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THE ORDER-MAINTENANCE AGENDA AS LAND USE POLICY

NICOLE STELLE GARNETT*

"We used to have a nice neighborhood. We don't have it anymore. . . . I am scared to go out in the daytime. . . . I don't go to the store because I am afraid. . . ."

"I have never had the terror that I feel everyday when I walk down the streets of Chicago."

> -Testimony before the Chicago City
> Council in favor of the Chicago Gang
> Loitering Ordinance, 1992[1]

In his short history of urban life, *The City: A Global History*, Joel Kotkin argues that all successful cities have three core characteristics: they are sacred, they are safe, and they are busy.[2] Few would argue with Kotkin's emphasis on city safety, or with his conviction that cities fail unless they keep their citizens safe. City life has long depended upon two kinds of security—the protection from invading outsiders and from deviant insiders. Until quite recently, urban civilizations' very existence depended upon the ability to repel invaders. Ancient cities—Assyrian, Greek, Indian, Roman, and American—developed and flourished when that security was established and foundered when it failed. As Kotkin observes, the rise of city walls once marked the beginnings of an urban society: when large walled towns first appeared in China (as early as 1110 B.C.E.), the characters for "wall" and for "city" were identical.[3] Even during the *Pax Romana*, when unprecedented security enabled the free movement of people, goods, and ideas, many cities—especially on the

1. Transcript of Proceedings before the City Council of Chicago, Committee on Police and Fire 66–67 (May 15, 1997) (*quoted in* City of Chicago v. Morales, 527 U.S. 41, 101 (1999) (Thomas, J., dissenting)).

2. JOEL KOTKIN, THE CITY: A GLOBAL HISTORY xix–xxii (2005).

3. *Id.* at 11.

frontier—depended upon the protection of walls and legionaries.[4] The return of urban life to Europe in the centuries after the fall of Rome was similarly marked by the "erecting [of] a defensive perimeter."[5]

While protecting inhabitants from invading outsiders is no longer a primary function of cities, local governments must continue to guarantee their residents' security by adopting and enforcing the rules necessary to protect them from deviant insiders. Indeed, many cities in the developing world are crippled by a lack of internal security.[6] In these places, those citizens who can afford to do so retreat into guarded, walled, suburban enclaves or emigrate abroad. Not long ago, many people expected American cities to suffer, in time, a similar fate. Crime rates rose dramatically during the 1960s and 1970s, and then remained at unprecedented levels despite increases in police expenditures. And as the crime rate rose, so did fear of crime, especially in urban areas. Private security forces—from paid security guards to the controversial "Guardian Angels"—began to patrol the streets.[7] Along with the high crime rates, other factors—including the decriminalization of public drunkenness and vagrancy, and the deinstitutionalization of the mentally ill—contributed to a crippling fear of urban disorder. By the end of the 1980s, many of those who could do so chose simply to avoid urban public spaces. Any informed observer might have concluded that our cities were falling apart at their seams and that any reasonable person would have cause to abandon them.[8]

According to Kotkin, one critical element in the late-twentieth-century revival in some American cities is "the adoption of new policing methods and a widespread determination to make public safety the number one priority of government."[9] His assertion is a plausible one. Since the publication in 1982 of James Q. Wilson and George Kelling's influential essay, *Broken Windows: The Police and Neighborhood Safety,*[10]

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4. *Id.* at 32–33.

5. *Id.* at 66.

6. *Id.* at 126–146.

7. NICOLE STELLE GARNETT, ORDERING THE CITY: LAND USE, POLICING, AND THE RESTORATION OF URBAN AMERICA 127 (2009).

8. On the effects of crime and disorder, see, for example, PAUL GROGAN & TONY PROSCIO, COMEBACK CITIES 152 (2000) ("Out of control crime was the nearly universal expectation for the inner city. Any other positive trend there . . . was sharply hemmed in by the prospect of continued crime and, just as important, an all but unshakable fear of crime."); George Kelling & Mark Moore, *From Political to Reform to Community: The Evolving Strategy of Police, in* POLICE AND SOCIETY 15 (David H. Bayley ed., 1977) ("Citizens abandoned parks, public transportation, neighborhood shopping centers, churches, as well as entire neighborhoods."); GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 40–60 (1996); Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning,* 105 YALE L.J. 1165 (1996).

9. KOTKIN, *supra* note 2, at 154–55.

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

urban policies focusing on curbing disorder, such as former Mayor Rudolph Giuliani's "quality of life" and "no tolerance" programs, as well as "community policing" efforts, have become ubiquitous.[11] This "order-maintenance revolution" is, at its heart, motivated by the desire to make our cities safer. From their inception, order-maintenance reforms have flowed from a conviction that the dominant post-war "law enforcement" model of policing—which focused on solving crimes rather than preventing them—was ineffective, if not counter-productive.[12]

In their essay, Wilson and Kelling first articulated the influential "broken windows hypothesis," which posits that uncorrected manifestations of disorder, even minor ones like broken windows, signal a breakdown in the social order that accelerates neighborhood decline and generates more serious crime.[13] The broken windows hypothesis has generated a vast academic literature, most of which falls into two broad, and overlapping, categories: the first concerning the efficacy of order-maintenance policing tactics; the second concerning these policies' civil-liberties consequences. In the first debate, social norms scholars argue that disorder is a precursor to more serious deviancy and crime, and, therefore, that order-maintenance policing strategies are needed to keep disorder in check.[14] As Dan Kahan has observed, "[c]racking down on aggressive panhandling, prostitution, open gang activity and other visible signs of disorder may be justifiable on this ground, since disorderly behavior and the law's response to it are cues about the community's attitude toward more serious forms of criminal wrongdoing."[15] Efforts to test this claim have generated a voluminous empirical literature, with scholars sharply divided over the meaning of the available data.[16]

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11. *See, e.g.*, Debra A. Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 577 (1997).

12. *See, e.g.*, KELLING & COLES, *supra* note 8, at 85–89 (describing collapse of reform-era policing strategies by the 1970s).

13. Wilson & Kelling, *supra* note 10, at 31.

14. For comprehensive treatments of the "social influence" justification for order-maintenance policing, see, for example, Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 367–73 (1997) [hereinafter Kahan, *Social Influence*]; Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1527–1538 (2002).

15. Kahan, *Social Influence*, *supra* note 14, at 351.

16. *See* WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 65–84 (1990) (finding causal connection between disorder and robbery rates); BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 128–30 (2001) (challenging Skogan's findings); Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 612–29 (1999) (finding disorder was correlated with robbery, but questioning causal connection between disorder and serious crime); George L. Kelling & William H. Sousa, Jr., *Do Police Matter? An Analysis of the Impact of New York City's Police Reforms* (Manhattan Inst. Ctr. for Civic Innovation, Civic Report No. 22, Dec. 2001) (attributing

In the second debate, civil liberties and criminal procedure scholars focus on the constitutional questions raised by the discretion afforded police officers by order-promoting criminal laws. Many worry that order-maintenance policing techniques threaten to undermine hard-earned civil liberties victories and open the door to police abuses, especially by eroding the constitutional limits on police discretion.[17] In response, order-maintenance proponents assert that skepticism of the police is outdated and, moreover, actually harms the very people that civil libertarians wish to protect, namely the poor minority residents of disorder-ravaged inner city neighborhoods.[18]

These debates focus almost exclusively on whether the order-maintenance agenda represents wise criminal law policy—specifically on whether, when, and at what cost, order-maintenance policing techniques reduce serious crime. These questions are important, but, as I have previously written, incomplete. In particular, academic debates about the order-maintenance revolution tend to overlook the complex and important role of property regulation in order-maintenance efforts.[19] This oversight is problematic for a number of reasons, including the fact that focusing on order-maintenance policies exclusively through the lens of the *criminal law* may cause commentators to miss what might be called "land use" benefits (and costs) of the order maintenance agenda. Although land use policies focus primarily on the regulation of private property, their goal has long been to maximize overall community health. Therefore, evaluating order-maintenance policies through the lens of land use policy lends itself to a more holistic consideration of benefits other than crime reduction.[20]

This Essay seeks to fill in this critical gap in the current understanding of order-maintenance policies. It considers benefits other than crime reduction, especially reducing the fear of crime (even when the crime

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dramatic decline in crime in New York City to aggressive misdemeanor arrest policy); Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 J. L. & ECON. 235, 262 (2005) (analyzing data from New York and finding that aggressive misdemeanor arrest policy led to decrease in incidents of violent crime); Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271, 275-77 (2006) (challenging these New York City studies).

