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Anti-democratic and racist legacy of policing misdemeanors: A critical literature review of the broken windows theory

ABSTRAKTI / ABSTRACT

James Q. Wilson and George L. Kelling's broken windows theory has been claimed to change policing in the United States by shifting focus from serious crimes to misdemeanors. Others view the theory as a form of reinstalling vagrancy laws that criminalized African Americans after the abolition of slavery. Through a critical literature review, this article discusses the theory's theoretical and historical precursors. The theory's wish to return to an earlier period of policing through wide police discretion and lack of procedural oversight over police work advances anti-democratic and racist goals calling for reduced civil rights for the "undesirables." By relying on colorblind racism in their history-telling, the theory portrays itself as race-neutral while contributing to racist policing. This article will also contribute to a less discussed aspect of the theory's approval of community and vigilante policing. Approval of policing by groups historically responsible for racial violence and terror further speaks to the colorblind racism of the theory, leading to dangerous implications for communities of color. Finally, the article will discuss the misdemeanor system as a continuation of vagrancy laws and tie the broken windows theory to punitiveness and anti-democratic ideas firmly rooted in the history of the United States.

James Q. Wilsonin ja George L. Kellingin rikkoutuneiden ikkunoiden teorian on väitetty muuttavan poliisitoiminnan painopistettä Yhdysvalloissa vakavasta rikollisuudesta pikkurikkeisiin. Toiset näkevät teorian pyrkineen irtolaisuuslakien palauttamiseen, jotka olivat keskeisiä afroamerikkalaisten kriminalisoinnissa orjuuden lakkauttamisen jälkeen. Tämä artikkeli tarkastelee teorian teoreettisia ja historiallisia edeltäjiä kriittisen kirjallisuuskatsauksen avulla. Teorian haikailu poliisitoiminnan aikaisempaan aikakauteen poliisin laajan harkintavallan ja poliisityön proseduraalisen valvonnan puutteen kautta edistää demokratianvastaisia ja rasistisia tavoitteita, joilla vaaditaan "ei-toivottujen henkilöiden" oikeuksien heikentämistä. Historiankertomuksessaan värisokeaan rasismiin nojaten teoria esittäytyy rotuneutraalina edistäen samalla rasistista poliisitoimintaa. Tämä artikkeli keskittyy myös vähemmän huomiota herättäneeseen yhteisöiden ja omankädenoikeuden harjoittajien poliisitoiminnan hyväksyntään teoriassa.

Rasistiseen väkivaltaan ja terrorismiin kytkeytyvien ryhmien poliisitoiminnan hyväksyntä kertoo jälleen teorian värisokeasta rasismista, jolla on vaarallisia seurauksia rodullistetuille vähemmistöille. Lopuksi artikkeli käsittelee rikkomusjärjestelmää irtolaislakien jatkona ja sitoo rikkoutuneiden ikkunoiden teorian Yhdysvaltojen historiaan vahvasti juurtuneeseen rankaisukeskeisyyteen ja demokratianvastaisuuteen.

Broken windows theory, vagrancy, undesirables, anti-democratic, anti-Blackness

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Introduction

Wilson and Kelling's broken windows theory—the bible of policing—is continuously seen to have shifted the field of policing in the United States.¹ Others perceive the theory as a historical continuum for criminalizing African Americans through mundane behavior (e.g., sleeping, eating, or standing around).² While criticizing the theory has become its own genre³, I have not located a critical literature review of the theory. This article will provide one by discussing the theory's theoretical and historical precursors, the often-neglected anti-democratic features, and the contemporary misdemeanor systems' role as a continuation of vagrancy laws.

While broken windows policing has affected more groups than African Americans, such as Indigenous people, Latinos, Muslims, migrants, and poor Whites, this article centers on anti-Blackness. This is not an attempt to deny the consequences to other groups affected by broken window policing. Due to limited space, I have chosen to emphasize African Americans, who have been a key target of policing in the United States—historically and contemporarily.⁴ This article does not focus on the gendered impacts of broken windows policing that have been analyzed elsewhere,⁵ and neither does this article attempt to deny the existence of disorder. Yet, what is considered disorder is subjective and more importantly, disorder is racialized. American culture associates Blackness with criminality and disorder, which contributes to viewing Black people and their neighborhoods as disorderly.⁶ This article problematizes the premises that Wilson and Kelling base policing disorder upon and how reliance on colorblind racism advances anti-democratic and racist solutions that call for decreased civil rights.⁷ Colorblind racism is a term coined by Eduardo Bonilla-Silva for the so-called new racism that emerged in the post-1965 era, transforming racism from overt and explicit forms to more subtle and “sophisticated” forms that still worked as effectively to uphold racial inequality.⁸

