increase distrust and render a community slightly paranoid and less cohesive than one with fewer snitches.<sup>46</sup>

### B. *Immigration Resistance and the Rise of the Antihero*

Communities who feel oppressed and under siege have often created their own antiheroes, figures like Robin Hood, who took from the rich and gave to the poor, or Joaquin Murrieta, the Latino figure who did much the same.<sup>47</sup> Sometimes these figures are imaginary; sometimes they are real (as with Gregorio Cortez); and at other times they are a mix of the two.<sup>48</sup>

The common thread running through these figures is their resistance to illegitimate authority and their inversion of the usual moral equation in which the police are right and lawbreakers wrong. Today, a similar inversion is taking place among some sectors of the Latino community and their sympathizers who resist what they believe are cruel and unfair immigration laws, heavy-handed enforcement, and a militarized border replete with watch towers, motion sensors, drones, searchlights, and ATVs.<sup>49</sup>

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43. *Id.*

44. *Id.*

45. On racial profiling and its social and psychological consequences, see, for example, DAVID HARRIS, *PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK* (2002); Natapoff, *supra* note 33, at 646.

46. See Natapoff, *supra* note 33, at 691.

47. For a discussion of the role of Murrieta and similar figures in Latino folklore, see ERIC HOBSBAWM, *BANDITS* (1969).

48. See PEREA ET AL., *supra* note 16, at 323–29 (discussing Cortez and similar resistance figures).

49. See *id.* at 350–51 (discussing the militarized border); Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 TEX. L. REV. 489, 508 (2004); Anne J. Goldberg, *Company Town, Border Town, Small Town: Transforming Place and Identities on the U.S.-Mexico Border*, 44 J. SOUTHWEST 275 (2006). On the recent round of sweeps at food processing plants and elsewhere that have created a climate of fear in the Latino community comparable, in some ways, to the dislike black communities exhibit towards “broken windows” policing, see, for example, Diana Nelson Jones, *Latinos Complain About Police Harass-*

Much of this resistance centers on the U.S.-Mexican border. Stretching for almost 2,000 miles from California to Texas, the border features harsh desert conditions for much of its length. Despite the difficult terrain and weather, however, millions of immigrants attempt to cross into the United States illegally every year, most of them in search of work. Today, over twelve million undocumented immigrants live and work in this country, where they form a substantial part of the economy, particularly in industries such as meat packing, construction, restaurant and hospitality work, gardening, and agriculture.<sup>50</sup>

The struggle over immigration has moved in recent years into extra-official enforcement, with vigilante groups such as the Minuteman Project patrolling the border with binoculars and reporting sightings to the authorities.<sup>51</sup> Recent years have also seen efforts to enlist local police to assist federal authorities in the enforcement of immigration laws.<sup>52</sup> On the other side are two types of organizations supporting undocumented immigrants. One, consisting of groups like the Border Angels, maintains water stations in the summer and caches of food, clothing, and water in the winter for immigrants seeking to cross California's Imperial Valley.<sup>53</sup> A different group, Samaritans, patrols sections of the Sonoran Desert, maintaining stocks of water, food, emergency medical supplies, and other equipment aimed at reducing the death toll for desperate individuals trying to cross into the United States.<sup>54</sup> Other organizations with names like Humane Borders do much the same in Arizona.<sup>55</sup> An umbrella organization, *No Mas Muertes* (No More Deaths), encompasses these large groups as well as many smaller ones and lists 255 official supporters including the Catholic Church, Amnesty

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ment, PITTSBURGH POST-GAZETTE, Aug. 28, 2007, at B1, which discusses reaction to heavy-handed policing, and Dianne Solis, *More Arrested at SWIFT Plants*, DALLAS MORNING NEWS, July 12, 2007, at A7.

50. RICHARD DELGADO ET AL., *LATINOS AND THE LAW* xiv (forthcoming 2008).

51. See Ruben Navarrete, Jr., *The World According to the Minutemen*, SALT LAKE TRIB., July 13, 2007; Jim Gilchrist's Minuteman Project, <http://www.minutemanproject.com> (last visited Nov. 21, 2007) (official website of the Minuteman Project).

52. E.g., Bill Turque & Karin Bruillard, *Police Enforcement of Immigration Laws Raises Worries*, WASH. POST, Oct. 1, 2006, at C7.

53. See Daniel A. Scharf, *For Humane Borders: Two Decades of Death and Illegal Activity in the Sonoran Desert*, 38 CASE W. RES. J. INT'L L. 141, 157-59 (2006); Border Angels, <http://borderangels.org> (last visited Nov. 21, 2007).

