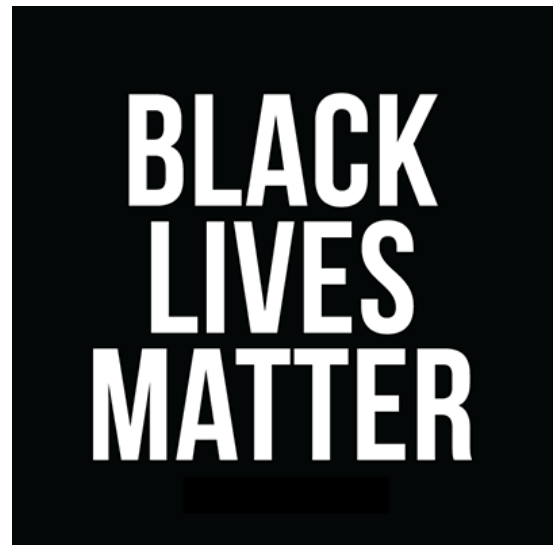


# Black Lives over Broken Windows

July 14, 2016



When protesters developed a platform to end police violence in the wake of the 2014 police shooting of 18-year-old Michael Brown in Ferguson, Missouri, the first of their 10 demands was to end “broken windows” policing, the law enforcement paradigm marked by aggressive policing of minor offenses and heavy police presence in low-income Black communities.<sup>1</sup>

Broken windows policing is what led Ferguson police officer Darren Wilson to approach Michael Brown simply for walking in the middle of the street. It is what motivated police to repeatedly harass Eric Garner, a 43-year-old Staten Island resident who was killed earlier that summer by NYPD officer Daniel Pantaleo, using a banned police chokehold during an encounter initiated over Garner’s alleged sale of loose cigarettes. And in 2015 it was what brought Baltimore police into contact with Freddie Gray, a 25-year-old Baltimore man who was initially stopped while allegedly fleeing from police officers in his low-income Black community—and who died after his spinal cord was severed while he was in police custody.

The role of broken windows policing in each death quickly became the focus of protesters from the Black Lives Matter movement and other civil rights advocates. Just days after Brown’s death, national president of the NAACP Cornell William Brooks said, “The death of Michael Brown strikes me as the latest, sad chapter in an ongoing national narrative about a form of policing, broken windows policing, that is simply not right for the country.”<sup>2</sup> In New York City, This Stops Today—an ad hoc coalition taking its name from Eric Garner’s words on the day he died to the officers who had repeatedly harassed him—made ending broken windows one of their 11 demands. (The 11 demands were issued in honor of the 11 times that Garner was seen on video telling the officers who killed him, “I can’t breathe.”<sup>3</sup>)



Regrouping for day 3 of the week of outrage surrounding the denial of justice for Eric Garner on December 10, 2016. Source: hollow sidewalks License: <https://creativecommons.org/licenses/by/2.0/>

Broken windows policing is not only all too often lethal, it also contributes to the use of excessive and illegal force in the context of the most mundane police encounters. It led a New York City officer

to put Rosan Miller, a seven-months pregnant Black woman initially approached for grilling outside her home, into the same banned chokehold that had led to Garner’s death just a few weeks before.<sup>4</sup> It was the excuse for another officer to slam Stephanie Maldonado to the ground in New York City’s West Village for “jaywalking” like Mike Brown.<sup>5</sup> It was what led police to arrest Duanna Johnson, a Black transgender woman, for prostitution—one focus of broken windows policing—while walking down a street in Memphis, Tennessee, in 2008, only to beat her bloody with metal handcuffs at the police station in an incident captured on video because she refused to answer to “faggot.”<sup>6</sup> Broken windows policing also created opportunities for recently convicted Oklahoma City police officer Daniel Holzclaw to stop women as they walked down the street to inquire as to what they were doing and where they were going, thus facilitating his sexual harassment, assault, and rape of 13 Black women and girls.<sup>7</sup>

