Culture and Contempt: The Limitations of Expressive Criminal Law

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The law is the master teacher and guides each generation as to what is acceptable conduct.
— Asa Hutchinson

The law of the land in America is full of shit.
— Chuck D

I. INTRODUCTION

Over the past decade, legal scholars have paid increasing attention to ways that criminal law affects social norms and socialization. While these ideas are not entirely original,1 the renewed focus on criminal law's role in social construction has been illuminating nonetheless. The recent scholarship has reminded us that criminal laws prevent crime not only by applying legal sanctions

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to disfavored actions, but also by facilitating the application of nonlegal sanctions, such as gossip, ostracism, and loss of employment. Criminal laws shape preferences as well as opportunities. Criminal laws do not merely raise the price of disfavored acts—they can also teach citizens to avoid those acts regardless of the price.

Disagreements about terminology and taxonomy have muddied this new body of scholarship, but it might not be necessary to settle such questions: It is enough to say that the criminal law simultaneously performs a variety of related and overlapping tasks. These tasks include: (1) changing the social meaning of certain actions in a way that decreases disfavored behavior and increases favored behavior; (2) increasing social sanctions and decreasing social rewards for disfavored behavior; (3) increasing social rewards and decreasing social sanctions for favored behavior; (4) supporting the enforcement mechanisms of favored social norms and disrupting the enforcement mechanisms of disfavored social norms; (5) causing actors to internalize favored social norms and reject disfavored social norms; and (6) changing the preferences of actors in a way that decreases

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4. The new criminal law scholarship has been defined, in part, by its differences with the classical economic analysis of the criminal law. The latter has been most closely associated with Gary Becker, see Gary S. Becker, Crime and Punishment: An Economic Approach, 76 J. POL. ECON. 169 (1968), and perhaps finds its ideological roots in the work of Jeremy Bentham, see 1 JEREMY BENTHAM, Principles of Penal Law, in JEREMY BENTHAM’S WORKS (Russell & Russell 1962) (1843); JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (J.H. Burns & H.L.A. Hart eds., 1970) (1780). Robert Ellickson has argued that the classical economic analysis erred in three ways: it neglected socialization, it neglected social norms, and it neglected the importance of non-material incentives. Robert C. Ellickson, Law and Economics Discovers Social Norms, 27 J. LEGAL STUD. 537, 539–41 (1998).

5. The relationship between social norms and social meaning is one point of confusion. For different versions of the relationship, see HARcourt, supra note 1, at 39–40; Lawrence Lessig, Social Meaning and Social Norms, 144 U. PA. L. REV. 2181, 2183–85 (1996); McAdams, supra note 2, at 382–86; Meares & Kahan, supra note 2, at 809; Cass R. Sunstein, On the Expressive Function of Law, 144 U. PA. L. REV. 2021, 2022 (1996).
disfavored behavior and increases favored behavior.\(^6\) I will refer to these tasks collectively as the *expressive function of criminal law*.\(^7\)

In this Article, I will attempt to highlight certain important features of the expressive function of criminal law that have been neglected. By bringing these elements into higher relief, I will try to add to our understanding of how expressive criminal law works and, in particular, how it can fail to work as intended.\(^8\) The meaning of a criminal law is not always transparent: It can be misinterpreted and contested. The criminal law, moreover, is not the only norm-shaping force in society—the media, popular culture, religious institutions, diffuse groups of individuals, and other networks of power also shape meanings. When put to work, the criminal law can move its competitors to action. Despite its particular coercive power, the

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Tushnet and Yackle’s choice of terminology (which I here adopt) is not without its difficulties. Some scholars have used the term "expressive law" to describe legal actions that are purely symbolic. *Id.* at 75 n.361. In addition, some might object that I am inappropriately conflating laws aimed at changing internal preferences and laws aimed at supporting external sanctions by referring to them both with one label. As I have just suggested, however, expressive laws often mean to accomplish both of these ends simultaneously.

It might be better to find a different label, but no other option seems compelling. We could follow Andenaes, and speak of the "educative" or "pedagogical" function of the criminal law, ANDENAES, supra note 1, at 7, 35, but those terms seem too narrow. We could refer to the "social constructionist" effects of the criminal law, but this seems overly esoteric. Tushnet and Yackle have suggested that it might be better to speak of "second-order instrumental" law rather than "expressive" law, but they keep the latter label in order to "standardize usage." Tushnet & Yackle, *supra*, at 75 n.361. I will do the same.

criminal law can be overwhelmed by resistance, and when this happens, the expressive function of the criminal law will not only fail—it will backfire.

To understand these dynamics better, I will look closely at one example of the operation of expressive criminal law. The example comes from the area of criminal drug policy. Drug policy is a good place to examine the operation of expressive law, in part because the nature of drug crimes leads the state to rely more on expressive tactics. Because drug crimes do not have a discrete victim who can report the crime and thus aid in surveillance and enforcement, it is relatively more important for the state to control behavior by shaping meanings and preferences. Not surprisingly, the state is self-consciously concerned with the expressive effects of drug policy.

Drug policy seeks to “convey a direct message that drug use is dangerous, is wrong, and will not be tolerated.” William Bennett, the ideological father of the modern phase of drug prohibition, has often spoken of and justified the policy in explicitly moralistic, expressive terms.

9. I will not rely on techniques of economic modeling; instead, I will use the methodology more similar to the ethnographic mode of “thick description.” The importance of thick description was first argued by Gilbert Ryle. See generally STEPHEN GREENBLATT, RENAISSANCE SELF-FASHIONING: FROM MORE TO SHAKESPEARE (1980) (applying techniques of thick description in literary theory).

10. THE WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY 9 (Feb. 2002) [hereinafter NATIONAL DRUG CONTROL STRATEGY]. Randall Kennedy notes that President Clinton and Congress rejected reducing the sentencing disparity between crack and powder cocaine largely because of the message it would send. See RANDALL KENNEDY, RACE, CRIME, AND THE LAW 381 (1997).

11. William Bennett, former Director of the White House Office of National Drug Control Policy (ONDCP), said that a primary goal of drug policy was to “de-normalize” drug use. FRONTLINE: DRUG WARS (PBS television broadcast, Oct. 10, 2000), transcript available at http://www.pbs.org/wgbh/pages/frontline/shows/drugs/etc/transcript2.html.

The fundamental mistake we made in the '70s is we said “The user is not a problem....” The user then felt morally off the hook—not culpable, not responsible. The casual user, the weekend user, the so-called recreational user—that person needs to be confronted and face consequences, too. We need to restore the moral authority of the institutions such as the family, the church and the school.

Bennett makes similar statements in a book co-authored with John DiIulio and current ONDCP head John Walters. WILLIAM J. BENNETT ET AL., BODY COUNT: MORAL
Enforcement Administration, has spoken of drug policy’s pedagogical, taste-shaping role:

If we as a nation want to discourage drug use that harms not just individuals, but society as a whole, how do we do it? Well, I believe that we do it through the law—by the law saying it is wrong because it is harmful. Our laws reflect the values of society. The law is the master teacher and guides each generation as to what is acceptable conduct.\(^{12}\)

Criminal drug laws are intended to have expressive effect: They are intended to construct the social meaning of drugs (as unsafe and immoral), to support social norms against drug use, and to shape the preferences of actors in a way that they will not desire to use or deal drugs.\(^{13}\)

I will examine how expressive drug laws have functioned in the street subculture of urban minority communities. This subculture cannot be defined with precision. As with any subculture, it is not the case that individuals either are or are not members—it is more true to say that individuals identify with it to a greater or lesser extent. Membership, in other words, is a matter of degree. As a result, any attempt to give an exacting definition would be both arbitrary and obfuscatting.\(^{14}\) Others have used a variety of terms when referring to this segment of society: the “urban poor,” the “black underclass,” “ghetto culture,” “street culture,” and “hip hop culture,” among others.

I mean to speak primarily of ghetto residents, but I do not mean to speak of all people who live in the ghetto. Elijah Anderson has

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POVERTY...AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS 50 (1996). The authors argue that drugs are both a cause of and a result of the moral poverty that causes crime in America. Criminal drug enforcement, they argue, is essential for teaching people (especially children) that drugs are immoral. See id. at 136–90.

12. Asa Hutchinson, Administrator, U.S. Drug Enforcement Admin., Debate with Gov. Gary Johnson (N.M.) at the Yale Law School (Nov. 15, 2001), available at http://www.usdoj.gov/dea/speeches/s11501.html. Hutchinson has also said that tough drug laws are appropriate as a way “to express the outrage of the community.” Nomination of Asa Hutchinson as Director of the Drug Enforcement Administration: Hearing Before the Senate Judiciary Committee, 107th Cong. 50 (July 17, 2001) (statement of Asa Hutchinson). See also Asa Hutchinson, Speaking Out in the Fight Against Drugs: Excerpts from Recent Speeches, available at http://www.usdoj.gov/dea/speeches/s103101.html (last visited Aug. 2, 2003) (“Enforcement sends the right signals to people who are tempted to buy drugs. . . . The law is our great moral teacher, and if we fail to enforce the law, we fail to teach and we succeed only in diminishing the character of this nation.”).

13. It is not, of course, my contention that drug policy is meant to have only expressive effects. Drug policy also seeks to increase the cost of drug crimes and to limit the opportunity to engage in drug crimes, among other things.

14. The concept of street culture is one with blurry boundaries; but lack of definite boundaries does not render a concept useless.
described the conflict in urban African-American communities and the internal division between "decent folk" and "street folk." My focus is the latter. And even within what I will loosely refer to as "street culture," there is diversity, disagreement, and conflict. Many of the social norms and social meanings in street culture (as elsewhere) are ambiguous and contested. The contradictions of ghetto life, while they do preclude simple conclusions, do not render analysis of street culture impossible; indeed, the ambiguities are a central part of the story. In this Article, I will "deal head-on with the deeply contradictory and multilayered voices and themes expressed" in street culture.

Street culture is an important site of analysis because members of street culture are the audience to whom drug policy seems most directly addressed. In our national consciousness, to some significant extent we associate the drug problem with urban minority communities: Ghettoes are seen as the "source" of the drug problem or the place where the drug problem is the worst. Members of street culture are very likely to face criminal sanctions for drug crimes, especially the particular (and particularly severe) sanction of imprisonment. Those sanctions are intended, in part, to support

15. Elijah Anderson, Code of the Street: Decency, Violence, and the Moral Life of the Inner City 35–65 (1999). Anderson might draw the distinction too sharply, leading to an overly-dichotomized conception of the ghetto. "[T]here is no Great Wall separating the underclass from the rest of the central-city poor and working class. Social research should not build one either." John M. Hagedorn, Homeboys, Dope Fiends, Legits, and New Jacks, 32 Criminology 197, 219 (1994). Anderson's terminology, moreover, is normatively loaded—he claims that it is the terminology used by ghetto residents themselves, Anderson, supra, at 35; but one cannot help but wonder if the "street" folk really refer to the others as the "decent" folk. (This point, incidentally, is suggestive of a larger critique of Anderson's sociology.)

Despite possible criticisms, Anderson's distinction is a useful one, especially for the important reminder that there is not a unified urban African-American culture. It is also worth pointing out what should not need to be said: that there is not a unified African-American culture in America, and that street culture is not representative of African-Americans generally. Indeed, street culture is defined in part by its opposition to the Black middle class. See infra notes 59–63 and accompanying text.


17. "The drug problem is also more concentrated ... in our central cities among black Americans." John P. Walters, Race and the War on Drugs, 1994 U. Chi. Legal F. 107, 134 (1994). See also Bennett et al., supra note 11, at 43–47, 56–81 (discussing the high levels of drug use, moral poverty, and crime among poor Blacks).

18. Since "street culture" cannot be defined precisely, it is not possible to say exactly how many members of street culture have been punished for drug law violations. But it is well known that poor minorities are disproportionately arrested and incarcerated for drug crimes. See Marc Mauer & Tracy Huling, Young Black Americans and the Criminal Justice System: Five Years Later 12 (1995); Human Rights Watch, Punishment and Prejudice: Racial Disparities in the War on Drugs (2000), available at http://www.hrw.org/reports/2000/usa/. Over half of drug offenders in state prisons are Black.
anti-drug norms and to "teach" people that drugs are dangerous and immoral. The descriptive sociological claim of this Article is that the criminal law has not succeeded in that project and that in some respects, it has backfired.¹⁹

In Part II, I will describe street ideology and the social meanings of crack dealing and marijuana use. In addition to traditional works of urban sociology, I will also examine a variety of primary sources, including hip hop music, movies, magazines, poetry, and memoirs. These cultural texts express the meanings shared by members of street culture—they allow us to see how members of street culture themselves describe the meaning of drugs and drug laws. Such texts also play an important role in shaping social meaning on the street.²⁰ To a lesser extent, I will rely on interviews and informal conversations I held with current and former users and dealers in New Haven, Connecticut, between 2000 and 2002.²¹

In Part III, I will outline a few relevant concepts from sociological theory, including strain theory, differential association, labeling theory, and theories of symbolic action. These concepts will help explain why expressive criminal law can have counter-productive

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¹⁹. This argument is not intended as a thoroughgoing critique of criminal drug policies. Even if expressive drug policy fails in street culture, it might succeed with some other subcultures. Perhaps the benefits of the latter outweigh the costs of the former. Moreover, even if drug policy fails to achieve its expressive goals, it might succeed in its opportunity-shaping goals.

²⁰. There is no way to prove that the sources I have chosen, or the voices expressed in them, are "representative" of some larger group of people. In one sense, this is irrelevant: I seek to analyze how the criminal law has interacted with one subculture, and that analysis might be useful even if that subculture is very small. That being said, I have tried to examine a wide variety of available sources, and I have paid particular attention to texts—such as Gil Scott-Heron's poetry, Tupac Shakur's music, the Hughes brothers' movies, and The Source magazine—that have been particularly influential in street culture.

At the same time, I would welcome any effort to show that I have ignored or misinterpreted elements of street culture. Regardless of whether they support the arguments of this Article, the voices of street culture should be heard in criminal law scholarship and policy debates generally. To this point, they have been largely ignored.

²¹. Over two years, I conducted approximately ten formal interviews with individual users and dealers, and I also sat in on several focus groups of users and dealers organized by the Yale School of Public Health and the I-91 Study. In addition, I spent approximately fifty hours walking through some of New Haven's poor neighborhoods and housing projects, where I had dozens of informal conversations with people on the street. I have almost no training as an ethnographer, and this amount of work is nowhere near large enough to constitute the basis of a law review article, much less a true ethnography. Because of these difficulties and others, my account will not rely heavily on my own interviews and observations. Nonetheless, I should acknowledge their importance in shaping my own understanding of street culture—and express gratitude to all those who spoke with me.
effects. Part IV will apply the conclusions of Parts II and III to law and norms scholarship.

Members of street culture live at the bottom of society. Because of their history of subordination, they distrust mainstream institutions and the law, especially the criminal law. When the criminal law tries to teach them a lesson about drugs, they suspect ulterior motives. The heavy imposition of criminal sanctions on members of street culture provokes many to deny the sincerity and the justice of drug policy. As a response, some seek means of rebellion and expressive opposition. Drug policy itself invests drug crimes with meanings of rebellion and resistance; it thus undermines its own expressive goals.

II. DRUG POLICY AND STREET IDEOLOGY

Street culture is alienated from mainstream society. Many analysts have noted that the Black underclass has characteristics of an "oppositional culture" that rejects, or even inverts, mainstream, "middle-class" values. There is something correct about these claims, but without further elaboration, they are superficial and misleading. It is not the case that street culture rejects all mainstream values (as if such a thing were even possible). So we should ask: Which values does street culture reject, and why? There are norms in street culture that reward actions that are perceived as "real" or "authentic," and punish actions that are perceived as "acting white" or "Tomming." But merely stating the existence of these norms at a high level of generality explains almost nothing—we must dig deeper


[T]he relation between the subculture of delinquency and the wider culture cannot be neatly summarized in the term opposition. The relation is subtle, complex, and sometimes devious. A subculture is almost always not simply oppositional precisely because it exists within a wider cultural milieu which affect it and which it, in turn, affect.