Drawing together the findings by earlier critics, this article argues that the broken windows theory is not so much about broken windows or disorder but the “undesirables” who require a wide police discretion to allow their easy removal from a neighborhood.⁹ This practice ties into the history of American policing that targets undesirable groups, predominately African Americans, with minor offenses—a continuum that even Wilson and Kelling recognized.¹⁰ The article will also build upon the less discussed approval of extralegal methods, not just with the police¹¹ but with community and vigilante groups. Ultimately, this article links the broken windows theory to anti-democratic and racist ideas strongly rooted in the history of American punitiveness.¹² Although Nordic countries are

often perceived beyond these issues, racialized punishment is gaining increasing visibility in public discussions accompanying the dismantling of the welfare state.¹³ Neither are Nordic countries strangers to racialized punishment historically. Especially the Roma have long roots of experiencing racist criminalization and punishment in the Nordics.¹⁴

First, I will review the broken windows theory, its evidence, and its implementation in practice. Second, I will discuss the theory's theoretical precursors and historical precursors. After discussing the history, I will analyze the theory's interconnections to it and the relevance of race in the theory without Wilson and Kelling ever explicitly calling African Americans disorderly yet actively advancing decreased civil rights and unlimited police powers. Lastly, I will briefly discuss the interrelations of the current misdemeanor system to vagrancy laws. The article finishes by drawing conclusions based on earlier criticisms and their gaps and builds on the theory's anti-democratic features.

Methods

This article focuses on the original broken windows article through a critical literature review. A literature review provides information on what is known about a specific topic. Critical literature review, on the other hand, does not just describe existing literature but provides an original, critical, and analytical review to point out existing gaps in literature.¹⁵ This article does not aim to cover everything written on the theory. I have narrowed the analysis to the broken windows article and 17 texts critically assessing it. Many other texts supplemented my analysis.

The implementation and background of the broken windows theory

The broken windows theory claims that leaving social and physical disorders untended leads to the breakdown of community control and will soon be followed by urban decay. Therefore, not addressing signs of disorder can quickly change a neighborhood into “an inhospitable and frightening jungle” where further disorder and crime thrive. The symbolic broken window signals to criminals that “no one cares” in the neighborhood. Disorder creates a fearful environment that pushes “decent” people out of the neighborhood as they can afford to leave. This is when the neighborhood becomes at risk for criminal invasion. Wilson and Kelling base this claim upon an evaluation of a foot patrol program by the Police Foundation in Washington, D.C., that seemingly increased the feeling of safety among residents and bettered police and community relations. But “the foundation concluded, to the surprise of hardly anyone, that foot patrol had not reduced crime rates.” Despite this finding, the theory claims that policing disorder is an effective crime prevention technique.¹⁶

Although the theory was initially published in *The Atlantic* and only relied on one empirical source in its central claim, the theory turned out to be very influential.¹⁷ Policing disorder has become a prominent way of preventing crime in the United States and beyond.¹⁸ Gurusami and Kurwa point out the theory leading to (1) treating minor noncriminal activities more strictly to discourage serious crime and (2) seeing police presence by patrolling and observing public spaces as important to stop these behaviors.¹⁹ Yet, the documentation of the theory's effectiveness has been mixed. Several researchers argue that no link between disorder and serious crime has been found.²⁰ O'Brien, Farrell, and Welsh's meta-analysis showed that support for the theory tends to be found through weak research designs.²¹ Measuring the effectiveness of broken windows policing can be tricky as the implementation and definition of serious crime and disorder can differ. Braga, Welsh, and Schnell found policing disorder to

be most effective with community and problem-solving interventions aimed at changing social and physical disorder conditions in specific locations. In contrast, aggressive order maintenance targeting individuals' behaviors did not lead to significant decreases in crime.²² These findings reflect another conceptual difficulty as critics tend to call the aggressive tactics deriving from the theory zero-tolerance.²³