17.   *See, e.g.*, Alan M. Dershowitz, *Rights and Interests, in* URGENT TIMES: POLICING AND RIGHTS IN INNER-CITY COMMUNITIES 33–39 (Tracey L. Meares & Dan M. Kahan eds., 1999); [hereinafter URGENT TIMES]; Carol S. Steiker, *More Wrong than Rights, in* URGENT TIMES *supra*, at 49–57; Margaret A. Burnham, *Twice Victimized, in* URGENT TIMES *supra*, at 63–69.

18.   *See* Dan M. Kahan & Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO. L. J. 1153, 1159–1171 (1998); Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong: The Paradox of Unwanted Rights, in* URGENT TIMES, *supra* note 17, at 3–30.

19.   *See* Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1 (2004); Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075 (2005).

20.   GARNETT, *supra* note 7, at 128-29.

itself does not decrease). The *Broken Windows* essay itself urged that attention to disorder was important not just because disorder was a precursor to more serious crime, but also because disorder undermined residents' sense of security.[21] The later scholarly explications of the broken windows hypothesis also emphasize the connection between restoring the *perception* of security and its reality.[22] One reason that social norms scholars link disorder and crime is that disorder has a predictable effect on law-abiding citizens: those with financial resources move away from, or choose not to move into, disorderly neighborhoods; those without resources remain inside and avoid public places. Even if these reactions (somewhat surprisingly) do not lead to more crime in a community, they certainly disadvantage city neighborhoods vis-à-vis their suburban alternatives.[23] Moreover, and importantly, the goals of reducing crime and of helping poor, inner-city residents feel better about, and more vested in, their communities are not necessarily coterminous; order-maintenance policies might achieve the latter without achieving the former. In other words, it might be the case that order-maintenance policies do not curb serious crime *and* that they make cities more attractive places to live, for both current and potential residents.

I.   BEYOND CRIME REDUCTION

To begin, it is important to emphasize that not all order-maintenance policies are policing strategies. Nor are all they all crime-reduction strategies, solely predicated on the existence of a causal link between disorder and more serious crime. Many order-maintenance policies are better understood as urban development strategies. They primarily aim to improve the quality of life in disorder-plagued urban neighborhoods, both for the sake of current residents and as a strategy for attracting newcomers. Certainly curbing crime, especially violent crime, is one of the most important ways to improve many urban neighborhoods. Violence is, unfortunately, the single most pressing quality-of-life issue facing many Americans today, especially the urban poor. But the broad array of policies falling under the order-maintenance umbrella—street

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21.   Wilson & Kelling, *supra* note 10, at 29, 35.

22.   On the perception of security versus its reality, see, for example, CHI. CMTY. POLICING EVALUATION CONSORTIUM, COMMUNITY POLICING IN CHICAGO, YEAR TEN: AN EVALUATION OF CHICAGO'S ALTERNATIVE POLICING STRATEGY 66 (2004) [hereinafter COMMUNITY POLICING IN CHICAGO]. On safety as a factor influencing housing choice, see NAT'L ASS'N OF HOME BUILDERS, 2005 MULTIFAMILY RENTER AND CONDO BUYER PREFERENCE SURVEY 20–21 (2005), *available at* http://www.nahb.org/generic. aspx?genericContentID=46103; PUB. POL'Y INST. OF CAL., SPECIAL SURVEY ON LAND USE 7 (2002), *available at* http://www.ppic.org/content/pubs/survey/S_1102MBS.pdf; Lee Sigelman & Jeffrey R. Henig, *Crossing the Great Divide: Race and Preferences for Living in the City Versus the Suburbs*, 37 URB. AFF. REV. 3, 7–8 (2001).

23.   GARNETT, *supra* note 7, at 132–40.

sweeping and litter pickup, graffiti and junk removal, "weed and seed" programs targeting rubble-strewn abandoned lots, the demolition of abandoned buildings, and policies aimed at curbing the common "social disorders," such as public drinking, prostitution and drug dealing—may generate a number of benefits, even if they do nothing to reduce serious crime. This Essay focuses primarily on one potential benefit—reducing the fear of crime—but there are many others, including, importantly, simply improving the residents' quality of life in our poorest communities.

A. *Fear of Crime*

In *Broken Windows*, Wilson and Kelling admitted—on the first page of their essay—that order-maintenance policing will not necessarily reduce crime. The essay was prompted by the Newark Foot Patrol Experiment, which increased the presence of police officers "walking the beat" instead of driving patrol cars. Kelling participated in an evaluation of the program, which found, in Wilson and Kelling's words, that "to the surprise of hardly anyone . . . foot patrols had not reduced crime rates."[24] Despite this, however, Wilson and Kelling still concluded that the foot patrols had made the affected neighborhoods *safer*. They reasoned that "residents of the foot-patrolled neighborhoods seemed to feel more secure[,] . . . tended to believe that crime had been reduced, and seemed to take fewer steps to protect themselves from crime (staying at home with the doors locked, for example)."[25]

Wilson and Kelling's admission that foot patrols had not caused crime rates to fall reflects their understanding, from its inception, that the order-maintenance enterprise is not just about reducing serious crime. It is also, perhaps primarily, about improving residents' sense of security. This distinction is important, especially because the available empirical evidence suggests that people tend to systematically *overestimate* the threat of crime. In other words, we tend to feel less safe than we actually are. Consider, for example, the most recent evaluation of Chicago's Alternative Policing Strategy (CAPS) program, a comprehensive community policing effort that focuses on addressing crime and disorder at the neighborhood level. The program assigns officers to one of 279 beats in the city. In order to maximize their "turf orientation," police officers are given long-term assignments and made primarily responsible for responding to calls in their beat. CAPS officers also hold monthly community meetings in their beats, and District Advisory Committees, made up of residents, community leaders, business owners, and other

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24. *Id.* at 29.
25. *Id.*; *see generally* George Kelling, THE NEWARK FOOT PATROL EXPERIMENT (1981).

stakeholders meet regularly with police leaders to discuss community priorities.[26]

Over the first ten years of the CAPS program, crime declined dramatically in Chicago (in keeping with national trends): robbery declined by 58 percent, rape by 45 percent, murder by 30 percent, aggravated assault by 41 percent, burglary by 51 percent, and motor vehicle theft by 47 percent.[27] Promisingly, crime declined most dramatically in the African-American neighborhoods where violent crime was disproportionately concentrated during the early 1990s. Latino neighborhoods also experienced sharper declines than white neighborhoods.[28] Public perceptions of the city's crime also improved during this time period. Surveys found that both African-American and white residents reported that crime fell sharply between 1993 and 2003. Importantly, African-American perceptions of the crime problem, which were historically the most pessimistic, began to converge with the perceptions of white residents. Official crime statistics, however, suggest that crime actually declined more than the public perception of crime. While both African-American and white residents felt that their neighborhoods were much safer in 2003 than in 1993, the trends in officially recorded crime were even more positive; that is, crime fell more sharply than Chicago residents thought that it did. The divergence between survey data and recorded crime was most dramatic in predominantly Spanish-speaking Latino neighborhoods. Spanish-speaking Latinos reported a significant *increase* in crime, despite the fact that official statistics suggest it trended sharply downward.[29]

The CAPS report also found that fear of crime in Chicago also has declined dramatically.[30] Fear of crime is distinct from public perceptions of crime, as it incorporates individuals' predictions about the likelihood of future victimization. Importantly, because an individual's evaluation of his or her vulnerability also reflects a predictive judgment about the likelihood of public or private intervention to prevent or mitigate the effects of crime, fear of crime is an important variable for gauging both police performance and the level of social capital in a community. Between 1993 and 2003, fear of crime fell across all demographic groups in Chicago. Fear was down by 10 percent among men and younger people—two traditionally low-fear groups; it fell twenty percentage points among the groups that traditionally expressed the greatest level of fear— women, African Americans, and the elderly.[31]

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26. *See generally* COMMUNITY POLICING IN CHICAGO, *supra* note 22.
27. *Id.* at 52–54.
28. *Id.* at 54–57.
29. *Id.* at 61–64.
30. *Id.* at iv–v, 54–55, 66–72.
31. *Id.*

