Community Policing in New Haven:

Social Norms, Police Culture, and the Alleged Crisis of Criminal Procedure

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INTRODUCTION

Nick Pastore will forever be known as one of New Haven's most colorful historical figures. The Chief of Police in New Haven from 1990 to 1997, Pastore was well-known for his outrageous comments and unusual antics. New Haven's chief proponent of community policing, Pastore referred to himself in interviews as "'an outstanding patrol officer,' a 'super crime-

fighting cop,' 'a good cop with the Mafia,' [and] 'Sherlock Holmes.'"[1] Pastore, unlike his immediate predecessor, highly valued working with the community and advocated for a focus on reducing crime rather than increasing arrests. Pastore once informed that New York Times that in 21st century New Haven, "You're not going to spend $30,000 for one black inmate." Instead, "You're going to send him to Yale. You're going to send him to the University of New Haven. Quality of life," he vowed, "that's the change."[2] In the spirit of community outreach, Pastore was rumored to have bought pizza for an accused felon and to have embraced a murder suspect in full view of the public, much to the chagrin of his officers.

In community policing circles, Pastore is considered something of an eccentric visionary; he was among the first modern police chiefs to adopt community policing methodologies. When Pastore took over the New Haven Police Department, community policing was more theoretical than practical: a hodgepodge of ideas about partnering with the community to co-produce justice that usually incorporated tools such as walking beats, block watch, and community-police councils. While at the time Pastore's philosophy seemed innovative, paradoxically Pastore was steering the New Haven Police Department back into policing's past. His emphasis on working with the community to increase the general welfare and reduce disorder echoes both William Blackstone's theory that police should build upon "the rules of propriety, good neighbourhood, and good manners"[3] and Sir Robert Peel's charge to the police that the "ability of the police to perform their duties is dependent upon public approval of police actions."[4] Indeed, his efforts harken back to a time when policing was a general-service occupation covering many

[1] Ralph Blumenthal & M.A. Farber, *Policing New Haven: Patrols and Politics - A Special Report*, N.Y. TIMES, Nov. 1, 1991, http://www.nytimes.com/1991/11/01/nyregion/policing-new-haven-patrols-politics-special-report-chief-with-high-profile-uses.html.
[2] *Id.*
[3] 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 162 (Oxford, Clarendon Press 1769).
[4] *Sir Robert Peel's Nine Principles*, NEW WESTMINSTER POLICE SERVICE, http://www.nwpolice.org/peel.html (last visited Mar. 1, 2011).

"miscellaneous" activities.[5] Early American and British police, for example, not only conducted arrests, but also occasionally ran soup kitchens and offered their precincts as homeless shelters. Their job was not only to solve crime, but to prevent it; administering to poverty was seen as a key task in crime prevention.[6]

Both new community policing and early community-oriented methods aim to reinforce extant social structures, building reciprocity and collective efficacy between citizens and police. While the early police kept this community-building function implicit, casting themselves as the head of a "well-ordered family," advocates of contemporary community policing like Pastore and George Kelling rely explicitly on theories of social norms. According to these theories, many communities police themselves, relying on reciprocity, community social organizations, and collective efficacy to convey social signals and enforce social sanctions. In both nineteenth century New England and twentieth century New Haven, cities experienced major disruptions in their social composition, which led to increased crime and the necessity of policing innovations. When the police were first constituted, their job was not only to combat crime, but also to help rebuild the social structures that had been disrupted by a huge influx of immigrants during the industrial revolution. Similarly, when cities were reconstituted after white flight in the mid-twentieth century, police needed to not only execute arrests but also to work with the community to repair its own informal policing mechanisms.

Community policing, then, sought to recapture the spirit of policing's past. However, in doing so, it ran into two major obstacles. First, community policing requires extensive use of police discretion in responding to community demand. In the intervening years, however, courts—and the U.S. Supreme Court in particular—curtailed that discretion in many criminal

[5] *See* 4 BLACKSTONE, *supra* note 3, at 162.
[6] *See* Mark Neocleous, *Theoretical Foundations of the New Police Science*, *in* THE NEW POLICE SCIENCE 17, 23 (Markus D. Dubber & Mariana Valverde eds., 2006).

procedure cases.[7] Second, the culture of the police itself interfered with community policing. Accustomed to keeping a "professional" distance, police became isolated from and hostile to inner-city communities over the twentieth century; they generally dislike "liberal" reforms that interfere with "real" police work.[8] This hostility limited Pastore's ability to implement his reforms, since community policing centers on police interaction with citizens. Pastore often explained, "I'm not a cop's cop…. I'm a people's cop. You understand what I'm saying?"[9] Pastore's second-in-command, Dean Esserman, framed the problem more simply. "The cops clearly hate the Chief," he claimed, "[A]nd they say it."[10]

Due to officer resistance, many departments—including New Haven's—have had difficulty sustaining community policing services, despite their promise in reducing disorder and fear of crime.[11] Many departments that wholeheartedly adopted community policing in the 1990s, such as New York's, are now renouncing its key tenets in favor of a more aggressive approach—an approach that undermines the very reciprocity and collective efficacy that community policing sought to create.[12] The Supreme Court, however, seems not to have noticed this decreased level of police-public cooperation. Referencing community accountability efforts, the Court has begun to roll back the clock on its criminal procedure doctrine and has granted police officers greater and greater discretion regarding how they treat citizens during

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[7] *See* Dan M. Kahan & Tracey L. Meares, *Foreword to The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153, 1155-59 (1998).
[8] *See* Allison Chappell, *The Philosophical Versus Actual Adoption of Community Policing: A Case Study*, 34 CRIM. JUST. REV. 1, 9 (2009).
[9] Blumenthal & Farber, *supra* note 1.
[10] *Id.*
[11] Telephone Interview with Sgt. Louis Cavaliere, President, New Haven Policemen's Union (Apr. 29, 2011) ("Community policing was a radical change from traditional policing. Pastore faced a lot of resistance.").
[12] While some of these cities have explicitly renounced community policing, others—like New York City—have simply altered their methodology to undermine the key tenets of community policing (for example, by using aggressive stop-and-frisks, which often alienate low-income neighborhoods, or setting quotas for citations, leading to fraudulent charges and deceased legitimacy). *See* Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy's 81st Precinct*, THE VILLAGE VOICE, May 4, 2010, http://www.villagevoice.com/content/printVersion/1797847; Ray Rivera, Al Baker & Janet Roberts, *A Few Blocks, 4 Years, 52,000 Police Stops*, N.Y. TIMES, July 11, 2010, http://www.nytimes.com/2010/07/12/nyregion/12frisk.html?pagewanted=1&_r=1.

investigations.[13] In light of police resistance to community oversight, this doctrinal shift seems premature and may even endanger future community policing efforts—contrary to the predictions of policing scholars like Dan Kahan and Tracey Meares.[14] While individual state laws and police department policies could further constrain officers' discretion and promote community collaboration, in the area of local criminal procedure, policies and decisions tend to track Supreme Court precedent with eerie precision.[15] In this one area of law, then, Court doctrine may be over-determinative—and the Court may be headed in the wrong direction.

Unless community-oriented reformers succeed in altering police culture—and police culture has not altered much in the last century—the Court should refrain from further erosion of citizens' civil rights. Until community policing has fully taken root—if it ever does—substantially increasing police discretion remains a risky choice. In areas where community policing has succeeded—where police norms mirror and respect community norms—citizens are likely less prone to sue the police over disputes, and hence relaxed criminal procedures are not necessary.[16] Communities and police will likely work out their own methods of resolving minor disagreements extra-judicially, in town hall meetings or through citizen-police councils. Where

[13] *See, e.g.*, Hudson v. Michigan, 547 U.S. 586 (2006) (holding that violation of the knock-and-announce rule need not lead to the exclusion of evidence); Scott v. Harris, 550 U.S. 372 (2007) (holding that terminating a high-speed chase by ramming the suspect's car is not impermissible use of deadly force and does not violate the Fourth Amendment).

[14] *See* Kahan & Meares, *supra* note 7, at 1153.

[15] Connecticut's criminal procedure laws, for example, track the Supreme Court's language around *Miranda* rights and search and seizure protections almost exactly. *See, e.g.*, CONN. GEN. STAT. § 54-1b (2010) ("Any accused…shall be advised by a judge that he has a right to counsel, that he has a right to refuse to make any statement and that any statement he makes may be introduced in evidence against him."); CONN. GEN. STAT. § 54-1f (2010) (Officers "shall arrest, without previous complaint and warrant, any person who the officer has reasonable grounds to believe has committed or is committing a felony"); CONN. GEN. STAT. § 54-33a (Warrants shall only issue upon "probable cause."). For language that similarly tracks U.S. Constitutional Law and U.S. Supreme Court jurisprudence, see, for example, N.Y. CODE CRIM. PROC. § 140.50 (An officer may make a stop or arrest "when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor."); or SEATTLE POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL, TITLE 5 (2011), *available at* http://www.cityofseattle.net/police/publications/Policy/SPD_Manual.pdf ("Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause.")

[16] *See* discussion of informal interactions between police and public *infra* Part IV.B.

community norms and police norms conflict and create friction, however, citizens still need to be given the benefit of the doubt. Keeping the police accountable to the rule of law will increase their legitimacy in the eyes of the public and leave room for future community partnerships.[17] As the history of community policing has shown, most departments are still pervaded by a culture of policing that is deeply suspicious of the community and haunted by a history of violence.[18] Allowing the police to practice more violence and coercion on citizens simply decreases the likelihood that community policing will ever be fully embraced—and that police will ever gain community trust and truly work with, rather than against, community norms.

I. Policing Cycles Across History

In order to understand community policing's ambitions, it is helpful to first understand its historical context. In many ways, community policing can be viewed as a return to the original philosophy and methodology of policing, wherein the power of the police was more directly linked to the local population and less mediated by states and courts. In fact, community policing in its purest form harkens back to the era before policing was formalized in the nineteenth century, when community members themselves took turns keeping watch and viewed crime prevention as a family and neighborly enterprise.

Since then, of course, social structures have changed. As a result of industrialization and urbanization, crime in cities began to spiral out of control; a formal police force became necessary.[19] Police departments in America modeled themselves to some extent off of the

[17] *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help Police Fight Crime in Their Communities?,* 6 OHIO ST. J. CRIM. L. 231, 231 (2008) (citing procedural fairness as a source of police legitimacy and legitimacy as a major factor in voluntary compliance).
[18] Note, *Retreat: The Supreme Court and the New Police*, 122 HARV. L. REV. 1706, 1708-10 (2009).
[19] *See, e.g.*, ERIC H. MONKONNEN, AMERICA BECOMES URBAN: THE DEVELOPMENT OF U.S. CITIES AND TOWNS 1780-1980, at 96 (1988) (observing that crime became more concentrated in cities and hence more visible and troublesome, although per capita crime rates remained low until World War II).

"Peelers" in England, a para-military, uniformed group engineered by Sir Robert Peel in 1829.[20] Still, these officers and departments largely derived their legitimacy from local politics and remained close to the people and responsive to their needs.[21] In the early twentieth century, though, citizens began to worry that the police were too responsive to the local political machine; corruption plagued many urban forces.[22] As a consequence, many reforms were implemented to distance police from politicians. This re-professionalization and focus on law enforcement further distanced police from the people and curtailed officers' traditional social-welfare functions. The adoption of technologies like the patrol car and 911 also widened the police-populace divide by removing police from their normal walking beats and limiting casual police-citizen interactions.[23]

This police-citizen divide itself, however, became a cause of concern in the 1960s and 1970s, when riots protesting police brutality—among other sources of social and political strife—erupted in cities. Law-enforcement as a primary means of managing the ills of poverty was lambasted, and the media highlighted the disproportionate use of police force against minority groups.[24] Minorities demanded that police be more responsive to their needs and more accountable to their constituencies. The links between poverty, education, welfare, and the police were re-examined and re-established. Out of this movement to increase police accountability and to address poverty in a systemic way, community policing was born.

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[20] *See id.* at 99.
[21] *See, e.g., id.* at 95, 109 (describing the early police as a service-oriented group that dealt with neighborhood children, the homeless, and nuissances affecting quality of life in addition to crime).
[22] *See* GEORGE L. KELLING & MARK H. MOORE, PERSPECTIVES ON POLICING 4: THE EVOLVING STRATEGY OF POLICING 2-4 (1988), *available at* http://www.hks.harvard.edu/criminaljustice/publications/pop4.pdf.
[23] *See id.* at 7.
[24] *See* Valerie Reitman and Mitchell Landsberg, *Watts Riots, Forty Years Later*, L.A. TIMES, Aug. 11, 2005, http://www.latimes.com/news/printedition/la-me-watts11aug11,0,1955949.story.

A. Early Police History

Thoughtful and systematized safety and order-maintenance practices have existed for centuries—although policing in the formal sense has only existed in America and England since the nineteenth century.[25] The role of police in the Western World changed slowly as concepts of governance evolved and as economies shifted from agriculture to manufacturing.[26] Rural life and distant governments spawned local and privately-run safety services, whereas urban life spurred police organizations run by the city's central government in service of larger populations.[27]

In England and America, groups of watchmen were originally communally run and staffed by the adult male members of towns.[28] In certain segments of England, groups of ten families would form a "tything," which would, in essence, police itself and bring any offender in the group before the court.[29] Neighbors, then, would police each other, following their own norms in terms of procedure and taking joint responsibility for prosecuting crimes that would harm the group as a whole. In other cities—for example, New Haven—policing primarily took the form of a night watch. The night watch in New Haven began as early as 1638, when the Quinnipiac colony was founded.[30] Captain Nathan Turner was charged with organizing the group, but all men aged sixteen to sixty were periodically assigned to keep "constant and strict watch" in the evenings from March until October.[31] Suspicious and disorderly persons—

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[25] *See* Neocleous, *supra* note 6, at 17, 18.
[26] *See id.* at 23-24.
[27] *See, e.g.*, Peter Wroe, *The King's Peace—A History of Policing in Cheshire*, MUSEUM OF POLICING IN CHESHIRE, http://museumofpolicingincheshire.org.uk/texts/historyches.htm (last visited Mar. 1, 2011).
[28] *Id.*
[29] *Id.*
[30] *See* MICHAEL M. BERLIN, IMPLEMENTING COMMUNITY POLICING: CASE STUDIES OF NEW HAVEN, CONNECTICUT AND RICHMOND, VIRGINIA 126 (2006); *see generally* ARTHUR V. PHILLIPS, HISTORY OF THE DEPARTMENT OF POLICE SERVICES IN NEW HAVEN, CONN. FROM 1638 TO 1906 (1906) (describing the evolution of policing in early New Haven).
[31] *See* A.E. COSTELLO, A HISTORY OF THE POLICE DEPARTMENT OF NEW HAVEN, CONNECTICUT 21-22 (1892). This early history of policing chronicles the watch's original madate "to bring to the court of guarde any person or

presumably strangers, for the most part—were detained, and warning shots were fired in the case of emergencies to rally the community and obtain assistance.[32] The watch took this communal form until 1820, when the watch became a year-round activity. Marshals, constables, tythingmen, and impounders were used to reinforce the nightly patrol.[33] As late as 1852 in New Haven, professional daytime police were labeled a "reckless extravagance" after a brief experiment in hiring a sole professional police officer failed.[34]

A. The Political Policing Era: 1820s-1920s

When policing first became formalized in America and Britain, "police work" covered a much broader and more community-oriented range of activities than traditional policing does today. The early police drew on early European theories of policing, such as the German field of *Polizeiwissenschaft* or Nicolas Delamare's theory of policing captured in *Traité de la Police* ("Treatise on the Police").[35] Historically, *Polizeiwissenschaft* covered a wide range of strategies and ideas; the closest translation of the term might be "governmentality studies."[36] Policing before the advent of police departments—and to some extent also during the early years of professional policing—included not only the backward-looking orientation of criminal law, but also forward-looking preventative measures such as the enforcement of health standards or zoning.[37]

This conception of police authority derived from the earliest practices of policing, which had been carried out largely by families and neighbors. Blackstone, for example, defined

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persons whom they shall find disorderly or in a suspicious manner within doors or without, whether English or Indians, or any other stranger whatsoever, and keep them there safe until morning and then bring them before the magistrates." *Id.*

[32] *Id.* at 28.

[33] *Id.* at 20.

[34] *See* PHILLIPS, *supra* note 30, at 20.

[35] *See* Markus D. Dubber and Mariana Valverde, *Perspectives on the Power and Science of the Polic*e, *in* THE NEW POLICE SCIENCE 1, 2 (Dubber & Valverde, eds.) (2006). The French term for policy is, in fact, *police.*

[36] *Id.*

[37] *Id.* at 4-5.

policing as "regulation and domestic order… whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners."[38] The state, then, was seen as the head of the family, entitled through its position of responsibility to enforce social norms through public sanctions. Blackstone elaborates that the public police ought to ensure that citizens remain "decent, industrious, and inoffensive in their respective stations. This head of offences must therefore be very miscellaneous, as it comprizes all such crimes as especially affect public society."[39] Such a description of police authority would surely be struck down as "void for vagueness" today, but in the early years of policing the authority of the police and the authority of the state were more or less coextensive. Mark Neocleous, a scholar of the police science, has even commented that "[i]n some sense police power was without parameters,"[40] with the administration of poverty "at the heart of the police project."[41] Police were, in effect, both law enforcement officers and social workers, ensuring the social and economic welfare of the polity.

The early New Haven police largely adhered to Colquhoun's conception of police as monitors of both criminal and social issues. When the New Haven Police Department was first established by Act in 1861,[42] the police officers "knew everyone in the community."[43] This, of course, was not unduly difficult, as New Haven was still relatively small and homogenous at the time. The original force consisted of the police chief, one captain, on lieutenant, fourteen

[38] 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 126 (Oxford, Clarendon Press 1769).
[39] *Id.*
[40] *See* Neocleous, *supra* note 6, at 19.
[41] *Id.* at 23.
[42] *See* BERLIN, *supra* note 30, at 127.
[43] William Kaempffer, *Old-Time New Haven Badges To Serve As Reminder of Community Policing of the Past*, NEW HAVEN REGISTER, Jan. 5, 2011, http://www.nhregister.com/articles/2011/01/05/news/new_haven/aa3_nenewoldcops010411.txt?viewmode=2 (quoting Bill MacMullen, a city employee who designed the Wall of Honor in the New Haven Police Department lobby, in remembrance of officers who died in the line of duty).

patrolmen, and fifteen supernumeraries.[44] Policing remained a true community effort. In 1885, the chief wrote that "it is not alone in the power of the Police Department to sustain law and morality in a community as large as ours, without the hearty cooperation of the people."[45]

The early police spent much of their time handling crimes that today would be classified as mere disorder. Drunkenness was by far the most popular cause of arrests. In 1870, for example, 1,030 arrests were executed because the arrestee was publicly drunk.[46] Lascivious carriage and fornication were other social ills of some concern, for which 25 people were arrested that year.[47] Sixty-one prisoners were arrested for vagrancy and ten for night walking.[48] In these numbers and crimes, one can see the potential for the disproportionate targeting of the poor and strangers. The only crime that caused harm to person or property which even came close to commanding as much police attention as general disorder was battery, for which around 455 persons were arrested in 1870.[49]

ARRESTS MADE BY NEW HAVEN POLICE, 1870

Abortion……1	Drunk and fighting…….5	Manslaughter…….……12
Attempted abortion……...1	Drunk and resisting Officers	Neglecting family……..16
Advising abortion……..1	…….…….……8	Night walking…….……10
Arson……..2	Defrauding boarding house	Peddling without license…..1
Assault……..19	…….…….……18	Prostitution…….…….....13
Assault and battery……455	Defrauding Railroad Co…3	Prize fighting…….…..…1
Assault, Intent to kill…….6	Dumping mud in harbor…1	Perjury…….……....4
Aiding a prize fight on Charles	Escaped convict……..…13	Resisting Officers…….25
Island……82	Embezzlement……..…5	Refusing to disperse from
Attempt to commit rape…...2	Fornication…….……17	crowd…….…….…3
Burglary……...…21	Fraud…….……..…6	Rape…….……. …1
Bigamy……1	False pretenses……..…16	Receiving stolen goods…..2
Breaking street lamps…...…3	Forgery…….……..…1	Residing in house of ill-
Breaking windows……..42	Fighting in streets…….25	fame……..……29