Broken windows policing was popularized by the Giuliani administration's Quality-of-Life campaign in New York from 1994 onwards. It shifted from softer measures of dealing with misdemeanors to detaining people to check their identity to see if they had outstanding warrants.²⁴ While the 1990s crime drop in New York following aggressive policing strategies is often considered evidence of the effectiveness of broken windows policing, Frydl and Skogan have problematized this for three reasons. First, aggressive policing was not the only organizational change made during that time. Second, outside factors such as the general crime drop and decline in the crack epidemic might have caused these changes. Third, the changes in crime do not differ from other cities in the United States that did not implement the same strategies.²⁵ Furthermore, the general crime drop in the 1990s was a tendency seen on a global level.²⁶ Implementing aggressive policing in New York did, however, increase complaints of police misconduct.²⁷ Alongside New York, aspects of broken windows policing were adopted in Chicago and Los Angeles.²⁸ Chicago's anti-gang loitering ordinance deriving from the broken windows theory was eventually found unconstitutionally vague in the *City of Chicago v. Morales*.²⁹ Yet the same has not applied to the Stop, Question, and Frisk practices based upon the broken windows theory; instead, they remain a common policing tactic.³⁰

Wilson and Kelling trace their idea behind the broken windows theory to insights from social psychologists and police officers. Mostly, they claim their idea stems from Philip Zimbardo's 1969 experiment, in which he left two cars in different neighborhoods. The one in the Bronx, New York, was immediately dismantled, while the one in Palo Alto, California, was left untouched until Zimbardo started breaking the car himself, encouraging passersby to join in.³¹ Ansfield has pointed out how the interpretation of the only empirical evidence of the theory is flawed. The car in Palo Alto was predominantly dismantled by the research team that got carried away in destroying it. Only after the team had destroyed the car did passersby join in. Therefore, the argument that one broken window attracted crime by signaling "no one cares" has been problematized. Rather, Ansfield attaches the destruction to the sight of the Stanford research team destroying an abandoned car.³²

An experiment with two cars is hardly generalizable, but a more careful reading of Zimbardo's experiment gives reason to suspect that the theorists' takeaway ignores Zimbardo's main points. Zimbardo runs a series of experiments focusing on individuation and deindividuation in laboratory settings and in the field. He found that anonymity fosters vandalism, while a lack of anonymity requires stronger social cues to instigate vandalism. This showed in the car experiment where the Bronx already had a sense of anonymity that Palo Alto lacked, thus requiring the destruction from the research team.³³ Here you can find most of the interconnections of the broken windows theory and Zimbardo's ideas as both seem to agree that anonymity is bad for community cohesion and social controls.

Yet, the broken windows theory is not just about broken windows. A key sign of disorder for Wilson and Kelling are "the undesirable persons" explicitly seen as "disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed." More than anything, the broken windows theory prioritizes the decent folks "fear of being bothered by disorderly people" above crime.³⁴ In comparison, Zimbardo has reflected on his car experiment findings and traced the root causes of vandalism to society's production of inequity.³⁵ These findings align with Zimbardo's later theory: When the context and circumstances are right, anyone can

commit “evil” instead of public disorder working as a stimulus for crime.³⁶ Therefore, his theory does not build upon a hierarchy between who is desirable and undesirable for the community. If anything, his criticism of the justifications for dehumanizing people committing vandalism might have motivated Wilson and Kelling:

But it is incorrect to treat acts of vandalism as homogenous in pattern, agent, intention, or lack thereof. To do so, is a technique used by those threatened by such acts, typically property-owners and politicians, designed to set vandals apart from “normal people,” thereby justifying coming down hard on these deviants.³⁷

Not all critics have been convinced by Zimbardo as the forefather of the theory. Wilson and Kelling’s interest in policies instead of root causes like Zimbardo has made them “strange bedfellow[s].”³⁸ Instead, critics connect the theory to the neoconservative ideas of Edward C. Banfield, whom the article does not explicitly mention. Harcourt has recognized Banfield as a mentor, colleague, and co-author of Wilson, who developed a theory of crime and urban decay that described “neighborhood change that relied significantly on behavioral norms and economic necessity to explain crime and urban blight.” Banfield discussed urban decay through “the logic of growth,” where higher-class individuals leave downtown neighborhoods due to affording and desiring more spacious homes and neighborhoods. Meanwhile, the lower classes take over the old neighborhoods, leading to their decay, which, to them, might even be “a blessing.” However, this dynamic does not explain crime; rather, it is the inherited features of the lower classes being present-oriented and destined to a life of crime and antisocial behavior. Urban decay then reinforces the already problematic features of the lower classes.³⁹