In addition to the false conception of the ghetto as a place of totalized opposition, some also make the mistake of conceiving of the ghetto as a place of normlessness. We should recognize that "conflict rather than anomie may be the alternative to harmony in socially structured relations." Mark Orkin, Beyond Alienation and Anomie: The Emancipatory Efficacy of Liberation Ideologies in South Africa, in Alienation, Society, and the Individual: Continuity and Change in Theory and Research 195, 197 (Felix Geyer & Walter R. Heinz eds., 1992) [hereinafter ALIENATION, SOCIETY, AND THE INDIVIDUAL].
to give a richer sociological account of which actions receive which labels, and why.

In giving a sociological account of street culture, we should be careful not to assume its essential pathological nature. This is easier said than done. In the three decades since the publication of The Death of White Sociology, it is hard to know if anything has changed in the way that most academic sociologists—much less the legal academy and the broader culture—view the ghetto. Too often, we assume that street culture is “nihilistic, apolitical, or simply worthless,” and our whole concept of the Black working class is “used as a moral category to distinguish the people we like from the people we don’t, the good Negroes from the bad apples, the Amos’s from the Andy’s.” One of Gwaltney’s interviewees famously said to him: “I think this anthropology is just another way of calling me a nigger.” Assumptions of pathology are both degrading and methodologically suspect.

It is also a mistake to think of the opposition in street culture as something essentially “juvenile,” akin to white upper- and middle-class teenagers rebelling against their parents. Street culture includes both younger and older voices—voices of citizens that should not be peremptorily excluded from the debate with a tactic of infantilization. At the same time, we should avoid romanticizing street ideology—we should not assume that rebels on the street are gallant young Marxists leading us forward/back to the glory of The Sixties. The story of street culture, like the condition of the ghettos where it lives, is in

24. THE DEATH OF WHITE SOCIOLOGY (Joyce A. Ladner ed., 1973). See also ALBERT MURRAY, THE OMNI-AMERICANS 31 (rev. ed. 1983) (“The situation now is that the contemporary folklore of racism in the United States is derived from social science surveys in which white norms and black deviations are tantamount to white well being and black pathology.”); CAROL B. STACK, ALL OUR KIN 22 (1997) (criticizing urban sociologists who fail to recognize “the interpretations black people have of their own cultural patterns”).

25. ROBIN D. G. KELLEY, RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS 12 (1994) [hereinafter KELLEY, RACE REBELS]. It is worth noting that much of Kelley’s general critique is directed at sociologists such as William Julius Wilson and Elijah Anderson, who have been influential in expressive criminal law scholarship. See ROBIN D. G. KELLEY, YO’ MAMA’S DISFUNKTIONAL!: FIGHTING THE CULTURE WARS IN URBAN AMERICA 15-42, 182-83 n.5 (1997) [hereinafter KELLEY, YO’ MAMA’S DISFUNKTIONAL].

26. JOHN LANGSTON GWALTNEY, DRYLONGSO: A SELF-PORTRAIT OF BLACK AMERICA, at xix (1980). The great strength of Gwaltney’s anthropological work is that he let his subjects define and describe their own systems of social meaning in their own words.

27. Tricia Rose has criticized the “dominant myth that deliberately misconstructs black rage as juvenile rebellion.” ROSE, supra note 16, at 139. Equating Blackness with youth is symptomatic of the sort of paternalistic racism that marks Blackness as uncivilized and inferior. See ELISABETH YOUNG-BREUHL, THE ANATOMY OF PREJUDICES 405-11 (1996). That being said, street culture is largely a youth culture, and some conflict in ghetto communities does map onto intergenerational conflict. See BAKARI KITWANA, THE HIP HOP GENERATION: YOUNG BLACKS AND THE CRISIS IN AFRICAN AMERICAN CULTURE, at xx-xxii, 7-8 (2002).
many ways tragic. The ideology of the street, as I will describe it, is not necessarily something that should be celebrated. But even if we see problems in street culture, we still must ask: Is the criminal law an effective solution?

Even those who find street ideology abhorrent should at least seek to understand it. If we want to analyze how law shapes norms, we must first understand what norms exist in the world. Moreover, even if we want to use the criminal law to displace destructive systems of norms, we should first try to understand the meanings shared by our target audience. To dismiss street ideology at the outset as ignorant and obviously false will not help us to reduce crime: even if street perceptions are inaccurate, they still shape the way actors interact with the criminal law.28 Expressive law seeks a discourse with the participants in a particular culture. It seeks “to converse with them, a matter a great deal more difficult, and not only with strangers, than is commonly recognized.”29 To have a conversation with a subculture, the law must first seek to understand the participants’ own meanings; reflexive condemnations will only multiply the difficulties of discourse.

A. Perceptions of Society, the State, and the Criminal Justice System

The voices of street culture often conceptualize the dominant culture as exclusive, racist, and hostile. Painful expressions of alienation are pervasive in street culture and hip hop art of all forms.

So you say you never heard of the ‘Inner City Blues’
And what’s more you don’t understand at all
What the ghetto folks mean about ‘living behind walls’?
Then put on your best suit, white shirt and tie
And come on downtown to stand in line
For a job washing dishes but you may not qualify . . .
Go looking for a place to live but all the while
Beware of what’s lurking behind the devil’s smile . . .
When you start to get frustrated by the tactics they use
You can recognize that, it’s the ‘Inner City Blues’


[M]en respond not only to the objective features of a situation, but also, and at times primarily, to the meaning this situation has for them. And once they have assigned some meaning to the situation, their consequent behavior and some of the consequences of that behavior are determined by the ascribed meaning.

Id.

29. GEERTZ, supra note 9, at 13.
It makes you wanna holler and throw up both your hands.\textsuperscript{30}

Many folks on the street distrust the institutions of mainstream society, including the educational system, the church, the media, Hollywood, the medical establishment, corporate America, and the economic system. Ghetto residents believe that the quality educations are available only to the rich, and that poor black schools are intentionally denied adequate resources. Moreover, some members of street culture believe that the public school system teaches propaganda designed to perpetuate the system that subordinates them:

The same people who control the school system control the prison system, and the whole social system. Ever since slavery . . . I tried to pay attention but they classes wasn’t interestin’. They seemed to only glorify the Europeans . . . Claimin’ Africans were only three-fifths a human being . . . They schools can’t teach us shit. Tellin’ me white man lies straight bullshit . . . School is like a 12 step brainwash camp. They make you think if you drop out you ain’t got a chance . . . [T]he schools ain’t teachin’ us nothin’. They ain’t teachin’ us nothin’ but how to be slaves and hard workers. For white people to build up they shit. Make they businesses successful while it’s exploitin’ us.\textsuperscript{31}

\textsuperscript{30} GIL SCOTT-HERON, Inner City Blues, in NOW AND THEN: THE POEMS OF GIL SCOTT-HERON 52 (2000). One of Gwaltney’s interviewees said to him: “I’ve seen too much pain and stupid, unnecessary suffering to believe that any moral, sane power is running things.” GWALTNEY, supra note 26, at 56. Elijah Anderson has described how members of street culture “exude generalized contempt for the wider scheme of things and for a system they are sure has nothing but contempt for them.” ANDERSON, supra note 15, at 36.

See also SAPPHIRE, American Dreams, in AMERICAN DREAMS 11, 17–18 (1994) (“There are no words / for some forms / of devastation / though we constantly / try to describe / what America has done / & continues to do to us. . . . / Well, you’re miserable now America. / The fact you put a flag / on the moon / doesn’t mean you own it. / You can’t steal everything / all the time / from everybody. / You can’t have the moon, sucker.”); Nadir Lasana Bomani, A Philosophical Perspective on Everyday Shit, in CATCH THE FIRE, A CROSS-GENERATIONAL ANTHOLOGY OF CONTEMPORARY AFRICAN-AMERICAN POETRY 168 (Derrick I.M. Gilbert ed., 1998) [hereinafter CATCH THE FIRE] (“I look at life like / milk of magnesia; white, thick / & hard to swallow.”).

\textsuperscript{31} DEAD PREZ, They Schools, on LET’S GET FREE (Loud 2000). Many other voices in street culture express similar complaints about the school system. See MICHAEL ERIC DYSON, HOLLER IF YOU HEAR ME: SEARCHING FOR TUPAC SHAKUR 77–79 (2001); YUSEF JAH & SISTER SHAH’KEYAH, UPRISING: CRIPS AND BLOODS TELL THE STORY OF AMERICA’S YOUTH IN THE CROSSFIRE 65 (1995); ROSE, supra note 16, at 104–05; SISTER SOULJAH, NO DISRESPECT 352 (1994); TERRY WILLIAMS, CRACKHOUSE: NOTES FROM THE END OF THE LINE 88 (1992); BOOGIE DOWN PRODUCTIONS, Stop the Violence, on BY ALL MEANS NECESSARY (Jive 1988).

See also CHUCK D, FIGHT THE POWER: RAP, RACE, AND REALITY 34 (1997) (“Fuck Ethan Frome, and fuck Ms. Haversham. Why did I have to read that shit instead of some James
Institutions of higher education are similarly criticized.\textsuperscript{32}

Some members of street culture believe that the mainstream (Christian) church is also a vehicle of propaganda and a tool of oppression.\textsuperscript{33} Even more common is a belief that the mainstream media is biased and dishonest. Like the schools, the media only present the perspective of the white society,\textsuperscript{34} so the subordinated folk

Baldwin or Zora Neale Hurston? ... Minister Farrakhan calls the school system the 'killing fields.' They’re killing the minds of our youth.”); NATHAN MCCALL, MAKES ME WANNA HOLLER: A YOUNG BLACK MAN IN AMERICA 199 (1994) (“Black people had been systematically brainwashed, and our parents had paid their tax dollars for the schools, biased textbooks, and curriculums that helped carry that out.”).


32. See SOULJAH, supra note 31, at 90–91; DERRICK I.M. GILBERT, Higher Learning, in HENNAMAN 87, 87–89 (2000); BOOGIE DOWN PRODUCTIONS, Questions and Answers, on SEX AND VIOLENCE (Jive 1992).

33. See LEON BING, DO OR DIE 221–22 (1991); NELSON GEORGE, HIP HOP AMERICA 51 (1998); JAH & SHAH’KEYAH, supra note 31, at 34, 49, 215; NATHAN MCCALL, WHAT’S GOING ON: PERSONAL ESSAYS 164 (1997); SANIYKA SHAKUR, MONSTER: THE AUTOBIOGRAPHY OF AN L.A. GANG MEMBER 214 (1993); Benjamin Theolonius Sanders, For What It’s Worth: To His Excellency Pope John Paul II, in BUM RUSH THE PAGE 41 (Tony Medina & Louis Reyey Rivera, eds., 2001); POOR RIGHTEOUS TEACHERS, So Many Teachers, on HOLY INTELLECT (Profile 1990). Through American history, there has been “a not insignificant suspicion among blacks that white Christianity is a hoax.” MEL WATKINS, ON THE REAL SIDE: LAUGHING, LYING, AND SIGNIFYING – THE UNDERGROUND TRADITION OF AFRICAN-AMERICAN HUMOR THAT TRANSFORMED AMERICAN CULTURE, FROM SLAVERY TO RICHARD PRiyor 451 (1994).

See also MCCALL, supra note 31, at 197 (questioning Christianity as “the white man’s religion” and a tool of imperialism); TONY MEDINA, VATICAN’s SMACKIN SKINS, in NO NOOSE IS GOOD NOOSE 32 (1996) (“Slavery has been berry berry good to them (the Catholic Church, that is).... [The Catholic Church is] [t]rying to reach out to out do the Baptist Church for the minstrel show of the century.”); KRS-ONE, Higher Level, on RETURN OF THE BOOM BAP (Jive 1993) (“We accepted our oppressor’s religion / So in the case of slavery it ain’t hard / Because it’s right in the eyes of their God.”).

The distrust of the Christian church is related to the influence of the Nation of Islam. See infra notes 61–63 and accompanying text. Of course, the Christian church remains an important and influential institution in urban minority communities—but there are voices of dissent.

34. “Almost everything I hear on the radio sounds like a lie to me.” GWALTNEY, supra note 26, at 29 (quoting an interviewee). For complaints about racist bias in the media, see MUMIA ABU-JAMAL, LIVE FROM DEATH ROW, at xxx (1995); CHUCK D, supra note 31, at 5–7; DERRICK I. M. GILBERT, Just Bein’, in HENNAMAN, supra note 32, at 110; Willie Perdomo, Reflections from the Metro North, Winter 1990, in ALOUD: VOICES FROM THE NYUORICAN POETS CAFE 113, 119 (Miguel Algarin & Bob Holman eds., 1994) [hereinafter ALOUD]; 2PAC, Only God Can Judge Me, on ALL EYEZ ON ME (Death Row 2001); PUBLIC ENEMY, Don’t Believe the Hype, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam 1988); UNSUNG, Tracy, on SHAME THE DEVIL (Freedom Fighters 2001).

See also GIL SCOTT-HERON, What You See Ain’t What You Geotz, in NOW AND THEN, supra note 30, at 32–33 ("[A]nd the anchorman’s job / is to try to look suave / while they’re
have to turn elsewhere for their education, their news, and their "knowledge." These worries about propaganda link to fears of anti-Black conspiracies perpetrated by a variety of institutions. Some on the street distrust the medico-scientific establishment, and corporations are suspected of contributing to the conspiracies of contamination and sterilization.

Finally, street ideology often includes a strident critique of the American economic system. Many ghetto residents, especially young men, face extremely limited opportunities for legitimate employment, and the employment that is available largely consists of degrading...
wage labor. As a result, American capitalism is viewed by many as a structure that perpetuates racial subordination:

Capitalism—the system of pimps and hoes
I'm sorry that's the way it goes . . .
When Africa's free the African will be free
Capitalism says we're all in slavery.40

Strains of Marxist thought have influenced street ideology.41

Street culture views the social and economic institutions of mainstream society with hostility. It is not surprising that street culture also views the legal institutions with suspicion. Many on the street have a cynical view of the politicians and the law.42

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"Every white person likes to think that he is what you used to hear people refer to as 'a self-made man.' . . . We were supposed to look up to the Mellons and the Morgans and people like that. Now, white people, I think did but we didn't . . ." GWALTNEY, supra note 26, at 99 (quoting an interviewee). See also JAH & SHAH'KEYAH, supra note 31, at 220 ("[C]apitalists are predators, and I say that with much disdain. I am a communalist. If I have a dollar, my community has a dollar.") (quoting a community leader).

41. Robin Kelley has argued that the history of "black nationalism(s)—especially as expressed in culture—had much more in common with American communism than most scholars have admitted." KELLEY, RACE REBELS, supra note 25, at 105. On the history of working class African-Americans and communism, see id. at 103-60; ROBIN D.G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION 36-59 (2002). On rap music's ambivalence toward capitalism, see id. at 200-01; ROSE, supra note 16, at 21; Andre Craddock Willis, Rap Music and the Black Musical Tradition: A Critical Assessment, 23 RADICAL AMERICA 29 (1991).

42. See ABU-JAMAL, supra note 34, at 49; GIL SCOTT-HERON, Winter in America, in NOW AND THEN, supra note 30, at 62, 62; Tony Medina, New York City Rundown (European on Me), in ALOUD, supra note 34, at 90, 96; Ngoma, Demockey, in BUM RUSH THE PAGE, supra note 33, at 57, 58; Carolyn Peyser, Movin' On for Mumia, in IN DEFENSE OF MUMIA 26 (S.E. Anderson & Tony Medina, eds., 1996); Roland Poet X, The Divided States of America, in CATCH THE FIRE, supra note 30, at 154, 157.