[44] *See Report of the Chief of Police* (1861), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 38-39 (1861).
[45] *See Mayor's Address* (1885), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 1-5 (1885).
[46] *See Report of the Chief of Police* (1870), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 52-53 (1870).
[47] *Id.*
[48] *Id.*
[49] *Id.*

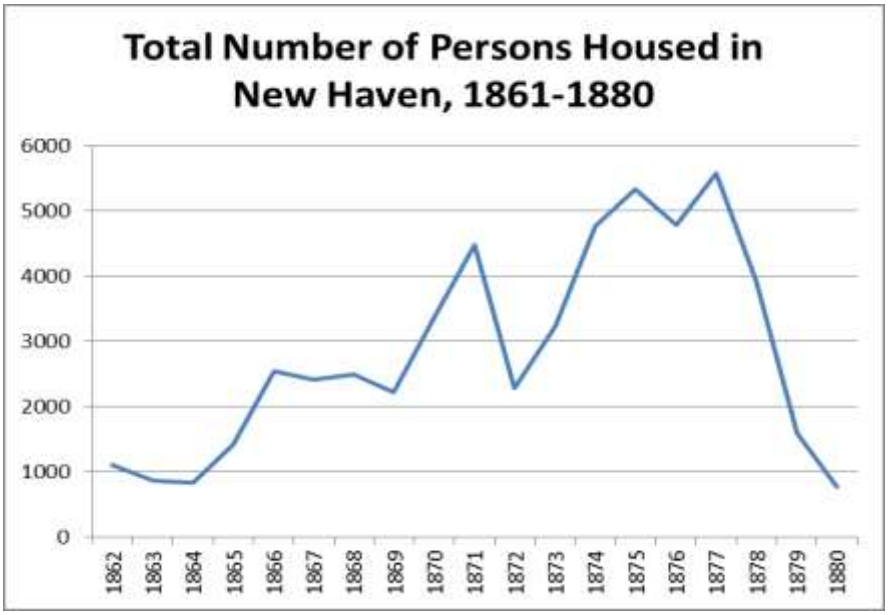
Breach of the peace…….52	Fast driving……..……8	Robbery…….…….5
Bastardy…….……..1	Frequenting house of ill-fame	Sabbath breaking…….…3
Begging…….……3	…….…….……..55	Seduction…….……..7
Capias……6	Gambling…….……12	Stealing from person……6
Carrying concealed	Horse stealing…….……1	Snowballing…….……3
Weapons…….……..1	Indecent exposure…….…..3	Theft…….……..…237
Cruelty to animals…….….3	Insane…….……15	Trespassing…….……3
Common drunkard…….…8	Interfering with Officers…7	Taking horse without
Disorderly conduct…….4	Interfering with Firemen….1	consent…….……..8
Discharging firearms……1	Keeping gambling house…5	Throwing stones…….…4
Disturbing school…….…3	Keeping disorderly house…7	Truancy…….……6
Disturbing religious	Keeping house of ill-fame, 20	Violating city ordinances, 26
Meeting…….……..…1	Lascivious carriage……..8	Violating Sunday liquor law,6
Drunkenness…….……957	Mutiny…….……4	Vagrancy…….……61
Drunk and disorderly……52	Malicious mischief……..9	Writing threatening letters, 2

Source: *Report of the Chief of Police* (1870), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 52-53 (1870).

The early New Haven police also undertook a fair amount of social work. From 1861, when the first force was established, to 1879 when Connecticut's Tramp Act was passed, the New Haven Police Department housed thousands of homeless persons overnight every year, such that the New Haven poor would not have to sleep in the streets or on the Green.[50] The Department was also concerned with untended children and the mentally ill. Early reports from the Chief often lament the sad and unsupervised state of New Haven's youth[51] and the first several decades worth of yearly police reports catalogue both arrests for truancy and lost children returned to their parents.[52] On one occasion, in 1870, the Chief challenged the city to provide better services for the ill than the police force was able to provide.[53] That same year, fifteen adults were arrested and charged with insanity.[54]

[50] *See Reports of the Chief of Police* (1861-80), *in* CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1861-80). Aggregate data catalogued in graph above.
[51] *See Report of the Chief of Police* (1863), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 29 (1863).
[52] *See Reports of the Chief of Police* (1861-80), *in* CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1861-80).
[53] *See Report of the Chief of Police* (1870), *supra* note 46, at 51 ("A very large number of persons are brought to the station who ought to be inmates of the hospital…. Some humane provision should be made for the comfort and care of persons of this character.")
[54] *Id.* at 32.

HOMELESS PERSONS HOUSED OVERNIGHT BY THE NEW HAVEN POLICE, YEARLY



Source: CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1861-80).

This early form of policing was not, of course, without its flaws. Although police may have sponsored some programs to aid the poor, their job was also, to some extent, one of containment. The poor were often the targets of vagrancy laws, which essentially authorized police to harass and arrest beggars, "rogues," and other unemployed persons.[55] The police power was expansive, and expansive power is prone to abuse. Knowing and serving a small community led some early police to be hostile and suspicious toward "outsiders."[56] This also encompassed minorities; the early New Haven police, for example, were disproportionately likely to arrest racial and ethnic minorities—especially the Irish—for crimes like vagrancy or drunkenness.[57] Ethnicity was, evidently, important enough to the early police that they kept track of arrests meticulously based on the prisoner's ethic background. The early police knew their communities well and had a strong service orientation; still, they were also prone to xenophobia and prejudice.

[55] *See* Neocleous, supra note 6, at 16-19.
[56] *See* A.E. COSTELLO, *supra* note 31, at 21-22.
[57] *See Reports of the Chief of Police* (1870-80), *in* CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1870-80).

By 1882, however, the force was becoming more organized and less oriented toward social work. New Haven's population had grown to over 67,000 by that time; the police force increased to ninety personnel and acquired a municipal headquarters and horse-drawn patrol wagons.[58] Most officers still walked their beats, and mounted patrols were introduced only in 1886.[59] There was no formal training for officers, and management was largely decentralized. While call boxes were installed in the 1880s for officers to communicate with precincts, for the most part officers still determined their own daily activities and priorities.[60]

This decentralized and community-centered brand of policing ran into difficulties in the early twentieth century, when rampant corruption and close ties between police and local politicians fomented a crisis in policing.[61] The police were seen as arms of the dysfunctional and illegitimate urban political machine; the Rice administration, for example, had personally hired over half of the officers in the New Haven police force, 106 out of a total of 208.[62] Accordingly, the department's allegiance was highly political. In order to regain legitimacy, the police had to eschew their political roots and establish themselves as independent professional agents deriving their legitimacy from the law—not merely from local community consent.[63]

B. The Reform Era: 1920s-1970s

This revolution in policing ushered in what Kelling and Moore term "the reform era."[64] Starting in the 1920s, the police became highly professionalized. In many cities, they were among the most autonomous agencies in local government. In some cities—for example,

[58] *See Report of the Chief of Police* (1882), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 232 (1882).
[59] *See Report of the Chief of Police* (1887), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 159 (1887).
[60] *See* A.E. COSTELLO, *supra* note 31, at *109, 110.*
[61] The first Police Chief praised the early Department's policitcal independence. *Report of the Chief of Police* (1862), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 42 (1862).When the Board was re-organized to be partisan, the Chief greatly mourned the shift as a falling-off from policing's ideals. *Report of the Chief of Police* (1868), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN (1868).
[62] DOUGLAS W. RAE, CITY: URBANISM AND ITS END 200 (2003).
[63] *See* KELLING & MOORE, *supra* note 22, at 5.
[64] *Id.*

Philadelphia—the desire to create a divide between police and public was so intense that laws were passed to prevent officers from living in the neighborhoods they patrolled.[65] The goals of police organizations narrowed from promoting a "well-ordered civil society" to strict law enforcement and crime prevention.

During this time, the organization of police departments became increasingly para-military—partially as a result of the World Wars. Decision-making power was reallocated primarily to central command. Rather than being assigned to steady beats, officers were often consolidated into specialized departments with routinized duties.[66] In New Haven, technology aided this specialization and centralization. Motorcycle patrols were added in 1913,[67] a traffic division was added in 1924,[68] and radio cars—which enabled dispatch to better control the actions of beat cops—were purchased in 1935.[69] Formal Police Academy training in New Haven began in 1943.[70] Rather than retaining local numbers, most departments—including New Haven's—began to route all requests for service through 911 in the late 1960s and early 1970s.[71] Instead of seeking community approval through the political process, departments began to judge their success via crime rates, arrests, and the promptness of their response to calls for service.

By the 1960s, it became apparent that the pendulum had swung too far; the police were too disconnected from many of the communities they served to retain the patina of legitimacy they derived from the law. Inner-cities were majority-minority by this time due to white flight to

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[65] *Id.*
[66] *Id.* at 6. *See also Reports of the Chief of Police* (1920-30), *in* CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1920-30) (Cataloguing various departments, such as the Traffic Division and the Harbor Patrol Service, being added to the force); NEW HAVEN POLICE DEPARTMENT, SPECIAL PROJECTS COMMITTEE, A BRIEF HISTORY OF LAW ENFORCEMENT IN NEW HAVEN 12 (1988) (noting that "specialization had arrived" in New Haven) [hereinafter HISTORY OF LAW ENFORCEMENT].
[67] *Report of the Chief of Police* (1914), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 125 (1914).
[68] *Report of the Chief of Police* (1925), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 156 (1925).
[69] *Report of the Chief of Police* (1936), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 216 (1936).
[70] HISTORY OF LAW ENFORCEMENT, *supra* note 70, at 16.
[71] *See* KELLING & MOORE, *supra* note 22, at 7; *see also* Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11 ("In the 1970s, everyone was in cars. Service was 911-driven.").

the suburbs.[72] Still, police officers were predominantly white and male.[73] Moreover, under the aegis of "professionalism," white officers were often encouraged to remain distant from the communities they patrolled. This created an explosive dynamic as officers became more and more aggressive in response to crime rates that were rising drastically.[74] Riots exploded in cities like Los Angeles and Detriot over racial tensions between citizens and police.[75] Incidents of police brutality were broadcast widely in the media, further undermining any authority the police might have enjoyed as agents of the law.[76]

Moreover, reform policing techniques—which we now think of as "traditional policing"—did not seem to be effective. Preventative patrols, where police sporadically circle large swaths of neighborhoods in their cars, were not shown to have any measurable impact on crime.[77] "Rapid response" to calls for service was also deemed ineffectual, since most criminals had fled the scene of a crime by the time patrolmen arrived. If witnesses could not already identify a likely perpetrator in advance of police arriving on the scene, the crime was unlikely to

[72] *See* HUBERT WILLIAMS & PATRICK MURPHY, PERSPECTIVES ON POLICING 13: THE EVOLVING STRATEGY OF POLICING -A MINORITY VIEW 11 (1990), *available at* http://www.hks.harvard.edu/criminaljustice/publications/pop13.pdf (observing that majority-minority inner-cities are often difficult to police).

[73] *See id.* at 9 (explaining that African-Americans largely disappeared from the police force after *Plessy*, which adds to the oppressive nature of the law-and-order regime for blacks); NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE, 81 (Wesley Skogan and Kathleen Frydl, eds.) (2004).

[74] *See* WILLIAMS & MURPHY, *supra* note 72, at 2-3 (arguing that minority riots in the 1960s lead to the rise of community-oriented policing); NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 61 (noting the tension caused by the targeting of minorities).

[75] *See id;* Reitman & Landsberg, *supra* note 24.

[76] Reitman & Landsberg, *supra* note 24.

[77] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 101 (claiming that all new techniques have a large "relative advantage," since reform-era techniques were an admitted failure); GEORGE L. KELLING ET AL., THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT1-4 (1974) (arguing that data indicate that preventive control has no effect on crime); David Weisburd & John Eck, *What Can Police Do to Reduce Crime, Disorder, and Fear?*, 593 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 42, 43, 49 (2004) (calling this method " ineffective" and "wasteful").

ever be solved.[78] Under reform policing techniques, crime did pay—only 21% of perpetrators, on average, were ever caught, and only 5% of crimes actually led to jail time.[79]

Given the tensions caused by aggressive and impersonal policing, maintaining ineffective reform-era methodologies hardly seemed worthwhile. Policy makers, social scientists, and police commanders were desperately searching for a new solution. The situation was particularly dire in cities like New Haven, where the cocaine epidemic was raging, engulfing entire housing projects in drug wars and further fueling racial tensions between minority dealers and white police.[80] Desperate to reduce crime, the police lashed out. New Haven residents typically describe this time period with disapproval, recalling the reign of the NHPD's "beat down posse."[81]

"The beat down posse" was the colloquial term used to describe a street unit dedicated to eradicating drug and gang-related crime. In essence, it consisted of a van full of predominantly white police officers that would pull up to corners and unleash its force on young black men "loitering" there.[82] The posse's daily activities involved assaulting the minority teenagers who stood at or near corners—with or without probable cause or warrants.[83] Police also patrolled the streets with "vicious" dogs from their canine unit. One resident recalled being "terrified" during these encounters with police canines.[84] Under this regime, even law-abiding residents "lost faith in the police."[85] The cycle of crime worsened as fewer and fewer citizens were willing to provide the police with the information necessary to solve and prevent crimes, especially gang-related crimes. Stripped of persuasive claims to legal legitimacy through their allegedly racist,

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[78] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 74.
[79] David Bayley & Clifford Shearing, *The Future of Policing*, 30 LAW & SOC'Y REV. 585, 588 (1996).
[80] *See generally* William Finnegan, *Out There*, NEW YORKER, Sept. 10 & 17, 1990 (chronicling the story of a young black cocaine dealer and his family in New Haven in the 1980s and early 1990s).
[81] Martine Powers, *With Aggressive Tactics, Back to 'Beat-Down Posse'?*, YALE DAILY NEWS, Sept. 19, 2008, http://www.yaledailynews.com/news/2008/sep/19/with-aggressive-tactics-back-to-beat-down-posse/.
[82] *See* Blumenthal & Farber, *supra* note 1.
[83] *See id;* Powers, *supra* note 81.
[84] *See* Powers, *supra* note 81.
[85] *Id.*

ineffective, and unconstitutional activities, the New Haven police were at nadir in their historical trajectory. Crime continued to climb, following the national trend, and both citizens and local politicians were desperate for a change. An intervention was needed to rescue policing from this crisis—and that intervention was community policing.

C. The Community Problem-Solving Era: 1980s-Present

Community policing theories rely on two major premises: First, community policing assumes that the police need authorization and cooperation from the communities they serve.[86] Second, community policing relies on the idea that the private social norms propagated within a community are just as important to law enforcement as the deterrent effects of public sanctions—perhaps even more important.[87] This assumption was culled from studies on social norms, a field of scholarship that flourished in the late the twentieth century. Part of the problem with crime post-World War II, according to this theory, was that inner cities were suffering from a breakdown of social organization: the citizens who would protest criminal activity had withdrawn from public view. The population that remained on the streets publicized the notion that crime—particularly gang- and drug-related crime—was a high-status activity, deserving approval and admiration rather than censure and disapproval.[88]

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[86] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 62; *cf.* Tyler & Fagan, *supra* note 17, at 231(claiming that citizens are more likely to cooperate with police when they are seen as procedurally fair and legitimate); Weisburd & Eck, *supra* note 77, at 46 (noting that increased partnerships elevated the legitimacy of officers in the community's eyes).

[87] *See* Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1514-15, 1519 (2002) (arguing that social norms better explain a community's response to crime than the deterrent effect of criminal sanctions).

[88] *See id.* at 1528; *see also* Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 LAW & SOC'Y REV. 805, 813-16 (1998) (observing the feedback loop inherent to rising crime rates and the status-enhancing nature of certain crimes); George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Security*, THE ATLANTIC, March 1982, http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/ (arguing that small disorders can have a large impact on community norms).

Accordingly, departments embracing community policing—New York, New Haven, Houston, and Chicago being prominent examples—undertook two tasks: partnering with communities to "co-produce" justice and adopting non-traditional tactics to intentionally alter community norms. Out of this incredibly broad mandate, multiple overlapping definitions of community policing emerged. While many of the activities and reforms enacted under the aegis of "community policing" do seem to generally hang together, defining community policing is nevertheless a difficult task.[89] For many police departments and even some academics, community policing seems to have become an "I-know-it-when-I-see-it" enterprise.[90] Skogan and Frydyl call community policing a "plastic concept" because of its large, complex, and continuously evolving nature.[91]

Generally speaking, community policing encompasses three different types of reforms: philosophical reforms, tactical reforms, and structural reforms.[92] In terms of its strategic orientation, community policing aims to re-engage the community in a cooperative crime-prevention process.[93] By integrating themselves into the community, police hope to encourage citizens to reclaim public spaces and to serve as witnesses and informants.[94] Tactically, community police use strategies aimed at making themselves accessible and disrupting the routine causes of crime: walking beats, neighborhood watch, storefront offices, advisory committees, community meetings, Police Athletic Leagues, citizen academies, and educational outreach are used—among other techniques.[95] Structurally, community policing involves

[89] *See* Weisburd & Eck, *supra* note 77, at 46.
[90] *Cf.* Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (referring to the definition of obscenity).
[91] NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 85.
[92] *See, e.g.*, *id.* at 94-95 (discussing community policing as a shift in "structure, activities, and goals").
[93] *See* Chappell, *supra* note 8, at 6.
[94] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 86.
[95] *See id.* at 87, 90; Chappell, *supra* note 8, at 7; Bayley & Shearing, *supra* note 79, at 587; Michael F. Masterson, *Speech on Contemporary Components of Community Policing in Boise, Idaho*, 78 FBI LAW ENFORCEMENT BULLETIN J1 (2009).

flattening the police hierarchy and devolving decision-making authority to the officers most engaged with the community, beat cops.[96] Police are assigned smaller neighborhoods to patrol and are considered the experts on crime in their particular geographical area. While all of these elements are typical of community policing, no one aspect—aside from some form of community partnership—has been deemed vital or definitive.

Unfortunately, this broad and inclusive definition of community oriented policing creates two major difficulties. First, calculating the impact of a policing technique is problematic if the technique is not properly defined. Almost every work on modern policing methodology posits that hard data on community policing in general is impossible to gather, since different departments implement community policing in drastically different ways.[97] Rather, data can only be gathered on a particular form of community policing as implemented in a particular city at a particular time. Second, tactics can be brought under the banner of "community policing" that are, in fact, counter-productive in relation to one of community policing's key goals, which is to strengthen ties to communities. For example, several "community policing" efforts—most notably contemporary efforts in New York City—have incorporated zero tolerance policies or "tough policing" tactics into their programs, often under the guise of using a "broken windows" methodology.[98] As Professor Dan Kahan notes, these methods may actually seriously undermine the reciprocal trust upon which community policing must be built.[99] However, since the

[96] *See* Chappell, *supra* note 8, 7; Bayley & Shearing, *supra* note 79, at 591 Stephen D. Mastrofski & James J. Willis, *Police Organization Continuity and Change: Into the Twenty-First Century*, 39 CRIME & JUST. 55, 117-18 (2010).
[97] *See* Chappell, *supra* note 8, 8; Weisburd & Eck, *supra* note 77, at 52.
[98] *See* Jihong Zhao, Nicholas P. Lovrich & Quint Thurman, *The Status of Community Policing in American Cities*, 22 POLICING: AN INT'L J. OF POLICING STRATEGIES AND MANAGEMENT 74, 88 (noting that indeterminacy is a weakness of community policing, since proponents of "tough policing" often co-opt the term); *see also* WILLIAM LYONS, THE POLITICS OF COMMUNITY POLICING 3 (1999) (describing how complaints of police misconduct doubled from 1990 to 1995 when zero tolerance policies were introduced); NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 61 (observing that zero tolerance policies sometimes masquerade as community policing).
[99] *See* Kahan, *supra* note 45, at 1529.

definition of community policing is so mutable, some practitioners would still deem these efforts "community policing"—despite their lack of community support and arguably negative impact on low-income communities.[100]

Regardless of these drawbacks, community policing gained immense popularity in the 1980s and 1990s.[101] Kelling and Wilson first popularized the discussion of community policing—or at least the discussion of two of its key tactics, walking beats and order maintenance—in their 1982 article on "broken windows."[102] Subsequently, study after study lauded the ability of community policing to reduce fear and disorder;[103] despite the independent and localized nature of most police departments, community policing reforms spread quickly throughout the country.[104] The proportion of agencies using community policing methods nearly doubled within two years in the 1990s, rising from 34% in 1997 to 64% by 1999.[105] By 1999, two-thirds of police departments employed full-time community policing officers.[106]

The spread of community policing was aided significantly by the passage of the Violent Crime Control and Law Enforcement Act in 1994, which set up the Office of Community Oriented Policing Services in the Department of Justice. [107] The statute authorized an investment of more than $30 billion dollars over a six-year period, which was used to create a grant program to help local agencies hire additional officers committed to furthering the goals of community

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[100] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 61.
[101] *See* Bayley & Shearing, *supra* note 79, at 587.
[102] Kelling & Wilson, *supra* note 88 (describing the success of disorder policing in altering community norms in Newark).
[103] *See, e.g.*, NATIONAL INSTITUTE OF JUSTICE, POLICING IN ACTION: LESSONS FROM AN OBSERVATIONAL STUDY (1998) , *available at* http://www.ncjrs.gov/pdffiles/fs000199.pdf (documenting a reduction in fear of crime in Indianapolis after community policing was implemented); ANTONY M. PATE ET AL., REDUCING FEAR OF CRIME IN HOUSTON AND NEWARK: A SUMMARY REPORT (1986) (documenting a similar reduction of fear as well as disorder in Houston and Newark); Weisburd & Eck, *supra* note 77 (summarizing several studies linking community policing to fear reduction).
[104] *See* Zhao, Lovrich & Thurman, *supra* note 98, at 75.
[105] JEREMY Q. WILSON, COMMUNITY POLICING IN AMERICA 2 (2006).
[106] NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 104.
[107] Pub. L. No. 103-322, 108 Stat. 1796 (codified at 42 U.S.C. § 13701 (2006)).

policing.[108] By 1999, police departments employed 113,000 community policing officers,[109] and thirty regional community policing institutes had been created.[110] The grant programs were extremely generous, as they paid for 75% of new officers' salaries and benefits.[111] There was a serious incentive, then, for departments to adopt community policing, and most departments did apply for a Department of Justice grant.