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Banfield’s ideas of the lower classes as pathological, present-oriented, and destined to crime and higher classes as future-oriented have been connected to a hierarchy between “decent folks” and “the disorderly” by Wilson and Kelling. Both theories rely on an idea of urban decay that follows the “decent” people leaving a neighborhood.⁴⁰ They also blame underserved neighborhoods for “not caring” while ignoring structural reasons contributing to the deprivation of neighborhoods.⁴¹ According to Thompson, Banfield’s theory of urban decay was developed during the 1960s to oppose the civil rights movement by maintaining ideas of social inequality as a product of inherited features of the lower classes instead of a structural problem. Banfield especially contributed to reproducing racial hierarchies by portraying Black people as inferior and destined for downward mobility.⁴² While Banfield was much more open about his racist beliefs, the broken windows theory is perceived to rely on colorblind racism implicating race without explicitly discussing it.⁴³ Ansfield has argued that Wilson and Kelling manipulated Zimbardo’s findings from the Bronx to put forth “a racialized image of urban decline, one that marshaled broken windows to stoke fears about the future of the US.”⁴⁴

Broken windows theory as a historical continuum

Although the broken windows theory is often claimed to have changed the nature of policing, some point out its interconnections to the history of policing, especially through vagrancy laws and Black Codes criminalizing African Americans and other groups deemed undesirable.⁴⁵ The criminalization of vagrancy dates to England’s poor laws implemented at the end of the feudal system when lords aimed to prevent their serfs from finding better opportunities.⁴⁶ Vagrancy laws ensured the groups that were

considered undesirable knew “their place,” which the majority’s wishes defined. In the United States, racialized minorities, especially African Americans, have historically been a common target of these statutes.⁴⁷



*Figure 1. A Southern chain gang 1903.
Source: Wikimedia Commons.*

Since slavery, African Americans have faced unique forms of policing, surveillance, and social control throughout the United States. Any White man could capture and imprison a Black person if they were not in the company of a White man and could not prove their freedom. The South relied on slave patrols, often seen as the first form of law enforcement, to oversee this deprivation of human value and rights. These patrols that existed until the Civil War were not an official form of policing but consisted of White citizens having legal authority over African Americans. Their job was to prevent “revolts” and any sign of resistance (e.g., educating oneself) among enslaved people. Meanwhile, the North relied on “a rigid community ethos of law and

order based on strict moral guidelines that largely embodied the religious views and social expectations of the ruling majority.” These were enforced by county sheriffs and town constables that have, in many ways, been seen to resemble slave patrols.⁴⁸

After the end of the Civil War and the abolishment of slavery by the 13th Amendment in 1865, the South rushed to criminalize Black freedom by adapting Black Codes consisting of vagrancy laws alongside other legal changes.⁴⁹ According to Hinton and Cook, Black Codes were established to “force formerly enslaved people back into an exploitative labor system that resembled the plantation regime in all but name.” This undermined the rights granted to African Americans through abolition. Black Codes created some rights for African Americans but banned things such as voting and testifying in court.⁵⁰ As Southern leaders felt threatened by their new status, these statutes worked to uphold white supremacy via officials regaining control over “their former property” by regulating Black labor with vagrancy laws. Some of these laws could also regulate White behavior if it were seen to threaten the status quo.⁵¹

Most Southern states adopted vague vagrancy laws, most of which did not explicitly state that they would be solely enforced against African Americans. Yet, like earlier, African Americans were not free to move or change employment without a pass from a White man. While court appeals and the federal level interfered with many laws, new laws quickly popped up to replace the earlier ones. While the 13th Amendment technically abolished slavery, it included a loophole, still allowing slavery as punishment for a crime. This loophole made it possible to create the system of convict leasing in the South by handing punishment and complete control to private companies by leasing the predominately African American imprisoned out. While there were some requirements with food, sanitation, and protection from torture, the only things regulated in practice focused on denying Black people freedom and upholding segregated conditions. The imprisoned were kept in horrendous conditions that killed many.⁵² As the imprisoned were no longer “property,” their lives were seen as less significant, earning the convict leasing the title of “worse than slavery.” While the passing of the 14th Amendment created new civil rights and interfered with the use of Black Codes, it hardly ended racial oppression. Southern states kept implementing new statutes that pushed African Americans to the convict leasing system to pick cotton, work in coal mines, and build railroads.⁵³ With the beginning of Jim Crow segregation, the former Confederate states passed even more detailed yet broader and vaguer vagrancy laws from 1893 to 1909, which were enforced until their later repeal.⁵⁴



Figure 2. At the bus station Durham, North Carolina. 1940. Source: Wikimedia Commons.