B. *Fear vs. Reality*

For many years, conventional wisdom held that crime was the primary cause of fear of crime. Beginning in the 1960s, however, as fear of crime increased dramatically, it became clear that the association between fear and victimization is complicated, and that other factors influence how fearful an individual feels.[32] This is hardly surprising. To begin, not all crime is reported, so crime statistics systematically underestimate the extent of the actual crime problem. Surveys can partially remedy this problem by asking residents to report whether they were themselves victims of crime or know of friends and neighbors who have been victimized. Survey data may be particularly helpful in gauging the extent of under-policed criminal activity, including classic "social disorder" crimes such as gangs, drug dealing, and prostitution. For these crimes, arrest and incident reports tend to reflect the level of police effort rather than the extent of the actual problem.[33] Unfortunately, however, surveys likely overcompensate for the underreporting problem. Respondents may tend to overstate the prevalence of crime, especially because informal and media reports of crime tend to have an amplification effect. For many Americans who have not been victimized, vicarious experiences become their primary contact with crime. Especially because these vicarious experiences often result from sensationalized media accounts of the least common, and most gruesome and bizarre, crimes, survey respondents may distort the extent and distribution of crime.[34]

Fear of crime is even more difficult to measure than the public perception of crime levels. There are no official "fear" statistics. Any effort to gauge the extent of fear necessarily depends upon self-reporting, usually in surveys, and survey results vary dramatically depending on the questions used to measure crime. Traditionally, researchers have divided over whether to gauge fear levels by asking about personal concern about crime, about the perceived risk of victimization, or about precautions taken to avoid crime.[35] By any measure, however, fear of crime is a significant urban problem. For example, a 2005 Gallup poll reported that 38 percent of Americans responded "yes" when asked whether "there is any area near where you live—that is, within a mile—where you would

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32. *See* Mark H. Moore & Robert C. Trojanowicz, *Policing and Fear of Crime*, 3 PERSPECTIVES ON POLICING 3 (June 1988).

33. *See* COMMUNITY POLICING IN CHICAGO, *supra* note 22.

34. BARRY GLASSNER, THE CULTURE OF FEAR: WHY AMERICANS ARE AFRAID OF THE WRONG THINGS 44–45 (1999); Terance D. Miethe, *Fear and Withdrawal from Urban Life*, 539 ANNALS AM. ACAD. POL. & SOC. SCI. 14, 17 (1995); Barrett A. Lee, *The Urban Unease Revisited: Perceptions of Local Safety and Neighborhood Satisfaction Among Metropolitan Residents*, 62 SOC. SCI. Q. 4 (1981).

35. Wesley Skogan, *Measuring What Matters: Crime, Disorder, and Fear*, in MEASURING WHAT MATTERS: PROCEEDINGS FROM THE POLICING INSTITUTE MEETINGS 37, 47–48 (Robert H. Langworthy ed., 1999).

be afraid to walk alone at night."[36] Surveys soliciting information about specific crimes (assault, burglary, rape, murder) generally find lower levels of fear. Perhaps because a respondent's assessment of her level of fear reflects some combination of perceived risk and the perceived seriousness of the offense, people are not necessarily most fearful of serious, violent crimes.[37]

The relationship between personal experience with crime and fear is also unclear. The theory of "indirect victimization" suggests that fear is more widespread than victimization because hearing about other people's experiences with crime causes nonvictims to become frightened.[38] For this reason, there is some evidence that strong local social ties may amplify fear, apparently because neighborhood gossip is an efficient way to distribute information about recent crimes in an area.[39] Most research suggests that prior direct experience with crime is weakly correlated with increased fear, although some authors have suggested that victimization actually may reduce fear under certain circumstances. (The theory being that some victims fear the worst and experience relief when they survive an incident relatively unscathed.)[40] Somewhat paradoxically, the groups with the highest levels of fear—women and the elderly—have the lowest rates of victimization; and those with the highest rates of victimization—young men—have the lowest. (These findings are consistent with the "indirect victimization" phenomenon, since older women are more physically vulnerable than younger men.)[41]

36.   Carroll, Joseph, *Gallup Reviews Americans' Attitudes about Crime*, GALLUP NEWS SERV., June 16, 2006, *available at* http://www.gallup.com/poll/23365/Gallup-Reviews-Americans-Attitudes-About-Crime.aspx.

37.   Miethe, *supra* note 34, at 17; Mark Warr & Mark Stafford, *Fear of Victimization, A Look at Proximate Causes*, 61 SOC. FORCES 1033 (1984).

38.   *See* WESLEY SKOGAN & MICHAEL G. MAXFIELD, COPING WITH CRIME 200–06 (1986); Jeannette Covington & Ralph Taylor, *Fear of Crime in Urban Residential Neighborhoods: Implications of Between- and Within-Neighborhoods for Current Models*, 32 SOC. Q. 231, 232 (1991).

39.   Covington & Taylor, *supra* note 38, at 232; Lauren B. Gates & William M. Rohe, *Fear and Reactions to Crime: A Revised Model*, 22 URB. AFF. R. 425, 439 (1987).

40.   On the connection between crime and fear, see Chris L. Gibson et al., *Social Integration: Individual Perceptions of Collective Efficacy and the Fear of Crime in Three Cities*, 19 JUST. Q. 537, 540 (2002) (discussing literature examining link between fear of crime and victimization); Allen E. Liska et al., *Fear of Crime and Constrained Behavior: Specifying and Estimating the Reciprocal Effects Model*, 66 SOC. FORCES 827, 827–36 (1988); Wesley G. Skogan, *The Impact of Victimization on Fear*, 33 CRIME & DELIN-QUENCY 135 (1987); Gates & Rohe, *supra* note 39. On the possibility that victimization may reduce fear, see RICHARD F. SPARKS ET AL., SURVEYING VICTIMS (1977).

41.   *See, e.g.*, Miethe, *supra* note 344, at 19; Covington & Taylor, *supra* note 38, at 231–32; Edmund F. McGarrell et al., *Neighborhood Disorder, Integration, and the Fear of Crime*, 14 JUST. Q. 479, 480 (1997); Gibson et al., *supra* note 40, at 540; James Garofalo & John Laub, *Fear of Crime: Broadening Our Perspective*, 3 Victimology 242 (1978).

II.   THE COSTS OF FEAR

In his 1968 essay, *The Urban Unease*, James Q. Wilson argued that fear (or unease) brought about by the failure of community was the root of the so-called "urban crisis."[42] At least since that time, fear of crime has been considered a serious impediment to urban health, for a number of related reasons discussed below.

A.   *Economic Costs of Precaution-Taking*

First, when individuals are fearful, they tend to take steps to minimize the risk of victimization. (Indeed, the level of precaution-taking in a community is a common measure of fearfulness.) These precautions are costly. Americans spend more on these private precautions—estimates range from $160 billion to $300 billion—than on the total U.S. law enforcement budget. In other words, private individuals spend more to avoid being victimized than U.S. governments at all levels (federal, state and local) spend on police, prosecutors, judges, and prisons.[43] And, these figures do not reflect the total cost of crime avoidance, such as the opportunity costs of remaining inside behind locked doors to avoid victimization. Many economists condemn private crime prevention measures as socially wasteful, reasoning that private precautions do not reduce the total amount of crime, but rather simply displace it. That is, precautions only deter criminals from victimizing protected individuals, not from committing crimes. Instead, criminals will choose to victimize those who have not taken steps to protect themselves.[44]

B.   *The Social-Capital Costs of Precaution-Taking*

Private precautions ultimately may prove counterproductive for another reason. If social influence theory is correct, steps taken to avoid crime may have the perverse effect of increasing its prevalence. Social influence theory predicts that people will be law-abiding when they perceive that their neighbors are obeying the law.[45] But private actions taken to avoid victimization cannot, by definition, support such a perception. Logically, would-be victims should not take steps to protect themselves from victimization if their neighbors are law-abiding; they will take pre-

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42.   James Q. Wilson, *The Urban Unease: Community v. City*, 12 PUB. INT. 25 (1968).

43.   *See generally* Robert A. Mikos, *"Eggshell" Victims, Private Precautions, and the Societal Benefits of Shifting Crime*, 105 MICH. L. REV. 307 (2006).

44.   *See, e.g.*, ROBERT COOTER & THOMAS ULEN, LAW & ECONOMICS 476 (4th ed. 2004); Omri Ben-Shahar & Alon Harel, *The Economics of the Law of Criminal Attempts: A Victim-Centered Perspective*, 145 U. PA. L. REV. 299 (1996); Steven Shavell, *Individual Precautions to Prevent Theft: Private v. Socially Optimal Behavior*, 11 INT'L REV. L & ECON. 123 (1991).

45.   *See* Kahan, *Social Influence*, *supra* note 14, at 367-73.

cautions only if they believe themselves to be surrounded by criminals. This is one reason why the "depolicing" advocates of the 1980s may have erred. Depolicing proponents worried that a community can become too dependent upon official police protection, leading individuals to under invest in private efforts to prevent and address crime.[46] Yet, the private deterrence measures that fearful individuals are most likely to take— including neighborhood watch groups, alarm systems, extra locks, bars on windows, etc.—tend to signal that crime is prevalent in a community.