## THE “FOLK” ORIGINS OF BROKEN WINDOWS

What does broken windows policing have to do with the Right? In part, the answer lies in where it came from: an outgrowth of the conservative “law and order” agendas of the early 1980s. Neoconservatives George Kelling and James Q. Wilson outlined the theory underlying broken windows policing in a 1982 *Atlantic Quarterly* article. <sup>8</sup> Kelling is a senior fellow at the Manhattan Institute, and Wilson, before his death in 2012, was a board member at the American Enterprise Institute, both right-wing think tanks.<sup>9</sup> According to Wilson and his colleagues, liberal concessions to civil rights movements and protest cultures of the 1960s and ‘70s were significant contributing factors to the urban chaos broken windows policing purports to address.<sup>10</sup> In 1985 Wilson co-wrote a book, *Crime and Human Nature*, with Richard J. Herrnstein, a co-author of *The Bell Curve*, which notoriously advanced a theory of racial differences in intelligence. Wilson’s own 1975 book, *Thinking About Crime*, argued that crime is the product of individual and social “predispositions,” rather than socioeconomic conditions. <sup>11</sup> His theories echoed those of his mentor, Edward Banfield, who theorized about a “culture of poverty,” which Wilson believed required a punitive response,<sup>12</sup> and those of *The Bell Curve*’s other co-author, Charles Murray, whose arguments suggest that crime is the result of individual mental and moral deficiencies.<sup>13</sup> Wilson decried single parenthood, claiming “illegitimacy was eroding the nation’s values,”<sup>14</sup> and, as Pam Chamberlain wrote in PRA’s *Defending Justice: An Activist Resource Kit*, argued for “returning to a path where religion is influential and where families remain intact.”<sup>15</sup>

New York City became the first municipality to aggressively implement broken windows policing theories rooted in these right-wing intellectual traditions in the early 1990s. Under the leadership of former Republican Mayor Rudolph Giuliani, and bolstered by right-wing media like the *New York Post* and right-wing think tanks like the Manhattan Institute, the city put Kelling and Wilson’s theories into practice with an internal police memorandum, “Reclaiming the Public Spaces of New York,” citing both the pair’s *Atlantic* article and the infamous 1965 Moynihan Report, which blamed social dysfunction on Black families, and particularly, Black mothers.<sup>16</sup>



Rally outside of the Manhattan Institute on December 10, 2014. Source: hollow sidewalks License: <https://creativecommons.org/licenses/by/2.0/>

The broken windows theory, brilliantly summarized in a recent video created by Molly Crabapple,<sup>17</sup> goes something like this: if signs of disorder—like broken windows—and minor offenses—like loitering, panhandling, and graffiti—are left unchecked, then it’s only a matter of time before a community descends into chaos and violence. According to Kelling and Wilson, the only way

to prevent this from happening is through aggressive enforcement and prosecution of minor offenses. At its core, broken windows relies on fear-mongering, stoked by familiar right-wing themes about the need for increased “security” and a compulsion to root out certain groups of people as embodied threats to a particular way of life.

But even Kelling and Wilson acknowledged back in 1982 that it is “not inevitable that serious crime will flourish or violent attacks on strangers will occur” if signs of disorder are left unchecked. Indeed, the two wrote that their entire premise is admittedly drawn from what they themselves call “folk wisdom” rather than objective data, based on the belief that perceived disorder somehow renders an area more “vulnerable to criminal invasion” such that “drugs will change hands, prostitutes will solicit, and cars will be stripped.”<sup>18</sup> It’s a theory, they implicitly admitted, based more on people’s fears and beliefs than on hard evidence.