See also 2PAC, Panther Power, on THE LOST TAPES (unreleased) ("And Uncle Sam never did a damn thing for me / Except lie about the facts in my history / So now I'm sittin' hear mad 'cause I'm unemployed / But the government's glad 'cause they enjoyed / When my people are down so they can screw us around / Time to change the government now Panther Power."); TALIB KWELI & HI TER, Ghetto Afterlife, on REFLECTION ETERNAL (Priority 2000) ("These niggaz ain't thugs, the real thugs is the government.").
government is seen as unrepresentative, or even as an enemy.\textsuperscript{43} To people in the ghetto, laws passed and enforced by the unrepresentative ruling government are thus tainted with illegitimacy. In short, many agree that the law is "full of shit."\textsuperscript{44}

As an arm of the illegitimate state, the criminal justice system—from police to courts to prisons—is seen as particularly racist and oppressive. To many members of street culture, the police are the enemy.\textsuperscript{45} While many older residents and "decent" folk in the ghetto do trust the police, others believe that police are still corrupt and brutal—that they are modern-day "slave masters":\textsuperscript{46}

The game remains essentially the same, police get paid for murderin'.

It's their job: running dogs for the ruling class, beating brown folks' ass so the boss can make his cash.

Police are the domestic military arm of the state here to make sure that the current power structure stays in place.\textsuperscript{47}

Distrust of the government has resulted in a significant degree of anti-statism among working-class Blacks. For a critical account, see KELLEY, \textit{Yo' MAMA'S DISFUNKTIONAL}, supra note 25, at 78–102.

\textsuperscript{43} "The big enemy is the system. Not white people, per se . . . . But this system, this government . . . . They say they want to help you, they say they are helping you but then, really, they ain't doin' nothin' but killing you off with words." BING, supra note 33, at 194 (quoting a drug dealer). For similar statements, see BING, supra note 33, at 27, 262; GWALTNEY, supra note 26, at 5; JAH & SHAH'KEYAH, supra note 31, at 12, 176; KELLEY, \textit{RACE REBELS}, supra note 25, at 196; SHAKUR, supra note 33, at 215–16; Jalal Nuriddin, \textit{E Pluribus Unum}, in \textit{THE LAST POETS: VIBES FROM THE SCRIBES} 55 (1992); BRAND NUBIAN, \textit{The Godz, on IN GOD WE TRUST} (Elektra 1993); DEAD PREZ, \textit{Police State, on LET'S GET FREE} (Loud 2001).

\textsuperscript{44} CHUCK D, supra note 31, at 14.


\textsuperscript{46} JAH & SHAH'KEYAH, supra note 31, at 72 (quoting an interviewee).

\textsuperscript{47} THE RED GUARD, \textit{John Law, on SHAME THE DEVIL} (Freedom Fighters 2001).
Stories of police brutality circulate through ghetto culture, and some well-known incidents of brutality (such as the Rodney King case in Los Angeles, and the Amadou Diallo case in New York) loom large in the minds of people on the street. The police thus remain one of the most common subjects of criticism in hip hop culture and art.

stigmatization. And even if underprotection affects more people, it does not necessarily follow that underprotection is a worse problem (the average act of overenforcement, for example, might be more damaging to its victim than the average act of underprotection). Professor Kennedy goes on: "Racially selective underprotection is also worse in the sense that society is not as well equipped to combat it." Id. Again, he does not provide much support for this claim—it is not even clear what he means.

Even if Professor Kennedy is correct that underprotection is a worse problem than overenforcement, we can recognize (as a sociological matter of fact) that many members of street culture believe otherwise.

48. ELIJAH ANDERSON, STREETWISE: RACE, CLASS, AND CHANGE IN AN URBAN COMMUNITY 205 (1990). Fifty-three percent of Blacks, compared to 28% of whites, believe that there is police brutality in their area. SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 2000, at 122 (2001). Fifty-eight percent of Blacks, compared to 20% of whites, believe that police do not treat all races fairly. Id. at 119. Thirty-six percent of Blacks, compared to 14% of whites, express fear that police will arrest them when they are innocent. Id. See also Richard R. W. Brooks, Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities, 73 S. CAL. L. REV. 1219 (2000) (examining empirical data regarding minorities' perceptions of fairness in the criminal justice system).

49. "Millions of poor black men can identify with Rodney King because police brutality is a staple of their adolescence and adulthood, a ritual of initiation into a fraternity of black male pain." MICHAEL ERIC DYSON, BETWEEN GOD AND GANGSTA RAP: BEARING WITNESS TO BLACK CULTURE 27 (1996). Ice Cube said of the incident, "It's been happening to us for years. It's just we didn't have a camcorder every time it happened." KELLEY, RACE REBELS, supra note 25, at 184. For other discussions of the King case, see ABU-JAMAL, supra note 34, at 140-45; DHORUBA BIN WAHAD ET AL., STILL BLACK, STILL STRONG: SURVIVORS OF THE U.S. WAR AGAINST BLACK REVOLUTIONARIES 107-112 (1993); KITWANA, supra note 27, at 18, 37-44; ROSE, supra note 16, at 106.

The rebellion that followed the King trial remains a resonant event in street ideology. The Source recently ran an article questioning whether anything has improved over the past decade for poor minorities in Los Angeles. The article reached a mostly negative conclusion. Jimmie Briggs, The Fire Last Time, THE SOURCE, Apr. 2002, at 120, 120-24. In street culture, the incident is referred to as a "rebellion" or "uprising" rather than "the riot—as many whites refer to the incident." Briggs, supra, at 122. See also SHAKUR, supra note 33, at 381 (discussing the "rebellion"); JAH & SHAH'KEYAH, supra note 31, passim (referring to the "uprising").

50. Several hip hop artists contributed to a compilation CD, Hip Hop for Respect, which was dedicated to Diallo. See Peter Noel, Call and Response, VILLAGE VOICE, July 11, 2000, at 54. For references to Diallo, see Carlos Raul Dufflar, Amadou Diallo from Guinea to the Bronx Dead on Arrival, in BUM RUSH THE PAGE, supra note 33, at 73; Malkia M'Buzi Moore, Another Scream, in BUM RUSH THE PAGE, supra note 33, at 74; James E. Cherry, Amadou, in BUM RUSH THE PAGE, supra note 33, at 78; KRS-ONE, South Bronx 2002, on SPIRITUAL MINDED (Koch Intl. 2002).

51. KELLEY, RACE REBELS, supra note 25, at 87, 202-03; ROSE, supra note 16, at 109; Akiba Solomon, What the F#@$?, THE SOURCE, June 2002, at 50. For examples of rap musicians' criticism of police, see BRAND NUBIAN, Probable Cause, on FOUNDATION (Arista 1998); DEAD PREZ, Cop Shot, on COP SHOT (unreleased); L.L. COOL J., Illegal Search, on MAMA SAID KNOCK YOU OUT (Def Jam 1990); N.W.A., Fuck tha Police, on STRAIGHT
Like the police, the courts are viewed with skepticism. Many in the ghetto believe that the courts are hostile toward poor minorities:

This white judge woman
hooded in mahogany-walled
chambers decides my life
is not worth nothing.
A fifteen-year-old black girl
equals zero in this white bitch’s book.52

The courts are viewed as inherently racist institutions, where a variety of factors (including the complicity of public defenders53) combine to produce a situation where even the innocent do not have a chance.54 Richard Pryor’s famous quip about the courts sums up the view of many: “They give niggers time like it’s lunch down there. You go down there lookin’ for justice, that what you find, just us!”55

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OUTTA COMPTON (Priority 1988); CYPRESS HILL, Pigs, on CYPRESS HILL (Sony 1991); 2PAC, Soulja’s Revenge, on STRICTLY FOR MY N.I.G.G.A.Z. (Jive 1993); THE PHARCYDE, Officer, on BIZARRE RIDE II (Rhino 2001).

See also BOOGIE DOWN PRODUCTIONS, Who Protects Us from You?, on GHETTO MUSIC: THE BLUEPRINT OF HIP HOP (Jive 1989) (“You were put here to protect us / But who protects us from you? / Every time you say ‘that’s illegal’ / Doesn’t mean that that’s true.”).

52. SAPPHIRE, Strange Juice (or the Murder of Latasha Harlins), in AMERICAN DREAMS, supra note 30, at 150, 155. Criticisms of racist judges, prosecutors, and juries are common. See ABU-JAMAL, supra note 34, at xvi, xx, 41–43, 119–21; GWALTNEY, supra note 26, at 15, 100; JAH & SHAH’KEYAH, supra note 31, at 137–38; GIL SCOTT-HERON, The New Deal, in NOW AND THEN, supra note 30, at 107; Lhotsky, supra note 45, at 211; The Clan, 3 DON DIVA, Issue 9, at 70, 73 (2001); 2PAC, Outlaw, on ME AGAINST THE WORLD (Jive 1995); ED O.G., Speak Upon It, on LIFE OF A KID IN THE GHETTO (Polygram 1991). See also George Edward Tait, The U.S.A. Court of No Appeal, in BUM RUSH THE PAGE, supra note 33, at 52 (“A magazine jury of twelve rounds / A prosecuting trigger / & forefinger judge . . . / A death verdict in a graveyard court— / Injustice sustained; / Objection overruled.”); MOS DEF, Mr. Nigga, on BLACK ON BOTH SIDES (Priority 1999) (“’Is it fair, is it equal, is it just, is it right? / Do you do the same shit when the defendant is white? / If white boys doin’ it, well, it’s success / When I start doin’, well, it’s suspect.”); PROPHETS OF RAGE, Illuminate, on SHAME THE DEVIL (Freedom Fighters 2001) (“’She’s judgin’ juveniles with thug-style / Survive the only way they know how / She don’t know nothin’ about the jungle / She’s private school silver spoon fed blood’s pure-bred . . . / Her tradition is lynchin’ my folk.”).

53. For criticisms of court-appointed defenders, see ANDERSON, supra note 15, at 241–46; JAH & SHAH’KEYAH, supra note 31, at 30; Gary Jay Walker, Adjudicated Probation, in INSIDE VIEWS, supra note 34, at 234.

54. DYSON, supra note 49, at 5; Diane Hamill Metzger, The Manipulation Game, in INSIDE VIEWS, supra note 34, at 216, 217 (“’It really doesn’t matter if you did it or not, or what your degree of involvement was, because when you go to court, changes are good that you’ll be convicted. Let’s face it, any self-respecting jury member knows that if the cops say you did it, you did it.”).

55. WATKINS, supra note 33, at 549. Versions of this joke can be found in several of Richard Pryor’s recorded comedy acts. E.g., RICHARD PRYOR, THAT NIGGER’S CRAZY
Prisons are seen as institutions where a disproportionate number of poor minorities are enslaved and brutalized.\textsuperscript{56} In prisons, critiques of the criminal justice system are linked to critiques of capitalism, the media, and corrupt politicians:

The cycle goes like this: The media needs higher ratings to sell more advertising so they run more sensational crime shows that scare the public. The prison industry needs more people imprisoned to boost profits so they lobby for more prison construction. Politicians need to create jobs for construction workers and prison guards, and they need to be seen as tough on crime.\textsuperscript{57}

(Reprise 1974); RICHARD PRYOR, RICHARD PRYOR . . . IS IT SOMETHING I SAID? (Reprise 1975).

\textsuperscript{56} Criticisms of prisons as a mechanism of racial subordination abound. See DYSON, supra note 49, at 5; GIL SCOTT-HERON, We Beg Your Pardon, America, in NOW AND THEN, supra note 30, at 86, 89; Rudolf Churchill, A View from Within, in INSIDE VIEWS, supra note 34, at 94, 96; Andre O. Hoillette, Blooming Death . . . Blossoms, in BUM RUSH THE PAGE, supra note 33, at 49, 50; 2PAC, Trapped, on 2PACALYPSE NOW (Jive 1992); DEAD PREZ, Behind Enemy Lines, on LET'S GET FREE (Loud 2000); KOOL DJ EQ, More Prisons, on NO MORE PRISONS (Rapitivism 2000). Mumia Abu-Jamal's widely-read prison writings have painted a bleak picture of prison. See generally ABU-JAMAL, supra note 34; MUMIA ABU-JAMAL, DEATH BLOSSOMS: REFLECTIONS FROM A PRISONER OF CONSCIENCE (1997); MUMIA ABU-JAMAL, ALL THINGS CENSORED (2000).

For descriptions of violence in prison and brutality by guards, see MCCALL, supra note 31, at 165; Donald D. Hairgrove, A Single Unheard Voice, in INSIDE VIEWS, supra note 34, at 147, 148; James W. Harkleroad, Control, in INSIDE VIEWS, supra note 34, at 161; Noah Lhotzy, California Cesspool: The Corcoran Security Housing Unit, in INSIDE VIEWS, supra note 34, at 214, 215. See also Michael Wayne Hunter, The Sixth Commandment, in INSIDE VIEWS, supra note 34, at 193, 196 ("I don't imagine too many citizens are terribly concerned about the prisoners I've seen shot/killed and the many more shot/maimed.").

For descriptions of sexual violence in prison, see KELLEY, RACE REBELS, supra note 25, at 207; MCCALL, supra note 31, at 156, 185-91; SHAKUR, supra note 33, at 135-40; James W. Harkleroad, Prison Is a Place, in INSIDE VIEWS, supra note 34, at 163; Gangster, 2 F.E.D.S., Issue 7, at 30, 31 (2001).

For criticisms describing prison as slavery, see WILLIAM UPSKI WIMSATT, NO MORE PRISONS: URBAN LIFE, HOMESCHOOLING, HIP-HOP LEADERSHIP, THE COOL RICH KIDS MOVEMENT, A HITCHHIKER'S GUIDE TO COMMUNITY ORGANIZING, AND WHY PHILANTHROPY IS THE GREATEST ART FORM OF THE 21ST CENTURY 9 (2000); Jemeni, America Eats its Young, in BUM RUSH THE PAGE, supra note 33, at 29, 30; Ronald A. Young, Prisoners, Poverty, and the Politics of Slavery, in INSIDE VIEWS, supra note 34, at 219; Larry Davis, 2 F.E.D.S., Issue 7, at 53, 54 (2001); Fred Hampton, Jr., The Making of a Slave, 8 MURDER DOG, Issue 5, at 20 (2001). See also PUBLIC ENEMY, Black Steel in the Hour of Chaos, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam 1987) ("4 of us packed in a cell like slaves—oh well / The same motherfucker got us livin' in his hell / You have to realize—that's a form of slavery / Organized under a swarm of devils.").

\textsuperscript{57} WIMSATT, supra note 56, at 7. For similar critiques, see ABU-JAMAL, supra note 34, at 127; JAH & SHAH'KEYAH, supra note 31, at 59; KITWANA, supra note 27, at 71-76; Peter Spiro, Work, in ALoud, supra note 34, at 141, 144-45; Marc Cooper, Lock 2000: gross national product, THE SOURCE, Jan. 2000, at 134; BLACK STAR, Thieves in the Night, on BLACK STAR
"Life behind bars has become a major theme" in street culture and hip hop art, because prisons are the end of the line for so many in the ghetto.

We have seen how street culture distrusts many of the institutions of mainstream white society. Street culture is also defined in part by its opposition to the Black middle class. It rejects the "moralizing" of the Black middle class, and it rejects many mainstream African-American leaders. Many on the street idolize Malcolm X, and they question Martin Luther King Jr.'s legitimacy. Street ideology is largely a Black nationalist ideology, reflecting the influence of the Black Panthers and the Black Power movement, as well as the Nation of Islam and the Five Percenters. Many current


See also Kim Redifer, Big Trouble in Li'l Chilli, in INSIDE VIEWS, supra note 34, at 143, 144 ("We [prisoners] are the expendable masses."); NAS, My Country, on STILLMATIC (Sony 2001) ("But yo I swear, it's a billion dollar business / Courts, lawyers, and jails / We all slaves in the system.").