Moreover, monetary estimates of prevention-related expenditures fail to capture the cost of reduced social capital resulting from fear. The concept of social capital is the subject of a voluminous literature.[47] For the purpose of this discussion, however, Robert Putnam's "lean and mean" definition of social capital—"social networks and the [associated] norms of reciprocity and trustworthiness"—suffices.[48] Fear undoubtedly impedes a community's ability to generate and capitalize upon social capital in a number ways. The first is related to the social-influence effects of prevention. When a resident takes steps to prevent victimization, especially visible steps such as installing bars on her windows, she may signal to her neighbors that she does not trust them. Even if neighbors do not interpret precautionary measures as evincing a lack of trust—perhaps because the community is plagued by criminals from other neighborhoods—precautionary measures may have other deleterious effects. Consider, for example, the likely effects of one of the simplest and most common crime-avoidance strategies—remaining indoors. As Jane Jacobs influentially argued, the presence of law abiding residents in a community's public spaces provides "eyes on the street" that keep crime and disorder in check.[49] Thus, when law-abiding, but fearful, residents remain indoors to avoid victimization, they deprive their community of private surveillance opportunities. As a result, frightened residents may effectively become prisoners in their own homes, forced to turn the public spaces in a community over to their would-be victimizers.

The "prisoner-in-my-own-home" phenomenon may also have the deleterious effect of reducing the social capital generated by informal, inter-neighbor socialization.[50] In urban neighborhoods, an important predictor of both actual crime and fear of crime is what sociologists and

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46. *See* DONALD BLACK & M.P. BAUMGARTNER, *On Self-Help in Modern Society*, *in* THE MANNERS AND CUSTOMS OF THE POLICE 193, 195–99 (1980).

47. See generally DAVID HALPERN, SOCIAL CAPITAL (2004) for a comprehensive literature review.

48. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 19 (2000).

49. *See* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 45-55 (1961).

50. *See* Wesley Skogan, *Fear of Crime and Neighborhood Change*, *in* COMMUNITIES AND CRIME, 203, 210–24 (Albert J. Reiss Jr. & Michael Tonry eds., 1988).

social psychologists call "collective efficacy," or the "ability of neighbor-hoods to realize the common goals of residents and maintain effective social control."[51] Collective efficacy is sometimes defined as a form of social capital, although it might be better understood as one way in which members of a community can successfully harness social capital. Collective efficacy, and the social capital that enables it, is critically important to neighborhood health. As James Q. Wilson explained in *The Urban Unease*:

> It is primarily at the neighborhood level that meaningful (i.e., potentially rewarding) opportunities for the exercise of urban citizenship exist. And it is the breakdown of neighborhood controls . . . that accounts for the principal concerns of urban citizens. When they can neither take for granted nor influence by their actions and those of their neighbors the standards of conduct within their own neighborhood community, they experience what to them are "urban problems . . . ."[52]

Wilson's observations, made over four decades ago, proved prescient: Numerous empirical studies have demonstrated both that neighborhoods with low levels of collective efficacy are more dangerous than those with higher levels, and that residents of such neighborhoods also are more fearful.[53] Some studies suggest that low levels of perceived social control have a greater effect on fear of crime than actual crime rates and previous victimization. Not surprisingly, a resident who counts on her neighbors to address community problems has less cause to fear victimization.[54]

C. *Crime, Fear, and Residential Sorting*

Finally, and importantly, safety—reflected both in actual crime rates and the perceived risk of victimization—strongly influences residential location decisions. In his 1956 essay, *A Pure Theory of Local Expenditures*, Charles Tiebout influentially hypothesized that municipalities use

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51. *See generally* Robert Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCI. 918 (1997); Tracey Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593, 1604 (2002).

52. *See* Wilson, *supra* note 42, at 28.

53. *See* Gibson et al., *supra* note 40, at 542 (collecting literature); A. Hunter & T.L. Baumer, *Street Traffic, Social Integration & Fear of Crime*, 52 SOC. INQUIRY 123, 131 (1982); DAN A. LEWIS & GRETA SALEM, FEAR OF CRIME: INCIVILITY AND THE PRODUCTION OF A SOCIAL PROBLEM (1986); Pamela Wilcox Rountree & Kenneth C. Land, *Burglary Victimization, Perceptions of Crime Risk, and Routine Activities: A Multilevel Analysis Across Seattle Neighborhoods and Census Tracts*, 33 J. RES. IN CRIME & DELINQ. 147 (1996).

54. *See, e.g.*, Matthew R. Lee & Terri L. Earnest, *Perceived Community Cohesion and Perceived Risk of Victimization: A Cross-National Analysis*, 20 JUST. Q. 131, 138 (2003); Pamela Wilcox, et al., *Busy Places and Broken Windows?: Toward Defining the Role and Physical Structure and Process in Community Crime Models*, 45 SOC. Q. 185, 186 (2004); Gibson et al., *supra* note 40, at 552, 558–59.

public goods to compete for residents, or "consumer voters."[55] According to the Tiebout model, which has been tested and refined extensively over the past half century, residents "sort" themselves within a metropolitan area according to their preferences for municipal services, which municipalities package and offer as an inducement to relocate. As Tiebout observed, "[e]very resident who moves to the suburbs to find better schools, more parks, and so forth, is reacting, in part, against the pattern that the city has to offer."[56] Although Tiebout did not mention it specifically, safety, which might be defined in public-goods terms as effective police protection, undoubtedly is one of the public goods influencing residential sorting.

If Tiebout is correct, then cities that succeed in convincing residents and would-be residents that they are, relatively speaking, safe—by actually reducing crime rates, by bolstering collective efficacy, or by undertaking policing practices that bolster residents' sense of security—are more likely to prosper than those that fail to do so. Why? It is fairly well accepted that crime and the fear of crime both work to undermine urban residential stability. In one nationwide study, for example, Julie Cullen and Steven Levitt found a strong correlation between crime and urban flight—each reported city crime correlated with a one-*person* decline in city population, and a ten percent increase in crime corresponded to a one-*percent* decline in city population.[57] Cullen and Levitt also found that residents motivated to move by fear of crime were more likely to remain in the same metropolitan area than those moving for other reasons, which also supports the conclusion that fear of crime has encouraged out migration to the suburbs.[58] Moreover, Cullen and Levitt's study focused on the connection between actual crime and out migration, that is, moves from the city to suburbs. It is reasonable to assume that the fear of crime exerts at least as robust an influence on residents' decisions about whether to move from one city neighborhood to another, with safer neighborhoods enjoying greater residential stability—that is, they have relatively low levels of resident turnover and high levels of homeownership—than more dangerous ones. And, importantly, even studies that question the connection between fear and out migration suggest that crime exerts a relatively strong, and negative, influence on

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55. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

56. *Id.* at 420. *See generally* THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES (William A. Fischel, ed. 2006).

57. Julie Berry Cullen & Steven D. Levitt, *Crime, Urban Flight, and the Consequences for Cities*, 81 REV. ECON. & STAT. 159 (1999).

58. *Id.* at 165-66. *See also, e.g.*, Robert J. Sampson & John D. Wooldredge, *Evidence That High Crime Rates Encourage Migration Away from Central Cities*, 70 SOC. SCI. REV. 4 (July 1986).

in-migration—that is, on the decision to move from the suburbs to the city.[59]

This connection between fear of crime and residential stability is important because residential stability is strongly correlated with collective efficacy. In a major study of 343 Chicago neighborhoods, Robert Sampson, Stephen Raudenbush, and Felton Earls found that residential stability, measured by average residential tenure and levels of homeownership, was one of three major factors explaining neighborhood variation in collective efficacy. They also found that collective efficacy, in turn, mediated the negative effects of the other two factors—economic disadvantage and immigration—enough to reduce violent victimization in a community.[60] These findings are consistent with other social science research linking residential tenure and homeownership, especially of single-family homes, with high levels of collective efficacy.[61] The connection between homeownership and residential tenure is, of course, easily explained. A resident's social integration into her neighborhood naturally increases over time, increasing the likelihood that she will build the kind of trust relationships with her neighbors that form the foundation of collective efficacy.[62] Moreover, homeowners have obvious financial incentives to organize with one another to address neighborhood problems that more temporary residents lack. This is one reason that fear of crime is a particularly salient land-use factor: Although home ownership raises the costs associated with moving and therefore may produce a kind of residential stickiness, highly educated wealthier households with children also are most responsive to crime—that is, most likely to relocate when they become fearful.[63] These likely homeowners are also the very residents most needed to promote collective efficacy.