The theory later evolved to advance the premise that individuals who commit minor offenses—like fare evasion in public transit—will, if not caught and punished, eventually commit more serious offenses: a sort of slippery slope of criminality. The new logic of broken windows, according to Tanya Erzen, a scholar of American conservatism, writing in *Zero Tolerance: Quality of Life and the New Police Brutality in New York City*, is that “graffiti taggers, turnstile jumpers and kids in a public park are either already criminals, or simply criminals in the making.”<sup>19</sup>

Even the theory’s biggest proponent, New York City Police Commissioner Bill Bratton—who spearheaded its implementation in New York City under Mayor Giuliani, actively promoted its spread around the country both as a consultant and as Los Angeles Police Commissioner, and pursued it with renewed vigor in his second tenure in New York City under current Mayor Bill de Blasio—concedes that neither premise has ever been conclusively proven.<sup>20</sup> In fact, several studies undermine the theory’s claims.<sup>21</sup> In a comprehensive review of the literature and a summary of his own research, Columbia law professor Bernard Harcourt concludes that, “Taken together, the wealth of research provides no support for a simple disorder-crime relationship as hypothesized by Wilson and Kelling in their broken-windows theory.... What I have come to believe is that the broken windows theory is really window dressing, and it masks or hides more profound processes of real estate development and wealth redistribution.”<sup>22</sup>

Like so many policies of the Right, broken windows policing is rooted in fear: fear of poverty, fear of youth, fear of unregulated sexuality and gender nonconformity, and deeply, at its core, a fear of Blackness.

Like so many policies of the Right, broken windows policing is rooted in fear: fear of poverty, fear of youth, fear of unregulated sexuality and gender nonconformity, and deeply, at its core, a fear of Blackness. According to George Kelling’s recent defense of the theory in *Politico*, published a year after Michael Brown’s death, “The goal is to reduce the level of disorder in public spaces so that citizens feel safe, are able to use them, and businesses thrive.”<sup>23</sup> Kelling concedes that it is, in essence, an approach based on public perception—that is, on feelings—rather than proof. In the end, fear—of crime, yes, but also, as the original article explains, of “being bothered by disorderly people,” like panhandlers, “addicts” or people living with mental illness—is the moving force behind the theory.<sup>24</sup> As Bratton once put it, “Aggressive panhandling, squeegee cleaners, street prostitution, ‘boombox cars,’ public drunkenness, reckless bicyclists, and graffiti have added to the sense that the entire public environment is a threatening place.”<sup>25</sup>

Although not explicitly stated, given that the communities described in Kelling and Wilson’s original article and others that followed are Black, it is clear that the “disorderly people,” the people driving

“boombox cars,” and the graffiti taggers are also imagined as Black. As gentrification of New York City proceeded through the 1990s, “disorderly people” came to mean those displaced into public spaces in the context of neoliberal devolution and cuts to social programs.<sup>26</sup> In other words, broken windows policing isn’t about reducing crime, it’s about assuaging white fear of poor people, Black people, and people of color—no matter how irrational or racialized.\*

## **FROM BLACK CODES TO BROKEN WINDOWS**

Scratching the surface of broken windows policing reveals that, in the end, the paradigm is simply a repackaged and sanitized version of the ways age-old “vagrancy” laws were enforced. These laws were explicitly created to criminalize and control the movements of people deemed undesirable throughout U.S. history: Indigenous peoples, formerly enslaved people of African descent, immigrants, women, and homeless and poor people. In his recent defense of broken windows, Kelling himself directly acknowledged the lineage, stating in reference to his 1982 essay, “Given the subject of our article, the Black Codes—vague loitering and vagrancy laws passed in the South immediately after the Civil War—were of special concern for us. Under these laws police arrested African Americans for minor offenses and, when they could not pay the fines, courts committed them to involuntary labor on farms—in a sense, extending slavery for many into the 20th century.”<sup>27</sup> Without offering a means of distinguishing present-day broken windows policing from these practices, Kelling simply submits that he and Wilson were just arguing for “doing a better job at maintaining order.”<sup>28</sup>

The question though, is whose order? In their 1982 article, Kelling and Wilson acknowledge that there are “no universal standards...to settle arguments over disorder...” and that charges of being a “suspicious person” or of vagrancy have “scarcely any legal meaning.”<sup>29</sup> Ultimately, they wrote, “These charges exist...because [society] wants an officer to have the legal tools to remove undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed.”<sup>30</sup>