58. KELLEY, RACE REBELS, supra note 25, at 207.
59. Id. at 36. For discussions of the conflict between working-class and middle-class Blacks, see id. at 36-44, 211-26; DYSON, supra note 49, at xi; SOUJAH, supra note 31, at xiii.
60. KITWANA, supra note 27, at 8, 183-87. "The white man ain't the devil I promise / You want to see the devil take a look at Clarence Thomas / Now you're saying, 'Who! like you a owl / Throw in the towel, the devil is Colin Powell.'" BOOGIE DOWN PRODUCTIONS, Build and Destroy, on SEX AND VIOLENCE (Jive 1992). See also ABU-JAMAL, supra note 34, at 181 (describing Jesse Jackson as a "dumb ass nigga . . . begging favors from the same system that oppresses him"); JAH & SHAH'KEYAH, supra note 31, at 216 ("[T]he NAACP, the National Advancement of 'Certain' People.") (quoting an interviewee); KRS-ONE, Free Mumia, in IN DEFENSE OF MUMIA, supra note 42, at 32, 33 ("Yeah J. Jackson we know what you're about / Youse a slave mason, not a free mason."); Reg E. Gaines, [Clarence] Thomas The Burnt English Muffins, in ALOUD, supra note 34, at 67, 68 ("wavin old glory frantically from / sea to shinin sea of / red blood flowin known well / this racist system / condemns his people to hell.").
61. Michael Eric Dyson has discussed how "[i]n black communities, the politics of the 1960s have resurfaced in the renewed popularity of Malcolm X and black nationalism," DYSON, supra note 49, at 113, while at the same time, many youths believe that King was "at best a moderate front for white interests," id. at 98. For examples of this sentiment, see ABU-JAMAL, supra note 34, at 133-35; BING, supra note 33, at 149; JAH & SHAH'KEYAH, supra note 31, at 134. See also 2PAC, Words of Wisdom, on 2PACALYPSE NOW (Jive 1992) ("No Malcolm X in my history text / Why is that? / Cause he tried to educate and liberate all blacks / Why is Martin Luther King in my book each week? / He told blacks, if they get smacked, turn the other cheek.").
62. See ABU-JAMAL, supra note 34, at 165; GEORGE, supra note 33, at 154; Allen, Jr., supra note 35, 159-85; William Eric Perkins, The Rap Attack: An Introduction, in DROPPIN' SCIENCE, supra note 35, at 4, 21-23. The Hughes brothers' popular street films have shown the importance of these influences in street culture by including nationalist and Islamist characters in their films. See MENACE II SOCIETY (New Line Cinema 1993); DEAD PRESIDENTS (Caravan Pictures 1995).
leaders and opinion-shapers in street culture see themselves as the new standard-bearers of older nationalist movements. Like its intellectual predecessors, street ideology is defined in part by its opposition to mainstream ideology.

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The web of perceptions, beliefs, and social meanings I have described makes up part of the "alternative cultural logic" of the street. It is against this background that street culture faces the war on drugs. Given how different the background systems of meaning and belief are for street culture and mainstream culture, it is not surprising that the intended message of drug policy is incoherent and unintelligible to the audience on the street. The meaning of the war on drugs is recoded—it is shaped to fit into street ideology.

The project, the drugs, the children, the thugs
The tears, the hugs, the love, the slugs...
The streets, the cops, the system, harassment
The options, get shot, go to jail, or get your ass kicked
The lawyers, the part, they are, of the puzzle...
The hustlin, the dealin, the robbin, the stealin


The Nation of Islam ("NOI"), historically and today, has "a long tradition of reaching out to wayward youth and the 'down and out'" and it has found many converts among the ranks of "prisoners, ex-hustlers, or jobless wanderers." KELLEY, YO' MAMA'S DISFUNKTIONAL, supra note 25, at 86. It is not surprising, then, that the NOI has influenced street ideology. For the foundational statement of NOI ideology, see ELIJAH MUHAMMAD, MESSAGE TO THE BLACKMAN IN AMERICA (1965).

63. "This party started right in '66 / With a pro-Black radical mix / Then at the hour of twelve / Some force cut the power / And emerged from hell / It was your so-called government / That made this occur / Like the grafted devils they were." PUBLIC ENEMY, Party for Your Right to Fight, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam 1988).

64. ROSE, supra note 16, at 83. Citing the work of James Scott, JAMES C. SCOTT, DOMINATION AND THE ART OF RESISTANCE: HIDDEN TRANSCRIPTS (1990), Rose argues that hip hop culture (and hip hop music, in particular) has constructed a system of meaning that opposes the dominant public system of meaning. The "hidden transcript" of hip hop subverts the established social order. In order to oppose their marginal status, hip hop folk "create alternative codes that invert stigmas," and thus "act out inversions of status hierarchies" and "enact[] ideological insubordination." ROSE, supra note 16, at 99–101. Rap music, in particular, expresses the ideological "chasm between black urban lived experience and the dominant, 'legitimate' (e.g., neoliberal) ideologies." Id. at 102. See also WILLIAM L. VAN DEBURG, NEW DAY IN BABYLON 192–247 (discussing the techniques of role reversal and inversion in Black cultural expressions); Allen, Jr., supra note 35 (noting the role of "alternative and oppositional forms in Afrocentric identity.").
The shit, hit the ceiling, little boy, with no feelin's. . .
The frustration, the rage, trapped inside a cage
Got beatin's till the age, I carried a twelve gauge. . .
They don't know who we be.
They don't know who we be. 65

In the next sections, I will describe street beliefs about drugs in more detail. Criminal drug policies have failed to construct a social reality where drug use and drug dealing are seen as unambiguously dangerous and immoral. Worse yet, criminal law enforcement is itself responsible for some of the adverse meanings.

B. The Social Meaning of Crack Dealing

The introduction of crack into the ghetto in the 1980s had a devastating impact on poor African-American communities. Crack is thought to be largely responsible for the violent crime wave that hit American cities in the late 1980s and early 1990s. 66 Crack culture has subsided, 67 and so has the crime wave, 68 but the crack experience continues to shape ideology on the street.

65. DMX, _Who We Be_, on _The Great Depression_ (Universal 2001).
To those who live in the ghetto, the effects of crack on individuals and the community have been a visible part of everyday life. In many ghettos, when "people walk the streets of the community, they cannot help seeing what's going on." The visible effects of crack on its users increase the salience of the problem. Crack users are often emaciated and sick; crack addicts are seen on the street hustling to support their habits; female addicts are forced into various forms of prostitution. Users are referred to by the derogatory terms "crackhead" or "basehead." The negative consequences of crack are not denied; indeed, they are painfully obvious.

While members of street culture agree with members of the dominant culture that crack devastated the ghetto, they largely disagree about the ultimate source of the devastation. Many ghetto residents believe that crack is part of a genocidal conspiracy against poor Blacks. Such beliefs resonate with generalized perceptions of

69. See ANDERSON, supra note 48, at 97; JACOBS, supra note 67, at 77-111; SOULJAH, supra note 31, at 34; TERRY WILLIAMS, THE COCAINE KIDS: THE INSIDE STORY OF A TEENAGE DRUG RING 25, 110 (1989); Curtis, supra note 67, at 1259; Jack Wiler, Meditations on Natural Man, in ALOUD, supra note 34, at 492, 492.

70. ANDERSON, supra note 15, at 133.

71. ANDERSON, supra note 48, at 105-07; BING, supra note 33, at 92; SCOTT H. DECKER & BARRIK VAN WINKLE, LIFE IN THE GANG: FAMILY, FRIENDS, AND VIOLENCE 168 (1996); WILLIAMS, supra note 31, at 54; Curtis, supra note 67, at 1263. See also PUBLIC ENEMY, Night of the Living Baseheads, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam 1988) (describing crackheads who "shrive to the bone / Like comatose walkin' around.").

72. See BING, supra note 33, at 40; JAH & SHAH'KEYAH, supra note 31, at 167.

73. ANDERSON, supra note 48, at 85-86, 88-90; ANDERSON, supra note 15, at 88-90; WILLIAMS, supra note 69, at 107; WILLIAMS, supra note 31, at 112-24; Johnson et al., supra note 67, at 182-83. See also N.W.A., Dopeman, on STRAIGHT OUTTA COMPTON (Priority 1988) ("If people out there are not hip to the fact / that strawberry is a girl sellin pussy for crack / to the dopeman / . . . If you smoke 'caine, you a stupid motherfucker.").

74. See ABU-JAMAL, supra note 34, at 95; BING, supra note 33, at 59; FINNEGAN, supra note 66, at 40; JACOBS, supra note 67, at 36-37; WILLIAMS, supra note 69, at 47, 84, 110.

75. Patricia Turner has provided the most complete analysis of these beliefs. TURNER, supra note 37, at 180-201. Randall Kennedy has also noted the perceptions of crack conspiracies, KENNEDY, supra note 10, at 351-52, including a poll where fully one quarter of African-Americans agreed that "the government deliberately makes sure that drugs are easily available in poor black neighborhoods in order to harm black people," id. at 456 n.3 (citing Jason DeParle, Talk of Government Being Out To Get Blacks Falls on More Attentive Ears, N.Y. TIMES, Oct. 29, 1990, at B7). These beliefs are promoted, in part, by the Nation of Islam. A Nation of Islam leader interviewed by Finnegan said, "Who do you think is bringing all these drugs into our community? . . . We don't own no jet airplanes. So who is it?" FINNEGAN, supra note 66, at 49.

For other conspiratorial analyses of crack, see ABU-JAMAL, ALL THINGS CENSORED, supra note 56, at 135; BING, supra note 33, at 192-93; FINNEGAN, supra note 66, at 26; JAH & SHAH'KEYAH, supra note 31, at 65, 176; KELLEY, RACE REBELS, supra note 25, at 193, 202; ROSE, supra note 16, at 120-21; WILLIAMS, supra note 31, at 91; Roland Poet X, supra note 42, at 155; AKBAR, Bigger Dey Come, on BIG BANG BOOGIE (Ill Boogie 2001); BRAND NUBIAN, Wake Up, on ONE FOR ALL (Elektra 1990); KRS-ONE, The Mind, on SNEAK ATTACK (Koch 2001).
racism and also with other theories about the ways white society seeks to contaminate or sterilize the Black race. Some believe that the government simply failed to prevent the crack epidemic; more extreme theories maintain that the government participated in and profited from the crack trade.

Given the widespread belief that the federal government is partly responsible for the crack problem, it is not surprising that many are suspicious of government efforts to "solve" the crack problem. The government's criminal justice response is itself seen as further evidence of racism, and as further evidence of an overarching racist conspiracy, which uses drugs as a tool.

Killing us one by one
In one way or another
America will find a way to eliminate the problem . . .
These are lies that we all accepted
'Say no to drugs' but the governments keep it
Running through our community, killing the unity
The war on drugs is a war on you and me.

To some members of street culture, one clear sign of racism in drug policy is in the government's differential treatment of crack and powder cocaine. State and federal laws punish crack cocaine offenses much more severely than powder cocaine offenses. To some on the

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76. "The drugs were designed to actually keep us from reproducing." JAH & SHAH'KEYAH, supra note 31, at 224 (quoting a former gang member). Cf. TURNER, supra note 37, at 137–64 (describing other forms of contamination fears in African-American folklore).

77. "Whoever controls international affairs in the government was makin' the real money. . . . Who else could it be? Gangbanger not the ones goin' down to get the shit and bring it back here. . . . It's the shotcallers who getting' rich. The politicians." BING, supra note 33, at 222 (quoting a former drug dealer).

78. 2PAC, Words of Wisdom, on 2PACALYPSE NOW (Jive 1992). For similar diagnoses of drug policy, see JAH & SHAH'KEYAH, supra note 31, at 83; GIL SCOTT-HERON, Message to the Messengers, in NOW AND THEN, supra note 30, at 102, 103; ICE CUBE, Endangered Species, on AMERIKKKA'S MOST WANTED (Priority Records 1990); KRS-ONE, R.E.A.L.I.T.Y., on KRS-ONE (Jive 1995).

street, there is no justifiable basis for this distinction, and the policy can only be explained by racism.

There is a] ridiculous disparity in sentencing laws for crack offenses versus cocaine offenses . . . . A person caught with five grams of crack will serve more time if caught than a person with five hundred grams of powder cocaine. That’s insane. The person with crack is wrong, and the person with the cocaine is one hundred times more wrong, but the reality is the person with the five hundred grams of cocaine is one hundred times more likely to be white.

The criticisms of the crack-powder disparity resonate with a larger perception that drug laws are enforced differentially and that white users and dealers are not punished.

More generally, the war on drugs is seen as providing an excuse for police to harass people in the ghetto. Members of street culture believe that racist police use drugs as an easy way to frame innocent people. Perceptions of drug-related police corruption are part of the common knowledge of Black youth, who “share a widely held view that police departments are simply regulating the drug traffic and

80. My informal conversation with a former dealer indicated that crack is simply powder cocaine mixed with two legal substances, namely water and baking soda. His concern was that the law treats ‘Black people who use crack cocaine differently from white people who use powder cocaine. See supra note 21. For similar criticisms, see WILLIAMS, supra note 31, at 25; Rock or Powder? Cocaine Is Cocaine, 3 DON DIVA, Issue 10, at 16 (2002).

81. CHUCK D, supra note 31, at 11–12. For similar criticisms, see KITWANA, supra note 27, at 14; MCCALL, supra note 33, at xv; WIMSATT, supra note 56, at 8–9.

82. “The pretext that is used to fill these prisons with people of color is the war on drugs. Ninety percent of the importers of hard drugs into the United States are white males.” BIN WAHAD ET AL., supra note 49, at 94.

Public Enemy’s music video for Night of the Living Baseheads “exposes” the white drug users who never get punished by the criminal law. In the video, MC Lyte intrudes into a Wall Street office and finds white businessmen using cocaine. For a description of the video and its message, see ROSE, supra note 16, at 115–23. On street beliefs of differential enforcement, see JAH & SHAH’KEYAH, supra note 31, at 83; WILLIAMS, supra note 31, at 91. See also THE COUP, Drug Warz, No More Prisons (Raptivism 2000) (“The ruling class shifts dope to you and me / And don’t get arrested, this is lunacy / or is it pimp low magic in unity? / Is it a war on drugs, or just my community?”).

83. “Searchin my car, lookin for product / Thinkin every nigga is sellin’ narcotics / You’d rather see, me in the pen.” N.W.A., Fuck tha Police, on STRAIGHT OUTTA COMPTON (Priority 1988). For similar criticisms, see Memphis Bleek, 2 F.E.D.S., Issue 7, at 63, 64 (2001); PRINCE AKEEM, Flush the Government, on COMING DOWN LIKE BABYLON (BRC 1991).

84. Some recent scandals that have received national attention have illustrated how easily police can use drugs to frame the innocent. See Ross E. Malloy, Fake Drugs Force an End to 24 Cases in Dallas, N.Y. TIMES, Jan. 16, 2002, at A14; Jim Yardley, The Heat Is on a Texas Town After the Arrest of 40 Blacks, N.Y. TIMES, Oct. 7, 2000, at A1; Ted Rohrlich, Scandal Shows Why Innocent Plead Guilty, L.A. TIMES, Dec. 31, 1999, at A1. Most of the victims in these cases were poor minorities.
often profiting from it." Stories of corrupt cops circulate through street culture, and this "evidence of police corruption at every level" supports "the proposition that the government is partially responsible for the devastating impact of crack on black communities." Perceptions of police corruption are part of a generalized street assessment of drugs and drug policy: that "everybody's gettin' paid." Crack dealers themselves are largely motivated by financial concerns. For many young Black men, to accept the menial work that society offers is to accept the position of subordination that the dominant racist society imposes—drug dealing is an alternative. It is a way to survive and achieve some measure of material success, and it is a way "to escape dependency on low-wage, alienating labor." For many drug dealers and their families, dealing means survival.