However, as might be expected, many police agencies simply used the funds to further traditional policing practices, subsuming them under the label of community policing.[112] A report by the Urban Institute observed, "True community partnerships, involving sharing power and decision-making, are rare at this time, found in only a few of the flagship departments." [113] In name if not in spirit, though, community policing had spread across the United States by the end of the 1990s. New Haven, of course, was ahead of this curve. By 1994, when the Crime Control Act was passed, an extensive community policing campaign had already been implemented.

The spread of community policing was also aided by a tremendous drop in crime coinciding with the expansion of community policing techniques during this same time period.[114] Since crime had been on the rise in the 1960s, 70s, and 80s—despite an influx of new police officers—the abrupt drop seemed nothing short of miraculous.[115] Some criminologists rushed to attribute the change to the increased use of community policing and order-maintenance methodologies.[116] Recent econometric studies, however, have concluded that policing methods had little—if

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[108] *See* Zhao, Lovrich & Thurman, *supra* note 98, at 75 (while the law itself did not specify the number of officers to be hired, policy statements set the goal at hiring around 100,000).
[109] Tracey L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1597 (2002).
[110] *See* Zhao, Lovrich & Thurman, *supra* note 98, at 76.
[111] *See* Susan Brown, *COPS Program Spurs Community Policing Nationwide, According to New Urban Institute Evaluation*, THE URBAN INSTITUTE (SEPTEMBER 6, 2000), http://www.urban.org/url.cfm?ID=900043.
[112] *See* JEFFREY A. ROTH & JOSEPH F. RYAN, NAT'L INST. OF JUSTICE, THE COPS PROGRAM AFTER 4 YEARS-NATIONAL EVALUATION (2000).
[113] Brown, *supra* note 111.
[114] Mastrofski & Willis, *supra* note 96, at 119-20.
[115] *See* Zhao, Lovrich & Thurman, *supra* note 98, at 75.
[116] *See* COMMUNITY POLICING: RHETORIC OR REALITY 72 (Jack R. Greene & Stephen D. Mastrofski eds., 1986); Kahan, *supra* note 45, at 1528.

anything—to do with this immense crime reduction. Instead, on a national scale, the drop can be almost wholly explained by "increases in the number of police, the rising prison population, the waning crack epidemic and the legalization of abortion."[117] Still, until recently, social scientists had no way to discern whether or not community policing was integral to declining crime rates—although they could be sure that it often reduced fear and disorder, which are arguably goods in and of themselves. After a period of crisis, community policing accompanied a transformation in the safety of most American cities. For a long time, police agencies clung to the idea that this new methodology had ushered in a revolution. Only recently—since it has become clear that our cities are no longer gripped by crippling crime—have police departments begun to seriously reevaluate the adoption of community policing.[118]

II. Community Policing as a Return to Policing's Past

A. The Crisis that Created Policing

Scholars have deemed community policing "the most important development in policing in the last quarter century"[119] and a serious "expansion of the police mandate."[120] While that may be true in comparison to reform-era policing, much of community policing represents a return to the beliefs and actions undergirding original police practices. In this respect, community policing can be imagined as a dismantling of many of the barriers that had been erected between officers and communities during the twentieth century; while this is certainly an expansion of the police mandate, the scope of community policing activity is not without precedent.

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[117] Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not*, 18 J. ECON. PERSPS. 163, 164 (2004).
[118] *See* Mastrofski & Willis, *supra* note 96, at 118-20 (describing the crisis that inspired community policing and the subsequent cessation in enthusiasm for the community-oriented philosophy).
[119] NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, 85.
[120] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73.

In essence, the advent of community policing stemmed from re-engagement with the question of what role police ought to play in a democratic society.[121] While city government had assumed for the majority of the twentieth century that the police's authority ought to stem from sources more stable and less prone to prejudice than the unmediated will of the people, suddenly the law seemed hopelessly unresponsive to the very real needs of specific neighborhoods. Departments, then, returned to the original premise of policing: that police were on-the-ground representatives of democratic government, who should be as responsive as elected officials to the will of the people—within the bounds of the law. The original mandate of the first Metropolitan Police in 1829, after all, claimed that force would be "in tune with the people, understanding the people, belonging to the people, and drawing its strength from the people."[122] The community policing ideal is not so different from this.

In a sense, the "invention" of community policing and the advent of the organized police stemmed from similar historical problems. In the early nineteenth century, cities were dealing with an influx of migrants from outside communities.[123] The composition of neighborhoods was rapidly changing, and previous social structures were uprooted and destroyed. Cities, for the most part, were now full of strangers. No one understood what the norms of these newly-constituted developments would be; there were not even clear social structures or "norm highways" along which community values could be transmitted.[124]

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[121] *See* Zhao, Lovrich & Thurman, *supra* note 98, at 74.
[122] *See* PATE, *supra* note 103, at 12.
[123] The population of New Haven, for example, nearly doubled from 1850 to 1860, as workers migrated to take part in New Haven's booming manufacturing industry. At the time, New Haven was "home to large-scale producers of rubber goods, clocks, pianos, beer, guns and military equipment, and a wide range of other products." These industries drew both skilled and unskilled workers from the outside world to New Haven. See CITY OF NEW HAVEN, CITY PLAN DEP'T, NEW HAVEN DATA BOOK 16 (2002), *available at* http://www.cityofnewhaven.com/cityplan/pdfs/PlanningPrograms/ComprehensivePlan/Data_Book.htm.
[124] "Norm highways" are the social infrastructure along which values and ideas are transmitted. For a discussion of norm highways, see Meares, *supra* note 109, at 1604.

By reducing chaos during this time of massive immigration and industrialization, [125] the first police departments to some extent allowed social structures and norm highways to be built. In New Haven, the process was not dissimilar from what happened in London and New York. A small city, which had originally been a sleepy colony, suddenly found itself an industrial center. Although New Haven had always been a town with ambitions, no city could have been wholly prepared for the uncertainty and influx of people caused by the nineteenth century manufacturing boom. [126] Previously, New Haven had been a moderately-sized city of neighborly norms and limited regulation. The city's tone was largely set by highly-visible local political giants.[127]

However, as industry converged upon New Haven, the population ballooned. New Haven had already grown from 4,487 in 1790, shortly after New Haven was incorporated as a city, to 7,147 in 1820 when the first permanent night watch was established.[128] A city of four-thousand could be overseen on a voluntary basis; a city of seven thousand required more diligence to keep the peace at night. Still more impressive was the explosive population growth that took place between the year the first daytime policeman was hired (and subsequently fired) in 1852 and the year the New Haven Police department was established, in 1861. From 1850 to 1860, the population grew from 20,345 souls to 40,000 residents, evincing the full power of the industrial boom. That is to say, within a decade, thousands upon thousands of workers flocked to New Haven, nearly doubling the population. One can only imagine the havoc wreaked upon New

[125] By 1860, New Haven could boast of 232 factories, 507 stores, 14 banks, and 5 insurance companies. ROLLIN G. OSTERWEIS, THREE CENTURIES OF NEW HAVEN, 1638-1938, at 95 (1953).
[126] *See* Elizabeth Mills Brown, *John Brockett of New Haven: The Man and the Myth*, 27 J. NEW HAVEN COL. HIST. SOC'Y 1, 3-4 (1980).
[127] In the early nineteenth century, for example, James Hillhouse, the consummate political actor, would have been a household name in New Haven. Other well-to-do and politically engaged families, such as the Trowbridges, , Hotchkisses, Hemingways, Englishes, and Brewsters, were also known widely and to some extent set an example for the city. *Cf.* OSTERWEIS, *supra* note 125, at 94-95 (describing the wealthy families and major figures in New Haven at the time). This class was sometimes known as "The Quality." *See* Floyd M. Shumway & Richard Hegel, *New Haven in 1884*, 30 J. NEW HAVEN COL. HIST. SOC'Y 1, 32-49 (1884).
[128] CITY OF NEW HAVEN, CITY PLAN DEP'T, NEW HAVEN DATA BOOK 16 (2002), *available at* http://www.cityofnewhaven.com/cityplan/pdfs/PlanningPrograms/ComprehensivePlan/Data_Book.htm.

Haven's social organization during this time. While professional police seemed optional in a city of 20,000—where most residents had been in New Haven for decades—in a city of 40,000, where nearly half of the residents were new to the city, police became a necessity—especially in the midst of a chaotic Civil War.

During the political policing era, police acted to stabilize the city, taking special care with the "lower classes" to keep the culture of the city in good order.[129] Most immigrants eventually settled down in neighborhoods of a similar social class with neighbors of shared ethnic backgrounds.[130] The population stabilized, and so too did the social organization of individual areas. For example, the Wooster Square area developed a reputation as an Italian-immigrant neighborhood; many of its inhabitants worked in the nearby factories or ran small stores out of their homes.[131] Concentrating so many newcomers with similar ethnic backgrounds in one place facilitated bonding and likely also aided the construction of social networks.[132] Police may not have facilitated integration, but they certainly maintained stability as populations of immigrants settled into their own neighborhoods and formed their own norms.[133] By the time de-personalized reform policing emerged in the 1920s, the neighbors of New Haven could more-or-less police themselves—or at least maintain stability—via informal social norms and sanctions.

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[129] *See* JON C. TEAFORD, THE UNHERALDED TRIUMPH: CITY GOVERNMENT IN AMERICA, 1870-1900, 268-75 (1984) ("Hundreds of thousands of paupers and indigents inhabited the cities of late nineteenth-century America….").
[130] On the pattern of residential and ethnic homogeneity in cities and suburbs, see SAM BASS WARNER, JR., STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900, at 67-116 (2d ed. 1978).
[131] *See Wooster Square Historic District*, THE NEW HAVEN PRESERVATION TRUST, http://nhpt.org/index.php/site/district/wooster_square_historic_district/ (last visited Feb. 26, 2011).
[132] For an overview of the importance of bonding to social capital (that is, to the formation of relationships that facilitate one's ability to "get things done), see Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 65 (1995).
[133] *See* MONKONNEN, *supra* note 19, at 101.

B. A Comparable Breakdown of Norms: The Industrial Revolution and Urban Renewal

In the middle of the twentieth century, however, sudden population flight from central cities proved just as catastrophic to social order as sudden growth had a century before.[134] Most of New Haven's out-migration began in the 1940s and continued into the 1970s and 1980s.[135] During this time, the population declined from a high of 164,443 in 1950 to 126,021 in 1980; that is, the population of New Haven was reduced by almost a quarter during this time.[136] Given the influx of African-Americans from the South during this same era, it is likely that over one in four residents left New Haven in the mid-to-late twentieth century. Many were likely replaced by blacks from the South seeking expanded economic opportunities and relief from Jim Crow regimes;[137] Douglas Rae estimates that for every three white families that left New Haven, two black families moved in. [138] This hypothesis is supported by the shifting ethnic composition of New Haven, which became a majority-minority city in 1990, having been nearly 70% white as recently as 1970.[139]

This flight was motivated largely by two factors: the rise of the automobile and the decline of manufacturing in New Haven. As cars became relatively inexpensive with the advent of the Ford assembly line, most middle-class families were able to afford at least one if not two cars.[140] Preferring open space to the relative congestion of the city, many middle-class families chose to move from central New Haven to the suburbs in Orange or Hamden, taking their social

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[134] *See id.* at 76 ("Mobility, like the frequent repotting of plants, tends to disrupt root systems, and it takes time for an uprooted individual to put down new roots.").
[135] CITY OF NEW HAVEN, *supra* note 128, at 16.
[136] *Id.*
[137] *Cf. id.* at 16, 22 (describing the migration of African-Americans from the South to New Haven in the twentieth century).
[138] RAE, *supra* note 62, at 343.
[139] *Id.* at 22.
[140] *See* RAE, *supra* note 62, at 25-27.

networks and social capital with them.[141] At the same time, cheap land, expanded A/C grids, and a mobile population of workers enabled manufacturing to cede from cities as well. In 1954, 33% of the population in New Haven was employed in manufacturing; by 1977, only 14% of the population was employed by local plants, representing a 58% decline in manufacturing work.[142] In 1947, there were 444 factories in New Haven, employing 27,742 workers. By 1987, 186 factories employed only 5,700 workers.[143] Workers often followed the jobs to the suburbs or smaller cities.

At the same time as New Haven experienced a population shift, then, it also became a much poorer city. The commercial tax base had contracted and fewer unionized jobs were available to the local residents.[144] As New Haven residents became poorer, they also on average began to live in lower-income, higher-density neighborhoods. Some of the lowest-income neighborhoods—neighborhoods that were also often segregated by race—achieved population densities which topped ten- and even twenty-thousand residents per square mile.[145] With the loss of jobs and increased density came all the symptoms of concentrated poverty—a sharp uptick in violence, a surge in gang activity, a prosperous drug market, and general disorder.[146]

To counter disorder and decay in some of the lowest-income neighborhoods, New Haven chose to simply tear them down. The idea, of course, was to foster urban renewal by getting rid

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[141] *Cf.* TEAFORD, *supra* note 129, at 110 (noting that by the 1950s many families lived in the suburbs and owned two cars).
[142] Norman A. Fainstein & Susan S. Fainstein, *New Haven: The Limits of the Local State*, *in* RESTRUCTURING THE CITY: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT 61-63 (Susan S. Fainstein et al. eds. rev. ed. 1968).
[143] RAE, *supra* note 62, at 362.
[144] *Cf.* John Dobrow, *A Farewell to Arms: Winchester Repeating Arms Company and New Haven, Connecticut*, 39 NEW HAVEN COL. HIST. SOC'Y J. 21 (chronicling the decline of unionized manufacturing jobs in late twentieth-century New Haven while focusing specifically on the Winchester company).
[145] By the end of the twentieth century, the Dwight neighborhood had a density of over 21,000 people per square mile. Dixwell, Newhallville, and the Hill all achieved densities of over 10,000 residents per square mile. CITY OF NEW HAVEN, *supra* note 128, at 19.
[146] *See* RAE, *supra* note 62, at 387 (showing an uptick in violent crime from 45.6 violent crimes per 100,000 persons in 1950 to 3,058.8 crimes per 100,000 persons in 1990). *See generally* Finnegan, *supra* note 80 (portraying the effect drugs and gangs had on one New Haven family in the 1980s and 1990s).

of the worst housing stock and reclaiming the space for more purposeful city planning. During the reign of Mayor Richard Lee and planner Edward Logue—the men who made New Haven's urban renewal project nationally-renowned—both the Oak Street and Church Street neighborhoods were bulldozed in the late 1950s.[147] James Baldwin famously referred to urban renewal as "negro removal" due to its targeting of poor African-American neighborhoods for demolition;[148] this term has been applied to the New Haven program, which disproportionately impacted African-American neighborhoods.[149]

Part of the objective seemed to be to break up neighborhoods that posed safety hazards, where positive social norms were presumed to have already broken down. One scholar estimates that as much as one-fifth of New Haven's population was uprooted between 1956 and 1974.[150] Rae estimates the number of persons displaced to be between 20,000 and 30,000; these numbers "suggest a monumental impact on the civic life of any municipality" that "almost certainly would rank among the most severe impacts anywhere in the country."[151]

Ironically, many scholars claim the urban renewal had the opposite of the intended effect. By bulldozing neighborhoods, city government essentially took a wrecking ball to the social organizations and structures that had been built within those shared spaces.[152] Far from minimizing crime, this displacement arguably added to the chaos and disorder. The small amount of social capital that remained in New Haven's poorest neighborhoods was obliterated, and gangs were subsequently free to assert their norms within the walls of newly-constructed housing

[147] Fainstein & Fainstein, *supra* note 142, at 61-63.
[148] *See* 12 THOMPSON ON REAL PROPERTY 194, 98.02(e) (David A. Thomas ed., 1994) (quoting James Baldwin); *see also* Herbert J. Gans, *The Failure of Urban Renewal,* COMMENTARY, Apr. 1965, at 29 (characterizing urban renewal as "Negro clearance").
[149] *See* RAE, *supra* note 62, at 340.
[150] Fainstein & Fainstein, *supra* note 142, at 61-63 ("Community social networks were in part destroyed by the very officials who sought to stop physical decay and make New Haven slumless.")
[151] RAE, *supra* note 62, at 338-39.
[152] *See id.*

projects and on the corners of the affected neighborhoods.[153] No one could successfully organize or object; the displaced neighbors were now among strangers, and community organizing in many areas seemed futile.[154]

In the context of all this poverty and turmoil—reminiscent of the disruption industrialization caused in the nineteenth century—the reversion to a more community-oriented policing makes sense. At a certain point, with respect to criminality, a neighborhood reaches a tipping point. While it is debatable what effect harsh sentences have on deterring crime in general, criminal sanctions will certainly have little impact on a neighborhood where crime has become the norm and where law-abiding citizens cannot organize to challenge these norms.[155] Informal signals are generally thought to have a greater impact on individual choices than the laws themselves, and the signal being sent in New Haven neighborhoods like the Hill and Dixwell in the 1960s, 1970s, and 1980s was clear: crime was not only acceptable, but encouraged. There was little hope, then, of turning these communities around without reshaping the norms; and there was little hope of reshaping norms without fostering community engagement. The use of blunt authoritative force cannot hope to rebuild private social organization—especially not in New Haven, where the government had so recently spearheaded the destruction of much social capital in low-income areas. Legitimacy matters in policing, and the New Haven police and policymakers lacked legitimacy and respect in the 1980s, according to local reports and interviews with officers.[156]

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[153] *Wave of Violence Grips New Haven*, DUBUQUE TELEGRPH-HERALD, June 27, 1992, at 4B (calling New Haven, Connecticut a "city under siege").
[154] *See* Gans, *supra* note 148, at 29 (describing the grief, depression, and hopelessnes many residents felt after being relocated among strangers).
[155] This is not to say that *imprisonment* has no effect on crime—it merely has little deterrent effect. Stephen Levitt argues powerfully that placing more people in jail did in fact impact crime in the 1990s by incapacitating would-be criminals. Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six That Do Not*, 18 J. ECON. PERSPS. 163, 164 (2004).
[156] RAE, *supra* note 62, at 387.

