COMMUNITY JUSTICE IN POLICING

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I. COMMUNITY JUSTICE IN THE CONTEXT OF POLICING

[To] maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the

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public and the public are the police; the police are the 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.\(^1\)

The above principle is one of nine enunciated by Sir Robert Peel in his effort to establish the London Metropolitan Police (one of the first organized police forces and the one after which American police forces were modeled). This principle had been nearly drained of its meaning by the 1970s, especially in American urban communities. In their long road toward professionalization, American police had relegated common citizens, whether organized or not, to passive roles in the business of policing. Citizens were encouraged to report criminal activity to the police and to serve as faithful witnesses in criminal cases, but otherwise were discouraged from taking a more active role in the business of policing.\(^2\) Beginning in the late 1960s, picking up steam in the 1980s, and coming to dominate at least the rhetoric of professional policing by the 1990s, a movement known as community policing represented, in part, an effort to return to Peel’s foundational principle. This movement grew out of concerns that the police, in their understandable and necessary desire to free themselves of some of the more corrupting influences of local political control, had become too distant from the citizens and communities they served.\(^3\) That distance was eroding public understanding of and confidence in the police and undermining police effectiveness. In spite of improved technology designed to enhance police capacity to solve crimes and respond quickly to emergencies, it had become apparent that police effectiveness in controlling crime, maintaining order, and promoting the public’s sense of security was largely dependent on the willingness and capacity of private citizens to engage and cooperate with police.\(^4\)

In sum, police, prosecutors, criminal courts, and corrections agencies became so preoccupied with apprehending and punishing individual offenders that little thought or attention was given to such other justice-related matters as restoration of individual victims, restoration of the community’s sense of security, and improvement of so-

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2. Herman Goldstein, Policing A Free Society 134–36 (1977); Peak & Glensor, supra note 1, at 1–27.
cial and physical conditions to prevent further criminality. Led by the community policing movement, other institutions associated with the criminal justice system—prosecutors, courts, and correctional agencies—have also initiated movements that place a new emphasis on consultation, cooperation, and collaboration with the community. These various trends, experiments, and movements have been collectively conceptualized as comprising a broader movement toward what is known as community justice.

II. THE SPECIFIC ROLE OF THE COMMUNITY IN POLICING

The term “community policing,” by itself, tells us little about what role the community is to play in the policing process. Is “community” the subject or the object of the verb “policing”? Is it the case, as Peel intimated, that citizens are expected to be, in effect, part-time police officers, taking their turns at patrolling the streets, intervening in disputes, arresting their fellow citizens for breaches of the law, and the like? Or is it merely that the phrase reminds police that it is the community, as opposed to say, territory, that they are policing, or that it is the interests of the community, and not just the government, that police ought to take into account when policing? The evolving notions of community justice suggest that it is both: that police need to be more mindful of the community’s desires, interests, and well-being when providing police services, and that citizens are both entitled and obliged to take greater responsibility for their own and their fellow citizens’ safety and security.

At least three distinct roles for citizens—other than as victims, offenders, witnesses, or jurors in criminal actions—have emerged in the practice of community policing. These three roles are: 1) community as nominator of public safety concerns and priorities, 2) community as actor or responder to public safety problems, and 3) community as arbiter. In some instances, the community is the object of policing, although taking a more active role in influencing what police and other government officials do to address public safety problems. In other instances, the community is the subject of policing, taking action itself to respond—directly or indirectly—to public safety problems.


Whether citizens are making demands and requests of government to address problems, taking action themselves to address those problems, or sitting in judgment of their fellow citizens, they are playing an active rather than a passive role in providing for public safety. Furthermore, there is emerging social science to buttress the idea that active communities are safer communities. A large longitudinal study of public safety in the many neighborhoods of Chicago has substantiated the thesis that communities that have the collective capacity to get things done (so-called “collective efficacy”) have demonstrably lower incidences of crime and disorder than those communities that lack this capacity.\textsuperscript{7} It remains somewhat an unanswered question whether or to what degree government—police included—can develop or influence this collective capacity.

A. Community as Object of Policing

The public expects that the police will assume a large share of responsibility for addressing a tremendous range of social problems that threaten public safety. The sheer breadth of this mandate is not always fully recognized nor its implications readily understood. In addition to the few crime types with which most citizens are familiar, and which preoccupy police accounting systems—murder, rape, assault, robbery, burglary, larceny, and motor vehicle theft—police must attend to such crimes as illegal drug trafficking, fraud (in its myriad forms), prostitution, arson, bomb threats, child and elder abuse and neglect, vandalism, public corruption, and illegal gambling. They must attend to such disturbances as domestic disputes, child custody disputes, neighbor disputes, landlord-tenant disputes, and labor-management disputes. They must attend to such nuisances as panhandling, graffiti, inebriated persons, homeless persons, abandoned vehicles, parking problems, noise, and disorderly youth. They must attend to such hazards as traffic crashes, drunk driving, street racing, dangerous animals, missing persons, mentally ill persons, runaway juveniles, suicidal persons, underage drinking, crowd control, dignitary protection, disaster management (natural and manmade), and now terrorism. Police are also tasked with dealing with the public and private fear and anxiety that these crimes, disorders, nuisances, and hazards provoke. On top of which police are asked to provide ancillary public services, ranging from funeral escorts to license regulation to youth recreation and education programs. It is not necessarily the case that police are always busy attending to all these matters simultaneously—though some police agencies certainly are—

but it is the case that police are expected to have some competence in all these areas and to be prepared to give special attention in any area as circumstances dictate. Given this incredibly broad mandate, how should police decide on what to concentrate their attention?

The standard mode by which citizens call police attention to public safety problems is through a citizen picking up the telephone and calling 911 or a non-emergency line at the police communications center. If the complaint so warrants it, a police officer is dispatched to investigate and decide how to respond to that particular complaint or incident. In this way all citizens command roughly equal claim on when and where police services will be delivered. Of course, the citizen calling the police does not dictate whether and how quickly police will respond, nor what action police will take to address the complaint, but nonetheless, in the aggregate, police give considerable attention to those matters which are processed through this system.