85. Lott, supra note 35, at 83. For claims of drug-related police corruption, see Gwaltney, supra note 26, at 214; Kitwana, supra note 27, at 57–62; Williams, supra note 31, at 84, 140; Larry Davis, 2 F.E.D.S., Issue 7, at 53, 57–59 (2001); 2Pac, Point the Finga, on Strictly For My N.I.G.G.A.Z. (Jive 1993); KRS-One, Sound of Da Police, on Return of the Boom Bap (Jive 1993).


87. An interviewee in Don Diva magazine recently put it this way: "[T]here is no doubt that drugs should be legalized. But if they were more than 90% of the judges would loose their jobs . . . not to mention probation officers, correction officers, psychologist, court reporters, prosecutors, defense attorneys and the list goes on. They would all be unemployed. So it will never happen." Gangsta Guide, 3 DON DIVA, Issue 9, at 14, 16 (2001).


89. See Bing, supra note 33, at 223; Jacobs, supra note 67, at 32–35; Kitwana, supra note 27, at 35–40; Williams, supra note 69, at x, 8, 67. See also McCall, supra note 31, at 99 ("As for the risks, dealing drugs seemed no more risky than working a thankless job at the shipyard for thirty years, always under the fear of being laid off.").

90. Kelley, Race Rebels, supra note 25, at 174. Kelley cites a number of ethnographic studies which suggest that employment in the illicit economy should be regarded as a strategy of escape, id. at 286 n.29, and suggests that in rap music, dealing is presented as an alternative to low-paying "slave" jobs, id. at 195.

91. See Wilson, supra note 23, at 58–59. "If you don't want to be a drug dealer, what can you do? Every job that's offered can't give you what you really need to sustain yourself." Jah & Shab\'Keyah, supra note 31, at 315 (quoting a former dealer). See also Churchill, supra note 56, at 98 (describing how countless young Black men in prison "are filled with a rage and hostility toward a 'system' (i.e., the white man) they feel has left them no alternative but crime to survive"); Kelley, Race Rebels, supra note 25, at 195 (describing how, from the perspective of some urban Black youth, "crime is clearly a means of survival"). See also Dead Prez, Sellin D.O.P.E. (unreleased) ("I ain't plan to get rich from sellin' that shit / it was survival."); Notorious B.I.G., Everyday Struggle, on Ready to Die (Bad Boy 1994) ("I know how it feel to wake up fucked up / Pockets broke as hell, another rock to sell / People look at you like you're the user / . . . But they don't know about your stress-filled day / Baby on the way mad bills to pay."); Outkast, Mainstream, on AtlIens (La Face 1996) ("Knowing each and every nigger sellin', but can you blame / the fact the only way a brother can survive the game."); Jay-Z, Can
claim that in the ghetto, there is no choice but to pursue illegitimate means to survive:

[Tracy] said 'fuck this,' put down the want ads and delivered a dime bag to get money for a crib, a clean bed for her kid, and she got caught and got a mandatory minimum in a Central Valley prison. Now her kids are in the system, same system that refused to assist 'em financially, readily rips apart their family. See, Tracy couldn't get a job on the outside, seemed only white folks hirin', and only their kind. And when employers realized where she resided, eyes became wide and applications denied and besides, none of the wages advertised could pay rent and child care. No, not anywhere in this city. Forget it—she had no choice but to do what she did, and now she has no choice but to work for the pennies they pay her, what they say her labor is worth. Like her great-great grandmother's worth, based on her capacity to birth more cotton-picking machines. This system don't see Tracy as a human being but as a potential profit. Better off inside, criminalized.92

Dealers believe that they are morally equivalent to those who achieve success in the mainstream economy.93 Drug dealers express this moral equivalence when they refer to dealing as "the game."94 Dealers are simply "playing" in the economy, trying to achieve the

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I Live II, on REASONABLE DOUBT (Priority 1999) ("Yeah, I sold drugs for a living, that's a given / Why is it? Why don't y'all try to visit the neighborhoods I lived in?").

Drug dealers are sometimes portrayed as achieving substantial wealth through their trade. See ANDERSON, supra note 15, at 120–24; WILSON, supra note 23, at 55–57. Dealers themselves may exaggerate their earnings. See DECKER & VAN WINKLE, supra note 71, at 155–59. It is very difficult to study the economics of dealing, but it is probably true that most retail-level dealers do not achieve great wealth from selling drugs. See also Hagedorn, supra note 15, at 207 (noting that many drug dealers are ultimately disappointed with their earnings).

92. UNSUNG, Tracy, on SHAME THE DEVIL (Freedom Fighters 2001).

93. See MARTIN SANCHEZ JANKOWSKI, ISLANDS IN THE STREETS: GANGS AND AMERICAN URBAN SOCIETY 103 (1991); KELLEY, RACE REBELS, supra note 25, at 200–01; McCALL, supra note 31, at 98–99; Bourgois, supra note 66, at 69. Cf. BOOGIE DOWN PRODUCTIONS, Drug Dealer, on SEX AND VIOLENCE (Jive 1992) ("Drug dealer, understand historical fact / Every race got ahead from sellin' drugs except Black / . . . Eighty percent of American business is created illegally / . . . Organize and legitimize your business / Remember, everybody else did this / Black drug dealer, you have to rise up / And organize your business so that we can rise up.").

94. A recent street magazine article discussed the pros and cons of playing "the game." See Akbar Pray, A View from Inside: Does the Risk Outweigh the Reward?, 3 DON DIVA, Issue 9, at 17 (2001). Several rap songs have outlined the rules of "the game." See NOTORIOUS B.I.G., Ten Crack Commandments, on LIFE AFTER DEATH (Bad Boy 1997); 2PAC, Heavy in the Game, on ME AGAINST THE WORLD (Jive 1995).
same material rewards that all economic actors seek,
they are also “playing” in a game where the police are the opposing team.

Here we begin to see how drug dealing has a meaning of subversion. Drug dealers view themselves, in part, as rebelling against the (racist and unrepresentative) state, the (racist and corrupt) police, and the (racist and unjust) economic system: “I just wanted to strike back in some way. All my life I have seen people like [the cops], who hold you in a position to tell you what to do, or keep you down. And they want you to give up trying.” Dealers, to some extent, view themselves as a contemporary version of the Black antiheroes who have historically been popular in African-American culture and folklore. To some on the street, drug dealing has a favorable meaning of rebellion.

In addition to the meanings of survival and rebellion, dealing also has another less favorable meaning in street culture: betrayal. Crack dealers are seen as traitors, or as fools who are duped into helping white society maintain racial domination by destroying Black

95. On the concept of “play” in street culture, and how young Black men seek to turn forms of play into a means of economic survival and upward mobility, see KELLEY, YO’ MAMA’S DISFUNKTIONAL, supra note 25, at 43–77 Drawing on Kelley’s work, we might draw a link between drug dealing, on one hand, and other forms of urban play for (sometimes) profit, such as rap music, break dancing, graffiti art, and basketball. For an account of subversive and illegal play of graffiti writers in New York, see generally JOE AUSTIN, TAKING THE TRAIN: HOW GRAFFITI ART BECAME AN URBAN CRISIS IN NEW YORK CITY (2001).

96. WILLIAMS, supra note 69, at 43 (quoting a crack dealer).

97. For a description of the historic role of Black antiheroes, see VAN DEBURG, supra note 64, at 224–34; WATKINS, supra note 33, at 444–78. Black antiheroic athletes, such as Jack Johnson, Muhammad Ali, and Mike Tyson, have been popular in working-class Black culture. See GEORGE, supra note 33, at 53–55; AL-TONY GILMORE, BAD NIGGER! THE NATIONAL IMPACT OF JACK JOHNSON (1975); KITWANA, supra note 27, at 8; MCCALL, supra note 33, at 173–88. On the continuing importance of antiheroic ideal in street culture, see KELLEY, supra note 25, at 177, 191, 213; ROSE, supra note 16, at 3; Allen, supra note 35, at 169.

The definition of drug dealers as modern Black antiheroes is probably best represented in the movie Superfly. See SUPERFLY (Warner Bros. 1972). Nathan McCall has discussed the appeal of the title character: He was a “drug dealer who was on a mission: to earn a million dollars, enough money so that he wouldn’t have to work for the white man for the rest of his life.” MCCALL, supra note 31, at 98. See also JAH & SHAH’KEYAH, supra note 31, at 16 (describing Superfly as a role model).

98. The notion that drug crimes—in the minds of the users and dealers themselves—represent a form of rebellion against mainstream society runs through Terry Williams’s ethnographic accounts. See WILLIAMS, supra note 31, at 2–3, 11, 88. For similar points, see ANDERSON, supra note 15, at 36, 107. For other discussions of how forms of rebellion (including crime) are valued on the street, see BING, supra note 33, at 21; KELLEY, RACE REBELS, supra note 25, at 8, 197–205; JAH & SHAH’KEYAH, supra note 31, at 65; MCCALL, supra note 31, at 88; MCCALL, supra note 33, at 34–55; ROSE, supra note 16, at 60; SHAKUR, supra note 33, at 69–70, 330; NAS, My Country, on STILLMATIC (Sony 2001); Tupac Amaru Shakur, I’m Just One Black Man Standing Alone, but I Won’t Sell Out, RAP PAGES, Apr. 1992, at 1.
Crack dealers are viewed with disdain by many in the ghetto. Dealers, however, often try to neutralize this criticism by pointing out that many of their customers are white suburbanites. The betrayal meaning of dealing largely disappears when it comes to selling crack to people who do not live in the ghetto.

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The social meaning of crack dealing in street culture is ambiguous and contested. Dealing has a negative meaning of betrayal, a positive meaning of rebellion, and a more neutral meaning of survival. It is not surprising that many dealers are deeply ambivalent about their trade: "Drug dealers... prey[...] on their own people. But like so many other guys, I reasoned that the end justified the means—any hustle that kept you out of the system was justifiable."101

This ambivalence is reflected not only in dealers themselves, but also in other members of the community. Many ghetto residents

99. "I think they're halfway responsible, because they're getting it from the Caucasians and bringing it into the hood and feeding it to the young homiez. They're distributing it in the neighborhoods, and who's getting it? Our people." JAH & SHAH'KEYAH, supra note 31, at 176 (quoting a former gang member). For other expressions of this sort, see SHAKUR, supra note 33, at 357–64; Kent Williams, Memoirs of the Astro Creep, in INSIDE VIEWS, supra note 34, at 10, 13.

100. For statements about white customers purchasing drugs from Black dealers in the ghetto, see ANDERSON, supra note 48, at 99; DOUGLAS CENTURY, STREET KINGDOM: FIVE YEARS INSIDE THE FRANKLIN AVENUE POSSE 237 (1999); DECKER & VAN WINKLE, supra note 71, at 168; FINNEGAN, supra note 66, at 60, 64; WILLIAMS, supra note 69, at 112.

This story has much purchase in drug policy debates. It is perhaps best depicted in the popular movie Traffic, where white suburban adolescents drive to the ghetto to purchase drugs from (and have sex with!) Black dealers. See TRAFFIC (USA Films 2000). The acceptance of this story, however, may have less to do with its truth than its convenience: It allows both white suburbanites and minority residents of the ghetto to blame the drug problem on each other, and it allows dealers to neutralize criticisms of betrayal.

Of the urban dealers interviewed by Decker and Van Winkle, more than 40% said their customers were all or mostly Black, while only 15% said their customers were all or mostly white. DECKER & VAN WINKLE, supra note 71, at 168. The observations of ethnographers in open-air ghetto drug markets generally do not suggest that the typical customer is a white suburbanite. See generally JACOBS, supra note 67; WILLIAMS, supra note 31; WILLIAMS, supra note 69. Some systematic evidence suggests that drug users do (at least occasionally) buy drugs outside their own neighborhoods. See NATIONAL INSTITUTE OF JUSTICE, ADAM PRELIMINARY 2000 FINDINGS ON DRUG USE AND DRUG MARKETS 26 (Dec. 2001). But there is generally a dearth of data, and the data that are available do not support any conclusions about how frequently white users purchase crack in the ghetto. We should at least contemplate the possibility that white suburban users typically purchase drugs from white suburban dealers.

101. MCCALL, supra note 31, at 101. For similar expressions of dealers' ambivalence, see BING, supra note 33, at xvi, 213; Piri Thomas, Prologue, Seven Long Times, in ALOUD, supra note 34, at 373, 375. John Hagedorn's surveys of dealers' attitudes found evidence of this ambivalence. In Hagedorn's study, most subjects expressed belief that dealing was "'unmoral'—wrong, but necessary for survival," Hagedorn, supra note 15, at 210, while others completely rejected conventional values, id. at 214–15.
"condemn the dealing but also tolerate it" and "try to coexist with it, rationalizing that the boys who deal drugs are not necessarily bad boys but are simply doing what they think they need to do to make money." The ambiguous social meaning of dealing leads to inaction: Community members are often unwilling to assist police, and may even be unwilling to criticize dealers. And again, when it comes to selling to outsiders, some ghetto residents are even less likely to complain.

The criminal law has condemned dealing, and tried to construct a social reality where dealing is viewed as unambiguously harmful and wrong. It has not succeeded. As we have seen, the actual social meanings in street culture are much more complicated and even contradictory. Worse yet, criminal drug laws may have backfired by helping to construct the meaning of rebellion. The criminal justice system opposes dealing, but this opposition allows dealers to tell a story that they are rebellious antiheroes subverting the unjust system. The idea of rebellion creates a moral space in which dealers can operate, and may even provide a marginal incentive for new entrants to the dealing market.

In the same way, the criminal law, far from supporting private sanctions against dealing, may actually have disrupted private sanctions against dealing. Tough criminal sanctions and aggressive enforcement have engendered some sympathy for dealers among some ghetto residents. Even those who believe that drugs are destroying their communities may be less willing to sanction dealers informally, because to do so would signal support for the police, the criminal justice system, and the state. To many members of street culture—

102. ANDERSON, supra note 15, at 132–33.
103. "It's a shame you chose the dope game / . . . But who am I to judge another brother?" 2PAC, If My Homie Calls, on 2PACALYPSE NOW (Jive 1992). Professor Kahan has suggested that long sentences for drug crimes have helped to imbue cooperation with the police "with connotations of collaboration and betrayal." Kahan, supra note 2, at 381.
104. "I'm not going to ever tell a brother not to get his money, it's just a shame that we have to sell it to each other. Sell it to white folks, sell it to somebody else . . . ." JAH & SHAH/KEYAH, supra note 31, at 168 (quoting an interviewee). See also PUBLIC ENEMY, Night of the Living Baseheads, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam 1988) (criticizing dealers who "sell to their own": "And to those that sell to Black / Shame on a brother").
105. Following Professor Lessig, we might say that the criminal law has unintentionally made the meaning of dealing ambiguous. Lessig, supra note 8, at 1010–12. This is not to suggest, however, that the meanings of betrayal and survival are the "basic" meanings, and that the law has subsequently added a meaning of rebellion. The meanings are interdependent; none has conceptual or historical priority.
106. "I'm against the gangs, but I have to say that the system is really trying to sock it to these kids who are involved with it, especially the black kids." BING, supra note 33, at 184 (quoting a mother).
even those who are not themselves dealers—social norms that reflect the view of the criminal justice system are presumptively suspect.

This problem seems to have gotten worse over the past few years. During the late 1980s and early 1990s, when the problems of crack and crime in the ghetto reached their apogee, there was wider support for tough criminal sanctions. Through the 1990s, however, crime and crack culture subsided, yet drug arrests and prison populations continued to rise. Drug laws increasingly came to be seen as an excuse for “greater police repression.” As a result, some African-American leaders and ghetto residents have begun to rethink their support for the war on drugs. In street culture, criticism of criminal drug laws seems to be intensifying. Increasingly, leaders in hip hop culture are arguing that the “war on drugs is the focal point” of the “prison crisis” devastating Black youth.