For a time, of course, the police did attempt to use blunt force to eradicate crime in New Haven. These attempts were manifestly unsuccessful. From 1950 to 1990, the crime rate climbed, jumping from roughly 45 violent crimes per hundred-thousand citizens in 1950 to 64.5 crimes per hundred-thousand in 1960, and skyrocketing to a rate of over 400 in 1970 and over 1,500 in 1980.[157] Violent crime reached its peak around 1990, when the rate was over 3,000 crimes for every hundred-thousand people.[158] Rates in new Haven were on par with those of other mid-sized cities until the 1980s; in fact, until that time, New Haven had been a safer-than-average town. By 1990, however, New Haven's crime rate was triple that of the average mid-sized city.[159] Newspaper articles referred to the town as "under siege,"[160] with "[p]atrol cars rac[ing] from one emergency to another as officers fought a battle of containment against rampant drug-fueled violence."[161] It is difficult to say what happened in New Haven in the 1980s to make it an abnormally dangerous town. The war on drugs certainly added to the violence, but many other cities also struggled with the drug trade during this decade—and New Haven never experienced a crack epidemic. It is possible that the gang culture in New Haven, combined with the inefficacy of the police and the severe displacement of the poor that occurred in the 1960s and 1970s, created unique preconditions for the explosion of crime New Haven saw from 1980 to 1990. With so many soft variables at play, it is impossible to know what made New Haven particularly prone to violent crime.

Throughout the 1960s, 70s, and 80s, the police continued to use highly reactive, reform-era techniques. Most policing was based on the "Three Rs": rapid response, random patrols, and

[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Wave of Violence Grips New Haven*, *supra* note 153.
[161] Blumenthal & Farber, *supra* note 1.

reactive investigation.[162] Police did not generally focus on preventing crime; they had their hands full handling investigations and emergency calls. Organization and operations were highly para-military. In fact, New Haven's last reform-era police chief, William F. Farrell, had been a former Marine Corps officer.[163] Under Farrell, the "department epitomized the reactive style of American policing."[164] On Farrell's watch, murders slowly climbed from 23 to 34 annually; reports of robbery and assault rose by more than fifty percent.[165]

Brutality among police appeared to be both tolerated and encouraged. Not only did Farrell's force pioneer the use of the beat-down posse, but on his watch an officer who was observed by a jail clerk shoving a young, handcuffed prisoner down and punching him twice in the kidney—allegedly with brass knuckles—was allowed to remain on the force with little more than a slap on the wrist.[166] Although cocaine was being sold openly on the streets, Farrell denied that New Haven had a drug problem—despite gang-related cross-fire on the New Haven Green.[167] Farrell did not run any significant undercover operations and seemed indifferent to the idea of gathering intelligence.[168] New Haven was at war; there was little to be gained by fraternizing with the enemy. Farrell seemed to assume that social organization and social norms were the community's problem.

C. Seeking Similar Solutions to Crime: Early Policing and Community-Oriented Services

By the 1990s, when Farrell's tenure ended, several scholars and theorists had begun to insist that social organization and social norms were not simply the community's problem. Since

[162] *See* Meares, *supra* note 109, at 1599.
[163] Blumenthal & Farber, *supra* note 1.
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*

cities had been radically reconstituted—in part due to market-motivated suburban migration, in part due to government-run urban renewal—norms, too, would need to be reconstituted. If norm formation had been stymied or warped by the chaotic reality of city life, perhaps the city government could intervene to remedy the situation.

The theories that *Polizeiwissenschaft* and Sir Robet Peel's police relied on implicitly, community policing drew upon explicitly. These norms-based theories were first expounded popularly and pragmatically by Kelling and Wilson.[169] Although their seminal article centers on the broken windows theory of disorder, it also articulates a rudimentary picture of community-oriented policing. The article chronicles the progress of the "Safe and Clean Neighborhoods Program," a program run experimentally in 28 cities in New Jersey, including Newark. The program gave cities grants to help take police out of their patrol cars and reassign them to walking beats. While no one expected the walking beats to drastically reduce crime, citizens reported feeling safer, appreciation for the police increased, and officer morale rose.[170] Kelling and Wilson note that people fear not only crime, but also disorder: being harassed by panhandlers, drunks teenagers, or addicts, for example. Police walking their beat were able to combat disorder by "enforcing informal but widely understood rules."[171] The officers addressed problems with drinking, noise, and vagrancy; they moderated disputes between customers and merchants. Much of the behavior they policed was not illegal, strictly speaking. Kelling and Wilson note that some of the actions the officers took to address disorder "probably would not withstand a legal challenge."[172]

[169] Kelling & Wilson, *supra* note 88.
[170] *Id.*
[171] *Id.*
[172] *Id.*

The title of the piece, "Broken Windows," stems from a rudimentary assumption in the field of social norms. Conventional wisdom assumes that "if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken" because "one unrepaired broken window is a signal that no one cares."[173] These small signals can actually be quite powerful. Kelling and Wilson cite one study in which a car with no license plate and its hood up was purposefully abandoned in a busy city. Before long, the car was savaged—largely by clean-cut, average-looking people.[174] The authors assert that this sort of "untended" behavior leads to a breakdown of community controls. Even citizens who are generally law-abiding will engage in criminal acts in an environment that seems untended.

These signals—"broken windows," if you will—can create a cycle of fear and withdrawal. Being in an untended environment creates fear; fear causes people to avoid one another, further weakening social controls; and so disorder worsens and even more citizens withdraw from community life.[175] While communities in the past had ordinarily re-asserted themselves, due to increasing mobility, law-abiding citizens were now simply abandoning neighborhoods caught in a broken-windows cycle. Kelling and Wilson argued, accordingly, that police needed to intervene in "untended" communities to keep order and to re-establish community norms—rather than simply waiting for crime to happen and "enforcing" the law.[176] They hypothesized that this would not require many additional officers—simply enough to strengthen a community's informal social controls until stability is regained. In the early 1980s, as crime rates in most cities were beginning to peak, the article quickly became a phenomenon,

[173] *Id.*
[174] *Id.*
[175] *Id; see also,* PATE, *supra* note 103, at 11.
[176] Kelling & Wilson, *supra* note 88.

spurring similar experimental order-maintenance programs in cities across the country, many of which accompanied broader community-policing efforts.[177]

The community policing movement expanded on this approach, not only addressing norms through order-maintenance, but also working with community groups to more directly influence social values and social organization. This more comprehensive approach relied on three broad concepts from norms theory: reciprocity, social organization, and social efficacy. Whereas reform-era policing rested on the fiction that individuals generally behave as detached, antisocial wealth-maximizers, community policing emphasized social reciprocity. Reform-era policing assumed that men would commit crimes when the amount they stood to gain exceeded the pain of punishment multiplied by the likelihood of apprehension; therefore, if the pain of punishment and certainty of punishment were large, it would become extremely unlikely that men would commit crimes.[178] This calculus appears to be both faulty and impracticable. Increasingly severe sentences have been shown to have little, if any, deterrent effect on crime.[179] Moreover, police have simply never become effective at apprehending and convicting criminals. Only one in twenty crimes leads to a sentence involving jail time.[180] Reliance on the rational-actor model to police crime, then, seemed futile if not outright incorrect.

Community policing relied instead on the premise that many citizens are willing to engage in reciprocity, even if doing so is not guaranteed to immediately maximize wealth or utility. This inclination toward reciprocity can be explained either from a game-theoretical perspective—one gains the most in the long run by meeting generosity with generosity and bad

[177] *See, e.g.*, PATE, *supra* note 103 (analyzing a similar experiment in Houston as well as Newark).
[178] *See* Kahan, *supra* note 45, at 1521-22.
[179] *Id.*at 1522.
[180] Bayley & Shearing, *supra* note 79, at 588.

behavior with punishment, tit-for-tat[181]—or under the assumption that there are at least some "Moms" in every community, inspired to sacrifice for the greater good as long as that sacrifice is not certain to be in vain.[182] Indeed, many studies have shown people frequently to be altruistic, trusting, reciprocal actors.[183] Either way, reciprocity posits that if community members can be persuaded that their fellow denizens are likely to contribute to public goods, then they may be willing to contribute as well.[184] If other community members—and police—reciprocate this contribution, then trust will grow. When reciprocity is withheld or one party acts opportunistically, though, trust and hence inclination toward reciprocity can decline rapidly.[185] This may explain the extreme lack of trust and collaboration between the abusive New Haven police under Farrell's regime and New Haven's most shell-shocked urban communities.

The use of external incentives or sanctions can undermine natural reciprocity both by insinuating that community members are not inclined to contribute willingly to pubic goods and by supplanting self-policing with formalized law enforcement.[186] Reform-era policing is not only at odds with reciprocity—it may actually undermine the work that communities undertake on their own to combat crime by ignoring or overriding the contributions citizens themselves are willing to make.

Community policing also differs from reform-era policing in its reliance on social organization theory. Reform-era policing assumed that criminals were, for the purposes of deterrence, isolated individuals acting independently of the law-abiding community. Community policing, on the other hand, assumes that community structures matter and that the infrastructure

[181] *See* Robert Alexrod, *The Evolution of Cooperation*, *in* PERSPECTIVES ON PROPERTY 261-72 (Robert C. Ellickson, Carol M. Rose & Bruce A. Ackerman eds., 3d ed. 2002).
[182] *See* Carol M. Rose, *Property as Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory*, *in* PERSPECTIVES ON PROPERTY, *supra* note 181, at 28-44.
[183] *See* George W. Dent, Jr., *Race, Trust, Altruism, and Reciprocity*, 39 U. RICH. L. REV. 1001, 1001 (2005).
[184] *See* Kahan, *supra* note 45, at 1519.
[185] *See* Dent, *supra* note 183, at 1015.
[186] *See* Kahan, *supra* note 45, at 1515.

of a community can be reinforced or weakened by the police. Social organization can be thought of as an amalgamation of the processes and relationships through which a community acts. It includes "networks of people, the exchanges and reciprocity that transpire in relationships, accepted standards and norms of social support, and social controls that regulate behavior and interaction."[187] This is the structure along which messages spread throughout a community; it is the highway along which norms and expectations are transmitted. Strong social networks, the assumption of collective responsibility for community outcomes, and participation in voluntary or formal organizations all help to reinforce these structures by increasing ties between community members.[188]

As Meares notes, social organization operates independently of factors like poverty and demography. Poor communities will not invariably have weak social organization, although factors like poverty, mobility, and heterogeneity can undermine communal ties.[189] Studies have shown, for example, that communities which collectively supervise teenagers tend to have stronger social organization and consequently often experience less crime—regardless of the community's socio-economic status.[190] Strong social organization, however, does not *necessarily* lead to crime reduction. Indeed, dense networks of social ties can actually facilitate criminal processes.[191] Social organization, then, represents a neutral structure that can be co-opted as a powerful crime deterrent or a route along which criminal operations may travel.

Reform-era policing often interrupted social organization in low-income communities—for example, by running frequent raids that could lead to lengthy, mandatory sentences for

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[187] *See* Jay A. Mancini, Gary L. Bowen & James A. Marti, *Community Social Organization: A Conceptual Linchpin in Examining Families in the Context of Communities*, 54 FAMILY RELATIONS 570, 572 (2005).
[188] *See* Tracey L. Meares, *When Two or Three Come Together*, 48 WM. & MARY L. REV. 1315, 1322 (2007).
[189] *See* Meares, *supra* note 109, at 1602.
[190] *See* Meares, *supra* note 189, at 1323.
[191] Robert J. Sampson, *Transcending Tradition: New Directions in Community Research, Chicago Style*, 40 CRIMINOLOGY 213, 220 (2002).

community members involved in the drug trade. For communities enmeshed in drug trafficking, drug raids and the resulting mass incarceration could be devastating to social structures.[192] In many poor communities, young black males all but disappeared from community life.[193] Reform-era policing also advocated steering clear of organizations like churches and community groups; involvement with these groups might be too overtly political or simply seem too akin to social work. Many iterations of community policing, by contrast, advocate for the use of rehabilitation and treatment programs over prosecution and imprisonment.[194] In addition, community policing relies on partnerships with community groups and churches.[195] By supporting and utilizing these structures, police have a better chance at positively impacting community norms.

Community policing also relies on the paradigm of collective efficacy. Collective efficacy and social organization are, of course, interrelated. Collective efficacy can be defined as "neighbors' conjoint capability for action to achieve an intended effect."[196] Social organization is a necessary but not sufficient precondition for collective efficacy;[197] a shared expectation of collective action must be added to the mix. As Robert Sampson notes, community efficacy is used "for the realization of [primarily] public or social goods, such as public safety, clean environments, and education for children."[198] Accordingly, police and government can be part and parcel of building and exercising collective efficacy. Since measures of collective efficacy are strong predictors of crime, contributing to this efficacy presents a promising opportunity for

[192] *See* Meares & Kahan, *supra* note 88, at 812-13.
[193] *See, e.g.*, RAE, *supra* note 62, at 390 (mourning the empty beds of young black males in New Haven, who were now sleeping in the penitentiary at nearby Somers).
[194] Nicholas Pastore, New Haven's chief of police during the community-policing era, allegedly asked his officers "to approach drug dealers to seek a better life" rather than arresting them. Blumenthal & Farber, *supra* note 1.
[195] *See, e.g.*, Meares, *supra* note 189 (describing the coordination of prayer vigils by Chicago police).
[196] *See* Meares & Kahan, *supra* note 88, at 812-13.
[197] *Id.*
[198] *Id.* at 821.

police to impact crime.[199] Whereas reform-era policing largely ignored the opportunity to contribute to informal acts of social control, community policing capitalizes on these opportunities.

Although this terminology did not exist as Robert Peel engineered London's first police force or as Colquhoun wrote his treatise on municipal policing, they nevertheless relied on the same social intuitions to solve a similar crisis involving a breakdown of community norms and the subsequent explosion of crime. Peel wrote, presciently, "The police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."[200] The spirit of the early police, then, was to depend on communal reciprocity to facilitate social organization—of which police, as fellow citizens, were already a part—and to marshal the collective efficacy of communities to quell disorder and crime. The mission of the first Peelers later became the mission of community policing: to not only be exemplary citizens, but to encourage law-abiding community residents to take their role as neighbors equally seriously. While community residents may not be professional law-enforcers, community policing presumes that they are no less capable of or essential to promoting the welfare of the neighborhood.

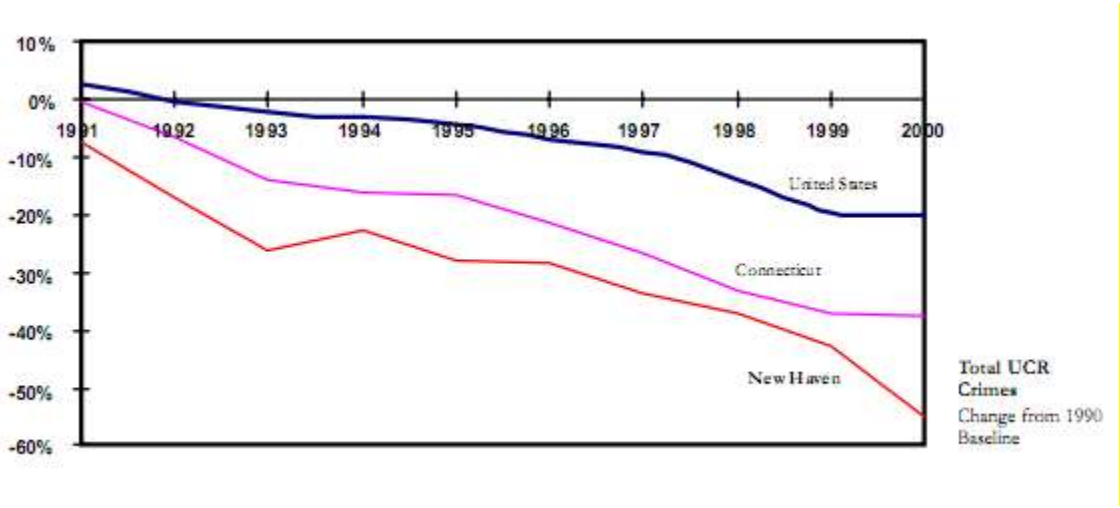
D. Recreating the Past in New Haven

It was with this spirit—drawn, perhaps unconsciously, from policing's past—that Nicholas Pastore approached institutional reform in New Haven. Pastore looms large in the history of policing in New Haven; serving as chief of police from 1990 to 1997, he was one of

[199] *See* Meares, *supra* note 109, at 1605.
[200] *Sir Robert Peel's Nine Principles*, *supra* note 4.

the nation's foremost advocates of community policing in the late twentieth century.[201] Few chiefs can be said to have pursued community policing with greater passion or ideological purity. For this reason, Pastore was a polarizing figure during his time at the head of the force.[202] However, crime dropped steadily during his tenure, outpacing the decline in crime that swept the nation during the 1990s.[203] According to New Haven's Databook, "total UCR crime, which includes the seven 'Part I' crimes of murder, rape, robbery, aggravated assault, larceny and auto theft, was down 19.8% for the nation, 37.2% for the state and 55% for the city" of New Haven in 2000 as compared to 1991.[204] As a result, many residents remember the advent of community policing with pride and satisfaction[205]—even if many members of the New Haven police themselves remain skeptical.

CRIME DROP IN NEW HAVEN, 1991-2000



Source: CITY OF NEW HAVEN, COMPREHENSIVE PLAN OF DEVELOPMENT, NEW HAVEN, CT: DATABOOK 97 (2002).

[201] *See* BERLIN, *supra* note 30, at 165; Powers, *supra* note 81.
[202] *See, e.g.*, Blumenthal & Farber, *supra* note 1 (According to Pastore's Assistant Chief of Police, "The cops clearly hate the Chief and they say it.").
[203] CITY OF NEW HAVEN, *supra* note 128, at 97.
[204] CITY OF NEW HAVEN, COMPREHENSIVE PLAN OF DEVELOPMENT, NEW HAVEN, CT: DATABOOK 97 (2002), *available at* http://www.cityofnewhaven.com/cityplan/pdfs/PlanningPrograms/ComprehensivePlan/Data_Book.htm.
[205] *See* Blumenthal & Farber, *supra* note 1 (quoting one citizen who complimented Pastore's promotion of "a unity with the community.").