That is not to say that security is the only, or even the primary, factor influencing most people's decisions about where to live. Migration to the suburbs began long before public attention became intensely focused on the "urban crisis" in the postwar years.[64] Most people move away from urban neighborhoods for reasons other than fear of crime, especially for so-called "life-cycle factors" such as a desire for more space and better public schools brought about by the birth of children. Perhaps recognizing this reality, many cities now seek to promote a "hip" image

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59.   *See* Martin D. Katzman, *The Contribution of Crime to Urban Decline*, 17 URB. STUD. 277 (1980). *But see* Cullen & Levitt, *supra* note 57, at 159 ("[T]he link between changes in crime and in-migration appears weak.").

60.   Sampson et al., *supra* note 51, at 923.

61.   McGarrell et al., *supra* note 41, at 484; Sampson & Raudenbush, *supra* note 16, at 610 ("Systemic theories of urban communities . . . have long pointed to the importance of residential stability as a major feature of urban social organization.").

62.   Gibson et al., *supra* note 40, at 552.

63.   Cullen & Levitt, *supra* note 57, at 159-69.

64.   *See, e.g.*, Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV. 277, 280-87 (2007).

in order to compete for young, childless professionals. For example, a 2003 New York Times article reported that cities like Memphis, Tennessee and Cincinnati, Ohio were "on a hunt for ways to put sex in the city:"

> In the same way that companies during the dot-com boom tried to present their offices as playgrounds, adding slides and masseurs, cities are now getting in on the act. In Michigan, Gov. Jennifer M. Granholm encouraged the mayors of 200 towns to form 'cool commissions' to attract and retain the state's young people. In Baltimore, a nonprofit group called Live Baltimore Home Center, partly financed by the city, has gone after young professionals as 'low hanging fruit.'[65]

The logic of this strategy is obvious: Seek out the kind of would-be residents who can "risk moving to neighborhoods with subpar school systems, fixer-upper housing stock or a little street crime . . . ."[66] The "young and hip" strategy also may draw in educated and creative young people—the very cohort that Richard Florida argued, in his influential 2002 book, *The Rise of the Creative Class*, modern cities must attract in order to thrive. Cities, according to Florida, "have become the prime location for the creative lifestyle and the new amenities that go with it;" they are benefiting from the energy provided by creative young professionals, who stay single longer than in previous generations, and who prefer to live in diverse, urban neighborhoods.[67]

Florida's work has been subjected to stinging criticism,[68] but he does capture a sense of the changing aesthetics of urban and suburban life. As Robert Bruegmann argues in his recent history of suburbia, the very economic changes lamented by many scholars of urban life—including the decline in the urban industrial base[69]—ultimately may save our cities. Freed from the congestion, pollution, and disease that once characterized urban life, cities will become more attractive to the "creative class" and other wealthy individuals who might previously have chosen to live in the suburbs. As Bruegmann has argued, "[i]t is quite possible that sprawl could recede everywhere as more citizens become affluent enough to live like the residents of the Upper East Side," because "as individuals pass from affluent to extraordinarily affluent they are better able to enjoy

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65. John Leland, *On a Hunt for Ways to Put Sex in the City*, N.Y. TIMES, Dec. 11, 2003, at F1.

66. *Id.*

67. RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS 287–88 (2002).

68. *See, e.g.*, Alec MacGillis, *The Ruse of the Creative Class*, AM. PROSPECT, Jan. 4, 2010, at 12; Joel Kotkin, *Uncool Cities*, PROSPECT, Oct. 22, 2005, http://www.prospect magazine.co.uk/2005/10/uncoolcities.

69. *See, e.g.*, WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 25–35 (1996) (linking inner-city crisis to decline in the urban industrial base).

the benefits of density without the negative side effects."[70] As a result, cities may thrive by abandoning their traditional roles as centers of social, cultural, and economic activity, and becoming temporary way stations for the unattached, gentrified playgrounds for the wealthy, or, in Bruegmann's words, "essentially resort areas filled with second homes."[71]

It is unclear, however, whether targeting the young—and those wealthy enough to afford a comfortable, fear-and-disorder-free urban life—is a long-term strategy for urban success. Even assuming that the "creative class" is indeed attracted to urban life (despite the fact that most of its members have lived from birth in suburbia), there are reasons to worry that H.G. Wells' prediction of a century ago may be coming to pass: "cities may now be morphing . . . from commanding centers of economic life toward a more ephemeral role as a 'bazaar, a great gallery of shops and places of concourse and rendezvous.'"[72] The fact remains that most young professionals, even hip ones, do not remain unattached and childless forever. When their life circumstances change, they face the same pressures and demands that all parents face. And the research connecting social integration and residential tenure with collective efficacy suggests that the most successful, safest, city neighborhoods ultimately will be the kinds of places where people choose to make their lives long term—to live, work, and raise families.

Unfortunately, fewer and fewer families—especially middle-class families—build their lives in city neighborhoods. Although the extent of concentrated poverty declined dramatically during the 1990s, central cities continue to contain a disproportionate number of poor families.[73] And while a handful of center cities are gaining wealthy residents, even growing cities continue to lose families in general, and middle-class families in particular. A recent Brookings Institution study of twelve large metropolitan areas found that only 23 percent of central-city neighborhoods had middle-income profiles (compared to 45 percent in 1970).[74]

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70. ROBERT BRUEGMANN, SPRAWL: A COMPACT HISTORY 221 (2005).

71. *Id.*

72. KOTKIN, *supra* note 2, at 151 (quoting H.G. WELLS, ANTICIPATIONS OF THE REACTION OF MECHANICAL AND SCIENTIFIC PROGRESS UPON HUMAN LIFE AND THOUGHT 32 (1902).

73. Paul A. Jargowsky, *Stunning Progress, Hidden Problems: The Dramatic Decline of Concentrated Poverty in the 1990s, in* 2 REDEFINING URBAN & SUBURBAN AMERICA 137 (Berube et al. eds., 2005); Alan Berube & William H. Frey, *A Decade of Mixed Blessings: Urban and Suburban Poverty in Census 2000, in* 2 REDEFINING URBAN & SUBURBAN AMERICA, *supra*, at 111.

74. *See* Jason C. Booza et al., Brookings Inst., Where Did They Go?: The Decline of Middle-Income Neighborhoods in Metropolitan America 9–11 (2006), *available at* http://www.brookings.edu/~/media/Files/rc/reports/2006/06poverty_booza/20060622_middleclass.pdf.

III.   DISORDER, FEAR, AND THE
ORDER-MAINTENANCE AGENDA

Convincing middle-income families with children to forego the amenities of suburbia and make their lives in cities—or, perhaps at least as importantly, to remain in any given urban neighborhood long enough to build the social capital needed to support a healthy urban life—obviously is no small task. But order-maintenance policies may prove critical to achieving this goal for three related, and underappreciated, reasons.

First, recall that wealthier families with children are most sensitive to fear of crime—that is, they are most likely to move if they become fearful.[75] And, while the causal connection between disorder and *crime* is hotly contested, the connection between disorder and the *fear of crime* is not. Nearly all efforts to measure the connection between disorder and fear find a strong positive correlation. People intuitively associate disorder and crime. Apparently, the average observer agrees with the broken windows hypothesis; when she sees physical disorder or experiences social incivilities in a neighborhood, she assumes that more serious crimes are prevalent there as well. Indeed, disorder may generate more fear of crime than actual personal experience with crime itself, perhaps because residents who live in disorder-plagued neighborhoods encounter disorder on a daily basis, even if they are rarely, if ever, victimized.[76]

Disorder generates fear at both the neighborhood and individual levels. At the neighborhood level, disorder is not only positively correlated with fear of crime, but higher levels of disorder correspond to higher levels of fear.[77] At the individual level, residents within the same neighborhoods experience different levels of fear depending upon their individual perceptions of the amount of disorder in their communities. That is, the more disorder a person sees, the more fearful she is. For example, Jeanette Covington and Ralph Taylor interviewed over 1500 residents about the levels of disorder in sixty-six Baltimore neighborhoods and then compared these responses to physical assessments of neighborhood conditions conducted by trained observers.[78] They found that fear was mostly strongly influenced by the disorder levels within a respondent's neighborhood. Residents of neighborhoods with higher levels of observed physical and social disorder had higher fear levels. They also found, moreover, that individual perceptions of disorder were strongly linked to individualized, within-neighborhood, differences in

75.   *See* GARNETT, *supra* note 7, at 138.

76.   *Id.* at 140-45.