But this method by which police determine what constitutes a public safety concern worthy of their attention suffers from several significant limitations. No single complaint necessarily represents a consensus concern of the larger community: each complaint might merely represent a single citizen’s grievance. Moreover, we know from crime victimization surveys that at least as often as not, citizens do not call the police to report their public safety concerns or to request police service even when they have a legitimate claim to do so. A professional norm has emerged among police that, at least ideally, every citizen complaint ought to be attended to and every crime ought to be investigated. Police aspirations to abide by this norm, by responding to individual requests for service and investigating each reported crime, quickly consumed most police resources. Police agencies routinely found themselves barely able, or unable, to keep up with the demand for patrol and investigative services. Underlying conditions in the community that were causing or contributing to the incidents of crime, disorder, and insecurity went largely unattended under the strain of this unremitting workload. Community conditions deteriorated, public satisfaction with police service declined, and police frustration increased.

To break this cycle police have tried a different attack. They have designed alternative systems by which the public can nominate matters for police attention, systems that are designed to better identify chronic public safety concerns that threaten not just individual citizens, but community life itself. They have done so in recognition of several important realities. First, that crime, disorder, and insecurity have negative social effects that are more than just the sum of negative effects experienced by individual citizens. Unremediated, they
corrode public confidence, not just in police, but in all of government. They can trigger social action, such as family decisions to move to communities they perceive to be safer. Such moves can become contagious and lead to wholesale flight of large numbers of citizens, leaving behind ever more desperate and unhealthy communities, mainly in urban centers. Second, police have recognized that once individual citizens lose confidence in the capacity of the police to solve their problems, they likely will cease to call them to police attention at all, leaving police even less capable of interrupting community decline. Third, police recognized that many crimes and calls for police service are better understood as symptoms of larger problems rather than as discrete problems in themselves. Fourth, police recognized that the sorts of public safety concerns that most troubled typical citizens were not necessarily the felonies that preoccupied police attention, but rather the myriad nuisances and incivilities which were more commonly and personally experienced in the course of everyday life. All this has meant that if police truly want to know what is troubling a community, it is incumbent on police to create alternative mechanisms through which community concerns can be more fully and explicitly expressed than they can in response to a necessarily curt police telephone operator’s insistent query, “911, what’s your emergency?”

The sorts of mechanisms police have developed for gleaning what is undermining a community’s sense of public safety, other than the 911 system, are numerous. Among the more common are attending (and occasionally first organizing) community meetings; establishing or meeting with existing citizen advisory groups; polling citizens through structured opinion surveys; analyzing trends and patterns among recorded calls for police service; operating police offices that are more accessible, hospitable, and welcoming to citizens and community groups; inviting community leaders (both formally and informally) to meet regularly with police leaders; and placing police officers in assignments that permit citizens frequent routine interaction with them such that trust and rapport is established with individual officers.

The mechanisms that are put in place to communicate with police influence the sort of public safety concerns that ultimately get expressed to police. The sorts of problems that are nominated for police attention at a community meeting are typically those that are commonly experienced by many citizens on a daily basis and which

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citizens feel comfortable enough sharing with police in front of other citizens. Neighborhood-level drug dealing, speeding vehicles, disorderly youth, panhandling, graffiti, and noise are common examples. Police commonly report being surprised at community meetings because police come prepared to discuss serious crime, assuming that is what concerns the community most, only to discover that citizens are more bothered by what police conventionally consider low-level offenses. By contrast, such problems as child and elder abuse, domestic violence, fraud, and extortion are not typically raised in a public setting because victims experience their victimization privately and often somewhat shamefully. They can be quite serious problems that beg for police attention but will not come to light in the context of a community forum.

In addition to determining which among many social problems will receive special police attention, there are various related matters to be decided: which problems will receive priority over competing problems, how will problems be defined, whose interests and stakes in problems will take precedence over competing interests and stakes, what actions will be taken to respond to the problems, who will be responsible for carrying out these actions, and what will be the specific goals and objectives in dealing with the problems.

The degree of influence that the community has in deciding these matters varies. In some instances police defer almost entirely to the community (however defined). In other instances police reserve to themselves the ultimate authority to decide these matters, taking account of the community’s expressed viewpoint.

B. Community as Subject of Policing

The other sense of “community policing” is that the community becomes the subject of policing; that is, the community does some of the policing itself. This is not new, of course. The community was largely responsible for its own policing long before organized paid police forces were created. Even after some police forces were organized, they did not exist in many rural and frontier regions, sometimes leading to the most egregious form of community justice, vigilantism. But even in modern times with nearly every community in the country under the jurisdiction of an organized police agency, overwhelmingly society is policed through mechanisms of informal social control. Formal social control mechanisms, including police, step in only where informal social control is insufficient. What is relatively new is

that police, an institution of formal social control, increasingly seek to harness various informal social control mechanisms present in the community in a concerted and purposeful way.

There are a variety of forms this new approach is taking. Among the more common ways in which citizens are actively engaging in the business of policing are forming community patrols and patrolling public places; petitioning legislative, judicial, or administrative bodies to take particular actions; making public demonstrations in opposition to particular offensive conduct (prostitution and drug dealing being the most common); monitoring illegal conduct, recording the details, and reporting that information to police for follow-up action; and cleaning up blighted areas to help restore a sense of order and guardianship.