54. Marc Cooper, *Dead in Their Tracks*, LA WKLY., Feb. 24, 2006, at 32; Samaritans—Who Are We?, <http://www.samaritanpatrol.org/aboutsamaritans.html> (last visited Nov. 21, 2007) (official website of Samaritan Patrol).

55. See Angie C. Marek, *Border Battles*, U.S. NEWS & WORLD REP., June 25, 2007, at 46, 47; Humane Borders Quick Facts, [http://humaneborders.org/about/about\\_quickfacts.html](http://humaneborders.org/about/about_quickfacts.html) (last visited Nov. 21, 2007).



International, and individual doctors, lawyers, and politicians.<sup>56</sup> The Southern Poverty Law Center provides litigation support.<sup>57</sup>

A second component of the efforts against immigration enforcement is sanctuary. In its original form, this movement aimed to enlist cities as havens for El Salvadoran and Guatemalan immigrants fleeing violence and civil war.<sup>58</sup> Today, the movement has expanded to encompass all undocumented immigrants seeking to relocate in the United States and includes not just cities and towns but community groups and individual churches, including five in New York City alone.<sup>59</sup> One prominent asylum leader, herself an undocumented immigrant, posted a statement saying that “if she is arrested on ‘holy ground,’ she ‘will know that God wants me to be an example of the hatred and hypocrisy of the current [official] policy.’”<sup>60</sup>

Very recently, the sanctuary movement received support from a new coalition of more than 100 largely evangelical Christian organizations when they petitioned Congress for more humane immigration laws and policies, invoking the biblical injunction to show compassion toward one’s neighbor, the weak, and the alien.<sup>61</sup> Advocacy groups with names like *La Familia Latina Unida* and *Centro Sin Fronteras* add support from within the Latino community.<sup>62</sup> In words echoing the debate about policing, a spokesman from a moderate national Latino organization, the League of United Latin American Citizens (“LULAC”), commented that spontaneous counterpressure from the community seems to be arriving on the scene just “as the government seems to be cracking down.”<sup>63</sup>

### C. Corridos: *Immigration Resistance in Myth and Imagination*

Subordinated people have long sung, told, or written about their oppression. Slave narratives, for example, described slaves’ condition and

56. See Claudine LoMonaco, *No More Deaths boosts migrant-saving efforts*, TUCSON CITIZEN, June 9, 2007, at 4A; History of No More Deaths, <http://nomoredeaths.org> (follow “History” hyperlink) (last visited Nov. 21, 2007).

57. See Southern Poverty Law Center, *Border vigilante ordered to pay in SPLC-sponsored suit*, SPLC REP., Dec. 2006, available at <http://www.splcenter.org/center/splcreport/article.jsp?aid=225> (last visited Nov. 21, 2007); see also Southern Poverty Law Center, <http://www.splcenter.org> (last visited Nov. 21, 2007) (official website of Southern Poverty Law Center).

58. See James Barron, *Congregations to Give Haven to Immigrants*, N.Y. TIMES, May 9, 2007, at B1; James Reel, *Sanctuary leaders renew defense of asylum seekers*, NAT’L CATH. REP., Apr. 5, 2002, at 7.

59. See Anthony Faiola, *Looking the Other Way on Immigrants: Some Cities Buck Federal Policies*, WASH. POST, Apr. 10, 2007, at A1; Tanya Sierra, *Mayor wants immigrant ‘sanctuary’*, SAN DIEGO UNION TRIB., Sept. 13, 2006, at B1.

60. Gretchen Ruethling, *Chicago Woman’s Stand Stirs Immigration Debate*, N.Y. TIMES, Aug. 19, 2006, at A10.

61. Neela Banerjee, *New Coalition of Christians Seeks Changes at Borders*, N.Y. TIMES, May 8, 2007, at A16.

62. Ruethling, *supra* note 60.

63. *Id.*

treatment at the hands of their masters and their hopes for a better life.<sup>64</sup> In Latino culture, *corridos* (laments, usually accompanied by a guitar or accordion) and similar narratives celebrate brave figures like Gregorio Cortez who flouted the law and led resistance to murderous Anglos and Texas Rangers who would “shoot first and ask questions later.”<sup>65</sup> Other *corridos* feature more peace-loving heroes such as Cesar Chavez or Robert Kennedy, or heartsick lovers.<sup>66</sup> *Corridos* are a form of people’s history or “history from below.”<sup>67</sup>

In the last few years, *corridos* have celebrated the exploits of the human smugglers (*coyotes*) who lead undocumented immigrants, for a fee, to safety in the United States.<sup>68</sup> Another new form of *corrido*, the *narcocorrido*, celebrates the bravery of drug dealers who outwit the cops or subdue their rivals in the drug business.<sup>69</sup> A recent *corrido*, published by the *New York Times* during the very week this reviewer was writing his draft, begins:

Now they are putting up barriers in front of us so we don’t return;  
but that is not going to block us from crossing into the United States,  
We leap them like deer, we go under them like moles.<sup>70</sup>

Another *corrido* that won a competition at the University of Arizona was entitled “*Corrido del Burro Mojado*” (Ballad of the Wet Burro). The story refers to a wetback donkey that sneaks across the border for love and ends up gaining U.S. citizenship and living happily ever after. The ballad illustrates a typical trope: the use of a derogatory term (“wetback”) in a way that turns it into a heroic designation. The hero breaks the law, defies authority,

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64. On the slave narratives, see, for example, PEREA ET AL., *supra* note 16, at 118–20; Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2436–37 (1989).

65. Delgado, *supra* note 64; see also NICOLÁS KANELLOS, *Herencia: THE ANTHOLOGY OF HISPANIC LITERATURE OF THE UNITED STATES* (2002) (collecting and analyzing *corridos*—folk tales and laments, often sung); AMÉRICO PAREDES, *A TEXAS-MEXICAN Cancionero* (1976) (same); JOHN-MICHAEL RIVERA, *THE EMERGENCE OF MEXICAN AMERICA* (2006) (describing role of stories and texts in constructing images of Latinos and Anglos in each others’ minds).

66. See AMÉRICO PAREDES, *WITH HIS PISTOL IN HIS HAND* (1958) (collecting *corridos* with both pacific and warlike themes); Serra Fox & Osama Solieman, *The Corrido*, Oct. 10, 2002, <http://parentseyes.arizona.edu/msw/corrido/index.html> (last visited Nov. 21, 2007) (describing both types of *corrido*).

67. Ethnomusicologists such as Nicolás Kanellos and Américo Paredes have collected and analyzed several centuries of *corridos* celebrating bravery, deploring tragedies, lamenting lost loves, or criticizing authorities who abused peasants and farmers and treated them unjustly and without compassion. See, e.g., KANELLOS, *supra* note 65; PAREDES, *supra* note 65; PAREDES, *supra* note 66. They have also analyzed their structure and form, use of metaphor, theme, character, and rhyme. See *supra* note 65; Guillermo E. Hernández, *What is a Corrido? Thematic Representation and Narrative Discourse*, 18 STUD. LATIN AM. POPULAR CULTURE 69 (1999).

68. E.g., Randal C. Archibold, *Far From Home, Mexicans Sing Age-Old Ballads of a New Life*, N.Y. TIMES, July 6, 2007, at A1; Jesse Greer, *Mario Celis and the Corrido*, Sept. 9, 2002, <http://parentseyes.arizona.edu/msw/corrido/index.html> (last visited Nov. 21, 2007).

69. ELIJAH WALD, *NARCOCORRIDO: A JOURNEY INTO THE MUSIC OF DRUGS, GUNS, AND GUERILLAS* (2001).

70. Archibold, *supra* note 68.

but ends up happy, celebrated by the community, and the doer of good deeds.<sup>71</sup>

*Corridos* such as these, too, echo the debate about police and policing strategies. They show how easily enforcement of unpopular laws can provoke resistance and a spirit of defiance. And they show how heavy-handed policing of any kind can cause communities to rebel and develop a set of countervailing norms, heroes, literature, and culture.

#### D. Predecessor Movements

Resistance to police and policing has long roots in minority communities and in society at large. The “Stop Snitching” movement, the efforts to alleviate immigration law enforcement, and the development of new forms of *corridos* all trace their origins to earlier resistance movements. Martin Luther King may be the most well-known twentieth-century figure to endorse extralegal action as a means of achieving social change. In 1963, authorities jailed the civil rights leader in Birmingham, Alabama, for leading a march without first securing a permit. While jailed, he wrote *Letter From Birmingham Jail*.<sup>72</sup> Addressed to a group of moderate white church leaders, this famous document begins by reminding King’s readers that time is neutral and that “human progress never rolls in on wheels of inevitability.”<sup>73</sup> Instead, it requires forceful action, for history shows that “privileged groups seldom give up their privileges voluntarily. . . . [F]reedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”<sup>74</sup> King went on to provide specific tests and measures for reformers pondering direct action, including criteria for determining when a law is, in fact, unjust and a candidate for civil disobedience.<sup>75</sup>

The late 1960s witnessed the emergence of the Black Panther Party, another American movement advocating radical change. In contrast to Dr. King, who urged nonviolent measures, the Panthers advocated armed resistance to unlawful authority.<sup>76</sup> Borrowing heavily from the writings of Karl Marx and Mao Tse Tung, the Panthers expressed special hatred of the white-dominated police, many of whom acted, according to the Panthers, effectively as agents of an occupying power and with little regard for the welfare of the black community.<sup>77</sup> In other cases, the Panthers followed the

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71. Greer, *supra* note 68.