None of this is to suggest that crack dealing is now viewed favorably in street culture. Many ghetto residents still enforce anti-dealing norms: They ostracize dealers, speak badly of them, and so on. But it is important to see that many ghetto residents simultaneously criticize both crack dealing and tough criminal drug policies. To recognize that there is no paradox here is to question the criminal law’s importance in shaping social norms.


108. KELLEY, RACE REBELS, supra note 25, at 193.


110. This shift in sentiment is reflected in Elijah Anderson’s ethnographies. Anderson’s Streetwise, published in 1990, portrays a community sentiment toward crack dealers that is almost uniformly hostile. See ANDERSON, supra note 48, at 77–111. Nine years later, however, Anderson’s Code of the Street reflects much more ambivalence about dealing among ghetto residents. See ANDERSON, supra note 15, at 132–33.

111. KITWANA, supra note 27, at 53. See also id. at 149 (discussing how opposition to police brutality and mandatory minimums intensified in the late 1990s); Dan Frosch, While We Slept: Bush Scored Victory at Home, THE SOURCE, Feb. 2002, at 48 (discussing opposition to the nomination of John Walters).
C. The Social Meaning of Marijuana Use

In street culture as elsewhere, different drugs have different social meanings. Over the past decade, as crack use became increasingly stigmatized in street culture, marijuana use became more accepted. The two trends are not independent: Some ethnographic researchers have suggested that marijuana use is itself associated with a rejection of "harder" drugs such as crack.\textsuperscript{112} Although marijuana is used widely and is the source of intense regulation,\textsuperscript{113} marijuana is the subject of relatively little conflict and contestation in the street culture. The discourse about marijuana in street culture, while pervasive, is nonetheless a more muted discourse.

Compared to crack, marijuana is not seen as a drug that has been terribly destructive to the Black community. Marijuana is seen as "natural" in a way that crack and other drugs are not.\textsuperscript{114} Although marijuana dealing is common on the street, the market for marijuana is not usually associated with violence. Unlike crack, marijuana is not typically a subject of conspiracy theorizing. Thus, the use (and sale) of marijuana does not have a meaning of complicity with racist conspiracies. When marijuana is criticized by members of street culture, the criticisms are usually grounded in a view that marijuana acts as a "gateway" to more dangerous, "harder" drugs.\textsuperscript{115}

In street ideology, marijuana is often viewed in more favorable terms than alcohol.\textsuperscript{116} Alcohol is viewed by some as a substance that undermines the Black community. Like crack, alcohol is a subject of conspiracy theories: the (omni)presence of package stores and bottle shops in the ghetto is evidence of a plan to subordinate Black folk by

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112. \textsc{Jacobs}, supra note 67, at 5, 38-40; \textsc{Andrew Golub \& Bruce D. Johnson, National Institute of Justice Research in Brief: The Rise of Marijuana as the Drug of Choice Among Youthful Adult Arrestees} (June 2001); \textsc{Johnson et al., supra note 67, at 168-69. As one interviewee told Richard Curtis, "You don't get no respect [if you use drugs]. See, the in-thing is the weed or drinking, but if you start messing with the dope, that's bad, you're a crackhead now." Curtis, supra note 67, at 1261.}

113. \textsc{There are over 700,000 annual arrests for marijuana violations, accounting for 46.5% of all drug arrests. See 2000 UCR, supra note 66, at 216.}

114. "Other people try to make you look bad, but I know you not / When my situation's lookin' sad I know I got / A true friend in my time of need, all I need / You're natural you come from seeds, I decree / ... Naturally you everything we need." \textsc{Scarface, MaryJane}, on \textsc{Untouchable} (Virgin 1997). Marijuana is not viewed as a drug by some on the street. See \textsc{Decker \& Van Winkle, supra note 71, at 137; Jacobs, supra note 67, at 38.}

115. \textsc{See Chuck D, supra note 31, at 15; Souljah, supra note 31, at 41.}

116. As William Eric Perkins points out, recent hip hop culture has taken a view of marijuana as "an alternative to alcohol, particularly malt liquor." \textsc{William Eric Perkins, Youth's Global Village: An Epilogue, in Droppin' Science, supra note 35, at 258, 260-61. See also Jah \& Shah'Keyah, supra note 31, at 146 ("That liquor has hurt us more than drugs have. Believe me, that liquor is the 'king' drug.") (quoting an interviewee).
keeping them intoxicated.\textsuperscript{117} Marijuana, by contrast, is seen with less suspicion. Again, the difference has something to do with the different physiological effects of marijuana and alcohol,\textsuperscript{118} in addition to the view that alcohol is distributed by (hostile and suspect) corporate America while marijuana is not.

Marijuana is not only viewed more favorably than crack and alcohol—it is affirmatively celebrated by some opinion-shapers in street culture.\textsuperscript{119} Depictions of marijuana use are common in hip hop movies,\textsuperscript{120} and references to marijuana use are common in hip hop music\textsuperscript{121} and art.\textsuperscript{122} Indeed, the identities (and popularity) of some rap

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\item[117.] On the presence of liquor stores in the ghetto, see generally \textsc{George A. Hacker, Marketing Booze to Blacks} (1987).
\item[118.] See \textsc{Jah \& Shah'Keyah}, supra note 31, at 116 ("I can sit up and smoke weed from here to next month and still stay in tune and focus with self, but once I take a drink . . . you won't know anything . . . Alcohol is one of the main reasons why our people cannot develop.") (quoting an interviewee); \textsc{The Pharcyde, Pack the Pipe, on Bizarre Ride II} (Rhino 2001) ("The bud not the beer 'cause the bud makes me wiser.").
\item[119.] "Marijuana use carries none of crack's stigma and, indeed, has been glorified by the rappers and celebrities many central-city street youth most admire." \textsc{Jaco\$s, supra note 67, at 38. }
\item[121.] \textsc{See Baby Boy} (New Deal 2001); \textsc{Friday} (New Line Cinema 1995); \textsc{High Heel} (Jers
dy Films 2001); \textsc{Next Friday} (Cube Vision 2000); \textsc{Scary Movie} (Dimension Films 2000); \textsc{The Wash} (Lions Gate 2001).
\item[122.] In addition to innumerable off-hand references to marijuana, there are a great many hip hop songs about marijuana. \textsc{See Busta Rhymes, Get High Tonight, on When Disaster Strikes} (Elektra 1997); \textsc{Dr. Dre, Blunt Time, on Dr. Dre Presents the Aftermath} (Interscope 1996); \textsc{The Eastsidaz, Sticky Fingers, on Duces 'n Trays: The Old Fashione
d Way} (Tee Vee Toons 2001); \textsc{The Fugees, Blunted on Reality, on Blunted on Reality} (Sony 1994); \textsc{The High and Mighty, Weed, on Home Field Advantage} (Priority 1999); \textsc{Ice Cube, Higher, on Higher Learning Soundtrack} (Sony 1995); \textsc{Jah Rule, Smokin' and Ridin', on Pain Is Love} (Universeal 2001); \textsc{Master P, I Got That Dank, on The Ghetto's Trying to Kill Me} (Priority 1994); \textsc{Master P, 1/2 on a Bag of Dank, on Ice Cream Man} (Priority 1996); \textsc{Master P, Weed and Money, on Ghetto D} (Priority 1997); \textsc{Method Man & Redman, How High, on Blackout} (Def Jam 1999); \textsc{Missy 'Misdemeanor' Elliot, Pass Da Blunt, on Supa Dupa Fly} (Elektra 1997); \textsc{Mystikal, Smoke Something, on Mind of Mystikal} (Jive 1996); \textsc{Mystikal, I Smell Smoke, on Ghetto Fabulous} (Jive 1998); \textsc{Mystikal, Smoked Out, on Let's Get Ready} (Jive 2000); \textsc{Nate Dogg, Bag o' Weed, on G-Funk Classics Vol. 1} (Breakaway 1998); \textsc{Outkast, Crumblin' Erb, on Southernplayalisticadillacmuzik} (La Face 1994); \textsc{The Pharcyde, Soul Flower, on Bizarre Ride II} (Rhino 2001); \textsc{Scarfack, MaryJane, on Untouchable} (Virgin 1997); \textsc{Scarfack, Let Me Roll, on The World Is Yours} (Virgin 1995); \textsc{Styles, Good Times (I Get High), A Gangster and a Gentleman} (Interscope 2002); \textsc{Tash, SmokeFest 1999, on Rap Life} (Sony 1999); \textsc{Timbaland & Magoo, Smoke in Da Air, on Welcome to Our World} (Atlantic 1997); \textsc{Wu-Tang Clan, As High as Wu-Tang Get, on Wu-Tang Forever} (Loud 1999); \textsc{Wyclef Jean, Something About Mary, on The Eclectic} – 2 Sides II A Book (Sony 2000). Several hip hop artists contributed to a recent pro-marijuana compilation CD. \textsc{T.H.C.: The Hip-Hop Collection Vol. 1} (Trans-High 2002).}
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\end{footnotesize}
stars are largely built around their reputation for marijuana use.\footnote{123} The frequent marijuana references in hip hop music are often conspicuously edited on the radio, so that drugs are simultaneously presented as accepted (by the artist) and condemned (by whoever the censors be), thus dramatizing social dissension about drugs.

The references to marijuana in hip hop culture are often simple, even stylized: Alluding to marijuana is a sort of shorthand to indicate a laid-back attitude or a good time. Marijuana is associated with relaxation and creativity.\footnote{124} Marijuana means freedom from some of the pain of ghetto life;\footnote{125} and even an escape from some of the violence


124. See \textit{Cypress Hill, Spark Another Owl}, on \textit{Temples of Boom} (Sony 1995) ("Once again the powers of the herb open up the mind."). Marijuana is also associated with the Jamaican roots of hip hop music. See \textit{George}, supra note 33, at 6 (describing the "ganja-filled gatherings" in Jamaica that produced dub-style reggae, a predecessor to rap music). Perhaps more deeply, through its connection with reggae and Rastafarianism, marijuana is associated with an "authentic" Black culture and religion. See \textit{Dick Hebdege, Subculture: The Meaning of Style} 30-45 (1979).


on the street: "Yo, yo, give me the gun, we don’t need to fight / Hold that blunt, I’ll give you a light / Don’t no nigga want to die tonight / With all this weed, get high tonight."\(^{126}\)

Largely unfettered by some of the negative meanings attached to other substances, marijuana has a more singular meaning of rebellious freedom. Michael Eric Dyson has described this meaning of marijuana in hip hop culture:

The creed of weed is romanticized in hard-core hip-hop and in the hood. The usual cry that it got the creative juices going is not the most important claim in these circles. Weed is viewed as the necessary adjunct to ghetto fabulousness, a bit more accessible to the hood’s rank and file than Cristal and Alizé. . . . Befitting the outlaw character of the hard-core rapper, ingesting huge amounts of legal and illegal substances amounts to a ghetto pass and union card. Getting high is at once pleasurable and political: It heightens the joys to be found in the thug life while blowing smoke rings around the constraints of the state. . . . That is why there is a close parallel, if not outright identification, between weed and freedom.\(^{127}\)

Marijuana is associated with opposition to the police and, as Dyson suggests, freedom from the state.\(^{128}\) "[S]tyle can be used as a gesture of refusal or as a form of oblique challenge to structures of domination."\(^{129}\) Marijuana is often a part of hip hop style; it is used as a way to signal resistance:

I shall never, cooperate with the law . . .
I swear that’s how we pledge allegiance, to the alliance of underworld’s killers and thugs, through the science of a nigga still yet to be found.
So light some green, and pass it around . . .

\(^{126}\) CYPRESS HILL & METHOD MAN, Cisco Kid, on HOW HIGH (Soundtrack) (Universal 2001).

\(^{127}\) DYSON, supra note 31, at 239.

\(^{128}\) Brian Gilmore, Georgia Avenue, Washington D.C., in BUM RUSH THE PAGE, supra note 33, at 62 ("on the back of the bus we smoke pot / drink wine / talk bad about the gov’t / in the back of the bus, we tell / each other that the white man is / the devil. / on the back of the bus, we own the world."). For suggestions of marijuana as symbolic opposition to the police, see 2PAC, Under Pressure, on THUG LIFE Vol. 1 (Jive 1995) ("Smokin’ blunts in the driveway, my fo’five / Screamin’ ‘Fuck the police,’ when we fly away."); CYPRESS HILL, Stoned Is the Way of the Walk, on CYPRESS HILL (Sony 1991) ("They wanna Rodney King me . . . ‘Cause we are the ones stonin’ in the ways of the mastas."); NAS & LAURYN HILL, If I Ruled the World, on IT WAS WRITTEN (Sony 1996) ("Imagine smokin’ weed in the street without cops harassin’.").

\(^{129}\) ROSE, supra note 16, at 36 (citing HEBDIGE, supra note 124). Rose goes on to note how "consumption rituals" are a means of "identity formation" for members of hip hop culture. ROSE, supra note 16, at 36–38.
Wanna get high, come smoke with me.130

* * * * *

Again, the social meaning of marijuana in street culture does not resemble the social meaning that the criminal law has tried to establish. And again, if anything, it seems that the criminal law has backfired by investing marijuana with a favorable meaning of freedom and rebellion. Marijuana use represents an expression of resistance to the state and to the criminal justice system; this meaning has been partly caused by criminal drug policy itself.

III. A SOCIOLOGICAL FRAMEWORK

We have seen that the social meanings of crack dealing and marijuana use in street culture do not closely match the meanings that criminal drug policy has tried to construct. In street culture, drugs are situated within an alternative system of social meanings. The state's policy on drugs is assessed against background perceptions of ongoing government efforts to oppress poor minorities. Drug laws are seen as a mechanism of subordination, and to some extent, drug law violations are seen as a means of resistance.

In this Part, I will draw on some concepts of theoretical sociology and criminology to explain how and why alternative and inverted ideologies can form in subcultures. My brief account will be something of a pastiche.131 I will draw from a variety of different schools of thought in sociology and criminology, all of which provide some concepts that will prove useful for analyzing the functioning of expressive law.

A. Ideology Formation

Sociological studies in a variety of contexts have shown how people can develop alternative and rebellious ideologies. Structural features of society can cause rebellion. Moreover, once an individual is stigmatized, she often responds by rejecting the dominant ideology that produced the stigma. Excluded from mainstream society, stigmatized people form subcultures that strengthen oppositional ideologies.

130. NAS, Smokin', on STILLMATIC (Sony 2001).
131. For an excellent synthetic overview of modern sociology of deviance, see generally DAVID GARLAND, PUNISHMENT AND MODERN SOCIETY: A STUDY IN SOCIAL THEORY (1990).
Some societal structures put pressure on individuals to deviate from society’s norms.\textsuperscript{132} Even when “culturally defined goals, purpose and interests” are widely shared across society, some individuals can have differential access to the “acceptable modes of reaching out for these goals.”\textsuperscript{133} This structural situation can cause various forms of deviance as individuals in segments of society that lack access to legitimate means seek various forms of response to their situation. Individuals might: (1) pursue legitimate ends with illegitimate means; (2) retreat from society; or (3) rebel, rejecting society’s goals and seeking a fundamentally different social structure.\textsuperscript{134} Thus, the very structure of societal advantages and disadvantages can produce


Some versions of strain theory incorporate notions of equity and justice. People enter social relations with an expectation that they will be treated justly and equally, and if they perceive that they are treated otherwise, anger and deviance can result. See, e.g., Karen A. Hegtvedt, The Effects of Relationship Structure on Emotional Responses to Inequity, 53 SOC. PSYCHOL. Q. 214 (1990).

\textsuperscript{133} MERTON, supra note 28, at 186–87. For the first presentation of these ideas, see Robert K. Merton, Social Structure and Anomie, 3 AM. SOC. REV. 672 (1938). Richard Cloward has pointed to a parallel dynamic: In structural terms, just as certain segments of society have less access to legitimate means of reaching social goals, so also do certain segments of society have greater access to illegitimate means. Richard A. Cloward, Illegitimate Means, Anomie, and Deviant Behavior, 24 AM. SOC. REV. 164 (1959). Cloward attempts to synthesize the works of Durkheim and Merton with the “differential association” tradition.