Pastore described inheriting "a city out of control" when he assumed leadership of the police department in 1990.[206] He remembered, "SWAT… going out several times a week. We were in full military mode—worst type of policing in the world.... The whole city was suffering trauma. We had politicians saying, 'the streets are a war zone, the police have taken over.'"[207] In 1990, New Haven achieved an all-time high of 18,805 property crimes and 2,207 violent crimes against persons.[208] The city had been overcome by successive waves of violence, averaging six reported incidents of gunfire per day.[209] In the process of dealing with that violence, the police had alienated the community through their use of the beat-down posse and other aggressive displays of force. Due to this bad blood, citizens refused to serve as informants, and police had extremely limited on-the-ground intelligence. [210] Paul Bass, a reporter for the New Haven Independent, recalled even "[p]eople who were law abiding lost faith in the police."[211]

Pastore, who had been appointed Chief of Police by New Haven's first black mayor, John C. Daniels, began a program to rebuild community relationships immediately and aggressively.[212] During his first months in office, Pastore reassigned one hundred officers who had formerly been working desk jobs to street beats. Disgruntled by these changes, 74 out of the department's 418 officers left the force, including many lieutenants and commanders.[213] This was part of Pastore's process of "ventilation," whereby he hoped to drive away personnel who were resistant to community policing and to promote officers whose ideology mirrored his

[206] *Id*.
[207] *Paramilitary Policing*, NEW COP ON THE BEAT, http://archive.itvs.org/newcoponthebeat/paramilitary.html (last visited Mar. 1, 2011).
[208] CITY OF NEW HAVEN, *supra* note 128, at 96.
[209] *See* Blumenthal & Farber, *supra* note 1.
[210] *See* Powers, *supra* note 81.
[211] *Id*.
[212] *See* Blumenthal & Farber, *supra* note 1.
[213] *See* BERLIN, *supra* note 30 at 144.

own.[214] Seventeen young officers were promoted to supervisory positions, partially based on their enthusiasm for community policing—although many supervisory positions were eliminated altogether in order to curtail the paramilitary hierarchy of the old department.[215] Although these initial moves did track community policing methodology by placing more police on the street and by flattening the hierarchical structure of the old department, many suspected that Pastore had an axe to grind with several of the command level officers who were driven away.[216]

Pastore himself was a long-time New Haven resident and had been a New Haven police officer from the sixties into the eighties. During that time, he had served as the head of intelligence for the department and led the detective division. [217] However, Pastore had some deep disagreements with the outgoing chief, William Farrell, and during Farrell's first year leading the department Pastore took an extended medical leave. Ostensibly, the leave was due to a kidney problem, but Pastore indicated that his clash with Farrell also contributed to his choice to seek alternative employment. [218] That alternative employment involved time as an advisor and consultant on Daniels' mayoral campaign.[219] When Pastore returned to the department as chief—vowing to implement his and Daniels' vision of community-oriented policing—many of the commanders in Farrell's regime were the first to leave. While most of the high-ranking officers received golden handshakes—generous retirement or severance packages of 75% pay and benefits to help usher them out the door[220]—one unlucky commander who refused to leave was

[214] *Id*. at 142.
[215] *Id*. at 240.
[216] *See* Blumenthal & Farber, *supra* note 1.
[217] *See* BERLIN, *supra* note 30, at 130.
[218] *Id*. at 130-31.
[219] *Id*. at 131.
[220] *Id*. at 142.

reassigned to the New Haven animal shelter and tasked with "'stay[ing] abreast of trends in animal epidemiology' and design[ing] a system of 'intake-to-release paperwork for all dogs.'"[221]

Despite these personal quirks, Pastore was relentlessly dedicated to the ideal of community-oriented policing, and the major decisions he made were all directed toward the goal of better partnering with the community to co-produce safety and justice. In 1991, Pastore divided New Haven up into eight geographic districts, each with its own local substation and district manager.[222] In this way, Pastore hoped to make the police more accessible to the local community; soon, each neighborhood also formed a Community Management Team to hold regular monthly meetings, bringing together neighborhood leaders and district staff.[223] Two additional districts and several new community-oriented units were added in 1995 after John DeStefano was elected mayor.[224] During these meetings, citizens and police would identify crime and quality of life issues and determine strategies for addressing these issues. Teams would sometimes outline "extras" or "discretionary functions," such as community clean-ups, to which officers would be assigned.[225]

Pastore sought to alter the tone and goals of the department immediately as well. The mission of the Department was rewritten from the standard serve-and-protect language to read: "Our mission is to provide pro-active, community police services to the public by furthering the partnership with our community to protect life and property, prevent crime and resolve problems."[226] Moreover, the Department's value statement warned, "The community can no longer stand by with an attitude of non-involvement…. Policing will become a shared

[221] *See* Blumenthal & Farber, *supra* note 1.
[222] *See* BERLIN, *supra* note 30 at 132.
[223] *See, e.g.*, *Patrol Districts*, NEW HAVEN POLICE DEPARTMENT, http://www.cityofnewhaven.com/Police/Districts/Dixwell.asp (listing the monthly meeting time for Dixwell's Community Management Team).
[224] *See* BERLIN, *supra* note 30, at 134.
[225] *Id.* at 202.
[226] *Id.* at 160.

responsibility to make the community a better place to live."[227] Even New Haven's policing guides were overhauled, offering suggestions such as "Be nice" and "Treat others with dignity and respect."[228] According to *The New York Times*, under Pastore, "police abandoned their confrontational stance, put on a more sympathetic face and tried to work with neighborhood residents, including gang members and drug dealers, to stop the violence."[229]

In Pastore's eyes, a large part of the department's problem was a lack of humanism in police interactions with the public. In an interview, he commented that when he inherited the department "[t]here was an 'us vs. them' mentality…. They were racist in their thinking. The worst kind of racism, they didn't know it was racism. It was endemic to their thinking."[230] Police supervisors under Pastore commented that they approached their jobs with "the expectation that people will be treated decently."[231] Pastore modeled this behavior, at one point in his career hugging a murder suspect and at another acquiring a pizza for a suspected felon.[232] He was known for asserting aggressively, "I'm not a cop's cop. I'm a people's cop."[233] He took those values seriously.

Pastore sought to re-orient the force to value efforts at collaboration and relationship-building.[234] To do so, he instituted a new training program focused almost solely on community policing. To implement this new regime, he brought in nationwide experts like Kelling—one of the "Broken Windows" authors—and Bob Trajanowicz, another renowned scholar of community

[227] *Id*. at 151.
[228] *Id*.
[229] Jonathan Rabinovitz, *New Haven Police Chief Quits in Scandal Over Child*, N.Y. TIMES, Feb. 8, 1997, http://query.nytimes.com/gst/fullpage.html?res=9F01E1DA123CF93BA35751C0A961958260.
[230] *See* BERLIN, *supra* note 30, at 137.
[231] *Id*.
[232] Rabinovitz, *supra* note 229.
[233] *Id*.
[234] *See* BERLIN, *supra* note 30, at 150.

policing.[235] He also hired civilian Kay Cordish, a Ph.D. in theatre, to head the training program and focus on interpersonal skills, diversity, and sensitivity.[236] After a broad departmental survey, half of the respondents said that this training changed their mind regarding community-oriented policing.[237]

In terms of major strategic initiatives, Pastore chose to focus first on street-level drug crimes. During his first year as chief, he piloted programs not only to better enforce drugs laws, but created partnerships with treatment and educational programs to more effectively divert addicts from the criminal justice system.[238] Pastore's efforts at staving off street level-crime forced many of the major gangs in town, like the Latin Kings and the Jungle Boys, out of the city or underground.[239] After tackling street-level trafficking, Pastore began to partner with state and federal agencies to gather better intelligence on the small, local gangs that were still running a robust drug business in New Haven.[240] His Anti-Gang Task Force marshaled multiple law-enforcement agencies in the interest of dismantling the local gangs that were crippling the city. Throughout the mid-1990s, the task force racked up major victories, including thirty-plus arrests in a sting executed against a Columbian cartel that had been importing millions of dollars of cocaine and heroin into the Fair Haven neighborhood.[241]

Pastore also initiated a number of community partnership and crime prevention programs, many of which focused on winning over the youth of New Haven. He revived the once-defunct

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[235] *Id.* at 164.
[236] *Id.* at 163.
[237] *Id.* at 182.
[238] *See id.* at 132.
[239] Bill Slocum, *The Battle of the Drug Trade in Fair Haven*, N.Y. TIMES, Feb. 4, 1996, http://www.nytimes.com/1996/02/04/nyregion/the-battle-of-the-drug-trade-in-fair-haven.html?scp=1&sq=pastore%201992%20arrests&st=nyt&pagewanted=1.
[240] *See* BERLIN, *supra* note 30, at 133.
[241] Slocum, *supra* note 239.

Police Athletic League to increase informal police interaction with children.[242] He also placed resource officers in schools, pioneered a police mentoring program for students, and created New Haven's Board of Young Adult Police Commissioners.[243] In addition, the police department joined with the Child Study Center at the Yale University School of Medicine to establish the Child Development-Community Policing Program, which secured immediate counseling for youth who had been exposed to violence via referrals from police officers.[244] Police were also trained by Yale clinicians to interact with youth who had experienced trauma to avoid exacerbating the psychological damage.[245] The New Haven Police joined with the Liveable Cities Initiative, too, to better address blight in New Haven by conducting frequent nuisance "sweeps" of substandard housing, thereby improving living conditions for tenants—and addressing some literal broken windows.[246]

Pastore also increased the number of walking beats throughout the city. One officer commented that where there used to be "no walking beats in my district, now [there are] five walking beats."[247] All of these tactics were aimed at changing local norms and altering signals that New Haven neighborhoods were "untended." The focus on children was particularly acute, as Pastore hoped to create a generational shift in how citizens interacted with police.

After Pastore's first year and a half in office, overall crime was down ten percent, and some categories of crime had decreased as much as twenty percent;[248] this was a precipitous drop for a single year. Crime continued to decline throughout Pastore's tenure, dropping a total of

[242] *See* BERLIN, *supra* note 30, at 133.
[243] *Id* at 133, 205.
[244] *See Child Development-Community Policing*, NATIONAL CENTER FOR CHILDREN EXPOSED TO VIOLENCE, http://www.nccev.org/initiatives/cdcp/index.html (last visited Mar. 3, 2011).
[245] *See id.*
[246] *See* BERLIN, *supra* note 30, at 207.
[247] *Id*. at 210.
[248] *See id.* at 133.

33% over seven years, from twenty-one thousand crimes a year to less than fourteen thousand.[249] This outpaced the crime drop for the nation, which declined less than ten percent between 1991 and 1997,[250] although it is impossible to definitively assert that Pastore's leadership was the primary cause of this rapid decline. Moreover, on the surface, many officers seem to have begrudgingly embraced certain tenets of community policing. Ninety percent—nearly all officers—believed that informal interactions with citizens were important.[251] Over eighty percent said service was more important than strict law enforcement,[252] and an overwhelming 95% said preserving constitutional rights was as important as enforcing the law.[253]

Nevertheless, Pastore had not completely won the hearts and minds of his officers. Several complained that he didn't speak to the rank and file. Others claimed that Pastore's values were "shoved down people's throats."[254] While sixty percent of officers claimed to have been invested in community policing, less than forty percent believed that other officers were invested—perhaps indicating that community policing was not fully accepted as a perceived norm among police.[255] Moreover, negative feelings about community policing doubled over time, leaving one scholar to assume that the methodology had been over-sold by Pastore.[256] Dean Esserman, Pastore's second-in-command, once told The New York Times, "The cops clearly hate the Chief and they say it."[257]

[249] *See Police Statistics,* CITY OF NEW HAVEN, http://www.cityofnewhaven.com/police/statistics.asp (last visited Mar. 4, 2011).
[250] *See* CITY OF NEW HAVEN, *supra* note 204, at 97.
[251] BERLIN, *supra* note 30, at 190.
[252] *Id*. at 195.
[253] *Id*. at 198.
[254] *Id*. at 162.
[255] *Id*. at 190.
[256] *Id*. at 192.
[257] Blumenthal & Farber, *supra* note 1.

In 1997, Nicholas Pastore resigned due to a personal scandal.[258] Melvin H. Wearing, his former Assistant Chief of Police, assumed command of the department. Community policing in New Haven continued uninterrupted as Wearing, the city's first African-American Chief of Police, added additional community partnerships, including a community mediation program and "Operation Weed and Seed," a program aimed at removing repeat offenders from the community and improving New Haven's quality of life.[259]

Indeed, based on both citizen responses and the fast-paced drop in crime and disorder, it seems likely that community policing made some impact on community norms in New Haven. It may even have had an impact on crime rates. This conclusion should be stated cautiously; other studies have not definitively shown community policing to have an impact on crime, although studies consistently indicate that community-oriented policing reduces fear of crime—which is both a good in and of itself and may, in the long run, impact crime rates by increasing opportunities for citizens to exert informal community controls.[260] Stephen Levitt, for example, is highly skeptical that policing methods have any impact on crime. According to his regression analysis, the crime drop across the 1990s in America was likely caused by an uptick in the number of police, the rising incapacitation of criminals through longer jail sentences, the decline of the crack epidemic, and the legalization of abortion.[261] He claims, with strong econometric evidence, that policing methods had nothing to do with the crime drop. However, given the situation in New Haven—and the fact its crime drop outpaced that of the nation by a factor of

[258] That year, Pastore admitted to fathering a child with a local prostitute. He had been married for 25 years and had three grown children at the time. Rabinovitz, *supra* note 229.
[259] *See* BERLIN, *supra* note 30, at 136.
[260] *See, e.g.*, NATIONAL INSTITUTE OF JUSTICE, *supra* note 103 (linking community policing to fear reduction); PATE ET AL., *supra* note 103 (also linking community policing to fear reduction); Weisburd & Eck, *supra* note 77 (summarizing several studies linking community policing to fear reduction).
[261] Steven D. Levitt, *supra* note 155, 164.

three—Levitt's claims may not apply.[262] The number of officers in New Haven, for example, did not increase when Pastore became chief of police.[263] Moreover, New Haven never experienced a crack epidemic—its market was primarily in the less-addictive, more-expensive drug cocaine.[264] Abortion rates and incapacitation through incarceration may have had a strong impact on the decline in crime, but it is difficult to surmise why these two factors alone would have led to a steeper-than-average decline in New Haven.

Perhaps, given that New Haven had triple the crime of an average mid-sized city, it is unsurprising that New Haven experienced about three times the average decline in crime. Nevertheless, there were many comparable cities—Providence, for example—that did not see the same massive decline in crime over the 1990s, despite having alarmingly high rates of crime to begin with.[265] Providence was one of the cities in the United State that did not embrace community policing methods in the 1990s. When Dean Esserman, Pastore's second-in-command in New Haven, took over the Providence Police Department in 2003, he compared the state of crime in the city to New Haven before Pastore.[266] After implementing a community-oriented policing program similar to New Haven's, Providence finally began to see a crime drop similar to the decline in crime New Haven experienced under Pastore and Esserman's oversight.[267] Of course, this is not proof that community policing works, or that it worked in New Haven or Providence. It does, however, suggest that community policing *may* have had an impact, and that

[262] Colin Ross, *Outgoing Chief Reflects*, YALE DAILY NEWS, Feb. 26, 2010, http://www.yaledailynews.com/news/2010/feb/26/outgoing-chief-reflects.
[263] *See* BERLIN, *supra* note 30 at 144.
[264] *See* Finnegan, *supra* note 80.
[265] RHODE ISLAND STATE POLICE, CRIME IN RHODE ISLAND 1997, at 20 (1997), *available at* http://www.risp.ri.gov/docs/UCR/1997.pdf.
[266] Telephone Interview with Col. Dean Esserman, Chief of Police, Rhode Island Police Department (Apr. 25, 2011) ("Providence thought community policing was a wasted effort in the 1990s…. We built our program the same way in each of the three cities I worked in [Stamford, New Haven, and Providence], and each city saw a remarkable decline in crime.").
[267] Crime in all categories dropped substantially in Providence from 2002 to 2007, contra national trends. *Crime Statistics*, CITY OF PROVIDENCE POLICE DEPARTMENT, http://www.providencepolice.com/police/crime-statistics (last visited May 2, 2011).

Levitt's four factors may not fully explain the precipitous crime drop in New Haven or Providence, where the decline cut against the national trend in the early twenty-first century.

Statistics aside, the implementation of community policing does have persuasive explanatory power as to why New Haven might have suddenly become a much safer city. By systematically addressing issues of reciprocity, social organization, and social efficacy, the police contributed to rebuilding community infrastructure and influenced the messages sent along newly-reinforced norm highways. To influence reciprocity, police first sent the signal that they were willing to work closely with the community in furtherance of their vision of safety and order. The police made it known that they were in the community, willing to work for the community, and would listen to the community's voice. By creating police substations, for example, New Haven increased both police visibility and police accessibility. Rather than being routed through the impersonal mechanism of a 911 call, residents had the option of calling their substation directly, walking over to the substation and contacting an officer personally, or conversing with one of the many officers walking a beat in their neighborhood.[268] The multiplication of walking beats itself likely signaled a willingness to reciprocally contribute to neighborhood-level safety[269] as did police participation in Community Management Teams.[270]

By decreasing fear and signs of disorder, police also likely encouraged citizens' willingness to act reciprocally toward each other. When residents are less afraid, they are more likely to interact and hence more likely to jointly exercise social controls for the communal

[268] *Id.* at 132. Francisco Ortiz, who was a District Manager at the time, recalls that citizens would sometimes contact beat officers directly during the 1990s. He surmises, moreover, that most citizens would have had some interaction with Pastore's community policing regime—either through block watches, encounters with officers, or management teams. Interview with Francisco Ortiz, Head of Security, Yale University, in New Haven, Conn. (Apr. 29, 2011) ("I do think citizens were aware of the changes. The new substations were highly visible. The district managers would meet with the block watch—which literally spans only one street….. Fair Haven knew what was going on—between Safe Neighborhoods Initiatives and school resource officers, yes.")
[269] Kelling & Wilson, *supra* note 88.
[270] *See* BERLIN, *supra* note 30, at 201-02.

good.[271] In Newark, where police officers had increased informal interactions with "regulars" in the neighborhood, feelings of safety increased as "untended" signals were addressed by beat officers.[272] Subsequently, these norms began to be enforced by community members themselves. In New Haven, community members increasingly assumed responsibility for safety and crime in their neighborhood by joining Community Management Teams. This initiated a cycle of reciprocity within neighborhoods where earlier most neighbors would have assumed that a contribution to the public good would have gone unnoticed and unmatched.[273] Neighborhood watch groups began to form.[274] Community gardens began to flourish.[275] Residents, in other words, became increasingly willing to contribute to community well-being, expecting both their neighbors and the police to match their efforts.

In addition, community policing altered community organization by adding considerably to the number of organized groups in the city and the number of informal interactions between neighbors. The Community Management Teams, for example, assembled some of the community's most involved and active citizens and provided them with a venue in which to communicate about neighborhood safety—both among themselves and with police. Police Athletics Leagues provided both young people and their parents with an opportunity to interact and to form social bonds. Neighborhood watch groups, too, increased pathways for intra-community communication. In addition, by focusing on street-level crime like drug trafficking, police cleared the corners and created spaces for neighbors to engage and connect, further reinforcing social organization.[276] Since police were involved in most of these new

[271] *See* Kahan & Meares, *supra* note 7, at 1163-64.
[272] Kelling & Wilson, *supra* note 88.
[273] *See*, *e.g.*, Kahan, *supra* note 87, at 1519.
[274] *See* BERLIN, *supra* note 30, at 201-07.
[275] *See History*, NEW HAVEN LAND TRUST, http://www.newhavenlandtrust.org/about/history (last visited Mar. 11, 2011).
[276] *See* Slocum, *supra* note 239.

organizations, from management teams to athletic leagues, norm highways were built not only between citizens, but between citizens and police. Whereas the information flow between citizens and police had once been a trickle, police were now able to obtain a steady flow of tips and leads.[277] Clearance rates increased, sting operations flourished, and the arrests that were made became increasingly responsive to community concerns.[278]

All of these initiatives also contributed to the community's social efficacy. Both through groups like neighborhood watch and by referring problems to beat officers, residents were increasingly able to "get things done." Neighbors no longer had to lobby city hall to have disorder and nuisances addressed—they could simply attend a monthly community meeting and secure the district manager's promise that the problem would be solved.[279] During this era, other public goods like community gardens and youth sports teams began to expand. New Haveners were increasingly able to undertake group initiatives, both with the police and on their own. Even children, through mechanisms like Board of Young Adult Police Commissioners, could effect change.

Perhaps for this reason, when New Haven's commitment to community policing began to wane during the first decade of the 21st century, the city's most savvy and active residents caused an uproar.[280] Members of management teams and community groups called several press conferences during Chief Ortiz's and Chief Lewis' tenures to protest what they saw as cutbacks in community initiatives.[281] After Chief Wearing left the New Haven force, his leadership was

[277] *See* BERLIN, *supra* note 30, at 133.
[278] *See* Blumenthal & Farber, *supra* note 1; Interview with Francisco Ortiz, *supra* note 268.
[279] *See, e.g.*, *Westville - West Hills Community Management Team*, WESTVILLECT.ORG, http://www.westvillect.org/westvillecmt (last visited Mar. 11, 2011) (listing police and citizen priorities based on community meetings).
[280] Paul Bass, *A Cry Goes Out: Bring Back Community Policing*, NEW HAVEN INDEPENDENT, July 9, 2007, http://newhavenindependent.org/archives/2007/07/community_polic_2.php.
[281] *Id.*; Melissa Bailey, *Goodbye "Community Policing,"* NEW HAVEN INDEPENDENT, Feb. 5, 2009, http://www.newhavenindependent.org/index.php/archives/entry/goodbye_community_policing.

supplanted by a series of short-term police chiefs with vague ideologies and increasingly weak commitment to community-police partnerships. In 2007, as crime in New Haven experienced an upsurge, angry residents held a conference to express their disappointment and to call for a re-commitment to community policing.[282] The Whaley-Edgewood-Beaver Hills neighborhood had experienced cut-backs in the number of officers walking beats and police-led neighborhood programs being implemented; they had also experienced an increased number of shootings and youth-perpetrated crime.[283] Reflecting on the nationally-renowned efforts of Pastore and his community policing regime, an activist from the Whaley-Edgewood-Beaver Hills Management Team observed, "We once had a gem." She concluded, "It's lost."[284] Another resident described rampant "fear, terror, [and] a feeling of helplessness, hopelessness."[285] During the summer of that year, residents—particularly those involved with management teams—called a press conference, criticizing then-chief Francisco Ortiz and demanding that the mayor "do something" to bring back community policing.[286]

That same year, frustrated residents also took action to privately enforce norms of order and safety.[287] A group in the Edgewood neighborhood that had redeveloped forty-some properties in the area formed a vigilante unit in response to rising crime.[288] Since the city was assigning fewer officers to walking beats and bike patrols—although the same overall number of officers remained on the force as during Pastore's time—residents took matters into their own hands.[289] From 6pm to 10pm, residents carrying licensed, concealed weapons and wearing "Edgewood

[282] Bass, *supra* note 280.
[283] *Id*
[284] *Id*.
[285] *Id*.
[286] *Id*.
[287] Paul Bass, *Edgewood's Packing*, NEW HAVEN INDEPENDENT, June 11, 2007, http://www.newhavenindependent.org/archives/2007/06/edgewoods_packi.php.
[288] *Id*.
[289] *Id*.