The degree to which any of these forms of community involvement in the business of policing actually contributes to the reduction and control of crime and disorder is hard to say with certainty. Absent rigorous and abundant evaluation, most programmatic initiatives in which citizens engage in the business of policing proceed on one or more of several bases: (1) that hard evidence notwithstanding, citizens are entitled and obliged as matters of principle to contribute to their own safety, (2) that regardless of the general evidence, citizen participation in policing activities can be effective when carefully targeted in time and place and on particular aspects of specific problems, (3) that citizen involvement in the policing process enhances the legitimacy of formal institutions of social control (including police) and enhances legitimacy which, in turn, promotes greater compliance with laws and norms that promote orderly behavior, or (4) that regardless of its crime preventive value or its effect on promoting legitimacy, citizen involvement in policing holds popular, and therefore, political appeal.

What social scientific evidence there is to date indicates that some of the more popular forms of citizen involvement, such as neighborhood watch and unfocused community policing programs, are not effective in preventing and controlling crime and disorder, but that citizen involvement can promote legitimacy, which does contribute to greater compliance with law and orderly behavior and citizens can do significant things in collaboration with police to address highly specific public safety problems. Accordingly, it seems generally safe to say that citizens can and will continue to participate in the business of policing both because they have the right and the duty to do so

and because it probably has an overall positive effect on respect for law and order and government institutions. It is perhaps even more important to say that, depending on the precise conditions and mechanisms by which public safety problems are occurring and the precise activities they engage in, citizen participation in the business of policing can alternately be productive, unproductive, or counterproductive to the larger aims of a democratic, peaceful, secure, and just society.

And so, the important question is not whether citizens should join with police in the business of policing—for surely they should—but rather, what should they do and what should police and other agents of social control do under what conditions to control particular threats to public safety and security.

C. Examples of Community Involvement in Policing

The descriptions and examples that follow illustrate the range of and rationale for community action undertaken as part of the business of policing. The categories are neither exhaustive nor mutually exclusive, but they reflect the more common and reasonably distinct forms that community participation in policing is taking. There is an important caveat: none of the actions as described below constitute proof of the effectiveness or fairness of these methods. Indeed, described in isolation of the other actions taken, encompassing both formal and informal social control, and in isolation of the many contextual factors of each public safety problem, it cannot be said whether any of these actions is sensible. Whether community action is either effective or just depends on many other factors: Why were these actions taken? What else was done by whom? Were rights protected and responsibilities and burdens equitably apportioned? Were more effective, fairer, less intrusive alternatives available to accomplish the same objectives? So, while recounting community action is instructive, determining whether such action resulted in community justice requires recounting the whole story. Indeed, the very same community action that might on its face be deemed laudatory in one context might be deemed objectionable in another.

1. Forming Community Patrols and Patrolling Public Places

Citizens have assumed some responsibility for patrolling public places, sometimes under the aegis of the local police and sometimes wholly independently. A citizen’s patrol was formed in San Diego in
1991 in response to a series of violent attacks on citizens.\textsuperscript{22} Hundreds of citizens from several neighborhoods participated in the patrols that were started in response to this particular crime problem. The citizens reported suspicious activity to their own dispatch operation via cellular telephones, and in turn, that information was relayed to police. Other similar patrols were started elsewhere in the city. At one point, 2500 citizens were officially enrolled in a citizen patrol in San Diego. While that figure is even greater than the number of police officers in San Diego, it nonetheless represents a small proportion of the city’s 1.2 million residents and many more visitors. In Honolulu, police organized special citizen patrols to monitor parking areas near beaches in response to a rash of vehicle break-ins.\textsuperscript{13} These patrols were targeted at the highest risk times and places. Citizen patrols have similarly been reported by police as making useful contributions toward addressing public safety problems in Las Vegas\textsuperscript{14}; Burnaby, British Columbia\textsuperscript{15}; Miami\textsuperscript{16}; Stuart, Florida\textsuperscript{17}; Edmonton, Alberta\textsuperscript{18}; El Paso, Texas\textsuperscript{19}; San Antonio\textsuperscript{20}; Fresno, California\textsuperscript{21}; Wichita, Kansas\textsuperscript{22}; and Aurora, Illinois\textsuperscript{23}. Citizen patrols are sufficiently numerous that a national association of them now exists.\textsuperscript{24}

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Many such citizen patrols are trained by police to be good witnesses and to patrol safely. Many patrols also provide communications equipment (often donated by private communications companies) and transportation. Although such patrols might be initiated in response to violent crime and citizens trained to report such violence if they see it, in fact, much of what gets reported are disorderly conditions in the community—vandalism, litter, disrepair, abandoned vehicles and buildings, vulnerable crime targets, and the like. It is rare enough for police officers to witness violent behavior and serious crime while on patrol; organized citizen patrols are no more likely to do so.

In contrast to the above programs in which citizens are watching out for the behavior of offenders are programs in which citizen volunteers provide services to fellow citizens to reduce their risk of victimization. An example is free or discounted public transportation services provided by women volunteers for other women (mainly during evening hours and often on university campuses) designed to minimize women’s risk of sexual assault. Another example is volunteer programs that routinely check on the welfare of elderly citizens. Whether or not citizen patrols actually lead to reductions in crime and disorder, their primary purpose is to help restore a sense of community efficacy and thereby alleviate community fear of public spaces.