Only in the 1950s did Congress pass statutes to criminalize enslavement in any form⁵⁵, and *Brown v. Board of Education* started signaling an end to state-sanctioned segregation that was formerly

allowed in 1896 *Plessy v. Ferguson*'s “separate but equal” decision.⁵⁶ Vagrancy laws, however, did not end. In 1960, United States Supreme Court Associate Justice William O. Douglas argued against vagrancy laws due to their unconstitutional aspects. He saw that these laws were predominately used against minorities and other marginalized groups and stood in the way of a healthy democracy.⁵⁷ Overall, the 1960s were a turbulent time. At the height of the civil rights movement, increasing dissatisfaction and unrest against police and vigilante violence grew stronger. African Americans reached civil rights advancements with the implementation of the Civil Rights Act in 1964 and the Voting Rights Act in 1965. Yet, another backlash followed. In 1965, Lyndon B. Johnson's War on Crime allocated money to policing against urban unrest and disorder, specifically in underprivileged neighborhoods disproportionately represented by African Americans. During the following administrations, punitiveness deepened as Nixon withdrew money from social welfare programs, marking a shift from welfare programs to punishment. The entrenching criminalization of African Americans continued with the War on Drugs and mass incarceration and reached its peak during the Reagan years.⁵⁸



Figure 3. Civil rights march in Washington, D.C. Source: Wikimedia Commons.

Academia supported and contributed to punitive responses as well. Wilson and his precursor Banfield saw liberals who had supported civil rights demands as those to blame for “urban chaos”; they pushed for punitive responses to fix the neighborhood disorder and instability by claiming government support is useless as people are beyond help.⁵⁹ Both helped sustain unequal systems by justifying oppression through pathologizing Black crime.⁶⁰ Furthermore, Hinton and Cook point out how the policing tactics and ideas put forth by the broken windows theory already existed before the emergence of the theory; making the theory an “exemplary product of the proactive policing reform movement.”⁶¹

Wacquant refers to this as “academization,” meaning pseudo-science is created to justify and extend the punitive politics already occurring.⁶²

Critics connecting the broken windows theory to vagrancy laws is hardly surprising. The theory was published a decade after vagrancy laws were found unconstitutionally vague and violating due process in *Papachristou v. Jacksonville*.⁶³ Wilson and Kelling argued for a return to the police's order maintenance function where vague offenses with “scarcely any legal meaning,” such as vagrancy, suspiciousness, or public drunkenness, allowed the police a legal way to clean up the streets from the undesirables. They warned against any further decriminalization of mundane behavior. Otherwise, “The unchecked panhandler is, in effect, the first broken window,” signaling that no one cares and crime will follow.⁶⁴ Furthermore, they seem to glorify the police of the “earliest days of the nation,” whose “function was seen primarily as that of a night watchman; to maintain order against the chief threats to order – fire, wild animals, and disreputable behavior”—a positive pattern of policing that continued around the time before World War II.⁶⁵

Wilson and Kelling never explicitly call African Americans or minorities disorderly. Race is not completely bypassed, though. Examples of disorderly neighborhoods refer to predominately Black neighborhoods reflecting the myth of Black criminality by portraying Black people as violent, criminal, and disorderly.⁶⁶ Sometimes, race is discussed; at other times, it is bypassed. When it is bypassed, it has serious consequences. Often, when race is discussed, it is to highlight how race is a non-issue. The only exception is how Wilson and Kelling acknowledge that the police might end up as “agents of neighborhood bigotry.” While not offering a decent solution, they “hoped” that selecting the right kind of officers, alongside training, supervision, and providing a “clear sense of outer limit of their discretionary authority ... to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood” will be enough to tackle these issues.⁶⁷ Stewart sees this discussion of bigotry as a way of avoiding accusations of racism while actively contributing to racist policing.⁶⁸