77.   Randy L. LaGrange et al., *Perceived Risk and Fear of Crime: Role of Social and Physical Incivilities*, 29 J. RES. CRIME &DELINQUENCY 311, 312–13, 327–28 (1992); McGarrell et al., *supra* note 41, at 493; Gibson et al., *supra* note 40, at 541.

78.   Covington & Taylor, *supra* note 38, at 241–43.

fear. Residents who saw more disorder than their neighbors, or expressed greater concern about disorder, experienced more fear.[79]

Second, disorder is negatively correlated with collective efficacy, which, as discussed above, is an important predictor of both fear of crime and residential stability. In their important study of the effects of disorder in Chicago neighborhoods, Robert Sampson and Stephen Raudenbush found no significant correlation between disorder and serious crimes other than robbery. But, they also found that collective efficacy was significantly and negatively correlated with disorder. There are two possible explanations for this correlation: First, as Sampson and Raudenbush observe, perceptions of disorder may color residents' judgments about the level of cohesion and control in their community. This observation is consistent with previous research suggesting that perceptions of disorder strongly influence individual perceptions of collective efficacy. Alternatively, it is reasonable to expect that communities with high levels of collective efficacy will be less disorderly; after all, members of cohesive communities with high levels of social capital are most likely to organize informally to keep disorder in check. Sampson and Raudenbush's findings led them to reject the strong version of the broken windows thesis, which posits a causal link between disorder and serious crime. But, they took care not to dismiss disorder as irrelevant. Disorder, they suggest, might "turn out to be important for understanding migration patterns, investment by businesses, and overall neighborhood viability," especially if it "operates in a cascading fashion—encouraging people to move (increasing residential instability) or discouraging efforts at building collective responses . . . ."[80]

Finally, even assuming that the disorder-crime nexus is spurious, order-maintenance policies can benefit disorder-plagued communities in ways unrelated to curbing serious crime directly. The first of these benefits flows from the fact that efforts to organize community responses to neighborhood problems are a centerpiece of many order-maintenance policies. Many cities' order-maintenance efforts seek to help neighbors overcome their fears by catalyzing new forms of collective efficacy. The CAPS program, for example, incorporates several forms of "assertive vigilance." Police work with local community leaders, including pastors, to organize marches in high-crime areas, prayer vigils at the site of gang- or drug-related shootings, "smoke-outs" (barbeque picnics) in drug-market areas, and "positive loitering" campaigns to harass prostitutes and their customers. In an interview, a police officer described the evolution of a successful positive loitering campaign to address a prostitution problem in her district:

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79. *Id.* at 241–43.
80. Sampson & Raudenbush, *supra* note 16, at 624–26. *See also* Gibson et al., *supra* note 40, at 552.

> The problem was brought up at the beat meeting . . . . [The officer] proposed positive-loitering, and they agreed to give it a try[.] . . . They started out with 30 people and were escorted by a police car. They began to alternate days and times so that the prostitutes would never know when they'd be there. Soon the prostitutes ran when they saw the group coming, while the police would stop them and check for warrants, arresting them if there were any outstanding. . . . When a community member complained of seeing prostitutes from 9 pm to 11 pm, positive loiterers came during those times. They got up to 60 volunteers.[81]

There is a reason, of course, why Chicago uses public resources to kick start collective efficacy. Low levels of social capital deprive these communities of the ability to organize informally. Order-maintenance efforts like "positive loitering," taking their cues from the broken windows hypothesis, flow from the belief that public intervention can reinvigorate collective efficacy when a neighborhood self-governance disappears. Somewhat ironically, Wilson—who is now seen as the godfather of such efforts—questioned this assumption in *The Urban Unease*, arguing that "there is relatively little government can do directly to maintain a neighborhood community. It can, of course, assign more police officers to it, but there are real limits to the value of this response."[82]

Although the apparent success of efforts like those featured in the CAPS programs suggest that Wilson may have been correct to reconsider this assumption, it is clear that the healthiest and safest urban communities enjoy high levels of collective efficacy without public intervention. In these communities, neighbors know and trust one another well enough to organize informally to address community problems.[83] Still, by discouraging informal social interaction among neighbors, fear diminishes the likelihood that members of a community will organize without public intervention.[84] Endeavors like Chicago's "positive loitering" campaigns, "smoke outs," and prayer vigils are not perfect substitutes for the collective efficacy organically present in healthier neighborhoods. Nevertheless, they may help generate much-needed social capital in struggling communities both by helping residents overcome fear and social isolation, and by bringing together community leaders who might not otherwise collaborate.

Consider, for example, the effects of police-sponsored prayer vigils in troubled Chicago neighborhoods. About ten years ago, an innovative police commander named Claudell Ervin took it upon himself to organize a massive anti-crime prayer vigil on Chicago's impoverished West

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81. COMMUNITY POLICING IN CHICAGO, *supra* note 22, at 92.
82. Wilson, *supra* note 42, at 34.
83. Sampson & Raudenbush, *supra* note 16, at 612–13.
84. McGarrell et al., *supra* note 41, at 494.

Side. Ervin invited hundreds of church leaders to attend a meeting at the police district headquarters; at this meeting, the group planned the vigil, which proceeded as follows: Participants stood and prayed in groups of ten on street corners that were usually occupied by drug dealers. Following the vigil, the participants were joined by thousands of other residents in a large park for a "praise celebration" featuring food, speeches, and a 400-member gospel choir. Variations of this prayer vigil have occurred hundreds of times since. A study conducted over the two years following the first vigil, found that the prayer vigils generated a number of important benefits. Importantly, religious leaders' opinion of the police improved, and they became more interested in, and likely to participate in, crime-prevention efforts. Moreover, the vigils apparently have fostered greater inter-denominational cooperation and have led churches and faith-based institutions to play a more prominent role in Chicago's community policing efforts. While this result might not please strict separationists, the improved relations allow police to enlist leaders of what are, in many inner-city neighborhoods, the most important community institutions—churches. The initial public intervention enabled subsequent informal collective efforts to address community problems: Following the initial vigil, an interdenominational coalition of ministers was formed to promote subsequent vigils. And coalition meetings quickly became a popular way for secular service providers to disseminate information.[85]

Perhaps more importantly, many order-maintenance policies apparently make people feel safer, even if they do not actually reduce serious crime. There is sizeable empirical literature suggesting that central elements of order-maintenance policing—especially preventative patrols and increased police-citizen interactions—reduce the fear of crime. Over the past several decades, a number of urban police forces have created controlled experiments to test the effects of different policing techniques. The pioneering experiment, the Kansas City Preventative Patrol Experiment, sought to measure the impact of routine motorized police patrols.[86] The goal of the experiment was to test what the researchers, who were led (somewhat ironically) by George Kelling, characterized as the longstanding and widely held belief that "the presence or potential presence of police officers on patrol severely inhibits criminal activity."[87] To test this hypothesis, the Kansas City Police Department agreed to vary the level of police presence in fifteen of the city's beats. In five "reactive" beats, routine patrols were eliminated and officers instructed to respond only to calls for service. In five "control" beats, routine preventative patrols were maintained at the usual level of one car per beat. And in five

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    85.   Tracey L. Meares & Kelsi Brown Corkran, *When 2 or 3 Come Together*, 48 WM. & MARY L. REV. 1315, 1334, 1347, 1350 (2006–07).
    86.   *See* GEORGE KELLING ET AL., THE KANSAS CITY PREVENTATIVE PATROL EXPERIMENT: A SUMMARY REPORT (1974).
    87.   *Id.* at 1.

"proactive" beats, routine patrols were intensified to two or three times the usual level.[88] The researchers found that increasing police presence had virtually no effect on crime levels, citizen satisfaction with police service, or citizens' fear of crime.[89]

The Kansas City Preventative Patrol Experiment was interpreted at the time as supporting a move toward reform-era, reactive, policing strategies. In the preface to the final report on the experiment, for example, the Kansas City Chief of Police asserted that the findings "repudiated a tradition prevailing in police work for almost 150 years,"[90] and "suggest[ed] that deployment strategies should be based on specific crime-prevention and service goals as opposed to routine preventive patrol[s]."[91] It is important to note, however, that the Kansas City study focused on *motorized* patrols, one of the reform-era innovations that Wilson and Kelling criticized in *Broken Windows*.[92] Two subsequent field studies found that routine *foot patrols* do in fact reduce the fear of crime, although they do not necessarily reduce crime itself. For example, in 1979, Flint, Michigan established a neighborhood foot patrol program with the hope that foot patrols would prevent crime, increase police-citizen interaction, and catalyze neighborhood organization.[93] Over several years, researchers from Michigan State University studied the effects of the foot patrols and found that, in most of the experimental beats, crime decreased, and importantly, that residents *believed* that foot patrols had decreased crime, regardless of whether they actually had. Residents' perception of personal safety also dramatically improved in the experimental areas (especially when a foot patrol officer was present). Residents living in the foot patrol areas also reported an increased level of communication with one another, a finding lending further support to the conclusion that order-maintenance policing efforts can increase neighborhood-level social capital.[94] Similarly, the Newark Foot Patrol Experiment, which served as the catalyst for the *Broken Windows* essay, found that foot patrols reduced the fear of crime, even as actual crime levels remained stable (or, in some cases, increased).[95]

Evidence from controlled experiments in other cities also supports the conclusion that certain elements of community policing can reduce the fear of crime and improve citizen perceptions of police perform-

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88.   *Id.* at 2.