Park Defense Patrol" shirts patrolled the streets.[290] The group was entirely privately organized, apparently in reaction to the lack of police responsiveness.[291] While cohorts of Guardian Angels[292]—citizens wearing similar shirts, but remaining unarmed—had been welcomed around the country, the armed New Haven group caused some concern.[293] While intended largely to send "signals" of safety, armed citizens untrained to respond to crime policing the streets presented obvious problems. Chief Ortiz, however, was able to calm community residents over time—while walking beats may have decreased, he remained committed to the ideology of community policing and continued to deepen close ties with the community. According to Sergeant Lou Cavaliere, who has been a New Haven police officer since 1968 and union president since 1981, Ortiz and Wearing were both committed to community-oriented methods.[294] Resources, however, "were waning" as federal grants became smaller, so hard decisions had to be made—decisions that often impacted walking beats. [295]

New Haveners staged a similar flurry of protest in 2009, when Chief Lewis announced that New Haven would formally revert to the use of paramilitary "tactical units" for much of its law enforcement.[296] Unlike Ortiz, Lewis was not a strong advocate of community-oriented policing. At one press conference, he reacted with annoyance to accusations that he was rolling back community policing: "Police are not social workers," he complained.[297] Officer Frank Lombardi, the union vice-president who has been with the force for 35 years—from Chief Farrell's tenure

[290] *Id.*
[291] Then-Chief Francisco Ortiz remembers the incident differently, calling the Edgwood Park Patrol "good friends." Interview with Francisco Ortiz, *supra* note 268.
[292] *See* Charlie Croom, *Guardian Angels come to Crown Street*, YALE DAILY NEWS, Oct. 13, 2010, http://www.yaledailynews.com/news/2010/oct/13/guardian-angels-come-to-crown-street.
[293] Bass, *supra* note 287.
[294] Telephone Interview with Lt. Frank Lombardi, Vice President, New Haven Policemen's Union (Apr. 29, 2011) ("Wearing and Ortiz continued [community policing], even as resources were waning.").
[295] *Id.*
[296] Bailey, *supra* note 281.
[297] Powers, *supra* note 81.

to Limon's present administration—explained that Lewis was "big on enforcement of the law."[298] Whereas Pastore encouraged officers to ignore small crimes in order to have more time to address community concerns,[299] Lewis wanted to see more arrests. As Lombardi puts it, he let "cops be cops" again.[300] Cavaliere added that the Department "got away from [community policing]" during Lewis's tenure.[301]

The idea behind putting police back in cars and adding more tactical units, according to Lewis, was to target specific behaviors like prostitution and street robberies rather than merely patrolling certain neighborhoods; the department wanted to shift from a community-oriented mentality to a problem-oriented focus. The mayor and the chief claimed that a decreased number of walking beats but increased number of officers on the force would precipitate the largest drop in crime.[302] The chief introduced a number of roaming units that would focus on certain types of crime, like narcotics or prostitution. The department also changed the slogan on its patrol cars from "Committed to Community Policing" to "Dedicated to Protecting Our Community."[303] Lewis weathered intense community criticism for these decisions, which some said "ushered in a new mistrust of the police" and spelled an end to community policing, in fact if not in name.[304]

When Lewis retired in 2010, however, he was replaced by Frank Limon, whose philosophy centers on community-oriented policing.[305] While Limon initially utilized many of the same tactics as Lewis, his appointment represents some ambivalence on the mayor's and city's part

[298] Telephone Interview with Lt. Frank Lombardi, *supra* note 294.
[299] Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11 ("Nick, he didn't want the cops to be proactive. He just wanted people to see the police, their presence. He didn't want you to chase down the guy for the nickel bag, 'cause it would tie you up for two or three hours.")
[300] Telephone Interview with Lt. Frank Lombardi, *supra* note 294.
[301] Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11.
[302] Bailey, *supra* note 281.
[303] *Id.*
[304] Ross, *supra* note 262.
[305] *New Haven Appoints New Police Chief*, NEW HAVEN REGISTER, Mar. 9, 2010, http://www.nhregister.com/articles/2010/03/09/news/doc4b964c5f0b112046046449.txt.

toward abandoning community policing. They seem to be toying with the idea of recommitting to Pastore's tactics; however, the police officers themselves have vociferously opposed the idea and have already staged a vote of no-confidence in Limon.[306] Lombardi, when asked about Limon's philosophy of community policing, complained, "I don't know what his approach is. I don't think it's being sold to officers. We're in kind of like an automatic mode—just doing what we were doing under the last administration. He talks about it, but I haven't really seen it." Cavaliere, phrasing it more bluntly, claims that Limon "hasn't really gone balls to the wall" with community policing. "There's been too much talking and not enough action." Former Chief Ortiz, on the other hand, remains optimistic. "They just need time," he reasons. "Community policing is all about building relationships." With barely a year in office, Limon has certainly sold community policing to the press and to the management teams—it remains to be seen if he can sell it to the officers patrolling their beats.

New Haven, like many American cities, seems unable to fully commit to community policing. After a love affair with the community-oriented methodology in the 1990s, the city slowly reverted to many reform-era tactics, including the three R's of rapid response, random patrols, and reactive investigation. However, community policing was popular with residents; at least, it was certainly popular with the most engaged and involved residents, the residents who interacted with the police every month in their community management meetings. Ortiz reasons that it would be hard for citizens not to have noticed the shift to community policing, since every block had a block watch in addition to an officer walking a beat during Pastore's tenure. Not every citizen might have been able to name the methodology being used—but the presence of the officers in addition to the drop in crime made them feel safer. Some residents were so invested

[306] William Kaempffer, *New Haven Cops Vote 'No Confidence' in Chief Limon*, NEW HAVEN REGISTER, Feb. 3, 2011, http://www.nhregister.com/articles/2011/02/03/news/doc4d4b841281571659774087.txt.

in community policing that they actually *noticed* when Ortiz and Lewis began reverting to reform-era tactics or cutting back on walking beats, despite City Hall's insistence that their methods still constituted community policing.[307] A certain sect of New Haveners knew and remembered enough about community policing to disagree, and have consistently demanded a reversion to walking beats and increased community partnerships.[308]

Given the popularity of the program and the fact that community-oriented policing seems no worse at deterring crime than reform-era policing and better at promoting feelings of safety, why have New Haven and other cities proven so stubbornly resistant to long-term adoption of community policing? Given the level of community support for community policing methodology, one would expect police to be clamoring for a more complete return to the tactics of early policing, embracing not only walking beats but police-run soup kitchens and aid to the homeless. Instead, in the twenty-first century departments like New Haven's have been resisting a commitment to even milder tactics, like bike patrols or soft approaches to youth crime. But why?

The answer seems to lie in two changes that took place in the years between community-oriented policing and early policing: altered legal constraints on police activities and altered norms in the police profession itself. Each of these changes has important implications for the future of community policing.

III. Forces that Have Undermined Community-Oriented Policing

Police departments have had difficulty permanently returning to the community-oriented tenets of early policing for two principal reasons. First, additional legal constraints have been

[307] *Id.*
[308] Melinda Tuhus, *DeStefano Offers Community Policing 2.0*, NEW HAVEN INDEPENDENT, Feb. 7, 2006, http://newhavenindependent.org/index.php/archives/entry/destefano_offers_community_policing_2.0.

placed on police actions by courts. Once, police could arrest citizens for vague offenses such as vagrancy or general drunkenness;[309] indeed, in the first years of the New Haven police force, vagrancy and common drunkenness were some of the major causes of arrests.[310] Now, however, criminalizing such vague conduct is illegal, and interactions between police and public are highly regulated by courts.[311]

Second, the culture of police officers has changed. The first police officers were instructed, as Peel put it, that they needed to "secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public."[312] Today, studies show that police officers feel more isolated from the public than Peel's words would suggest;[313] they see themselves not as agents of or equals to other citizens, but as a group with authority over the general population. This transition seems to have happened during the "reform" era, post-World War I, when policing became highly paramilitary. Whereas the early police complained about wearing uniforms and feeling like actual "servants" of the public,[314] after the wars abroad the significance of the uniform and the near-military authority that accompanied it seems to have shifted. Post-World War II, crime in cities also became much

[309] *See* Kahan & Meares, *supra* note 7, at 1158-59.
[310] In 1863, the second year the police filed a year-end report with the city, 783 arrests—the most of any category by a margin of over 500—were for intoxication, in addition to 110 for "intoxication and disorderly conduct" and twelve for common drunkenness. Forty-five arrests were made for vagrancy. In the same year, fifteen arrests were made for "malicious mischief" and thirteen for "night walking." New Haven also criminalized "frequenting dance houses" at the time, as well as "bathing within forbidden limits." Not only were vague statues acceptable, but criminalizing disorder was routine. *Report of the Chief of Police* (1863), *supra* note 51, at 27.
[311] *See* Kahan & Meares, *supra* note 7, at 1158-59. Based on the opinions in *Miranda v. Arizona* and *Terry v. Ohio*, for example, many departments have written their guidelines to more or less mandate that police behavior during arrests and stop-and-frisks mirror the minimum standards the court demands exactly. *See, e.g., SF Police General Orders*, SAN FRANCISCO POLICE DEPARTMENT, http://sf-police.org/index.aspx?page=1720 (last visited May 2, 2011) (Mirroring *Terry* and its progeny, the manual states: "A police officer may briefly detain a person for questioning or request identification only if the officer has a reasonable suspicion that the person's behavior is related to criminal activity. The officer, however, must have specific and articulable facts to support his/her actions; a mere suspicion or 'hunch' is not sufficient cause to detain a person or to request identification.").
[312] *Sir Robert Peel's Nine Principles*, *supra* note 4.
[313] *Retreat: The Supreme Court and the New Police*, *supra* note 18, at 1709.
[314] *See* MONKONNEN, *supra* note 19, at 100.

more violent; police felt entitled to greater authority since they were no longer merely policing disorder, but putting their lives at risk for the public good.[315] As a result, many officers see community partnerships as liberal nonsense that gets in the way of their "real" crime-fighting jobs.[316] Both changes have certainly created barriers for a full-fledged return to community-oriented policing.

A. Court-Imposed Barriers to Reviving Community Policing

Community policing represents a return to a much broader police mandate than that of reform-era policing. Community-oriented police, in theory, address neighborhood well-being generally and react not only to crime but also to disorder and other "untended" signals. The decision as to what signals disorder is largely context-dependent. Accordingly, community policing proposes devolution of authority and discretion from high-level commanders to street-level officers. Community police make many small but difficult decisions every day, and they may require broad authority and wide discretion to do so.

Up until the 1960s, courts generally endorsed officers' ability to make broad discretionary judgments and cities' ability to create whatever criminal ordinances seemed necessary.[317] Most police actions were deemed permissible by courts, unless they "shocked the conscience."[318] Police chiefs and urban mayors were considered far more apt supervisors of police activity than courts.[319] Accordingly, courts deferred to city leadership in terms of keeping the police in check. However, part of reform-era policing's objective was to separate policing

[315] *Id*. at 95.
[316] Chappell, *supra* note 8, at 9.
[317] *See* Kahan & Meares, *supra* note 7, at 1158.
[318] William J. Stuntz, *The Substantive Origins of Criminal Procedure* , 105 YALE L. J. 393, 435-38 (1995).
[319] *See* Kahan & Meares, *supra* note 7, at 1159 ("The primary check against [abuse] is the accountability of law enforcers to the community's political representatives.")

from politics.[320] Accordingly, over the twentieth century police departments became far less responsive to community demands and community control. Mayors were no longer appointing the majority of the department's officers; precincts had become their own independent outposts in the world of city bureaucracy. This became glaringly apparent when the media began to cover incidents of white police brutalizing communities of color during the civil rights era. Scholars claim that police-on-minority violence was prevalent in part because community-driven political recourse was not able to keep the officers sufficiently in check. [321]

In response, the Supreme Court crafted a new criminal procedure regime aimed at eliminating abuse by limiting police discretion and granting accused criminals increased protection. Fourth amendment jurisprudence, for example, became much more robust. Whereas the admissibility of illegally obtained evidence had once been a matter of some judicial discretion,[322] in *Mapp v. Ohio*[323] the Supreme Court held that evidence obtained illegally was uniformly inadmissible at trial—even in state courts. *Mapp* was followed by *Terry v. Ohio*, which dictated that police officers must have a "reasonable suspicion" that a crime is about to be committed and that a suspect is armed and dangerous before conducting a "stop and frisk" or pat-

[320] Kelling & Wilson, *supra* note 88.
[321] TRACEY L. MEARES & DAN M. KAHAN, URGENT TIMES: POLICING AND RIGHTS IN INNER-CITY COMMUNITIES 7 (1999). While this violence and discrimination came to the public's attention with new urgency in the 1960s, police had likely been using vague ordinances to discriminate against minorities for some time. In one early history of the New Haven Police, for example, a detective bragged that he could walk into an Italian boarding house and pick out a specific crook—implying, to some extent, that Italians largely look alike and are generally inclined to disorder. *See* See A.E. COSTELLO, *supra* note 31, at 55. Another early twentieth century policing document proclaims that "75% of all arrests this year are for gambling, and 101 of these arrests are young Italian males." NEW HAVEN COL. HIST. SOC'Y, SCRAPBOOK OF THE NEW HAVEN POLICE DEPARTMENT (1970) (This source is held by the New Haven Colony Historical Society and is comprised of unnumbered sheets of looseleaf paper from the Department). For several years, arrests of Irishmen outpaced arrests of "Americans"—despite New Haven being far from a majority-Irish town at the time. *See generally Reports of the Chief of Police* (1870-80), *in* CITY YEAR BOOKS OF THE CITY OF NEW HAVEN (1870-80) (cataloguing arrests by ethnicity).
[322] In *Wolf v. Colorado*, the Supreme Court held "that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure." Wolf v. Colorado, 338 U.S. 25, 33 (1949).
[323] 367 U.S. 643 (1961).

down.[324] Fifth Amendment law also became more restrictive under the Warren Court. After *Miranda v. Arizona*, which was decided in 1966, police could no longer interrogate suspects without informing them of their right to remain silent and their ability to consult with an attorney before submitting to interrogation.[325] Police interactions—at least interactions that might lead to the collection of evidence or an arrest—suddenly had to be much more formal.

During the 1970s and 1980s, the Supreme Court also developed its "void for vagueness" doctrine—a doctrine that some scholars argue is hostile to community policing. In *Papachristou v. City of Jacksonville*, the Court struck down a typical vagrancy statute[326] both because it "fail[ed] to give a person of ordinary intelligence fair notice that his contemplated conduct [was] forbidden by the statute and because it encourage[d] arbitrary and erratic arrests and convictions."[327] The Court reasoned that the statute made criminal "activities which by modern standards are normally innocent."[328] In this case, the Court reiterated that states and cities cannot "set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."[329]

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[324] Terry v. Ohio, 392 U.S. 1 (1968).
[325] Miranda v. Arizona, 384 U.S. 436 (1966).
[326] The *Papachristou* statute is exemplary in its vagueness—and reads like Shakespearean doggerel, since it was derived from an Elizabethan law regulating the poor:

> Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants…."

Id. at 157 n.1.
[327] *Id*. at 162 (citations omitted).
[328] *Id*. at 163.
[329] United States v. Reese, 92 U.S. 214, 221 (1875). Similar reasoning had been invoked in *Bouie v. City of Columbia*, which struck down a trespass statue that had been used to arrest a black man who entered a drugstore and was asked to leave. 378 U.S. 347 (1964).

These cases profoundly impacted the day-to-day activities of police, and there can be no doubt that officers felt the effect of the Court's oversight. After *Warren v. Mapp*, many police departments instituted very specific procedures regarding searches. [330] Not only did a warrant become a necessity for searching most premises, but police now had to knock and wait an appropriate amount of time before searching houses or apartments. They could no longer count on courts to defer to their expertise. The same was true of stop and frisks. If police wanted to be able to use evidence obtained from a pat down, they now had to either obtain consent for the search or prove that they had reasonable suspicion that a crime was about to be committed and the suspect was armed and dangerous.[331] For police who had once depended on courts to trust their judgment, *Mapp* and *Terry* represented a significant diminution in officer autonomy. The same can be said of *Miranda*; informing the accused of her "right to remain silent" added to the growing list of court-mandated police procedure.

The demise of loitering and vagrancy laws also seriously limited police discretion. *Papachristou* was later cited in *City of Chicago v. Morales*,[332] a Supreme Court case that invalidated a gang loitering ordinance aimed at reducing crime in the violence-ridden Robert Taylor housing projects of Chicago. As Professors Meares and Kahan note, the context of each case was extremely different.[333] In *Papachristou*, police used an Elizabethan vagrancy statute as the basis for arresting, among others, two black men waiting for a ride to a job interview and two black men sharing a car with two white women.[334] In *Morales*, on the other hand, the loitering statute had been lobbied for by African-American community members and was being used in a

[330] *See, e.g.*, SEATTLE POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL, *supra* note 15, Title 6.
[331] *See SF Police General Orders*, *supra* note 310.
[332] 527 U.S. 41 (1999).
[333] *See generally* Kahan & Meares, *supra* note 7 (describing the difference in context between criminal procedure in the 1960s and contemporary criminal procedure).
[334] Papachristou v. City of Jacksonville, 391 U.S. 145 (1968).

targeted fashion to police areas of known gang activity.[335] While the targeted community may have been a minority neighborhood, advocates of the policy were concerned minority citizens in the same set of housing projects. Yet the ordinance was still struck down. Many of the broad vagrancy ordinances that early police had used to curb disorder would, in fact, be "void for vagueness" under the *Papachristou* standard.

These changes arguably impacted the implementation of community policing at the turn of the twenty-first century. Community policing involves a substantial devolution of authority from policymakers to beat cops. In the community-oriented model, neighborhood police should be free to converse with citizens, determine the source of fear or disorder, and act quickly upon community desires and mandates. Moreover, police need the ability to address broken windows—that is, small signs of disorder like public drunkenness or teenagers flagging gang colors on corners. Twentieth-century judicial mandates, however, severely limited certain forms of police discretion and made criminalizing broad categories of disorder nearly impossible. The new community policing, then, was bound to be more constrained than its earlier counterpart; modern police would never have the same freedom to comply with community will as their predecessors.

This is not to say that all informal police-community relationships were barred or undermined. New Haven still has its block watches, its community management teams, and its Police Activities League.[336] Police still walk their beats, albeit more of them are in patrol cars nowadays. Officers can still step in to mediate tense situations between neighbors, and national

[335] 527 U.S. 41.
[336] *Police Activities League*, BOYS & GIRLS CLUB OF NEW HAVEN, http://www.bgcnewhaven.org/page11025235.aspx (last visited May 2, 2011).

studies show that police do still use quite a bit of discretion—they make arrests in only about half of the situations in which an arrest would have been legally warranted.[337]

Nevertheless, it is more difficult for police to handle the small but important signs of disorder that routinely came under their purview in the nineteenth century. Young people can no longer be arrested for something as vague as "malicious mischief" or "vagrancy." Although a few cities maintain curfew laws, some scholars suspect that "night walking" ordinances—were they brought before courts—would be struck down as overly-broad, giving police the opportunity to arrest harmless citizens walking at night in low-income areas.[338] Often, however, law-abiding citizens in low-income communities report that these disorderly behaviors cause the greatest amount of fear.[339] Kahan and Meares, for example, chronicle how community groups in Chicago fiercely debated and ultimately endorsed the ordinance struck down in *Morales*.[340] Adults were sick of living in fear of the gang members who were flagging on the corners in their community, clearly intending to sell drugs.[341] They wanted police to be able to arrest menacing gang members on sight. Similarly, community members in Chicago also endorsed an ordinance that would allow police to search apartments in the projects without a warrant after gunfire had been heard. This provision was also struck down by a court as clashing with modern Fourth Amendment jurisprudence.[342]

Former Chief Ortiz reports a similar story from his time with the New Haven Police Department. In his meetings with community members, residents would often ask why the police could not tackle the problem of drug dealers cruising around blocks in their cars, waiting for

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[337] *See* NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 64.
[338] *See* Matt Alsdorf, *Is Seattle's Curfew Legal?*, SLATE.COM (Dec. 2, 1999, 6:39 PM), http://www.slate.com/id/1004107/.
[339] *See* Kelling & Wilson, *supra* note 88.
[340] *See* Kahan & Meares, *supra* note 7, at 1166-72.
[341] *See id.*
[342] *See id.*

clients, or of prostitutes peddling their services on the corner.[343] The citizens were frustrated—the clear gang presence and prostitutes on the street sent untended signals that made their community feel unsafe. Ortiz commented that, on more than one occasion, citizens approached the police, offering to gather signatures to support them in pushing through stricter loitering ordinances or broader search mandates.[344] Ortiz, who keeps a copy of the Constitution in his office, would have to explain to the citizens that even with their support, he couldn't push for broader vagrancy or search-and-seizure laws.[345] One can only imagine how these interactions must have frustrated New Haven residents and undermined their sense of collective efficacy. Who would be willing to keep their eyes on the street, knowing that they would have to watch helplessly as gang members stood outside their store while police struggled to gather evidence? Reciprocity may have become more difficult as citizens realized that the police were still unable to address some of their neighborhood's most obvious problems.