2. Petitioning Legislative, Judicial, or Administrative Bodies to Take Particular Actions

In the purest form of representative democracy, citizens have pressed their elected representatives—through signed petitions, letter-writing campaigns, political meetings, or testimony offered at legislative hearings—to enact laws that they believe will better address public safety concerns. Over 600 citizens in Fort Myers, Florida signed petitions in favor of a juvenile curfew law as one means of controlling juvenile delinquency. Local police then delivered the petitions to the local city council and the curfew was duly enacted. Over 300 residents in Windham, Connecticut petitioned their town government

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Kansas City, Missouri police secured petitions from local residents in support of a local parking regulation that would discourage people not living in the neighborhood from coming there to transact business in an open-air drug market.\footnote{Kansas City Police Dep't, Herman Goldstein Award for Excellence in Problem Oriented Policing (1998), http://www.popcenter.org/library/Goldstein/1998/98-35.pdf.}

Citizens of Barrow, Alaska petitioned the local government to allow a referendum on a proposal to ban the sale and consumption of alcohol in the city in a campaign to reduce alcohol-related harm. Supported by police, the referendum passed, resulting in dramatic reductions in the problem.\footnote{North Slope Borough Dep't of Public Safety, The Barrow Temperance Project: Reducing Alcohol-Related Crime and Disorder with Prohibition in an Alaskan Community (1995), http://www.popcenter.org/library/Goldstein/1995/95-56(W).PDF.}

In some jurisdictions, nuisance abatement actions can be initiated by citizens through the filing of petitions or complaints with a court or abatement board. This process was used effectively to control drug trafficking from houses in residential neighborhoods in West Hollywood, California.\footnote{Los Angeles County Sheriff's Dep't, Clean and Safe City Task Force (1996), http://www.popcenter.org/library/Goldstein/1996/96-27.PDF.}

San Diego Police organized affected merchants and residents to file a petition for temporary restraining orders barring prostitutes from plying their trade in certain areas.\footnote{San Diego Police Dep't, Glitter Track: The Use of a Temporary Restraining Order to Solve the Prostitution Problem (1994), http://www.popcenter.org/Library/Goldstein/1994/94-16(F).pdf.}

Citizens have also been organized into “court watches” in which they conspicuously attend certain court proceedings for the purpose of demonstrating to judges the community desire that certain offenders be sentenced in a particular way; typically more severely than the citizens believe the judges would otherwise be inclined to do. Citizens in Durham, North Carolina, bothered by persistent noise around the college campus, organized a court watch to pressure judges to treat the cases arising out of these complaints more seriously.\footnote{Durham Police Dep't, Dealing With Noise Complaints Around University Campuses (2003), http://www.popcenter.org/Library/Goldstein/2003./03-11.pdf} Fifty citizens in St. Louis were mobilized to attend a liquor license revocation hearing and requested the opportunity to testify in support of the revocation as part of a police-community initiative to clean up a trou-
bled neighborhood. Chattanooga, Tennessee citizens appeared in court with signed petitions to demonstrate their support of police efforts to evict drug dealers from residences.

Court watch schemes have also been employed more generally to get judges to impose harsher sentences in classes of cases such as drunk driving, sexual assault, and domestic violence. Other than in high-profile cases, in many criminal courtrooms the only parties present at sentencing are the defendant, the attorneys, and court employees. Many believe that judges behave differently when there appear to be interested spectators in the courtroom.

3. Making Public Demonstrations in Opposition to Particular Offensive Conduct

In the context of promoting greater public safety and security, citizens commonly exercise their constitutional right “peaceably to assemble, and to petition the Government for a redress of grievances.” They march on city hall, as it were, to tell the government—police included—what they want the government to do about crime and disorder. However, sometimes they also exercise this right in collaboration with police, joining their interest with that of the police in telling others—sometimes fellow citizens, sometimes corporations, sometimes other government agencies—what they ought to do (or stop doing). These demonstrations, rallies, assemblies, marches, vigils, and protests commonly focus on such problems as drug trafficking, prostitution, sexually-oriented businesses, and violence. Anti-drug marches were popularized in Philadelphia in the late 1980s and became part of the standard repertoire of police-community responses to open-air drug markets.

Sometimes the main purpose of the gathering is to call attention to a problem; other times, the gathering is intended to have a more direct effect on the problem itself, such as when citizens physically occupy space that otherwise might be occupied by drug dealers and customers or prostitutes and johns. The community makes a physical and vocal presence to reclaim public space for legitimate purposes and discourage its use for illegitimate ones.

35. U.S. CONST. amend. I.
This relationship between police and community is typified by the following sentiments expressed by a group of Kansas City, Missouri citizens writing to the local police commander:

For years we have watched as the neighborhood where “we live, work and worship has declined and been taken [over] by the criminal element in the form of prostitution, drug dealing and criminal vandalism. . . .

What Officer Schriever did for us is help us take action along with his fellow officers. He helped us see we could do a lot more if we did not accept this as a way of life. He said if we pulled our group together and worked as one unit with the police we could show the drug dealers and prostitutes we would not accept them in our neighborhood. . . .

. . .

Officer Schriever also helped instigate the TAKE BACK OUR NEIGHBORHOOD RALLY. . . .

. . .

. . . He has helped our neighborhood be pro-active.37

In the above statements, the interactive nature of the relationship between police and community is revealed. The residents who stand behind these statements clearly feel as though it is they, the representatives of the community, who ultimately made the difference in improving conditions in their neighborhood, but that the police served as the catalyst, perhaps without whom the community might not have been able to mobilize effectively.

On occasion, a public protest that takes an adversarial posture toward government and police can lead to a collaborative resolution to the problems about which citizens were protesting. Homeless persons and their advocates staged a prolonged protest in front of the San Diego city government buildings. City officials directed that police remove the hundreds of protesters when their behavior and the physical conditions surrounding the protest deteriorated. While police did resolve to end the protest and remove the protesters, they went fur-

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ther by working with protest leaders to develop a new plan for improving the overall community and government response to homeless persons. The new plan brought together police, mental health officials, health and human services workers, and a homeless services coordinator in a homeless outreach team. This account demonstrates how a single community group—in this instance, homeless advocates—can be police adversaries in one context (the protest) and police allies in another (the mental illness problem).

There is yet another form of citizen demonstration against illegal conduct that is more personal and more targeted than those described above. Two recent examples illustrate this form.