This is to say that, since its inception, broken windows policing has self-consciously been about promoting a particular type of community, maintaining particular structural relations of power, and policing the borders of “desirability.” Delving deeper into its theoretical premise, a desirable community, as described by Wilson and Kelling, is one of “families who care for their homes, mind each other’s children, and confidently frown on intruders.”<sup>31</sup> Broken windows policing is posited as the last bulwark against a “frightening jungle”—a term fraught with racial meaning—in which “unattached adults”—that is, single people—replace traditional families, where teenagers gather in front of the corner store, litter abounds, and panhandlers stalk pedestrians.<sup>32</sup> In this framework, conservative values with deep racial overtones ultimately drive how an individual’s presence will be perceived and valued,<sup>33</sup> and promote disregard for youth, adults living outside of hetero-patriarchal families, and low-income and homeless people who live in this idealized community.<sup>34</sup>

## **WHOSE QUALITY OF LIFE?**



Building in New York City with the words, “stop and frisk. just another quality of life offense” seen on March 27, 2014. Source: carnagenyc. License: <https://creativecommons.org/licenses/by-nc/2.0/>

Key to implementing broken windows policing is the proliferation of “quality of life” regulations, which criminalize an ever-expanding range of activities in public spaces, including standing or

walking (recast as “loitering”), sitting, lying down, sleeping, eating, drinking, urinating, making noise, and approaching strangers, as well as a number of vaguer offenses, such as engaging in “disorderly” or “lewd” conduct. This broad range of potential offenses gives police almost unlimited license to stop, ticket, and arrest. According to one researcher, enforcement of such low-level offenses has become the “most common point of contact between the public and the criminal justice system.”<sup>35</sup>

Of course, what conduct is deemed “disorderly” or “lewd” is more often than not in the eye of the beholder, informed by deeply racialized and gendered perceptions. Where offenses are more specific, they criminalize activities so common they can’t be enforced at all times against all people. When I speak publicly about broken windows policing, I often ask how many members of the audience have ever fallen asleep on a train or ridden a bicycle on a sidewalk at some point in their lives. Dozens of hands shoot up. When I ask how many have ever been ticketed or arrested for it, almost all hands come down—that is, unless I am at a drop-in center for homeless youth or adults, or in a low-income Black neighborhood. There, many hands remain in the air.

As former Yale law professor Charles Reich notes, “Laws that are widely violated...especially lend themselves to selective and arbitrary enforcement.”<sup>36</sup> As a result, both vague and specific “quality of life” offenses are selectively enforced in particular neighborhoods and communities, or against particular people, by officers wielding an extraordinary amount of discretion, largely unrestrained by constitutional protections. As legal scholar Dorothy Roberts notes in “Race, Vagueness, and the Social Meaning of Order-Maintenance Policing,” over the last several decades, conservative commentators have called for a relaxation of legal doctrines disfavoring vague offenses and reining in police discretion in the name of “law and order” agendas.<sup>37</sup>

## **COMMUNITIES IN THE CROSSHAIRS**

Given all of this, it’s easy to predict who gets targeted by broken windows policing. Despite proponents’ contention that the approach targets specific behaviors, not specific people, the article on which the theory is premised explicitly names particular types of people—youth, homeless people, people perceived to be engaged in prostitution—as embodied signs of disorder.<sup>38</sup> According to Pete White of Los Angeles Community Action Network (LA CAN), a community organization that has been fighting the effects of broken windows policing on Los Angeles’ homeless population for decades, the inspirations for Kelling and Wilson’s 1982 article were much more explicit about the racial and gender make up of signs of neighborhood disorder: “young Black men, young women in short shorts hanging out on corners, interracial couples, and gay folks.”<sup>39</sup> The result: dramatically increased frequency and intensity of police interactions with Black and Brown youth, low-income and homeless people, public housing residents, people who are—or who are perceived to be—engaged in street-based prostitution, street vendors (many of whom are immigrants), and anyone else who is hyper-visible in public spaces, including lesbian, gay, bisexual, trans and gender nonconforming people.