B. Social Barriers to Reviving Community Policing

Not only had the culture of the Court changed in the years between early policing and new community policing, but the culture of the police had changed too. Police in the nineteenth century were taught that "the police are the public and the public are the police" from the inception of their profession.[346] They understood that their occupation was deeply intertwined with the plight of the urban poor.[347] Since there were no social workers at the time, officers knew that they would be addressing the full range of problems brought on by poverty. Running a soup kitchen was not unheard of in some cities; some of the first American police, for example, were accustomed to having hundreds of homeless persons sheltered in their precinct, sleeping on the

[343] Interview with Francisco Ortiz, *supra* note 268.
[344] *Id.*
[345] *Id.*
[346] *Sir Robert Peel's Nine Principles*, *supra* note 200.
[347] *See* Neocleous,*supra* note 6, at 23.

floor.[348] Until 1879, when the Tramp Act was passed in Connecticut,[349] New Haven's precinct hosted thousands of homeless persons every year. In 1878, for example, 5,568 souls were sheltered by the officers in the station overnight.[350]

America's vision of policing changed, however, during the intervening years. Reform-era policing strove to emphasize a divide between police and community and to attain heightened levels of professionalism. Disconnected from the political machine, notions of service and responsiveness waned. Social workers—another class of professionals—stepped in to address more psychological and resource-based community ills. Police took a step back from the underclass that once enveloped their day-to-day existence. While the police have become more diverse and more racially tolerant over time,[351] they have also become more distant.

Since police could no longer derive their legitimacy wholly from the will of those they policed, they instead looked to the law for their authority. This no doubt gave policing a far more formal, less service-oriented feel. Police were now law-enforcement professionals who believed they had special expertise in their field.[352] At the same time, in the shadow of both World Wars, policing was becoming more centralized and para-military. The New Haven Police Department's history of its own force proclaimed that, by the early 1920s, "[t]he era of specialization had arrived."[353] The notion of the generalist policeman began its decline, and police began to see themselves as specialized soldiers fighting the "War on Crime"—often against the communities they patrolled.

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[348] *See* TEAFORD, *supra* note 129, at 268-75.
[349] *See Report of the Chief of Police* (1879), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 101 (1879).
[350] *See Report of the Chief of Police* (1878), *in* CITY YEAR BOOK OF THE CITY OF NEW HAVEN 122 (1878).
[351] NAT'L RESEARCH COUNCIL COMM. ON LAW & JUSTICE, *supra* note 73, at 79-82.
[352] *See* Mastrofski & Willis, *supra* note 96, at 98.
[353] HISTORY OF LAW ENFORCEMENT, *supra* note 70, at 12.

Once this division between police and public became entrenched, police attitudes toward citizens began to shift. Viewing themselves as a special class undertaking dangerous missions, police officers began to feel isolated from the broader community.[354] While this bred solidarity within the profession, it also led to increased hostility toward outsiders.[355] Because of the physical danger officers face on a daily basis, they "share a deep suspicion of situations and people's motives."[356] The public is largely considered to be "clueless," and formal scientific studies are deeply distrusted, viewed as either illegitimate or "contrary to the interest of the rank and file."[357]

This isolation and constant sense of danger has also led to a legacy of police violence. While no comprehensive studies exist on trends in police violence in America—data is only gathered, after all, in the rare cases where officers are formally disciplined or investigated[358]—several in-depth studies of the culture of violence in policing have been propagated in the last two decades. According to Jerome H. Skolnick, one of America's foremost scholars of policing, officers see

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[354] *See* Mastrofski & Willis, *supra* note 96, at 97*; see also* JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY 53-60 (3d ed. 1994).
[355] *Retreat: The Supreme Court and the New Police*, *supra* note 18, at 1709.
[356] Mastrofski & Willis, *supra* note 96, at 97.
[357] *Id.* at 98.
[358] Some studies were undertaken in the 1990s on a city-by-city basis, documenting excessive police-on-citizen violence. *See, e.g.*, JAMES G. KOLTS, ET AL., REPORT OF THE SPECIAL COUNSEL ON THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT (1992); ST. CLAIR COMMISSION, REPORT OF THE BOSTON POLICE DEPARTMENT MANAGEMENT REVIEW COMMITTEE (JANUARY 14, 1992). And, of course, the famous Kerner Report from the 1960s documents police violence during that decade. NATN'L AD. COMM., THE 1968 REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER REPORT) (1968). One would expect, however, incidences of police violence to have decreased since cities began cracking down on errant officers in the 1960s and 1990s. While this may be the case, hardly a year goes by without several disturbing instances of police violence making national headlines. For recent examples, see Paul Elias & Greg Risling, *Mehserle Verdict of Involuntary Manslaughter Spurs Protests in Oakland*, WASH. POST, July 9, 2010, http://www.washingtonpost.com/wp-dyn/content/story/2010/07/09/ST2010070902105.html?sid=ST2010070902105 (describing riots in Oakland after Johannes Mesherle, a white transit officer, shot Oscar Grant, an unarmed black man); and A.C. Thompson, *DOJ Finds "Systemic Violations of Civil Rights" by New Orleans Police*, FRONTLINE, Mar. 17, 2011, http://www.pbs.org/wgbh/pages/frontline/2011/03/doj-finds-systemic-violations-of-civil-rights-by-new-orleans-police.html (documenting a "pattern of discriminatory policing, the routine use of 'unnecessary and unreasonable' force, and a chronic failure to discipline officers involved in misconduct.").

themselves a society's delegated vigilantes and act accordingly.[359] One scholar, Paul Chevigny, comments that police share a secret belief that "terrorizing and deterring" potential criminals will lead to the greatest reduction in crime.[360] Professors Fyfe and Skolnick add that police violence seems to be another tactic by which police assert their professional superiority. Police see violence and intimidation as a way to discipline "a population thought to be undesirable, underserving, and underpunished by established law."[361]

Given their isolated culture, police officers have had an extremely difficult time adjusting to community-oriented policing, let alone embracing it. Many studies have shown officers to be "resistant to the changes associated with community policing," since they see it as "less than real police work."[362] In Chappell's qualitative study on community policing, officers began laughing when graduate student observers mentioned community policing, calling it "liberal jibberish" and "crap."[363] Many officers claimed they didn't have time to interact with civilians or build bonds with communities; these same officers often spent much of their shift watching baseball or writing parking tickets.[364] Union President Cavaliere confirms a similar sentiment in New Haven: "There was huge resistance to Pastore's approach…. Cops wanted to be cops and make arrests…. They basically felt that Pastore was prohibiting them from doing police work."[365] Cavliere's son, who was being trained by the NHPD in the 1990s, would regale his father with stories of the ballet exercises he had done during department trainings. The officers wanted more firearms instruction; instead, they got pliés and pirouettes.[366] Colonel Dean Esserman called the

[359] JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 23-42 (1993).
[360] PAUL CHEVIGNY, EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS 54 (1995).
[361] SKOLNICK & FYFE, *supra* note 359, at 24.
[362] Chappell, *supra* note 8, at 9.
[363] *Id*. at 19.
[364] *Id*. at 17-18.
[365] Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11.
[366] *Id*.

change from police operating as "lone cowboys" to collaboration "profound." He observed that "many officers join the police in the spirit of adventure. Then their expectation collides with reality, and they don't like it."[367]

This immediate reaction against community policing is particularly unfortunate in light of evidence that appreciation for community policing often grows once officers implement community policing practices. Many officers begin to enjoy interacting with community youth in particular and slowly come to see how closer ties to the community make their work easier.[368] Several studies show that community policing improves not only the community's satisfaction with the police, but police satisfaction with their own jobs.[369] Officer Lombardi recalls how his appreciation for community-oriented policing grew over time. "I was in the car on a patrol beat for five or six years. Then [when Pastore took over] I was assigned to a walking beat [in the same neighborhood, around Chapel St. and Derby]. I started introducing myself at the upholstery shop and at Sydney's Tailors—all the stores. The shopkeepers had never noticed me before in all those years….. We needed to start communicating with the people. We needed informants. Residents know their neighborhoods better than the cops."[370] While originally there was a perception that you were "being punished" if you were assigned to a walking beat, eventually the force "moved away from that" when the officers saw that "everyone was out on beats."[371] Knowing the neighborhood, they found, was helpful in combating crime.

It is remarkable how uniformly the officers who served during Pastore's tenure admire his philosophy and support community-oriented efforts—despite the initial resistance to his

[367] Telephone Interview with Col. Dean Esserman, *supra* note 266.
[368] *Id.* at 21 (One officer "wanted a positive relationship so when problems arose, suspects wouldn't flee or run away.")
[369] *Id.* at 9, 21 (Another officer claimed "[p]eople invite him to their get-togethers and it makes him feel more like a part of the community.")
[370] Telephone Interview with Lt. Frank Lombardi, *supra* note 294.
[371] *Id.*

methodology. Cavaliere, who led a vote of no confidence against Pastore at the beginning of his administration, commented, "Before, in neighborhoods with high crime, we weren't welcome there. [With community policing], we gained more respect—people wanted us there. Even the bad people knew the cops. We treated them pretty decent. Kids get to like you, and you get some information."[372] He notes with admiration, "Pastore was one of a kind—not like anybody else in the police department…. He was a very smart guy who clearly knew his stuff."[373] Lombari adds that many of the officers did "buy into" Pastore's philosophy. "Once he left, they wished he was back."[374] Ortiz asserts, "Some of the best things in policing in America happened here in New Haven, under Pastore."[375] Opinions can change; but even under Pastore, the change did take time.

Police seem to need a "gentle nudge" toward adopting the culture of community policing. Hard shoves, like Pastore's aggressive implementation of community policing methodology, can be temporarily effective, but seem to have little sticking power. By the time Lewis arrived on the scene, the officers were thrilled to return to their patrol cars and make more arrests. While veterans may admire Pastore, the rank-and-file, even in New Haven, have remained invested in the old "John Wayne" model of policing.[376] While some scholars tout the ability of management to impact police attitudes, many agree that police culture—like community culture—is transmitted largely through informal mechanisms. Since the image of police as heroic crime fighters is deeply entrenched in most departments, it will take time and gradual turn-over—with officers opting into the community-oriented strategy—for the culture to truly change.[377] In

[372] Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11.
[373] *Id.*
[374] Telephone Interview with Lt. Frank Lombardi, *supra* note 294.
[375] Interview with Francisco Ortiz, *supra* note 268.
[376] Mastrofski & Willis, *supra* note 96, at 85.
[377] *Id.* at 101

addition, the very nature of policing makes it difficult to embrace the community, especially in crime-ridden areas. Scholars point out that it takes constant effort to assuage the paranoia and isolation that officers experience from living under the constant threat of physical violence.[378] This reality tends to slowly erode the work done by men like Pastore—and an experience with a beloved "cop's cop" like Lewis can easily undo years of community-oriented focus.

IV. The Linked Fate of Community Policing and Criminal Procedure in America

Community policing is at a crossroads. Its adoption in the 1980s and 1990s was hastened by a perceived crisis in law enforcement.[379] Violent crime was at an all-time high for the nation; the crack epidemic was raging; and law-abiding citizens were paralyzed by an overwhelming fear of crime and disorder.[380] In this context, it was possible to run roughshod over a police culture that did not naturally embrace a community-oriented philosophy and to depend on police culture to slowly adjust. In addition to the opportunity for experimentation presented by the crime surge, the federal government offered a major incentive for departments to adopt community policing in the 1990s by offering large grants to hire community policing officers.

Many departments like New York's and New Haven's gave officers rewards for going along with the program, either by revising their performance reviews to emphasize community policing activities or by rewarding and promoting the officers that most enthusiastically embraced community policing practices.[381] Realigning incentives, while helpful, does not necessarily create a permanent shift in policing culture. Indeed, in New Haven officers are once again lashing out against the revivification of community policing; the culture of police and the culture

[378] *See* WILLIAM WESTLEY, VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY (1971).
[379] Mastrofski & Willis, *supra* note 96, at 101.
[380] *See id.*
[381] Mastrofski & Willis, *supra* note 96, at 102.

of community policing are once again openly at odds.[382] New Haven has found in perennially difficult to effectively return to policing's past. Now, in the face of intense opposition, the City's leadership must decide if doing so is truly worthwhile.

At the same time as police departments have been backsliding into reform-era policing patterns, the Supreme Court has been showing increased faith in police discretion and local accountability. Heartened, perhaps, by local initiatives like community policing and by post-Civil Rights Era efforts to address police racism, the Court has changed course and appears to be broadening rather than restricting police discretion where it has been challenged.[383] Theoretically, these developments could be promising for community policing—after all, local efforts could well be aided by a renewed ability to criminalize disorder and by the further empowerment of police. However, they come at a moment when community policing is on the decline, if not in its death throes. Endorsing the use of police discretion could help community policing survive—or it could further harm low-income communities of color, who have traditionally found it quite difficult to keep the police in check.[384]

Community policing and criminal procedure, then, are both at a pivotal moment, and their fates are intertwined. If community policing dies out, leaving police departments to potentially return to the aggressive and undemocratic methods of the reform era, then increasing police discretion at the expense of individual civil rights becomes a poorly-timed and potentially dangerous reform. If, on the other hand, community policing survives, its effectiveness could be aided by affording police more autonomy. The question then becomes: what kind of autonomy is

[382] *See* William Kaempffer, *supra* note 306 (depicting the community supporting Limon as the police vote against him—but also calling Limon's commitment to community policing into question).
[383] *See, e.g.,* Hudson v. Michigan, 547 U.S. 586 (2006) (holding that violation of the knock-and-announce rule need not lead to the exclusion of evidence); Scott v. Harris, 550 U.S. 372 (2007) (holding that terminating a high-speed chase by ramming the suspect's car is not impermissible use of deadly force and does not violate the Fourth Amendment).
[384] *See* Kahan & Meares, *supra* note 7, at 1155-59; *see also* Thompson, *supra* note 358 (describing one low-income community's struggle with the New Orleans police).

the Court affording officers? And is it the kind of autonomy that will aid officers in responding to democratic community initiatives—or does it simply give officers license to return to efficacy- and reciprocity-destroying tactics like the beat-down posse?

A. Ambivalence Around Community Policing in Present-Day New Haven

While Chief Wearing and Chief Ortiz after him continued Pastore's legacy of community policing, James Lewis, who was hired to serve the remaining term of Ortiz's contract when Ortiz left the NHPD to work for Yale in 2008, emphatically objected to many of community policing's key tenets. He quickly reformed New Haven's program, creating more specialized units and undertaking "aggressive" new campaigns to increase arrests. Undertaking more traffic stops and staging prostitution stings were his first priorities in office. Under Lewis, the number of arrests in New Haven rose considerably[385]—particularly in low-income neighborhoods. Whereas under Pastore these arrests had been considered a sign of failure, Lewis regarded them as a triumph. Officers embraced this new aggressive mentality; the union gave Lewis little trouble, and officers seemed to appreciate the lack of "social work" under his regime.

Citizens, however, complained bitterly about Lewis's tactics—despite a purported 10% drop in crime from 2008 to 2010.[386] Ward 10 Alderman Allan Brison argued that Lewis's aggressive methods harassed citizens in his district and created unnecessary neighborhood animosity toward the police.[387] According to Brison, "Lewis's tactics have ushered in a new mistrust of the police among New Haven youth which did not exist ten years ago."[388] Another resident observed the

[385] Ross, *supra* note 262.
[386] *Id.*
[387] *Id.*
[388] *Id.*

Lewis relied heavily on "intimidation tactics." She complained that "police barely interact with New Haven youths unless they are handing them bicycle citations."[389]

While these traffic stops and prostitution stings can deter crime by fixing broken windows and sending signals that police are active in the area, they can also be disruptive of the neighborhood's trust if the stops are based on race or the arrests disproportionately impact communities of color. Professors Tom Tyler and Jeffrey Fagan have hypothesized that these tactics, if undertaken without community support, can lead to decreased police legitimacy.[390] This lack of legitimacy can in turn hasten the breakdown of social organization and communication between police and citizens, which can decrease the efficacy of both community and police to combat crime.

Community members and Lewis battled over which method of policing had been more effective in New Haven. Alderman Brison noted that Pastore's program of foot patrols and after-school programs led to a 33% drop in crime over seven years, while under Lewis crime dropped only ten percent.[391] Lewis countered that crime was nevertheless at a twenty-year low when he left the department.[392] Murder statistics, however, may tell a different story: the average yearly murder rate post-Pastore, from 1998 to 2005, was around 12 homocides per year.[393] Under Lewis, from 2006-2008, the rate spiked to around twenty per year.[394] In 2010, the rate was up to

[389] Powers, *supra* note 81.
[390] *See generally* TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990) (positing that a convergence of norms and the law and perceived police legitimacy leads to law-abiding behavior); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457 (2000) (asserting that aggressive enforcement can lead to decreased legitimacy); Tyler & Fagan, *supra* note 17 (noting that police legitimacy is contingent on community acceptance).
[391] Ross, *supra* note 262.
[392] *Id.*
[393] *See Police Statistics, supra* note 249.
[394] *See id;* Everett Rosenfeld, *Murder Count Spikes as General Crime Rate Dips*, YALE DAILY NEWS, Jan. 13, 2011, http://www.yaledailynews.com/news/2011/jan/13/murder-count-spikes-as-general-crime-rate-falls.

24 murders in the calendar year.[395] While other crime rates can be "adjusted" by classifying some violent crimes as low-level or non-violent offenses, murder rates cannot be tampered with.[396] The murder rates suggest that crime control may have been less effective under Lewis than at any time in the previous decade. Admittedly, these are small numbers, and the jump could have been an aberration, since murders in New Haven represent a tiny sample size. At minimum, however, the deaths call Lewis's crime-reduction numbers into question.

Alarmed by the rising murder rates, Mayor Destefano sought out a new chief who would return to Pastore's methods. Frank Limon became the new Chief of Police in April of 2010. By that time, the fissure between the community and the police had become apparent: none of the city's then-eleven homicides for the year had been solved due to a lack of intelligence.[397] While Limon claimed that community policing was the "basis for [his] belief in policing,"[398] his initial time in New Haven has been rocky. While residents generally support a return to the community-oriented model, Limon's first actions have not been very community-centered. Instead, he saturated the downtown corridor with police after a rash of crime on Crown Street, the center of nightlife in New Haven.[399] The bar raids and stop-and-frisks drew the ire of the Yale students, who felt that their rights were being violated.[400] Other residents, however, have appreciated the increasing number of opportunities to meet with the police and have their voices heard.

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[395]Everett Rosenfeld, *Murder Count Spikes as General Crime Rate Dips*, YALE DAILY NEWS, Jan. 13, 2011, http://www.yaledailynews.com/news/2011/jan/13/murder-count-spikes-as-general-crime-rate-falls/.
[396] *See* Rayman, *supra* note 12.
[397] William Kaempffer, *New Police Effort to Focus on Intelligence*?, NEW HAVEN REGISTER, May 11, 2010, http://www.nhregister.com/articles/2010/05/11/aa3_necrime1051110.txt. It is not unlikely that community policing leads to better intelligence—and hence higher clearance rates—than reform policing. It may also contribute to less violence in general, since less disorder may lead to less opportunities for violence and norm-breaking.
[398] Frank Limon, *New Haven Chief: Community Policing Major Priority*, NEW HAVEN REGISTER, Aug. 22, 2010, http://www.nhregister.com/articles/2010/08/22/opinion/doc4c70af13b49be226479946.txt.
[399] *See* Kaempffer, *supra* note 397; *New Haven Man, 18, Second To Be Arrested in Downtown Shooting*, NEW HAVEN REGISTER, Sept. 27, 2010, http://www.nhregister.com/articles/2010/09/27/news/doc4ca0148609075760982299.txt?viewmode=fullstory.
[400] *See, e.g.*, Susan Misur, *Protest Marchers Call for Fair Police Actions in New Haven*, NEW HAVEN REGISTER, Oct. 23, 2010, http://www.nhregister.com/articles/2010/10/23/news/new_haven/doc4cc3784bc4a6b536565827.txt.