In High Point, North Carolina police efforts to control illegal drug markets through conventional law enforcement appeared to be failing. After careful analysis of the problem, police concluded that part of the reason the conventional approach was failing was that the general law-abiding community in which the drug markets flourished were conflicted: they hated the operations of the drug markets and their destructive impact on the community, but they also hated the law enforcement approach to dealing with it, an approach they felt strongly was oppressive and racially biased. Only when police and prosecutors acknowledged that both sentiments were legitimate were they able to move forward with a new approach. The essence of the new approach was to combine conventional drug enforcement, expressions of community intolerance for the drug markets, and social services for offenders willing to change their ways. Police and prosecutors developed strong criminal cases against targeted drug dealers, but then held the charges in abeyance. The police, prosecutors, and social service providers then summoned all the targeted drug dealers (primarily men) and their families (primarily their mothers) to a meeting. At the meeting the police and prosecutors revealed to the dealers the criminal cases they had built against them. They told the dealers and their families that they were prepared to take them into custody at any time and prosecute them fully, but that if the dealers were willing to cease their dealing and accept offers of assistance toward a different way of life, the cases would not be prosecuted. The real key to this working was when the mothers told their drug dealing sons that they, too, wanted them to stop dealing drugs, that they did not want to see them go to prison, and that they wanted a better

40. See generally id.
life for them. Remarkably, all of the targeted drug markets were shut down. Some of the drug dealers gave up drug dealing and accepted assistance; others were arrested, prosecuted, and incarcerated. While none of the tactics used were novel, it appears that the novel ingredient in this formula is the strong expression by the community—in a most direct way—that it no longer will tolerate the drug markets and that it stands ready both to support the drug dealers and to support the police and prosecutors to shut them down.\footnote{See generally id.}

A variation on the High Point approach was recently applied in Sheboygan, Wisconsin.\footnote{SHEBOYGAN POLICE DEP'T, NEIGHBORS AGAINST DRUGS (2005), http://www.popcenter.org/about-conference-papers.htm#finalist-sheboygan.} Concerned about emerging indoor drug markets in residential neighborhoods, police worked to organize the community against drug trafficking. After identifying suspected houses out of which drugs were being dealt (through careful citizen documentation of suspicious activity and police undercover drug buys), police and police-trained citizen volunteers went door to door in the neighborhood, surveying all residents about their awareness of and concerns about the problem. At the conclusion of each interview, surveyors requested that the resident place on their front lawn a sign reading “Neighbors Against Drugs.” Signs were placed on the lawns of every house in the neighborhood except the house suspected of being used for drug dealing. Police then confronted the owner of the suspected drug house, made certain the owner understood the community opposition to the illegal use of the house, and threatened the owner with civil property abatement and possible seizure of the property. Careful evaluation of the initiative documented the cessation of drug dealing from nearly sixty drug houses and drug dealing eliminated from eighteen neighborhoods. As in High Point, while some conventional law enforcement tactics were crucial to the project’s success, the novel and essential element was the strong and targeted expression of community opprobrium for the illegal activity.\footnote{See generally id.}

What the initiatives described above have in common is that they recognize that illegal and disorderly activity persists where there is either community acceptance of or weak community opposition to it. The exercise of formal authority enforcing laws against illegal and disorderly conduct is usually insufficient to control the conduct where the informal authority of the community to stop the conduct is not similarly exercised.

41. *See generally id.*
43. *See generally id.*
4. Monitoring Illegal Conduct, Recording the Details, and Reporting that Information to Police for Follow-up Action

Citizens have long been encouraged by police to be vigilant to illegal conduct and to faithfully report such to police and be available to testify as witnesses in legal proceedings, if necessary. Sometimes citizens organize in block or neighborhood watch programs and agree to be especially vigilant over their neighbors’ property. As noted above, citizens also organize into citizen patrols and report suspicious activity to police. Occasionally, citizens opt to take a more active role in monitoring specific illegal conduct by recording the details, and reporting that information to police for follow-up action.

A Los Angeles police officer worked with the Beverly Glen Homeowners’ Association on a plan to control speeding in which resident volunteers were trained by police to operate a speed detection device, record the speed and vehicle identification information, and pass it along to police.\(^{44}\) Police then sent written notices to the vehicle owners about the program advising them that their vehicles are part of the problem, requesting their cooperation in abiding by the speed laws, and implying a threat of enforcement. Citizens bothered by the noise of loud car stereos in Savannah, Georgia systematically recorded the license plate numbers and other details of offending vehicles and submitted these complaint logs to the local police precinct, which in turn sent an official warning letter to the registered owners of the vehicles.\(^{45}\) In many jurisdictions citizens have done likewise, recording the particulars of vehicles seen cruising through areas known for drug trafficking or prostitution; police use the citizens’ information to identify registered vehicle owners and send them warning notices.

In all of these instances citizens are not acting independent of one another, merely reporting their personal complaints to a largely anonymous and indifferent police communications center. Rather, they are acting in concert with one another and with police and with a strategic purpose. It is intended that, in addition to providing actionable information to police, they are bolstering their sense of collective efficacy.


5. Cleaning up Blighted Areas to Help Restore a Sense of Order and Guardianship

Usually working at the neighborhood level, citizens frequently collaborate with police and other local government agencies to improve the physical conditions of a neighborhood through clean-up initiatives. Often times these initiatives focus on graffiti, abandoned vehicles, abandoned shopping carts or tires, discarded furniture, vacant lots, or transient encampments.

Police in many jurisdictions have come to believe in the “Broken Windows” thesis which posits that visible signs of community disorder, including dilapidated, destroyed, dirty, and abandoned property, promote a general sense of lawlessness and absence of guardianship and thereby cause or contribute to yet more serious criminality. While the precise relationship between visible disorder and serious crime is not yet clearly established (and is a point of academic contention), the idea that police ought to work with citizens to get neighborhoods physically cleaned up as part of an overall crime control and prevention strategy is quite vibrant and pervasive. Whether citizens participating in the clean up leads directly to crime reductions (in keeping with the broken windows hypothesis) or indirectly by bolstering collective efficacy (which in turn is harnessed in the service of other crime control mechanisms), community clean up campaigns are as much or more about public safety as they are about


51. See generally, Wilson & Kelling, supra note 8.

community aesthetics, public health, or environmental protection. In many communities the resources required to repair widespread blight greatly exceed those possessed by police or government public works departments. Thus, direct citizen involvement is often essential to the task.