Wilson and Kelling fail to mention that historically, that was what low-level offenses had been used for—to enforce racial purity through regulating behavior. The history of policing is not seen through the lens of colonialism, enslavement, convict leasing, and vagrancy laws aimed at controlling and harassing African Americans and other “undesirables.” Racialized aspects of the history of policing are never discussed. Instead, history is portrayed as a peaceful time of order with great community cohesion. While vagrancy laws have been deployed against people of color, somehow, this does not come up in the theory. Furthermore, the timing of the positive pattern of policing seems to overlap with the age of wide vagrancy laws and convict leasing. Ritchie has noted that the theorists were not unaware of the historical interconnections despite the reliance on colorblind racism to portray history as an orderly White utopia. Kelling has admitted elsewhere that they were aware of the connections.⁶⁹

Yet, for Wilson and Kelling, these laws served the purpose of protecting order in a community. They saw the law as too focused on individuals’ rights instead of protecting communities.⁷⁰ By splitting people into presumptively lawless and law-abiding⁷¹, the theory encourages the community to tolerate civil rights violations with the “undesirables” by pushing a retreat from the rule of law to trust the good faith and intentions of the police.⁷² Ultimately, Wilson and Kelling pit community order in opposition to individuals’ civil rights. These two are portrayed as forces that cannot coexist. Wilson and Kelling see wide police discretion accompanied by nonexistent procedural checks and reduced civil rights as necessary for police effectiveness in upholding orderly communities. Therefore, the police must be allowed to rely on even illegal or extra-legal methods if they benefit the community without the risk of being held accountable. Their approval of extralegal methods shows exceptionally well in the following quote concerning police officer “Kelly” in the foot patrol program:

These rules were defined and enforced in collaboration with the “regulars” on the street. Another neighborhood might have different rules, but these, everybody understood, were the rules for this neighborhood. If someone violated them, the regulars not only turned to Kelly for help but also ridiculed the violator. Sometimes what Kelly did could be described as “enforcing the law,” but just as often it involved taking informal or extralegal steps to help protect what the neighborhood had decided was the appropriate level of public order. Some of the things he did probably would not withstand a legal challenge.⁷³

This quote brings me to an aspect less discussed by the critics: the role of the community. Rules are not the same in all communities, and the community works as an authority to the police instead of basing police work on legality.⁷⁴ Communities can decide what rules they wish to establish that the police then enforce. Combining the rules changing based on neighborhoods with unlimited police discretion is the definition of arbitrary, if not totalitarian, police powers.⁷⁵ Wilson and Kelling even admit their suggestions are unjust and cannot follow the legal principles of due process or fairness. Yet, as Stewart has recognized, they see these violations as necessary to protect communities from rising crime levels.⁷⁶ Now, it is important to remember that Wilson and Kelling never proved that disorder and serious crime are connected. Although serious crime is not a concern of the theory, it becomes a convenient tool for advancing the good old days policing.

Furthermore, the approval of extralegal methods by forms of community policing tends to go undiscussed by critics. This is another key part where relying on colorblind racism leads to severe consequences. Alongside official institutions, communities have been key in enforcing white supremacy. After African Americans gained some rights after the Civil War, White mobs and vigilante groups stepped up to enforce racial purity through extralegal violence as official institutions were seen as failing to uphold the community’s preferred level of white supremacy.⁷⁷ Yet, community watchmen and vigilante groups are not painted as a threat to order but as actors who can and have contributed to maintaining order. Wilson and Kelling even seem disappointed that vigilante groups have disappeared, despite communities’ fears over their neighborhoods turning into “urban frontiers.”⁷⁸

While vigilante groups such as the White Power movement have often worked in favor and with the support of the state, they have also violently resisted the government’s existence and its legitimacy—most famously during the Oklahoma bombing in 1995.⁷⁹ Unmentioned by Wilson and Kelling is the racial violence and terror by White mobs and vigilantes, such as the lynchings of African Americans or the Tulsa race massacre.⁸⁰ Vagrancy and other behavior that did not please Whites, such as talking too much or not removing one’s hat, could trigger this violence alongside other claims of African Americans’ criminal propensities. These actors were not held accountable for the racial violence and terror they perpetrated either. While one part of this was the intimidation by Klan members, there was also a broad community consensus, extending to the political spectrum, on using extralegal violence against African Americans. Indeed, these groups claimed to provide “justice” and the “rule of law” through extralegal violence that the community deemed necessary.⁸¹ The police have also continuously failed to protect African Americans from this extralegal violence.⁸²