89.   *Id.* at 2-3.

90.   *Id.* at viii.

91.   *Id.* at vii.

92.   Wilson & Kelling, *supra* note 10, at 34.

93.   ROBERT TROJANOWICZ, AN EVALUATION OF THE NEIGHBORHOOD FOOT PATROL PROGRAM IN FLINT, MICHIGAN 15, 19-20 (1982).

94.   *Id.*

95.   POLICE FOUNDATION, THE NEWARK FOOT PATROL EXPERIMENT (1981).

ance.[96] For example, controlled policing experiments conducted in Houston, Texas and Newark, New Jersey during the mid-1980s measured the effect of several community-policing techniques—including a police-community newsletter, neighborhood-level police multi-service centers, and frequent police contacts with residents to solicit input about local problems. Researchers found that, in both cities, programs that fostered more frequent citizen-police interactions reduced fear of crime, resulted in lower levels of perceived crime and disorder, and improved residents' evaluation of police service.[97]

Similarly, in the Citizen-Oriented Police Enforcement (COPE) project, Baltimore, Maryland assigned 45 officers to new COPE units and then varied the intensity and organization of police presence over three years. The first year involved intensive mobile patrol in targeted areas. In the second, officers increased their contacts with citizens, and some mobile patrols were shifted to foot patrol. In the third year, officers engaged in intensive problem solving and community mobilization. The COPE program's aim was specifically the reduction of the *fear* of crime. The evidence showed that fear was reduced in the transition from phase one to phase two, but that phase three—intensive contact and problem solving with community members—had the most significant effect on fear reduction.[98] Other experiments yield similar results: A comprehensive review of empirical and quasi-empirical studies of the relationship between policing strategies and fear reduction, conducted in 2002, found that order-maintenance policing strategies reduced fear in 31 of 50 studies; 18 found no change and 1 reported an increase in fear. The authors noted that merely increasing police presence appears to do less to reduce fear than proactive, targeted policing efforts and community policing.[99] Interestingly, however, some studies suggest that police-citizen collaborations that involve citizens directly in crime-prevention activities, such as the prayer vigils discussed above, may actually increase fear of crime, at least among participants.[100]

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96. *See generally* David Weisburd & John E. Eck, *What Can Police Do to Reduce Crime, Disorder, and Fear?*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 42 (2004).

97. *See* ANTONY M. PATE ET AL., REDUCING FEAR OF CRIME IN HOUSTON AND NEWARK: A SUMMARY REPORT 12 (1986). One exception to the finding was that police newsletters in both cities and the disorder-reduction program in Newark appeared to have little effect on citizens' perceptions of safety or of police performance. *Id.* at 31–33.

98. *See* Gary W. Cordner, *Fear of Crime and the Police: An Evaluation of a Fear-Reduction Strategy*, 14 J. POLICE SCI. & ADMIN. 223 (1986).

99. *See* Jihong "Solomon" Zhao et al., *The Effect of Police Presence on Public Fear Reduction and Satisfaction: A Review of the Literature*, 15 JUST. PROF. 273, 295 (2002).

100. *See* Brian C. Renauer, *Reducing Fear of Crime: Citizen, Police, or Government Responsibility?*, 10 Police Q. 41, 47 (2007).

IV. THE COSTS OF ORDER

The costs of implementing the policies most likely to achieve these benefits—including efforts to increase the frequency and quality of citizen-police interactions (such as intensive community-policing efforts and foot patrols)—are not insubstantial. This is undoubtedly one reason why order-maintenance proponents promise that their policies will reduce serious crime, rather than simply make people feel safer, and more vested, in their neighborhoods. Crime rates are tangible and measurable, reflected in official statistics. In contrast, the benefits discussed in this Essay, such as a reduction in the fear of crime and an increase in collective efficacy, are difficult to quantify, and their very definitions contestable. The remainder of this Essay reflects upon two frequently cited possible costs of order-maintenance policies: First, they are too resource–intensive. Second, they threaten to undermine civil liberties. A third potential cost—that an order-maintenance mindset may lead urban leaders to stifle the kinds of social and economic activities necessary for a healthy urban life—is set to one side, as I have discussed it in detail elsewhere.[101] The purpose of this closing reflection is not to weigh empirically the costs and benefits of the order-maintenance enterprise, but rather to suggest that it is overly simplistic to conclude that, absent proof that reducing disorder *in fact* reduces more serious crime, the order-maintenance agenda should be abandoned.

A. *Economic Costs*

Order-maintenance policing tactics are resource-intensive. Some, like Mayor Giuliani's "quality of life" policing practices, require police departments to devote significant resources to the arrest and processing of individuals for relatively minor offenses. Others, such as foot patrols, require the enlistment of more officers, if only for the simple reason that an officer, or team of officers, can cover far more ground in a car than on foot. The most predominant order-maintenance technique, community policing, requires officers to devote significant time to building community relations, attending community meetings, etc., and also tends to expand the range of problems on officers' plates.[102] Some critics, therefore, have used data questioning the crime-disorder nexus to argue that order-maintenance policing does not make economic sense. For example, Bernard Harcourt and Jens Ludwig have argued that the available evidence fails to "support the view that shifting policing toward minor disorder offenses would improve the efficiency of police spending and reduce violent crime."[103] While Harcourt and Ludwig agree with order-

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101. *See* Garnett, *Ordering (and Order in) the City, supra* note 19.

102. GARNETT, *supra* note 7, at 16-17.

103. Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment,* 73 U. CHI. L. REV. 271, 315 (2006).

maintenance proponents that "police matter," they urge that other practices, for example intensive policing in criminal "hot spots," represent a better allocation of policing resources.[104]

B. *Civil-Liberties Costs*

Among the concerns critics raise, perhaps the most troubling is the assertion that order-maintenance policing techniques threaten civil liberties, especially of poor minorities who live in struggling urban neighborhoods. This prediction reflects a deep skepticism of police discretion. Critics worry that order-maintenance policies present opportunities for police abuses by increasing the frequency and intensity of police-citizen interactions and failing to channel the discretion that officers necessarily exercise during them.[105] Critics also express concern that the emphasis on police-citizen interactions will politicize police practices, inviting the kind of corruption that reform-era innovations sought to eliminate and causing officers to side with citizens whom they know well or believe to be politically influential.[106] If officers become too close to the citizens that they are assigned to protect, they might begin to enforce "vigilante values" rather than the criminal laws.[107]

Order-maintenance proponents counter that increasing the police-citizen interaction and collaboration diminishes, rather than exacerbates, the risk of abuse and corruption. As Tracey Meares has asserted:

> Critics of community policing fear that encouraging the alignment of law enforcement and community interests will result in the compromise of individual rights—usually criminal-procedural rights. Yet . . . aligning the interests of those in high-crime urban neighborhoods with the goals of law enforcement might well enable residents . . . to hold law enforcers accountable in order to better guide their exercise of discretion.[108]

The highly militarist "law enforcement" policing model, according to this view, encourages officers to consider themselves crime-fighting warriors who are pitted against lawless citizens, enemies who are unworthy of their respect and protection.[109] Stephen Mastrofski and Jack Green

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104.   *Id.* at 314–15.

105.   *See, e.g.,* GARNETT, *supra* note 7, at 18–21.

106.   *See* Mark Harrison Moore, *Problem-Solving and Community Policing,* 15 CRIME & JUST. 99, 145 (1992); David H. Bayley, *Community Policing: A Report from the Devil's Advocate, in* COMMUNITY POLICING: RHETORIC OR REALITY 225 (Jack R. Greene & Stephen D. Mastrofski eds., 1988).