D. Community as Arbiter

One dimension of the broad community justice approach is that the systems in which offenders are adjudicated ought to take better account of the desires, needs, perspectives, and interests of the community most directly affected by the offenders’ conduct. While crime can be said to have consequences to society as a whole, it has more immediate and tangible consequences for the smaller communities in which particular crimes occur. Accordingly, it is thought that community justice is not done merely by recruiting potential jurors from the larger jurisdiction in which the crimes occur, but by involving citizens from the more immediate neighborhood in which the crimes occur in shaping the legal and social consequences to offenders.

Toward this end, a growing number of jurisdictions have established so-called community courts. Generally speaking, community courts operate at a more local level than conventional criminal and municipal courts. They commonly impose sentences on offenders that in some fashion help repair the harm to the community that the offenders’ conduct caused. They give priority attention to offenses that might be trivialized in conventional courts, but which cause considerable disruption or harm to a local community. They seek to restore offenders, individual victims, and communities alike to some measure of wholeness.53 While it is beyond the scope of this article to explore fully the operations and issues associated with community courts, of more immediate interest here are those instances in which citizens are involved quite directly in the business of adjudicating their fellow citizens and in which police collaborate in this process.

San Diego police collaborated with its city attorney’s office to establish a community court to adjudicate certain nonviolent misdemeanors that emanate from especially bothersome public order problems such as prostitution, vandalism, noise, and peace disturbances.54 Defendants who meet certain criteria can have their case adjudicated by a “sanctioning panel” that comprises a city prosecutor, a court co-

ordinator, and two specially trained citizen volunteers. Formal charges are suspended in lieu of defendants hearing strong and personal messages from the community about the harm their conduct is causing to community life. Defendants are then “sentenced” to tailored community service tasks and/or personal rehabilitation programs.

In many jurisdictions convicted drunk drivers are required as part of their sentence to listen to a panel of citizens whose lives have been negatively affected by drunk driving. These so-called victim impact panels reflect a desire to have citizen victims sit in judgment of offenders and hold them to more personal account for their offending behavior.55

There is yet another interesting possibility for how citizens can participate in policing, not as complainants and not as actors, but rather as problem-solving analysts. In this role they are arbiters of data, not of guilt in the context of a legal proceeding. A case in point occurred in San Diego in which an elderly woman who volunteered in the San Diego Police Department’s Retired Senior Volunteer Program undertook to study a problem of burglaries from self-storage mini-warehouses.56 She and a few fellow senior volunteers analyzed crime statistics and reports, surveyed owners and managers of various self-storage firms, and then recommended improved management practices for firms experiencing high rates of burglary. As a direct result of the volunteers’ analysis that particular burglary problem was nearly eliminated.57 What this example points out is that citizens not only have their anger, fear, concern, compassion, time, physical labor, and vigilance to share with police in pursuit of greater public safety, but at least some citizens have some intellectual skills that can be brought to bear on persistent public safety problems. The intellectual capital of the community has not been fully tapped by police, but the potential to do so clearly exists.

III. ISSUES RAISED BY COMMUNITY PARTICIPATION IN POLICING

57. Id. at 151.
It nearly can go without saying that in democratic societies community participation in policing is both inevitable and desirable. It is part of what defines a society as democratic. But that does not mean that active community participation in the formal aspects of policing occurs without complication or controversy. Among the more salient issues are: (1) What constitutes a community and who speaks for it? (2) What capacity and competence does the community have to engage in formal policing? (3) What capacity and competence do the police have for working with the community? (4) Can community interests compromise the rights of individuals and minority groups? (5) What is to be done when the community is part of the problem?

A. Determining What is a Community and Who Speaks for the Community

Determining what is a community and who speaks for it is more than just a semantic exercise. To be sure, the term “community” has varied definitions: (1a) group of people living in the same locality and under the same government, (2a) group of people having common interests, similarity, or identity, (3) similarity or identity. (4) Society as a whole.58 The phrase “community policing” takes on slightly different meanings depending on which of the above definitions of “community” one has in mind. For some, “community policing” and “neighborhood policing” are synonymous and mean delivering police services at the neighborhood level and attending to and taking account of the interests of the majority or plurality of citizens who live or work in a relatively small geographic area. For others, “community policing” is more fluid; it involves attending to and taking account of the interests of a group of people who may or may not reside or work near one another but who share common characteristics or interests. Under this definition, there may well be multiple, overlapping, or even conflicting communities within the same geographic area. Obviously, this form of community policing can be more intricate and complex than the former. For yet others, “community policing” is understood in the broadest terms as an overarching philosophical stance akin to what Peel articulated: that the police are merely part of the larger society, not a separate and foreign entity. Some others have asserted that the phrase “community policing” is redundant inasmuch as “police” derives from both the Greek “polites,” which means “citizen” and the Latin “polis,” which means “city.” As one wise Canadian

police executive claimed, “community policing” is like saying “fishing for fish”; it is unnecessary because it is implied.59

But beyond these abstractions, albeit important ones, there are practical challenges for operationalizing any policing approach that seeks to involve citizens more directly in the business of formal social control. Whether the community, as the object of policing, is expressing its desires to the police, or the community, as subject of policing, is helping police do the policing, there is need to decide whose opinion counts, whose opinion is essential, who gets invited to meetings, who is permitted to participate in actions on behalf of the community, and so forth. In other words, who is in and who is out of the “community.” Because the essence of policing is resolving conflict (between citizens or between citizens and the government), nearly all policing entails sorting out the competing interests within the larger community. “Community” might connote consensus, but it is comprised equally of conflict.60

The term “community” is also fluid enough that it conceivably encompasses any individual or social entity not part of the government, including corporations and non-government organizations. And yet it takes little imagination to recognize an important distinction between the motives and interests of private citizens who claim only to represent themselves, their families, their small businesses, or their immediate neighborhoods, and the commercial interests of large corporations and non-government organizations whose profits and revenue streams might be at stake in the context of any particular public safety problem.