While the community remains cautiously optimistic about Limon, officers complained that the chief was focusing too much of his attention on residents and not enough on the rank-and-file. While police acknowledged that Limon had been aggressively reaching out to the community and promising to strengthen police-community ties, they complained that "he has shown less interest in dealing with them."[401] Bitter that Limon wanted detectives to wear suits at all times and ignored union grievances, the union leadership commented, "These three people here, I've never worked under anyone like this."[402] Police unrest led to a union vote of no confidence for Limon—just as it had for Pastore and Ortiz before him.[403]

While officers were no doubt also rankled by city budget cuts and the resultant jobs lost,[404] a shift in priority from officer's preferences to community preferences seemed to play into the officer's anger. They expressed their distaste vocally long before the budget cuts, and the parallel fates of Pastore, Ortiz, and Limon—all proponents of community policing—are difficult to ignore. Pastore and Ortiz both weathered the no confidence vote, and under their watches New Haven experienced significant decreases in violent crime.[405] The same may be true of Limon. Proponents of community policing should hope so, since without stable leadership, implementing community policing has traditionally proven difficult if not impossible.[406] To ensure that community policing remains operative in New Haven, Limon would likely need to remain chief for quite some time, even in the face of intense union opposition. The union,

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[401] William Kaempffer, *Union Considers No Confidence Vote in New Haven Police Chief Over 'Lack of Leadership'*, NEW HAVEN REGISTER, Sept. 1, 2010, http://www.nhregister.com/articles/2010/09/01/news/new_haven/doc4c7e9b0883506907319801.txt.
[402] *Id*.
[403] Kaempffer, *supra* note 382.
[404] Sixteen officers were fired in 2011. Thomas MacMillan, *Last-Minute Negotiations Fail After Cop March*, NEW HAVEN INDEPENDENT, Feb. 17, 2011, http://www.newhavenindependent.org/index.php/archives/entry/sirens_wail_as_laid-off_cops_march_on_city_hall/id_33907.
[405] Kaempffer, *supra* note 382.
[406] *See* WILSON, *supra* note 105, at 102-04.

however, speculates that Limon may not last long in New Haven. Three career NHPD officers were recently promoted to Assistant Chief, and Cavaliere suspects that one of them will be named chief when Limon leaves—or is abruptly pushed out.[407]

B. Court Perception and Police Practice Are Diverging

Many cities are struggling with the same issues surrounding community policing as New Haven. New York's historic community policing efforts have ended in all but name. The city has recently been attacked for using excessive stop-and-frisks, which alienate youth in low-income communities and net contraband in only three out of every hundred cases—and a gun in only one of those three.[408] Moreover, a precinct in Brooklyn was recently sanctioned for handing its police quotas for arrests and citations, leading some officers to ticket men carrying soda bottles under "open container" laws and offending the local population.[409] These aggressive strategies are incompatible with the theories of reciprocity and trust at the heart of community policing. San Francisco, too, is struggling to faithfully implement community policing; because the police have failed to pursue community-based reforms with sufficient fidelity, City Hall is considering legislating adherence to community-based methods.[410]

Recent events have caused many other cities to reconsider community policing. In early 2011, a man walked into a community policing station in Detroit—a station that had no bullet proof glass in order to appear more welcoming—and shot four officers.[411] The subsequent furor caused many cities still nominally pursuing community-oriented policing to consider scaling

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[407] *See* William Kaempffer, *New Haven Police Chief Picks Three New Assistant Chiefs*, NEW HAVEN REGISTER, Apr. 12, 2011, http://www.nhregister.com/articles/2011/04/12/news/new_haven/doc4da3b2fe6562b018334366.txt; Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11.
[408] *See* Fagan & Davies, *supra* note 390.
[409] *See* Rayman, *supra* note 396.
[410] Rachel Gordon, *Community Policing: Hot Topic at City Hall*, SAN FRANCISCO CHRONICLE, Mar. 10, 2011, http://www.sfgate.com/cgi-bin/blogs/cityinsider/detail?entry_id=84702.
[411] Jeff Karoub, *Police-Station Rampage Tests `Community Policing,'* BOSTON.COM, Jan. 25, 2011, http://www.boston.com/news/local/massachusetts/articles/2011/01/25/police_station_rampage_tests_community_policing/

back or terminating the strategy altogether. The head of the National Association of Police Organizations—a union umbrella organization—took the opportunity to criticize community policing's reliance on civilian aid and goodwill.[412]

Some cities, however, maintain a strong commitment to community policing or are just embarking on community policing reforms. Providence, for example, recently hired Dean Esserman, the Assistant Chief of Police under Pastore in New Haven, to bring community policing to their city.[413] San Francisco has vowed that its next chief of police will be hired primarily based on his commitment to community policing.[414] Small cities like Boise and San Antonio have continued to adhere to the philosophy as well.[415] Still, implementation is not nearly as uniform as it was in the late 1990s, when grant funding was at its peak. And—given the imminent national budget cuts—grant programs, and hence external incentives to pursue the community-based strategy, may shrink or disappear altogether by 2012.

Alice Chappell has characterized the implementation of community policing as "a battle for the hearts and minds of police officers."[416] That battle has not been won. As Mastrofski and Willis observe, while police policy can change quickly under a dedicated leader, police culture changes largely through informal mechanisms and slowly over time.[417] In addition, Wilson notes that it is extremely difficult to sustain community policing unless police departments maintain stable leadership, which departments rarely do.[418] New Haven, for example, has had five

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[412] *Id.*
[413] Amanda Milkovitz, *The Best Police Chief in America*, PROVIDENCE JOURNAL, Feb. 8, 2004, http://www.projo.com/news/content/projo_20040208_pchief8.faa80.html.
[414] Gordon, *supra* note 410.
[415] *Community Policing*, CITYOFBOISE.ORG, http://www.cityofboise.org/Departments/Police/AboutBPD/CommunityPolicing/page5740.aspx (last visited Mar. 10, 2011); *San Antonio Police Department: Community Policing*, SANANTONIO.GOV, http://www.sanantonio.gov/sapd/COPPS.asp?res=1024&ver=true.
[416] Chappell, *supra* note 8, at 8.
[417] Mastrofski & Willis, *supra* note 96, at 10.
[418] *See* WILSON, *supra* note 105, at 102-104.

different chiefs since Pastore resigned in 1997. The implementation of community policing will continue to be a battle, then: a battle won only over a long period of time by dedicated leaders slowly changing the signals sent to their officers and the culture of their departments. Since an aggressive and isolated policing culture is entrenched in many departments, it will almost certainly take a series of gentle nudges and shifts in incentives to transform officers into eager and willing community servants. Hard shoves and attempts at quick progress may only further alienate reticent officers.[419]

In this contentious policing environment, granting police increased autonomy and trusting that they will remain accountable to communities seems misguided—yet the Supreme Court has done just that. In each of the major criminal procedure cases in the last five years, the Supreme Court has sided with police, thereby expanding police authority and discretion. In the Fourth Amendment context, *Hudson v. Michigan*[420] has severely limited the exclusionary rule; police can now ignore the knock and announce rule articulated in *Mapp v. Ohio*[421] without jeopardizing the evidence collected. *Scott v. Harris*,[422] another Fourth Amendment case, affirmed an officer's right to terminate a high speed chase, even at the risk of paralyzing or killing the driver. In a smattering of other cases—*Montejo v. Louisiana*,[423] *Florida v. Powell*,[424] and *Berghuis v. Thompkins*,[425] for example—the Court uniformly affirmed that almost any warning suspects were given regarding their right to an attorney satisfied the *Miranda* standard. These cases unequivocally extend police authority to keep badgering a suspect where he does not specifically

[419] Despite officers' eventual acceptance of Pastore's methods, both union representatives commented that the change in attitude was helped along by generous doses of overtime pay—and may not have been uniform among all officers. Telephone Interview with Sgt. Louis Cavaliere, *supra* note 11; Telephone Interview with Lt. Frank Lombardi, *supra* note 294.
[420] 547 U.S. 586 (2006).
[421] 367 U.S. 643 (1961).
[422] 550 U.S. 372 (2007).
[423] 129 S.Ct. 2079 (2009).
[424] 130 S.Ct. 1195 (2010).
[425] 130 S.Ct. 2250 (2010)

invoke his *Miranda* rights. Police may now burst in to resident's homes or ram into their cars with little forewarning or procedure.

Ironically, in scaling back Court-ordered rules of criminal procedure, Scalia relies on the argument that police departments have been increasingly reliable in respecting citizens' rights—rights based on Court-ordered rules of criminal procedure that originated in the 1960s.[426] It is highly debatable whether police would be so reliable in respecting citizens' rights if courts had not been so aggressive in protecting civil liberties. Scalia also relies on the increased use of citizen review, one of the many reforms that accompanied community policing. In cities like New Haven, however, City Hall-appointed citizen review boards have been one of the weakest methods of holding police democratically accountable. Indeed, citizen oversight and participation in policing seems to be on the decline, while a new generation of officers enter the profession hoping to engage in exciting crime fighting à la *NYPD Blue* or *Law and Order*. The Court's new jurisprudence doesn't seem to be a nudge to embrace the community, so much as it authorizes police to ignore citizen's rights, potentially further undermining police legitimacy and reciprocity.

While Supreme Court precedent generally acts as a floor for protecting citizens' rights—states or localities can always afford citizens greater protection—in the area of criminal procedure, Supreme Court precedent has more or less become synonymous with most state laws and police department guidelines.[427] This was not always the case. The first New Haven police had strict guidelines as to when they should execute arrests versus when they ought to furnish

[426] 547 U.S. 586, 598-99.

[427] *See, e.g.*, CONN. GEN. STAT. § 54-1b (2010) ("Any accused…shall be advised by a judge that he has a right to counsel, that he has a right to refuse to make any statement and that any statement he makes may be introduced in evidence against him."); CONN. GEN. STAT. § 54-1f (2010) (Officers "shall arrest, without previous complaint and warrant, any person who the officer has reasonable grounds to believe has committed or is committing a felony"); CONN. GEN. STAT. § 54-33a (Warrants shall only issue upon "probable cause.").

warnings—despite Supreme Court precedent being largely laissez-faire at the time.[428] The Supreme Court's caselaw from the 1960s and 1970s, however, superseded many department's policies or state's laws, since it was extremely pro-civil liberties. While states or departments may begin to once again impose stricter guidelines on their officers—especially given the threat of tort suits—these changes are far from assured in America's current "tough on crime" environment.

It is another question entirely whether or not the Court should change its jurisprudence to reflect changes in local politics and police behavior. Most scholars agree that the Court did just that in the 1960s—although many disagree over whether or not this should be the Court's general procedure.[429] In addition, it seems—based on Scalia's reasoning—that the Court is still paying attention to local trends.[430] This paper does not purport to join in the debate over to what extent law ought to be influenced by policy and public will. Rather, in asserting that the current level of legal protection in criminal procedure should be maintained, the argument takes for granted that the Court has responded and continues to respond to political and social trends. If this is true, then the Court ought to at least strive to interpret and respond to these trends reasonably and accurately.

Professors Kahan and Meares predicted an upheaval in criminal procedure over a decade ago—although the current shift differs from what they originally envisioned. In their article *Foreword: The Coming Crisis of Criminal Procedure*, they anticipated, based on the "political revolution… remaking urban law enforcement" that certain restrictive doctrines would drop out

[428] *See* NEW HAVEN BD. OF POLICE COMMISSIONERS, RULES AND REGULATIONS FOR THE CONDUCT, GOVERNMENT, AND CONTROL OF THE POLICE DEPARTMENT OF THE CITY OF NEW HAVEN 7 (May 10, 1865) ("No member of the department shall maltreat or use unnecessary violence toward a prisoner, or other person, or use insulting or abusive language.").
[429] *See* MEARES & KAHAN, *supra* note 321, at7.
[430] 547 U.S. 586, 598-99.

of criminal procedure.[431] Indeed, criminal procedure is quickly changing in favor of law enforcement, but the community-based revolution seems to have fizzled—or at least stalled. Kahan and Meares would have the Court roll back various criminal procedure protections that developed in the 1960s in response to widespread police racism at the time—doctrines that they claim are now interfering with community-based policing. Communities, they argue, are now better able to hold the police politically accountable, and rampant racism is on the decline. In other words, since we have now rolled policing strategies back to the nineteenth century, when police were kept in check by the communities they served, procedure should be rolled back as well to remove unnecessary barriers to, say, community-favored gang loitering laws.

The problem here is twofold. First, the Court hasn't really implemented the kind of changes Kahan and Meares envisioned—changes that would aid community policing. Instead, the Court has made it easier for police to burst into apartments without knocking and seriously injure perpetrators in car chases. If anything, unannounced visits and violent chases would likely undermine community trust rather than reinforce social organization. Second, with the future of community policing remaining so unclear, the basis for implementing pro-policing reforms vanishes. In fact, given the reason community policing has floundered—arguably, the violent and distrustful culture of police—the Court should be reticent to curtail so many of the civil rights developed in the 1960s and 1970s.

In fact, although Kahan and Meares claim that criminal procedure has stymied community policing efforts, it seems highly unlikely that cases like *City of Chicago v. Morales*[432] have initiated the decline community policing has faced in the last ten years. While *Morales* struck down a community-supported gang loitering ordinance as unconstitutionally vague, the Court

[431] *See* Kahan & Meares, *supra* note 384, 1155-59.
[432] 527 U.S. 41 (1999).

also claimed that the ordinance could have stood had it been rewritten with greater specificity.[433] Community policing ordinances have not been callously tossed out by courts; Courts have merely declared that they must be specific enough to guard against the arbitrary deprivation of liberty.[434] Surely demanding that officers have some reasonable suspicion that citizens are armed and dangerous or probable cause to believe that they are trafficking drugs is not an unreasonable demand. Indeed, many neighborhoods in New York are crying out for even greater protection from police than the "reasonable suspicion" bar affords[435]—and these are police who still claim to be implementing community policing via broken windows. Under these circumstances, it hardly seems plausible that criminal procedure is solely to blame for the decline of community policing.

The more plausible explanation—supported by countless studies of policing and by the story of New Haven—is that the officers charged with the on-the-ground implementation of community policing remain skeptical of the enterprise.[436] There remains a cultural divide between enthusiasts like Pastore, who are willing to hug accused murderers and buy alleged felons pizza, and your average police officer. Isolated by the constant threat of violence and their unique authority, these men and women in blue often joined the force to be crime fighters, not community advocates.[437] Winning them over will take time and consistency.

In the meanwhile, the Court should not presume that police culture has been utterly transformed—although we have undoubtedly made *some* progress since the 1960s—or that community norms and police norms have suddenly merged. Where community policing is in

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[433] See MEARES & KAHAN, *supra* note 321, at 22-23.
[434] 527 U.S. 41 (1999).
[435] *See* Rivera, Baker & Roberts, *supra* note 12 ("[M]any residents say they often come away from encounters with officers feeling violated, degraded and resentful.").
[436] *See* SKOLNICK, *supra* 354, at 53-60; Bayley & Shearing, *supra* note 79, at 604; Chappell, *supra* note 8, at 19; Mastrofski & Willis, *supra* note 96, at 101.
[437] *See* SKOLNICK, *supra* 354, at 53-60; Mastrofski & Willis, *supra* note 96, at 101.

place and functioning, there will likely be little need for the community to resort to formal legal measures to keep police in line. Rather, if the police have truly made themselves accountable to the community and have integrated themselves into the community's social organization, low-cost, informal sanctions will likely suffice to keep police honest: filing a complaint with the department, for example, or speaking out about mistreatment at a community meeting. Generally, communities will take their case to court only where there is a normative disjuncture between the community and the police that cannot be efficiently resolved between the two parties. The relationship between community members and their police is an enduring one, and so it behooves both parties to settle matters informally and locally so that the relationship can continue to be reciprocal and productive—and such that joint police-community efficacy is not destroyed.

One New Haven ordinance provides an interesting example of this thesis. New Haven has on its books, to this day, an ordinance shockingly similar to the ordinance overturned in *Morales*. The regulation, which was passed during Pastore's tenure, reads as follows:

> A person is guilty of drug-traffic loitering if he or she remains in a public place in a manner and under circumstances manifesting the purpose of soliciting, enticing or procuring another to engage in illegal drug activity, and such person refuses to cease such conduct when ordered to do so by the police, or resumes such conduct after being ordered by police to cease.[438]

Given the ordinance's similarity to the ordinance struck down in Chicago, this regulation is almost certainly unconstitutional. In defining what it means to loiter "under circumstances

[438] NEW HAVEN CODE OF ORDINANCES, Sec. 18-17.1(b) (added Sept. 5, 1995). Compare with Chicago's ordinance, which read:

> Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

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

manifesting the purpose of soliciting… illegal drug activity," the ordinance lists a few examples, including "repeatedly beckon[ing] to, stop[ing] or attempt[ing] to stop passersby, or engag[ing] passersby in conversation." Even today's Court would almost certainly balk at criminalizing such ambiguous behavior.

So why is this law still on the books? Why haven't courts intervened to strike it down as void for vagueness? The answer seems simple: because nobody ever sued, and nobody in New Haven ever would. Former-Chief Francisco Ortiz explained:

> This ordinance was formed through dialogue in public forums, with public feedback. The community wanted us to have another tool for fighting drug crime. They said they wanted to help the police…. We involved advocates on both side of the debate, pro and con. This gave us legitimacy and credibility when we pushed for the ordinance. We were co-authors with the community. At the end of the day, they understood that we were trying to save lives.[439]

In New Haven, in 1995, the police had succeeded in gaining legitimacy and credibility with citizens. Pastore pushed to create shared norms around order maintenance, and—to some extent—he prevailed. No one ever took the city to court over this ordinance, probably because the local rules and norms seemed agreeable. There was no clash over the local policy significant enough to resort to formal adjudication via federal law during Pastore or Ortiz's time, and since then the ordinance has fallen into disuse.

But what if the police today began to abuse the ordinance? Where there is a disjuncture between community and police expectations, holding in favor of the community in close cases would produce the better outcome. Holding for the community members in these cases would simply incentivize officers to avoid activities that could disrupt community trust and chill future efforts at creating reciprocity. Avoiding the streets for fear of police, after all, is just as disruptive of social organization as avoiding the streets for fear of crime or disorder. Moreover, if citizens

[439] Interview with Francisco Ortiz, *supra* note 268.

do not believe that the police are legitimate—if they view the police as unchecked by either the community or the law—then there is little hope that the community and police will join together to increase collective efficacy. There is good cause to believe that most police will compromise a suspect's liberty as much as the law will allow, but no more.[440] The law, perhaps, protects the police from their own antisocial impulses as much as it protects the citizens from the police.

Current law, then, may actually favor the eventual flourishing of community policing far more than a relaxed criminal procedure doctrine would. By holding police accountable where their actions violate community norms and civil liberties, current jurisprudence may preserve the legitimacy of the criminal legal system.[441] Without this legitimacy and without the possibility of trust or reciprocity, it would be very difficult to strengthen or revive cities' waning community policing programs. Given strong community approval of the community policing philosophy, its propensity to reduce fear of crime, and its ability to harness the power of citizens and police alike in preserving order, it may well be worth protecting the Warren Court's criminal procedure regime in order to preserve the possibility of a revival of community policing. New Haven's regime, and many others, are on the precipice. Incentivizing officers to create shared norms and to treat community members with respect may aid in community policing's eventual re-emergence.

CONCLUSION

Dedicated police departments have been working to roll back the clock and return to community-oriented policing—policing that reduces fear and disorder while reinforcing a community's ability to police itself. They have not succeeded yet. A true transformation of police culture may take decades. In the meanwhile, the Court should refrain from rolling back

[440] *See Retreat: The Supreme Court and the New Police*, *supra* note 18, at 1709.
[441] *See*Tyler & Fagan, *supra* note 17.

the clock on criminal procedure and removing the very protections that make trust in the police—the prerequisite of any community policing regime—possible.