While Wilson and Kelling claim concern over the fears of citizens, the support for community and vigilante policing strongly indicates that White fear is prioritized, as Ritchie has discussed earlier concerning the police.⁸³ Another aspect showing White fear being prioritized is reflected in how police presence is discussed. Police presence is seen to increase the feeling of safety among residents.⁸⁴ Unmentioned is how not only are communities of color overpoliced but under-protected.⁸⁵ The theorists ignore the racialized reality of this and claim that most people like talking to police officers.⁸⁶

Ignoring the history of policing, the intergenerational trauma, and the personal, as well as community experiences in communities of color, bypasses the fact that the police are not a source of safety for all but often a source of fear.⁸⁷

Ironically, policing disorder is justified through claims of Black people wanting and needing broken windows policing in Black neighborhoods.⁸⁸ Roberts points out that this tendency has continued with the proponents of the theory claiming that the support from Black people must be a sign that order maintenance works and that the police finally protect people of color. These claims bypass the versatility of different opinions within the Black community by relying on a racist idea that a consensus exists among Black people.⁸⁹ Although some Black people have pushed for more aggressive policing, these demands have commonly been accompanied by demands for basic resources such as employment, education, and housing.⁹⁰ Even if citizens approve of measures against democracy and the rule of law, governmental institutions should uphold these principles instead of contributing to them. A democracy cannot be based upon oppression, even if it is the popular will. Minorities especially need strong safeguards for their civil rights as the majority is not capable of fairly balancing their interests with those of oppressed groups.⁹¹

Yet, some researchers see racial oppression as a key feature of American democracy. Muhammad points out that American democracy and economy were established on racialized punishment, robbing Indigenous lands and enslaving African Americans.⁹² The United States has even been called “a white democracy” where the freedoms and privileges of Whites depend on the oppression of people of color.⁹³ For Garland, rather than a land based upon individual freedoms for all, the United States is “better understood as a deep embrace of market freedom, restricted government, and limited democracy.”⁹⁴ Furthermore, the “popular justice” against undesirable groups alongside strong popular influence over the criminal justice system is also seen as an embedded part of the American punitiveness eroding democratic values.⁹⁵

Misdemeanors – the contemporary vagrancy laws?

Decriminalizing mundane behavior has not followed. The misdemeanor system has continued criminalizing people of color through wide police discretion offered by minor offenses such as loitering, trespassing, civil injunctions, and even reinstalling vagrancy laws during the broken windows revolution.⁹⁶ Broken windows policing is still a dominant form of policing in urban areas in the United States⁹⁷, and being policed for noncriminal offenses and misdemeanors is the most frequent contact between citizens and the criminal justice system.⁹⁸ Annually, 10.5 million cases are estimated to revolve through the criminal justice system, making it the largest function of it.⁹⁹ While the misdemeanor system includes some harmful conduct, such as domestic abuse and driving under the influence, the vast majority criminalizes harmless, victimless, and mundane behaviors that happen constantly.¹⁰⁰

Broken windows policing has increased disparities between the rich and poor, while the increased interactions have been especially dangerous for poor communities of color where such enforcement has led to killings of Black people such as Eric Garner or Michael Brown.¹⁰¹ Being policed for misdemeanors, even without physical threats, bears substantial costs. Not only do individuals and communities lose money while the state makes enormous profits through arrests and legal fees, but being criminalized for minor offenses can affect employment, schooling, housing, voting, and families.¹⁰² For migrants, broken windows policing increases the threat of deportation.¹⁰³

Proponents of the theory do not deny the economic and racialized consequences; instead, they attach this to poor communities of color having higher proportions of crime and disorder.¹⁰⁴ This bypasses how the police target low-income neighborhoods, leading to more police contacts, especially for Black residents.¹⁰⁵ Blaming Black residents for disproportionate policing then follows a historical continuum recognized by Muhammad of using statistics to defend racist ideas of Blacks as inherently criminal and in need of harsher punishments.¹⁰⁶ However, broken windows policing was not supposed to target high-crime areas. Wilson and Kelling suggested focusing on communities at the “tipping point” due to the police’s limited resources. They saw some communities beyond policing due to their decay or serenity.¹⁰⁷ Instead, Howell perceives that broken windows policing has come to target poor communities of color while economically privileged White people get a free pass for the same behaviors.¹⁰⁸ For Roberts, racial profiling through order maintenance policing then works as a self-fulfilling prophecy, increasing police contacts with communities of color, making them more prone to be arrested and incarcerated, further reinforcing the myth of Black criminality.¹⁰⁹



Figure 4. A sign banning soliciting, loitering, and trespassing in Chicago in 2024. Source: Author.