Accordingly, it is important to quickly get past the deceptively simple rhetoric of “community” to reveal just whose and what interests are at stake when addressing public safety problems. Revealing, articulating, and sometimes quantifying the various interests at stake in a public safety problem is perhaps the most critical aspect of a community problem-solving process. Only through a full accounting of who has what to gain or to lose can truly informed public policy be made and community justice done.

B. Capacity and Competence of the Community

Just as individuals have different capacities and competences to solve problems, so too do communities. Not all communities or community groups are equally staffed, organized, trained, resourced, connected, or skilled to push the buttons and pull the levers of social con-

60. See generally JAMES S. COLEMAN, COMMUNITY CONFLICT (1957).
control to bring about purposeful, significant, and lasting improvements to public safety. As noted earlier, so-called “collective efficacy” varies tremendously across communities. Some communities have long-standing habits, traditions, and systems for identifying problems, making them a priority within the community and within local government, developing workable action plans, and carrying out those plans. Whether through the strong and capable leadership of a few individuals or the well-oiled mechanics of a community organization, these communities seem always to be out in front of problems; heading them off before they become acute and then entrenched. Other communities have little of this sort of capacity and competence. Of course, it is typically in the incapable and incompetent communities where police find their greatest public safety challenges. Indeed, serious public safety problems tend to arise in some communities precisely because they are incapable and incompetent to protect themselves from them.

What then are police to do about this state of affairs? Reflecting again on the conventional ideal model of professional policing, police endeavored to give all communities within their jurisdiction equal access to police services, mainly the reactive services provided in response to incidents of crime and disorder. But as it becomes clearer that real public safety, crime prevention, and social order are more products of what communities can do for themselves, rather than what police or government can do for them, new challenges are presented to police. Should police invest their resources in the capable and competent communities because that is where the best returns on that investment lie, or should they invest their resources in the incapable and incompetent communities because that is where the need is greatest? Some local governments have opted for the middle ground: providing special community organizing and mobilization assistance in marginal communities that have some reasonable semblance of community organization and capacity, yet have significant public safety problems that place the community at risk of decline. The answer depends at least in part on whether government, police included, can make communities capable and competent when they are not naturally so. This matter is taken up in the next section.

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61. See Sampson et al., supra note 7, at 918–24.
62. The City of St. Louis operated a program called Operation ConServ that provided special assistance to select neighborhoods at risk of decline. At least during some periods of its existence, the program worked closely with community police officers to address crime and disorder problems.
C. Capacity and Competence of the Police to Work with the Community

The rhetoric of community policing and community justice, hard though it may be for some to come to terms with, is nonetheless the easier part of it. Working effectively with the community, however defined, is the harder part and does not necessarily come naturally to police. This is so not merely because, as noted above, communities are riven by conflict (else why would the police be involved?). It is also so because citizens, citizen groups, non-government organizations, and corporations think and behave in different patterns than do public agencies like the police because they have different incentive structures. Among these entities only police are formally accountable for reconciling the divergent interests at stake toward a difficult to define “public interest;” the others are legally and sometimes ethically obliged only to advance a narrower self-interest.

Any successful collaboration among disparate entities requires certain essential conditions: that each stakeholder's stake is sufficiently important to them that they are and remain motivated to solve the underlying problem; that partners acknowledge the need to collaborate in order to solve the problem, that partnering agencies and individuals trust one another sufficiently; that consensus can be reached about the goals of the collaboration, that the group possesses the collective expertise and other resources necessary to study the problem and carry out a plan of action; and that mechanisms for frequent and honest communication exist and are used.63

While many police agencies have developed and fine tuned their capacity and competence for collaborating with the community, particularly since their agencies consciously embraced the community policing approach, many other police agencies have not. For the most part, in the United States police-community collaborations remain optional: nice when they occur, but without serious legal consequence when they do not. By contrast, in the United Kingdom the notion of police collaborating with others is enshrined in a law that requires that local government, police, public health, and probation authorities to collaborate, design, and implement strategies to control crime and disorder.64 Police and other government authority executives are held accountable for doing so. While there are obvious limits on the extent to which such provisions can be binding with respect to nongovernmental citizens and organizations, the law serves to strongly promote

63. See generally TAMMY A. RINEHART ET AL., COLLABORATION TOOLKIT: HOW TO BUILD, FIX, AND SUSTAIN PRODUCTIVE PARTNERSHIPS (2001); SHARON CHARMED, Police Partnerships with Business to Address Problems (forthcoming).
the idea that police cannot and should not view public safety as solely within their purview.

While it is debatable whether police ought to assume the role of managing multi-dimensional collaborations and partnerships (there are cases to be made that elected officials, appointed government chief executives, or prosecutors are better candidates for this role), in fact this role does often fall to police. If police are to assume this role, they will need to systematically develop and refine this capacity. This will entail both aspects of community involvement in policing addressed in this article: community as subject and community as object of policing. More specifically, with respect to the community as the object of policing this means police must ensure there are communications and data collection systems in place that are broad and sensitive enough to identify the community’s public safety concerns. Such systems must be broad enough to capture a variety of community public safety concerns from serious crime to disorder and nuisance to accidental injury to fear. No single system will suffice to capture them all. Police must then develop systems for prioritizing the concerns recorded and apportioning responsibility within the police organization for assessing and addressing them. The systems must also be sensitive enough such that they capture the concerns of citizens who are relatively disenfranchised and disorganized. Many citizens whose safety and security are profoundly at risk lack the “squeak” that often produces the “grease” of helpful government intervention.