The results are striking. Broken windows policing has contributed to widespread criminalization of Black youth in New York City under a range of offenses, including disorderly conduct, unreasonable noise, turnstile jumping, performing on the subway, riding a bike on the sidewalk, and being in a city park after dark. Between 2001 and 2013, 81 percent of the 7.3 million people charged in the city with a violation were Black or Brown. <sup>40</sup> In 2015 the greatest number of arrests—29,198—were for not paying the \$2.75 fare on city subways; 92 percent of those arrests were of people of color.<sup>41</sup> In Park Slope, a Brooklyn neighborhood heavily populated by white families, police issue an average of eight tickets a year for riding bicycles on the sidewalk. In Bedford-Stuyvesant, a gentrifying but still predominantly Black community, police issue more than 2,000 a year.<sup>42</sup> Eighty-five percent of summonses issued for “open container” violations in Brooklyn are issued to Black and Brown people, even as countless white revelers spill onto the sidewalks of the city on any given evening to smoke a

cigarette outside a bar or art gallery while sipping on an alcoholic beverage, or pop open a bottle of bubbly to accompany a symphony in the park, without any consequence whatsoever. One judge presiding over summons court in New York City said he had no memory of having ever adjudicated an open container ticket given to a white person.<sup>43</sup>

Contrary to Kelling's recent defense of his broken windows theory, the results of this approach are not an error of application, but rather deeply embedded in the theory itself. In fact, the authors asked themselves in 1982, "how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable?"<sup>44</sup> Their answer was that they were not confident that there was one—except that police must understand the outer limits of their discretion to be that their role is "not to maintain racial or ethnic purity of a neighborhood," only to regulate behavior.<sup>45</sup> The statistics above suggest that officers are, in fact, exercising their discretion—just in racially discriminatory ways.

## CONSEQUENCES

The consequences for those targeted are far from minimal. Broken windows policing not only places Black lives at risk of lethal and excessive force, as well as sexual harassment, assault, and extortion in exchange for avoiding a ticket or arrest, it also subjects Black people to the daily indignity of being stopped and questioned in their own communities, being ordered to put their hands on the wall and spread their legs to be frisked in front of their neighbors, and sometimes spending 24 hours wending their way through police vans, precincts, and central booking pens between arrest and arraignment. Even if they simply receive a summons, they are still required to spend at least one day in court defending themselves against minor charges, to pay exorbitant fines and criminal court fees, and to comply with community service and other mandates imposed on people convicted of offenses as minor as spitting or littering.

Black people of all genders and sexualities come within the crosshairs of broken windows policing. In fact, one of the less frequently discussed realities is that it facilitates racialized policing of gender and sexuality.<sup>46</sup> According to Tanya Erzen, broken windows policing "enables officers to act upon racial and gender biases they may have when they enter the police department—under the guise of enforcement of 'unified guidelines.'"<sup>47</sup> All too often, officers read actual or perceived gender disjuncture as inherently out of order, resulting in stops, harassments, and arrests of transgender, gender nonconforming, and queer people of color—along with anyone perceived to deviate from racialized "rules" of gender or sexuality—for "disorderly" or "lewd" conduct offenses.<sup>48</sup> Stereotypes framing gender nonconforming people as inherently violent and deviant also lead gender nonconforming young women to be profiled and targeted in the context of "gang policing."<sup>49</sup>

Broken windows policing is also a driving force behind aggressive policing of street-based prostitution, which has been documented to have racially disparate impacts. These are rooted both in profiling of Black women and women of color—trans and not trans—as being engaged in prostitution based on age-old stereotypes, and also in the makeup of sex work which, like every other industry, concentrates Black women and transgender people in its most visible and risky sectors (such as street-based prostitution, which more Black women are pushed into, versus legal strip clubs, which frequently discriminate against women of color).<sup>50</sup> Gay and gender nonconforming men, for their part, are profiled and discriminatorily targeted for enforcement of lewd conduct laws in public bathrooms and public parks. The broad discretion allowed in enforcement is fueled by perceptions of Black and Brown men—and particularly those who are gender nonconforming or perceived to be queer—as hypersexual uncontrolled manifestations of sexual deviance, with predictably racially disparate impacts.<sup>51</sup>