\textsuperscript{134} Merton called these respective forms of deviance innovation, retreatism, and rebellion. MERTON, supra note 28, at 193–211. Drug dealers could be characterized as innovators, in that they accept the dominant goals of society (especially wealth maximization), but use proscribed means to attain those goals. Drug addicts could be characterized as retreatists. See MERTON, supra note 28, at 207. But perhaps a more nuanced account of deviance would recognize that acts of deviance can contain elements of different deviant forms. The descriptive account of Part II should make clear that crack dealing and marijuana use, for example, (simultaneously) contain aspects of innovation, retreatism, and rebellion. Cf. Edward Sagarin & Robert J. Kelly, Sexual Deviance and Labeling Perspectives, in THE LABELING OF DEVIANCE: EVALUATING A PERSPECTIVE 347, 353–55 (Walter R. Gove ed., 2d ed. 1980) [hereinafter LABELING OF DEVIANCE] (noting that individuals' responses to stigma, including their acceptance of the validity of the judgment, are often ambiguous and varied).

It should also be noted that Merton distinguishes his conception of rebellion from Scheler’s idea of resentment. Ressentiment is a “sour-grapes pattern” that “does not involve a genuine change in values,” while rebellion involves “a genuine transvaluation.” \textit{MERTON, supra note 28, at 209–10. Analysts who assert that ghetto youth are simply “nihilistic” may be missing the importance of this distinction.}
oppositional ideologies. These ideologies serve to neutralize condemnations of deviance.\textsuperscript{135}

Sociologists in the labeling theory tradition have also examined the development of alternative or oppositional belief systems.\textsuperscript{136} Once an individual is labeled as deviant or stigmatized, she may develop a counter-ideology in response.\textsuperscript{137} Stigmatized individuals often deny the legitimacy of the groups (such as mainstream society) or the institutions (such as the criminal justice system) that have applied the

\textsuperscript{135} Oppositional ideologies are often conceived of as ex-post rationalizations of crimes, but Gresham Sykes and David Matza suggest that they may "precede deviant behavior and make deviant behavior possible." Gresham M. Sykes & David Matza, Techniques of Neutralization: A Theory of Delinquency 22 AM. SOC. REV. 664, 666 (1957).

Sykes and Matza categorized neutralizing beliefs into five categories: (1) denial of responsibility; (2) denial of injury; (3) denial of the victim; (4) condemnation of the condemners; and (5) appeal to higher loyalties. \textit{Id.} at 668–70. These techniques resemble formal defenses to criminal charges. \textit{Matza, supra} note 23, at 61–62, 69–90.

136. Labeling theory has been criticized on a variety of fronts. Sociologists in the labeling tradition have been criticized for being too sympathetic with the objects of their study, or even for romanticizing deviants as hero outlaws. Because labeling theorists suggest that deviance is not an inherent property of an act, but is the product of social response, they have been attacked as relativistic.

Since the 1970s, criminology has largely returned to a naturalist or positivist view of crime (associated with James Q. Wilson, John Dilulio, and others): That criminals and criminal acts, as currently defined, are inherently bad. (This latter view is, of course, the predominant one in current legal discourse and legal scholarship). The naturalist view is often criticized for being too antipathic toward "deviants." For an account of this dialectic within the field of criminology, see Dario Melossi, Changing Representations of the Criminal, in CRIMINOLOGY AND SOCIAL THEORY 149, 163–72 (David Garland & Richard Sparks eds., 2000).

For my purposes, it is not necessary to take sides in this debate; many of the normative and empirical claims of labeling are not relevant here. The work of labeling theorists is nonetheless of particular importance, however, since labeling theorists made a unique contribution by closely examining the lives and beliefs of stigmatized individuals. In other words, even if we reject the normative relativism of the labeling theorists, we can still gain insight from their micro-sociological descriptions.

137. See ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 10 (1963). Often, at the early stages of this process, an individual will come to believe that others sharing her stigma are like everyone else, \textit{id.} at 39–40, and that the arguments of normals about difference are merely foolish rationalizations, \textit{id.} at 135. Ultimately, many stigmatized individuals conclude "that they are not merely equal to but better than normals, and that the life they lead is better than that lived by the persons they would otherwise be." \textit{Id.} at 145 (emphasis added). Howard Becker cites drug addicts as one category of deviants who "develop[] full-blown ideologies explaining why they are right and why those who disapprove of and punish them are wrong." \textit{Howard Becker, Outsiders: Studies in the Sociology of Deviance} 3 (2d ed. 1973).

Of course, there is not a one-way causal or chronological relationship between the imposition of a deviant label and the formation of oppositional ideology. Prior to being labeled as deviant, someone may already "belong to a minority group or subculture whose values and ways of behaving lead to violations of the rules of the dominant group." Walter R. Gove, The Labeling Perspective: An Overview, in \textit{The Labeling of Deviance, supra} note 134, at 9, 11. The process is progressive: Outsiders are more likely to be labeled as deviant, and the act of labeling can solidify opposition. See \textit{Becker, supra} note 137, at 22–39.
deviant labels. These individuals reject the beliefs of the group that applied the deviant label and develop a counter-story to explain why they are not really deviant and why mainstream ideology is flawed.

This process of oppositional ideology formation is greatly amplified by group dynamics. The same segments of society that lack access to legitimate means of reaching social goals also lack the means to resist the imposition of stigma. Stigmatized individuals are concentrated in certain groups, and those groups are isolated from society. Those who are stigmatized often congregate with other stigmatized individuals for work, socializing, and other forms of communal life. Once isolated into subcultures, their social life consists largely of interaction with other individuals who are outsiders, and this can lead to a “collective denial of the social order.”

Subcultures of outsiders (like any other subculture) contain mechanisms of integration and education. They transmit values and beliefs. Again, there is a dual dynamic, where stigmatized individuals with alterative ideologies form subcultures, and subcultures simultaneously transmit alternative ideologies to their

138. BECKER, supra note 137, at 1–2; GOFFMAN, supra note 137, at 129; Sykes & Matza, supra note 135, at 669. Rebellious belief systems, however, do not necessarily (or even typically) involve a total rejection of mainstream beliefs. Even those who express significant opposition still “appear to recognize the moral validity of the dominant normative system in many instances.” Sykes & Matza, supra note 135, at 665.

139. Becker’s accounts of marijuana users and dance musicians provide good examples of the alternate systems of social meanings that deviants construct. Marijuana users come to believe that they have been “emancipated” from conventional morality, that their use is less dangerous than conventional alternatives such as alcohol and tobacco, that marijuana is in fact beneficial, and that their view is the “inside” view. BECKER, supra note 137, at 72–78. The dance musicians interviewed by Becker believed they had a special artistic gift which made them better from the ignorant “squares” of normal society; as a result, they flouted conventional norms. Id. at 85–100.

140. “Membership in such a [deviant] group solidifies a deviant identity.” BECKER, supra note 137, at 38. Theorists in the differential association tradition have also shown how subcultures can develop “an ideology of legitimation” that helps criminals justify their behavior. John Rosecrance, The Stoofer: A Professional Thief in the Sutherland Manner, 24 CRIMINOLOGY 29 (1986) (citing EDWIN H. SUTHERLAND, PRINCIPLES OF CRIMINOLOGY 197–216 (4th ed. 1947)).

141. Labeling theorists argue that “the poor and the black” are particularly “ill-equipped to prevent the imposition of a deviant label,” and so are “particularly likely to be labeled deviant.” Gove, supra note 137, at 11. For these types of arguments, see BECKER, supra note 137, at 8–14; THOMAS J. SCHEFF, BEING MENTALLY ILL: A SOCIOLOGICAL THEORY 97–101 (1966).

142. GOFFMAN, supra note 137, at 144. See also BECKER, supra note 137, at 34–35, 81 (discussing the formation of deviant subcultures); J. H. GAGNON & W. SIMON, SEXUAL CONDUCT: THE SOCIAL SOURCES OF HUMAN SEXUALITY 195 (1973) (discussing the function of deviant subcultures to their members).

143. In groups, “the ideology of members is formulated—their complaints, their aspirations, their politics.” GOFFMAN, supra note 137, at 25.
members. A dynamic of “group polarization” can take hold, and the (oppositional) beliefs of individuals can “become even more aligned in the direction they were already tending.” When stigmatized individuals are isolated into groups of other like-minded people, extreme oppositional ideologies can result. When the government cracks down on deviant subcultures, applying further punishments and stigma, members' beliefs can be pushed to further extremes.

These socio-psychological processes contribute to broader forms of cultural conflict. When a group perceives (correctly or not) that it is the object of repression, it responds by opposing the moral categories and social meanings of the repressive group. Groups,

144. “The hostile societal reaction forces large numbers of deviants into a subcultural milieu of their own, where they give one another mutual support and an ideology that enhances the ego and the self-image.” Sagarin & Kelly, supra note 134, at 372.


Again, this is not to suggest that subcultures are totalized by opposition. Even with dramatic ideological differences, subcultures are still embedded in, and thus influenced by, mainstream culture. See Matza, supra note 23, at 33–64.

146. According to Becker, “deviant groups tend, more than deviant individuals, to be pushed into rationalizing their position. At an extreme, they develop a very complicated historical, legal, and psychological justification for their deviant activity. . . . Most deviant groups have a self-justifying rationale (or ‘ideology’). . . .” Becker, supra note 137, at 38.

Becker considered the “deviant” group of homosexuals to be the best and most extreme example of this phenomenon. The homosexual community, said Becker, had books and magazines with articles:

designed to show that homosexuality is a ‘normal’ sexual response. They contain legal articles, pleading for civil liberties for homosexuals. Taken together, this material provides a working philosophy for the active homosexual, explaining to him why he is the way he is, that other people have also been that way, and why it is all right for him to be that way.

Id. (footnotes omitted).

147. Joseph Gusfield’s analysis of Prohibition has shown how regulation of alcohol was bound up in competition between status groups. Competing groups ascribed different meanings to alcohol use, and each tried to vindicate its ascribed meaning in the law. See generally Joseph R. Gusfield, Symbolic Crusade: Status Politics and the American Temperance Movement (2d ed. 1986).

148. Hierarchies in society are maintained, in part, “by a system of social meanings in which one group receives relatively positive associations and another correspondingly negative associations.” J.M. Balkin, The Constitution of Status, 106 YALE L.J. 2313, 2323 (1997). It is not surprising that groups at the bottom engage in tactics intended to subvert the system of social meanings: “Groups lower in a status hierarchy may respond to their lower status by developing a compensatory sense of esteem in their own ways of living, condemning the lifestyles of higher status groups as immoral or inauthentic, or attempting to turn their lower status into a point of pride through irony. . . . Working-class culture has found innumerable ways to express
defined by class or other status categories, engage in struggles to vindicate ideological systems and so to vindicate themselves. Dynamics of cultural conflict produce opposing ideological systems that often resemble inversions of one another. 149

Following this analysis, the presence of oppositional ideology in street culture should not be surprising. For a variety of reasons, members of street culture lack access to legitimate means of obtaining social ends, so they sometimes employ illegitimate means to obtain those ends. They lack the means to avoid detection and punishment, and when they are punished, the resulting stigma leads to further exclusion. 150 In response to their conditions, individuals rebel—they deny the accuracy of dominant social meanings and the legitimacy of dominant social norms. Together with other outsiders, they are isolated from mainstream society in institutions such as the prison and the ghetto. 151 The isolation fosters group dynamics that contribute to the production of radically oppositional ideologies.

resentment and disapproval of upper-class manners; blacks, homosexuals, and other lower status groups have often used derogatory epithets and stereotypes ironically and subversively.” Id. at 2324.

Working in the tradition of psychoanalysis, Elisabeth Young-Bruehl has also described how victims of prejudice engage in a variety of tactics to diagnose and resist prejudice. YOUNG-BRUEHL, supra note 27, at 457–540. Sometimes the victims respond with prejudices of their own. Id. at 480–85. It might be said that the theory of crack as a devilish contamination conspiracy is a sort of obsessional prejudice in street culture.

149. Avishai Margalit and Ian Buruma’s account of occidentalism in non-Western cultures provides an illuminating look into this process of ideological and cultural conflict. Avishai Margalit & Ian Buruma, Occidentalism, N.Y. REV. OF BOOKS, Jan. 17, 2002, at 4. Members of Western cultures, in their conception of non-Western cultures, are often characterized by Orientalism, in the sense described by Edward Said. EDWARD W. SAID, ORIENTALISM 31–32 (1978). Occidentalists, by contrast, have a contrasting moral system—built around concepts of “purity,” “soul,” “bravery,” and “manliness”—used to critique the West. Occidentalism contains critiques of “the City, the Bourgeois, Reason, and Feminism. Each contains a set of attributes, such as arrogance, feebleness, greed, depravity, and decadence, which are invoked as typically Western, or even American, characteristics.” Margalit & Buruma, supra.

What is striking is how the Occidentalist critique of the West is in many ways a mirror image—a diacritical inversion—of the Orientalist critique of the non-West. It is also striking how the Occidentalist critique resembles street culture’s critique of mainstream American society. Cf. GWALTNEY, supra note 26, at 59 (“There is nothing on this earth as low and lazy and cowardly as a cracker.”) (quoting an interviewee). We might note, moreover, that the causal links between the two systems run both directions: Both are defined by difference; both are produced by oppositional contradistinction.

150. David Garland and Richard Sparks have argued how crime policies since the late 1970s have served to “immobilize individuals, quarantine whole sections of the population, erect boundaries, [and] close off access.” David Garland & Richard Sparks, Criminology, Social Theory and the Challenge of Our Times, in CRIMINOLOGY AND SOCIAL THEORY, supra note 136, at 18.

151. Professor Fiss has perceptively analyzed the ghetto as an institution that isolates and concentrates disadvantage. Owen Fiss, What Should Be Done for Those Who Have Been Left
We can complicate and extend this analysis by recognizing how different types of stigma are linked in nested relationships. In American society, the trait of Blackness itself carries some stigma, and that stigma is linked to the more specific stigmata that result from the operation of the criminal law. Young Black men from the ghetto are associated with a variety of negative traits—laziness, unreliability, lack of intellectual ability, criminality—regardless of whether they ever commit a deviant act. Blackness is associated with crack dealing, and this association affects a group of people much larger than the subset who actually sell drugs.

As a result, the alternative-oppositional ideologies of the street are held not only by those who have been to prison or those who are members of drug dealing gangs. Aspects of those ideologies are shared in various degrees by a wider group of people. When stigma is applied to a drug dealer—when his action is labeled as deviant—that can produce an oppositional response not only in the drug dealer, but also in other individuals who identify with him in whatever way: as family members, as friends, as neighbors, and perhaps as African-Americans.

Moreover, these linkages help to explain the ambivalence that many ghetto residents express about drug dealing and drug use. Members of outsider subcultures are often caught in a bind: On one hand, they want to remain loyal to members of their “own” group; on the other hand, they want to integrate into society and distance themselves from those whose stigmata are worse:

Whether closely allied with his own kind or not, the stigmatized individual may exhibit identity ambivalence when he obtains a close sight of his own kind behaving in a stereotyped way... acting out the negative attributes imputed to them. The sight

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Behind?, BOSTON REV., July-Aug. 2000, at 4. We can extend this analysis by recognizing the ghetto's similarity to, and connection with, the institution of the prison.

152. “[S]tigma involves not so much a set of concrete individuals who can be separated into two piles, the stigmatized and the normal, as a pervasive two-role social process in which every individual participates in both roles...” GOFFMAN, supra note 137, at 137–38.

153. Goffman distinguished between stigma based on “blemishes of individual character” (such as drug addiction and imprisonment) and “tribal stigma of race.” Id. at 4. But the two types are related: Part of what constitutes the stigma of race are assumptions about character blemishes. Part of the process of stigma formation is that those who stigmatize “tend to impute a wide range of imperfections on the basis of the original one.” Id. at 5.