With respect to the community as subject of policing, police must become adept at reacting sensibly to community-initiated responses to public safety problems. Police should know whether to encourage or discourage a community protest, a citizens patrol, a petition campaign, or a civil enforcement initiative. This determination must be based on more than just whether police feel the community is encroaching upon police prerogatives, but rather whether, in the context of the particular problem, the proposed community response is likely to be both effective and fair. A police judgment about the likely effectiveness of a community response ought to be based on research evidence and sound analysis of the attendant problem, not merely on speculation. A police judgment about the fairness of a proposed community response is a somewhat more complex judgment that must be grounded in the values of democratic policing and informed by a healthy exchange of perspectives. Police should have a strong voice on matters of fairness, but not the sole voice.

D. Protection of Individual and Minority Group Rights

One aspect of fairness, referenced above, is that individual and minority group rights be protected in the face of pressure from the majority that threatens those rights. It is widely recognized that police in a constitutional democracy have an affirmative duty to safeguard such rights.66 While it is not the case that all demands on the police expressed by the majority community are insensitive to individual and minority group rights, where community participation in the business of policing is strongly encouraged, extra care must be taken to reconcile majority interests and minority rights. This concern can arise when the community is nominating problems for police attention (that is, discriminatory desires to keep certain types of individuals out of certain areas), when the community is pressing police to adopt certain methods for addressing problems (that is, indiscriminate sweeps of undesirable people, enforcement crackdowns), or when the community is taking action itself (that is, harassing individuals, vigilantism).

An interesting case in which the tension between majority community interests and individual rights came to the fore was presented in recent years in Chicago. In response to significant community concerns about the intimidating presence of youth gangs loitering in public, the City of Chicago enacted an ordinance giving police the authority to order suspected gang members to disperse and to arrest them for failure to do so. Both police and community groups strongly endorsed the ordinance and its enforcement. Over forty thousand arrests were made by police in three years before the law was overturned as unconstitutionally vague by both the Illinois and United States Supreme Courts.67 The constitutional debate surrounding this case has proven quite interesting. Some legal scholars have pressed the argument that where historically disenfranchised communities have achieved sufficient political power, as is alleged to be the case of the African-American communities of Chicago that supported the gang loitering ordinance, judicial deference ought to be paid to how those communities choose to balance community safety and individual liberty.68 Without exploring fully the arguments in this debate here, the Morales case illustrates the dilemmas surrounding majority

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66. See generally AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, INSTITUTE OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO THE URBAN POLICE FUNCTION (1973).
interests and individual rights that police-community collaboration can generate. Linking the formal authority and resources of the police with the informal authority and political power of the community can produce a formidable force that individuals and minority groups will have difficulty resisting, for better or for worse.

E. Community as Part of the Problem

As a general proposition, it is self-evident that the community is part of every public safety problem. Most public safety problems arise because the behavior of one segment of the community negatively affects the safety and security of another segment. But, there are special ways in which it can be said that the community can be part of the problems of public safety and whereby the police role might be to encourage or compel the community to take greater responsibility for the conditions that give rise to those public safety problems. This is the case when large segments of the community are negatively impacted by a particular problem but fail to recognize or acknowledge that certain conditions or practices occurring within the community are contributing to or causing the problem.

With respect to so many public safety problems the natural tendency of the community and police alike is to identify the relatively small group of “bad guys” who prey upon the community and to try to change their behavior principally through punishment. But a more thorough examination of the etiology of many public safety problems, rather than a more limited analysis of criminal law culpability, often leads to different conclusions; conclusions that widespread conditions or practices of the generally law-abiding community are making the public safety problems nearly inevitable. This is so not just with respect to large and fairly obvious problems (that is, the demand for illegal drugs contributes to the harms of the illegal drug trade), but to less obvious problems. For example, widespread giving of money to panhandlers fosters harassment and intimidation attendant to some panhandling. A local economy built around the consumption of alcohol fosters alcohol-related crime and disorder. Poorly designed steering columns on cars facilitate the theft of them. Placing certain merchandise unprotected near store exits contributes to theft. Tolerance of prostitution encourages the illegal trafficking and mistreatment of immigrant women and girls. Desire for cheap menial labor leads to disorderly day laborer sites. Leaving the entire credit card numbers imprinted on receipts invites credit card fraud. Allowing customers to pump gasoline into their vehicles before paying for it enables theft of the gasoline. Scrap metal dealers who buy metal without proof of ownership encourage theft of metal. Landlords who do not screen or
manage their tenants invite drug trafficking onto their properties. In these and many other examples, while there is clearly criminal behavior by individuals that can and perhaps should be held to account, changes to the conditions or practices that facilitate the crime would likely have a far greater impact on controlling the problem.

But therein lies the rub: often times the community at large does not want to change its practices or conditions. It wants to do what it wants to do and have police and prosecutors hold the relatively few offenders to criminal account. Corporations and small business owners want to maximize profits and often perceive they can better do so if they can shift the costs of the harms of their products and services off to the public in the form of taxes for police, prosecutors, courts, and jails. Thus, police and other government agencies with public safety responsibilities must learn how to shift back to segments of the community greater responsibility for controlling criminogenic practices and conditions. But doing so requires persuading the community both of the nexus between the various practices and conditions and the resultant crime and disorder, and of the moral responsibility the community bears for its own public safety problems.

This then brings the notion of community justice full circle. Not only has the conventional model of professionalized, governmental, and formal justice systematically excluded community participation, both as the object and the subject of policing, it has also systematically absolved the community of its own responsibility for creating many public safety problems in the first instance. Movement is required along both fronts simultaneously for police and other formal authorities to create greater opportunities for meaningful community participation in the business of policing a society and to shift greater responsibility back to the community—individuals, citizen groups, non-governmental organizations, corporations, and small businesses alike—for behaving in ways that obviate the need for formal corrective action. That would be a more complete model of community justice.