## BLACK LIVES OVER BROKEN WINDOWS

Even as the broken windows theory trades in fear of Black people, it claims the mantle of protecting Black communities seeking more safety, and thereby, protecting Black lives.<sup>52</sup> Heather MacDonald of the right-wing Manhattan Institute twists the logic of Black Lives Matter to argue that broken windows policing “has saved thousands of black lives, brought lawful commerce and jobs to once drug-infested neighborhoods and allowed millions to go about their daily lives without fear.”<sup>53</sup>

Right-wing commentators claiming to be concerned with the welfare of Black communities are not alone. Progressives like David Thacher of the Gerald Ford School of Public Policy in Michigan, writing in a blog for The Marshall Project, have critiqued Campaign Zero’s call for an end to broken windows policing, pointing to Black communities’ right to safety and safe public spaces.<sup>54</sup> Thacher, like Kelling, acknowledges the pitfalls of enforcing vague offenses like “disorderly conduct,” as well as more specific ones like bans on skateboarding or public drinking, which are not enforced in white suburbs as they are in Black communities. He acknowledges that, “As long as modern police forces have been around, they have used disorderly conduct statutes and many other public order rules to investigate suspicious and unpopular people in circumstances when doing so overtly would be forbidden,” noting that “the Ferguson Police Department’s intensive use of a city code provision regulating a pedestrian’s ‘manner of walking in the roadway’ to run warrant checks and question suspicious people is only one of many examples.”<sup>55</sup> Although he argues for a kinder, gentler form of broken windows in the interests of Black community safety, Thacher’s arguments in fact support the notion that it is bound to produce the same results.<sup>56</sup> Unfortunately, that hasn’t stopped some community leaders, legislators, and policymakers from continuing to promote and invest in this flawed approach in the name of safety for Black and Brown communities.



The Black Youth Project 100’s 2014 report “Agenda to Keep us Safe.” Source: <http://byp100.org>

Increasingly though, Black communities across the country are speaking for themselves, loudly and clearly, demanding safety from all forms of violence—including the violence of profiling, discriminatory enforcement, and police violence intrinsic to broken windows policing. They are resisting the false choices presented by broken windows proponents, demanding both authentic safety and an end to police violence, harassment, and surveillance, along with respect for rights and dignity. As the Malcolm X Grassroots Movement of New York City stated in the wake of Eric Garner’s killing, the “‘broken windows’ philosophy of policing, which purports that focusing resources on the most minor violations will somehow prevent larger ones, has consistently resulted in our rights being violated.”<sup>57</sup> They emphatically state that safety cannot come at the price of daily harassment, violation, and the taking of Black lives.

Black voices and communities are articulating their own visions of safety through Black Youth Project 100’s *Agenda to Keep us Safe* <sup>58</sup> and *Agenda to Build Black Futures*, Campaign Zero, and demands articulated by Black Lives Matter<sup>59</sup> and Ferguson Action.<sup>60</sup> What ties many of these agendas together is the notion that the best strategy to promote safety in Black communities is to divest from policing and punishment and instead invest in and support Black communities, leaving no one behind. Together, they issue a clarion call to combat and dismantle systems of structural discrimination that foster violence while limiting opportunities and life chances of Black people—including “broken windows” policing.

*\*Editor’s note: PRA’s convention is to capitalize both Black and White, to emphasize that both are constructed categories. At the request of the author, this article departs from that convention.*

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<http://www.politicalresearch.org/2016/07/06/black-lives-over-broken-windows-challenging-the-policing-paradigm-rooted-in-right-wing-folk-wisdom/#sthash.PArsDxJ7.In9lBuGP.dpuf>

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