72. King, *supra* note 5.

73. *Id.*

74. *Id.*

75. *Id.*; see also PEREA ET AL., *supra* note 16, at 1210–11 (discussing criteria for nonviolent resistance).

76. See PEREA ET AL., *supra* note 16, at 1211–12 (describing arrival of Black Power); David Ray Papke, *The Black Panther Party’s Narratives of Resistance*, 18 VT. L. REV. 645 (1994).

77. E.g., ELAINE BROWN, *A TASTE OF POWER: A BLACK WOMAN’S STORY* 135 (1992); Richard Delgado, *Two Ways to Think about Race: Reflections on the Id, the Ego and Other Reformist Theories of Equal Protection*, 89 GEO. L.J. 2279, 2291–92 (2001); Papke, *supra* note 76, at 654.

law assiduously, for example by cleaning up after their own demonstrations or operating free breakfast programs for inner-city children.<sup>78</sup> Moreover, when the group engaged in a shootout with the police, they were at pains to insist that the police had fired first.<sup>79</sup>

In recent times, two prominent black intellectuals have addressed the same dichotomy that appears in Black Panther thought. University of Pennsylvania law professor Regina Austin contrasts a community-based "politics of identification" with a more mainstream politics of distinction.<sup>80</sup> In the former, the black community identifies with its youthful offenders, offering them comfort, shelter, and an opportunity for redemption. In the latter, blacks disidentify with the offenders in their midst and call for additional police services to arrest and imprison them. Austin, who believes that an oppressed group should not be too law-abiding, favors the former approach and suggests that black solidarity is a rational response to heavy-handed policing tinged with racism.<sup>81</sup>

In similar fashion, George Washington University law professor Paul Butler, a former federal prosecutor, urges that black jurors vote to acquit young black defendants charged with nonviolent, *malum prohibitum* offenses when they believe that the defendant is more useful to the black community free than behind bars.<sup>82</sup> Butler points out that the right of jury nullification has ancient roots and receives protection in the Constitution's guarantee against double jeopardy and re-examination of jury verdicts.<sup>83</sup> Butler and Austin build upon both black history and earlier writings like those mentioned above to coin approaches to a perceived gap between the police and the communities they ostensibly serve. As with Latino resistance to immigration, they both point to the idea that enforcing the law sometimes has greater human cost than the official enforcement arm will acknowledge.

### CONCLUSION

If current developments in minority communities and recent scholarship about policing agree that to be effective, policing must be consensual, or at least perceived as legitimate, what should be done? One possibility that

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78. *Police and Panthers: Growing Paranoia*, TIME, Dec. 19, 1969, at 14.

79. *Id.* at 15. Why would the Panthers draw these distinctions? Might it be that they conceded, if only implicitly, the legitimacy of laws against littering, creating messes, and shooting first? If so, they perhaps granted the white police the limited right to insist on compliance with a few basic norms. Or, they might not have wanted to create confusion in the public's mind about whether the Panthers were revolutionaries rather than ordinary criminals.

80. Regina Austin, "The Black Community," *Its Lawbreakers and a Politics of Identification*, 65 S. CAL. L. REV. 1769 (1992).

81. *Id.* Might she embrace—or at least tolerate—the new anti-snitching norm? See *supra* Section II.A. One suspects so, although she seems never to have addressed the issue, at least in public.

82. Paul Butler, *Racially Biased Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 715 (1995).

83. *Id.* at 701–03.

emerges from the three books, as well as the very brief summary of minority attitudes and writings, is that very little can be done. The police will continue to act as a repressive body, provoking continual resistance by enforcing unpopular laws on unwilling subjects in racially dichotomous ways. Alternatively, the police may offer true partnership to the communities they serve, ceding some of their authority to them, much as national and territorial administrators did during the settlement period. If this comes to pass, heavy-handed approaches such as “broken windows” will no longer be necessary because the community itself will fix the outward signs of disorder. And technologically based approaches such as Compstat or hot-spots policing may become unnecessary, since the community will have, and share, the knowledge that the police—now regarded as an ally—need. Both current and historical experience suggests that the latter approach is the only workable one in the long run. Unfortunately, crime-control funding aims at the short run, as do many politicians running for re-election. If I am right, reforms of the kind sketched out immediately above are quite practicable, but may be a long time in coming.