107.   Stephen D. Mastrofski & Craig D. Uchida, *Transforming the Police,* 30 J. RES. CRIME & DELINQ. 330, 348 (1993).

108.   Tracey L. Meares, *Praying for Community Policing,* 90 CAL. L. REV. 1593, 1595–96 (2002).

109.   *See generally* JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE (1993); Debra Ann Livingston, *Brutality in*

express this sentiment slightly differently, arguing that community polic-
ing will give greater weight to "men" in the balance between "laws and
men," reasoning that "the bonds of formal law and bureaucratic rules
must be loosened to allow police policies and practices to be guided by
community norms and sentiments."[110]

It is also possible that vesting police officers with more discretion
ultimately will improve police officers' attitudes about the legal rights of
citizens. As Jerome Skolnick and James Fyfe have argued, the "crime
fighting" model of policing "has had the effect of putting the police on
the front lines of crime wars they cannot win."[111] Some lose heart and
become frustrated and demoralized; others become convinced that "they
are losing the war only because *others* . . . have handcuffed them. They
hear fundamental Constitutional principles and due process rights . . .
described as technicalities and unreasonable limits on their ability to fight
the enemy among us."[112] The turn toward problem-oriented or commu-
nity policing, prompted by the order-maintenance agenda, might, as
Mark Moore has suggested, encourage officers to view themselves as
"street corner judges" rather than "street corner politicians," and to begin
to perceive legal rights as valuable tools for resolving disputes rather than
constraints that limit their ability to perform their jobs effectively.[113]

Unfortunately, not enough is known about the connection between
policing techniques and police behavior. Some commentators have
sought to connect order-maintenance policing techniques, especially the
aggressive misdemeanor arrest practices that characterize New York City's
quality of life policing efforts, with an increase in excessive force inci-
dents. A comprehensive review of national and local data on the use of
force, conducted for the National Institute of Justice in 1999, however,
concluded that virtually no data exists on how different policing tech-
niques affect the use of force.[114] A more recent nationwide survey of
police officers from 113 departments, conducted by the Police Founda-
tion in 2001, found that officers overwhelmingly rejected the idea that
community-oriented policing increases abuse of authority (including cor-
ruption and excessive force). Most officers, however, also rejected the
proposition that community policing *decreases* the risk of corruption,

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Blue: Community, Authority, and the Elusive Promise of Police Reform, 92 MICH. L. REV.
1556 (1994) (reviewing JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW:
POLICE AND THE EXCESSIVE USE OF FORCE (1993)).

110.   Stephen D. Mastrofski & Jack R. Greene, *Community Policing and the Rule of
Law, in* POLICE INNOVATION AND CONTROL OF THE POLICE 80, 80 (David Weisburd &
Craig Uchida eds., 1993).

111.   SKOLNICK & FYFE, *supra* note 109, at 114.

112.   *Id.*

113.   Moore, *supra* note 106, at 145 (quoting WILLIAM KER MUIR, JR., POLICE:
STREETCORNER POLITICIANS (1977)).

114.   NATIONAL INSTITUTE OF JUSTICE, USE OF FORCE BY POLICE: OVERVIEW OF
NATIONAL AND LOCAL DATA ix (1999).

although a slight majority believed that community policing reduces the risk of excessive force incidents. These findings are generally consistent with other studies seeking to gauge police attitudes about community policing. Indeed, officers report that community policing improves their morale and their relationships with citizens.[115]

Positive police attitudes toward community policing are certainly a hopeful sign. Ultimately, however, as now-judge Debra Livingston has observed, whether order-maintenance policies, especially problem-solving and community policing, act to curb police abuses may be inextricably linked with whether they enable police to successfully address real community problems.[116] Skolnik and Fyfe may be right that asking police to engage in an unwinnable "war" on crime leads to cynicism, alienation, and even brutality among the ranks. If so, it seems likely officers are least likely to feel frustrated and cynical if they are asked to identify and accomplish achievable goals. The sizable literature investigating the factors that influence public satisfaction with the police tends to support Judge Livingston's hypothesis. One of the most important predictors of public satisfaction with the police is public perception that the police are doing their job effectively. For example, fear of crime is inversely related to public satisfaction with police performance; that is, the safer people feel, the happier they are with police performance. Interestingly, citizens who *fear the police*—that is, who are afraid that police will abuse their authority—also express high levels of fear of crime, suggesting a different kind of connection between police performance and public satisfaction.[117] There is undoubtedly a risk that expanding the universe of policing priorities to include order-maintenance and other community problems will overwhelm officers with tasks with which they are ill-equipped to deal.[118]

It is less clear under what circumstances order-maintenance policing practices improve public satisfaction with the police. The early foot patrol experiments, discussed above, found that increasing police presence in a neighborhood led both citizens and police officers to report that police performance improved. In Boston, foot patrols became so popular that local politicians quickly seized upon the opportunity to take credit for their deployment, with some issuing press releases when additional officers were assigned to a neighborhood. Other studies, however, indicate that increased police presence does not itself improve public satisfaction, although policing techniques that successfully reduce fear of crime

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115. Richard E. Adams et al., *Implementing Community-Oriented Policing: Organizational Change and Street Officer Attitudes*, 48 CRIME & DELINQ. 399, 424 (2002).

116. *See* Livingston, *supra* note 109, at 1574–75.

117. Brian Renauer, *Reducing Fear of Crime: Citizen, Police, or Government Responsibility?*, 10 POLICE Q. 41, 46 (2007).

118. *See, e.g.*, Adams et al., *supra* note 115, at 423.

do.[119] For example, community policing activities tend to improve citizens' evaluation of police performance: A 2003 evaluation of data from twelve cities, collected by the U.S. Justice Department's Bureau of Justice Statistics and the Office of Community Oriented Policing Services, found a strong correlation between increased community policing efforts and citizen satisfaction with the police.[120] And the connection between community policing efforts and citizen satisfaction apparently holds true across all racial groups. In Chicago, the researchers conducting the ten-year review of the CAPS program found that while perceptions of police performance had improved among all racial groups, the gap between the perceptions of whites and other racial groups did not close.[121] While the continued gap is cause for concern, overall increase in policing satisfaction remains hopeful, especially because minorities tend simultaneously to demand increased levels of police protection and to express high levels of distrust for police officers. It is also promising that minority police officers often express higher levels of support for community policing than their white counter parts.[122]

V. Conclusion

This Essay expands the discussion of the order-maintenance agenda beyond the narrow question of whether order-maintenance-policing techniques reduce serious crime. By highlighting the important distinction between crime reduction and fear reduction, I hope to illustrate that order-maintenance policies might "work" even if they do not reduce serious crime. Importantly, order-maintenance policies may mitigate the negative effects of the fear of crime, including reduced levels of collective efficacy and residential stability. These things matter intensely to cities and their neighborhoods; crime rates tell only part of a city's story.

Nothing in this Essay should be interpreted as suggesting that the potential benefits of fear-reduction necessarily justify all of the myriad policies falling under the order-maintenance umbrella. I am ill-equipped to weigh the not-insignificant costs of any of these policies, or some combination of them, against any set of potential benefits. The order-maintenance policing techniques that appear to be most successful at reducing the fear of crime—foot patrols and community policing—are also perhaps the most resource-intensive. Some have suggested that other, less-resource-intensive policing techniques (for example, "hot spots" policing) do more to reduce actual crime.[123] If so, policies that simply make people

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119.   *See* Zhao et al., *supra* note 99.
120.   Matthew C. Scheider et al., *The Impact of Citizen Perceptions of Community Policing on Fear of Crime: Findings from Twelve Cities*, 6 POLICE Q. 363, 377 (2003).
121.   COMMUNITY POLICING IN CHICAGO, *supra* note 22, at 43–44.
122.   Sampson & Raudenbush, *supra* note 16, at 611.
123.   *See* Lawrence W. Sherman, *Fair and Effective Policing*, *in* CRIME: PUBLIC POLICIES FOR CRIME CONTROL 383 (James Q. Wilson & Joan Petersilia, eds. 2002).

feel safer might not represent the best allocation of scarce law-enforcement resources.

Moreover, generalizations about the order-maintenance agenda are themselves problematic because of the dramatic differences among the various policies falling under the order-maintenance umbrella. For example, the apparent link between order-maintenance policing efforts, including community policing, and improved satisfaction with the police may mitigate concerns that order-maintenance policies may lead to discriminatory enforcement. But general expressions of satisfaction with community policing efforts should not be interpreted as an endorsement of all order-maintenance tactics. Chicago's community policing efforts stand in sharp contrast, for example, to the aggressive policies of misdemeanor arrests that characterized New York's order-maintenance efforts during Rudolph Giuliani's mayoralty. Local government officials should take care to attend to, and consider the potential civil-liberties implications of, these distinctions.