Many anti-democratic ideas that Wilson and Kelling pushed for seem to apply to the current misdemeanor system. In many ways, it resembles the same issues Douglas criticized with vagrancy laws. Vagrancy laws relying on wide police discretion consisted of a huge bulk of cases going through the criminal justice system combined with speedy trials and minimal protections. An unwillingness to plead guilty would land a person in jail. Most of those processed through the system came from oppressed groups, and the system relied on the presumption of guilt rather than innocence.¹¹⁰ Natapoff has found

similar features existing in the current misdemeanor system: wide police discretion, prosecutors passing almost all cases to the judge relying merely on the police officer's testimony, numerous cases dealt with high speed and minimal protections compared to felony charges, and most cases being solved through plea deals instead of trials. Like vagrancy laws, the misdemeanor system relies on the presumption of guilt instead of innocence. Those lacking the monetary resources to pay bail have a stronger incentive to accept plea deals, even when innocent, to avoid awaiting a hearing and risk getting a conviction. These aspects are justified due to the minor consequences of misdemeanors. Although most misdemeanors are punished through fines or probation, a failure to pay the fine or other fees or to meet the probation requirements can land a person in jail, even if the original charge is not punishable by jail time.¹¹¹

Conclusion

The broken windows theory posits that leaving disorder untended will be followed by rising crime levels, leading to urban decay and community destruction. Although the theory lacks support, broken windows policing remains a common policing tactic. While Wilson and Kelling point to Zimbaro as the originator of the broken windows argument, critics have connected the theory to the neoconservative ideas of Banfield, who was against the civil rights movement and blamed African Americans for their oppression. Instead of broken windows, the theory prioritizes the easy removal of “the undesirables” through wide police discretion.

Broken windows theory is often perceived to have changed the nature of policing. Others recognize it as deriving from laws historically aimed at criminalizing, controlling, and harassing African Americans and other groups considered “undesirable.” After the abolishment of slavery, Black Codes and vagrancy laws helped push African Americans into a system of “slavery by another name”: convict leasing. Later, at the height of the civil rights movement, increasing funding for policing disorder in underprivileged neighborhoods marked yet another racist backlash supported by academia. Wilson and Kelling, like their precursor Banfield, contributed to the existing political atmosphere of upholding inequalities by justifying oppression.

Relying on colorblind racism, Wilson and Kelling glorify the earliest forms of policing by portraying an orderly White utopia overseen by the police. This leads to approving and appraising anti-democratic solutions. By pitting community order in opposition to individuals' rights, Wilson and Kelling called for wide police discretion based upon the wishes of specific communities, the decreased civil rights of undesirables, and nonexistent procedural checks on police work. Therefore, their theory calls for a totalitarian police state. Less attention among critics has gotten the theory's approval of extralegal violence by communities and vigilante groups historically connected to lynching and mob violence. These groups responsible for racial violence and terror are not painted as a source of disorder or fear in the theory but as a positive contribution to the community. This further shows the colorblind racism and priority of White fear while justifying the need for broken windows policing by claiming Black people want and need it.

Unsurprisingly, broken windows policing has helped maintain racial disparities by focusing on poor communities of color despite the theory's original argument to focus on communities at the “tipping point.” In many ways, the contemporary misdemeanor system continues the same issues of vagrancy laws as Wilson and Kelling hoped when they spoke against any further decriminalizing of mundane behavior. This system, like vagrancy laws, targets African Americans and other disadvantaged

groups while depriving them of their rights. In all its popularity, the inherently anti-democratic broken windows theory perfectly illustrates the deeply embedded punitiveness of the American culture. The theory remains an important reminder of how portraying history through the lens of the majority group can have profoundly dangerous effects on minorities.

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