154. See Michalis Lianos & Mary Douglas, Dangerization and the End of Deviance: The Institutional Environment, in CRIMINOLOGY AND SOCIAL THEORY, supra note 136, at 103, 104; Melossi, supra note 136, at 170.

may repel him, since after all he supports the norms of the wider society, but his social and psychological identification with these offenders holds him to what repels him . . . . In brief, he can neither embrace his group nor let it go.\textsuperscript{156}

This dynamic helps to explain the anguish that exists in the ghetto when it comes to drugs and drug policy.

**B. Identity and Expression**

Structural factors and the processes of stigmatization produce oppositional ideologies. Oppositional ideologies can contribute to the performance of deviant acts—indeed, deviant acts can be seen as both expressing and reconstituting oppositional ideology.

One of the claims of some labeling theorists is that the process of policing and punishing deviance can itself produce deviance and deviant identities.

The process of making the criminal . . . is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits that are complained of. . . . The person becomes the thing that he is described as being . . . . The harder [the labelers] work to reform the evil, the greater the evil grows under their hands.\textsuperscript{157}

Based in part on proto-Foucauldian insights like these, labeling theorists argued that punishing deviance actually produces further acts of deviance.\textsuperscript{158} Oppositional ideologies, developed partly in response to punishment, can lead to further deviance.\textsuperscript{159}

Deviant acts can be seen as expressions of rebellion and oppositional ideology.\textsuperscript{160} Recognizing this as a theoretical matter

\textsuperscript{156} Goffman, supra note 137, at 107–08.

\textsuperscript{157} Frank Tannenbaum, Crime and the Community 19–20 (1938).

\textsuperscript{158} Becker, supra note 137, at 37. The degree of this effect depends on the degree and permanence of the exclusion. See Kai T. Erikson, Notes on the Sociology of Deviance, 9 Social Problems 307, 311 (1962).

\textsuperscript{159} This is not to say that rebellious values are the sole determinants of crime. "[C]ommitting a crime solely on the basis of adherence to a set of values or beliefs would be true only in extreme cases of highly ideologically motivated offenses or of intense group loyalty." Ronald L. Akers, Is Differential Association/Social Learning Cultural Deviance Theory?, 34 Criminology 229, 238 (1996). Many individuals who hold oppositional ideologies do not commit crimes, and subcultural systems of meaning are not so powerful that they compel individual members to break the law.

\textsuperscript{160} An individual's conception of himself can become closely tied to deviance, as he "organizes his identity around a pattern of deviant behavior." Becker, supra note 137, at 30. Becker noted how dance musicians committed repeated deviant acts in order to express "their
supports the claim that in street culture, violations of drug laws are (in part) acts of rebellion and expressions of opposition.\textsuperscript{161} In other words, they are acts that have political and ideological content. To contemplate this claim is to accept a redefinition of what is “political” and to realize that there is no “clear-cut” political sphere that exists apart from the “other facets of daily life.”\textsuperscript{162} It is also to resist the temptation of mainstream culture to define the political realm in a self-serving way.\textsuperscript{163}

Deviant acts, moreover, are not merely expressions of rebellious identity: They also solidify and reproduce oppositional identity. Political-ideological identities, like other identities, might be partly constituted by the (repeated) performance of certain acts. Some deviant acts might be part of what constitutes an oppositional political identity.\textsuperscript{164} This is especially true when deviant acts are made visible isolation from the standards and interests of conventional society.” \textit{Id.} at 98. Deviant acts can serve as symbols that (are intended to) convey social information. \textit{See Goffman, supra note 137, at 43–48.}

\textsuperscript{161} This has been true at other times in other subcultures. \textit{See David F. Musto, The American Disease: Origins of Narcotic Control} 247–50 (3d ed. 1999); Paul E. Williams, \textit{The Cultural Meaning of Drug Use,} in \textit{Resistance Through Rituals: Youth Subcultures in Post-War Britain} 106–118 (Stuart Hall \\& Tony Jefferson eds., 1993). This idea flows naturally from Professor Sunstein’s definition of “social meaning” as “the expressive dimension of conduct (not excluding speech) in the relevant community.” Sunstein, \textit{supra} note 3, at 925.

\textsuperscript{162} \textit{Kelley, Race Rebels, supra note 25, at 9.} “Politics comprises the many battles to roll back constraints and exercise some power over, or create some space within, the institutions and social relationships that dominate our lives.” \textit{Id.} at 9–10. For Kelley, this sort of redefinition of politics is essential for performing cultural and historical analysis of those on the bottom of society, especially lower class African-Americans. \textit{Id.} at 1–13. \textit{See also Hebdige, supra note 124, at 12 (“Since ideology saturates everyday discourse in the form of common sense, it cannot be bracketed off from everyday life as a self-contained set of ‘political opinions’ . . .”). We should not dismiss those who “do not choose ‘political’ subjects as having no politically resistive role.” Rose, \textit{supra} note 16, at 124.}

\textsuperscript{163} The kinds of acts that are more widely regarded as political (for example, running for office, or writing op-eds) are not available to those on the margins of society; limiting the definition of what is “political” can deny marginal citizens any sort of political participation and performance.

\textsuperscript{164} Dick Hebdige examined the “expressive forms and rituals of . . . subordinate groups” and showed how the very actions which the dominant group stigmatizes become a source of identity, value, and even triumph for those who are subordinated when it is used as “a gesture of defiance or contempt.” \textit{Hebdige, supra note 124, at 2–3.} Hebdige examined several examples of this process. \textit{Id.} at 23–70.

By defining the acts as criminal and deviant, the law is part of what constitutes the meaning of oppositional style. Violation of taboos (enforced by the criminal law or other systems) has a powerful meaning, because it challenges the “transparency” (the taken-for-grantedness) of meaning. \textit{Id.} at 91. The criminal law identifies certain acts as taboos, but those taboos can then be appropriated in unpredictable ways.

There is a certain irony here, in that the criminal law, by investing an act with a meaning of rebellion, might be said to provide a “good” to those who value rebellion. But this sort of claim distorts the chronological and conceptual relationship between rebellion and the criminal law:
by the performer\textsuperscript{165} (as when rap singers, for example, repeatedly and publicly proclaim their fondness for marijuana). To perform deviance publicly is to express rebellion; it solidifies oppositional identity.\textsuperscript{166}

None of this is to suggest, however, that deviance and oppositional politics should be entirely conflated. Many forms of oppositional politics do not include acts defined as deviant. Nor are all deviant acts expressions of political identity. I mean to suggest something more moderate: that some deviant performances—for reasons that may rest on deeply contingent historical factors—can come to have a meaning of ideological opposition. Because of the contingency, our knowledge of whether any given act of "deviance" fits the oppositional bill can only come from historical, cultural, and sociological analysis. In other words, we can only understand the relationship between deviance and opposition by closely examining social meanings.

It is precisely this sort of analysis that I have tried to perform (or at least begin) with respect to drugs and street culture. In so doing, I have tried to give a concrete example of the Foucauldian notion that rules that appear to be repressive are actually productive of (deviant) identities.\textsuperscript{167} My argument has some support not only from Foucault,
but also from the less controversial and less avant-garde sociological works of Durkheim, Merton, Becker, Goffman, and others. The argument should serve to complicate the views of those who seek to use the criminal law to shape social meanings and social norms.

IV. EXPRESSIVE LAW AND ORDER

Systems of social meanings and social norms help to maintain order in society. They limit misconduct and encourage positive behavior. They provide a semantic currency that individuals can use in the marketplace of social interaction. Social meanings and social norms help to build a society characterized by cohesion, regularity, and peace. This societal order provides the foundation for human flourishing.

But "order" has a double meaning—it suggests not only stability, but also rank. Systems of social norms and social meanings help to define which people in a society are superordinate and which people are subordinate. These systems stigmatize and exclude. They produce cohesion and unity, but they also produce something ostensibly opposed to cohesion and unity: hierarchy. This apparent


Foucault's primary explication of how the police-prison system produces deviance appears near the end of FOUCAULT, DISCIPLINE AND PUNISH, supra, at 264–92. "If the law is supposed to define offences, if the function of the penal apparatus is to reduce them and if the prison is the instrument of this repression, then failure has to be admitted." Id. at 271. But, Foucault argues, the true function of the police-prison system—indeed, the intended function—is not to reduce crime, but actually to produce it and control it in a way that benefits certain systems of power. In fact, Foucault suggests that drug crimes are a sort of "useful delinquency," where "the existence of a legal prohibition creates around it a field of illegal practices, which one manages to supervise while extracting from it an illicit profit through elements, themselves illegal, but rendered manipulable by their organization in delinquency. This organization is an instrument for administering and exploiting illegalities." Id. at 280.

Even if we reject Foucault's most controversial claim that repressive laws are intended to produce delinquency, the underlying account of how repressive laws do produce delinquency remains powerful.

168. Richard McAdams has offered a theory that norms arise from people's desire to gain esteem. McAdams, supra note 2, at 355. McAdams notes that "the preference for esteem is inherently relative—that individuals care how they are evaluated in comparison to others." Id. at 357. For the social science evidence of relative preferences, see Richard H. McAdams, Relative Preferences, 102 YALE L.J. 1, 31–48 (1992). If norms arise from a desire for relative esteem, then part of the function of norms is to separate and rank people. A related insight of McAdams's work is that the act of punishing others (by granting disesteem, for example) is a benefit to the punisher. McAdams, supra note 2, at 359–40. This conflicts with the typical understanding that norm enforcement is costly to the enforcer. See Cooter, supra note 2, at 962. See also Sunstein, supra note 3, at 965 (noting that government action to shape norms might aid groups "promoting unjust goals" or "aggravate a caste-like situation").

opposition, however, might be misleading. It might be that hierarchy is necessary for stability (perhaps especially, though not exclusively, in capitalist societies).\textsuperscript{170} Extending Durkheim, we might see that the two meanings of order are linked—that it is precisely by excluding and punishing certain persons that we construct cohesion and stability.\textsuperscript{171} On the other hand, we might see order, and the social meanings on which it sits, as an operation of power—a system imposed by some status or class groups on others. Inverting Durkheim, we might see that punishment can serve to produce discord and division.

However we assess order, we should be aware that its construction can produce resistance. Even if we see the ordering processes of society as beneficial or justified, we should not be surprised when those who are excluded or ranked at the bottom disagree. Individuals and groups will resist systems of social meaning that marginalize them; they will seek to vindicate alternate systems which offer superiority, or at least a measure of equality. Citizens will resist laws that they perceive as demeaning their status. This dynamic will limit the law's efficacy at shaping social meanings and social norms.\textsuperscript{172}

\textbf{A. The Production of Resistance}

There are, no doubt, many preconditions to the successful functioning of expressive criminal law. There are also many ways to analyze the expressive failure of criminal drug laws in street culture.

The failure may be seen as a problem of interpretation. Within the dialogue of street culture, the existence of tough criminal drug laws is not taken as a piece of evidence to support the proposition that drugs are bad, but rather is used to prove that the dominant culture will use drugs and drug laws to perpetuate subordination. This

\textsuperscript{170} Marxist theories of crime analyze how the criminal law can be used to support capitalism. "Problem populations" can be useful in that they "can be supportive economically (as part of a surplus labor pool or dual labor market), politically (as evidence of the need for state intervention) and ideologically (as a scapegoat for rising discontent)." Steven Spizer, Toward a Marxian Theory of Deviance, 22 SOCIAL PROBLEMS 638, 645 (1975). See also William J. Chambliss, Toward a Political Economy of Crime, 2 THEORY AND SOCIETY 149, 152–53 (1975) (describing how the criminal law can function to divide lower classes and also to incarcerate some surplus laborers while employing others).

\textsuperscript{171} According to Durkheim, the institution of punishment "serves to sustain the common consciousness itself"; it symbolizes, expresses, and produces solidarity. DURKHEIM, THE DIVISION OF LABOR IN SOCIETY, supra note 132, at 60–64. Bernard Harcourt has drawn the connection between the Durkheimian conception of order (which has been dominant in law and norms scholarship) and hierarchy. See HARCOURT, supra note 1, at 125–59.

\textsuperscript{172} Since subcultural norms exert more influence on individuals than cultural norms do, the systems of oppositional norms achieve substantial stability. Subcultures have relative advantages over society as a whole in enforcing norms. See McAdams, supra note 2, at 387–90.
(mis)interpretation is caused, in part, by the background ideology of street culture.173 Because street culture and mainstream culture have such different worldviews, communication between the two—through the law or otherwise—is difficult.174

The message also fails because the messenger is distrusted. The state, and the criminal justice system in particular, lack legitimacy. Legitimacy is a complicated phenomenon that can be explained in different ways.175 One lesson from the experience of drug laws and street culture is that people may deny the legitimacy of a law even though they condemn the behavior prohibited. Members of street culture resist drug laws, but it is not simply because they condemn the behavior less176 or consider it "not immoral";177—indeed, many condemn some violations (such as crack dealing) in the strongest terms. They nonetheless inhibit legal enforcement because they deny the institutional legitimacy of the criminal justice system itself.

In addition to problems of interpretation and legitimacy, expressive law can fail if it undermines social institutions that support favored norms.178 By incarcerating and stigmatizing a large number of

173. By "background ideology," I mean generally the street perceptions of society and the state sketched in Part II.A. The heavy lifting done by ideological background is further emphasized when we recognize how little people rely on empirical investigation in interpretation. There is, for example, some body of evidence on the government's role in importing drugs. See Alexander Cockburn & Jeffrey St. Clair, Whiteout: The CIA, DRUGS, AND THE PRESS (1998); Peter Dale Scott & Jonathan Marshall, COCAINE Politics: Drugs, Armies, and the CIA in Central America (1991); Gary Webb, Dark Alliance: The CIA, the CONTRAS, and the Crack COCAINE EXPLOSION (1998). Most people, however, do not make any attempt to assess this evidence before coming to some (firmly held) belief about the government's role in the drug trade. This is true, of course, both for members of street culture and for members of mainstream culture.

174. Cf. Gwaltney, supra note 26, at 193 ("You see, white men don't want to be bound by anything, especially their own laws or rules or whatever. . . . The rules don't mean what they say, that is the truth.") (quoting an interviewee).

175. For different versions of the role of legitimacy, see, for example, Andenaes, supra note 1, at 114–16; David Cole, No Equal Justice 170 (1999); Matza, supra note 23, at 102; Tom R. Tyler, Why People Obey the Law (1990); Robinson & Darley, supra note 2, at 475.

176. The "decisive factor in determining whether a norm will inhibit enforcement . . . is how much more severely the law condemns the behavior than does the typical decisionmaker." Dan M. Kahan, Gentle Nudges vs. Hard Shoes: Solving the Sticky Norms Problem, 67 U. Chi. L. Rev. 667, 680 (2000).

177. Robinson & Darley, supra note 2, 483.

178. Professors Meares and Kahan have argued in a variety of publications that incarcerating a large number of African-American men has weakened the social institutions in the ghetto, and this has produced more crime. See Tracey L. Meares & Dan M. Kahan, URGENT TIMES: POLICING AND RIGHTS IN INNER-CITY COMMUNITIES 13–14 (1999); Meares & Kahan, supra note 2, at 813. Bennett, Dilulio, and Walters argue that crime is caused by lack of properly functioning families, churches, and schools, Bennett et al., supra note 11, and use this to argue for tough criminal sanctions. Cf. National Drug Control Strategy, supra note 10, at 1 ("Drug use . . . threatens . . . the success of our Nation's colleges,
people, criminal drug laws have disrupted families, churches, and schools. Conversely, criminal drug laws have also produced other institutions that support oppositional norms. Prisons, most notably, are sites of intense discourse and norm production. Prisoners are likely to reject the legitimacy of the criminal law, and they are surrounded by others in the same position. Such an institution can produce a large number of people with highly polarized views. Those

does not necessarily limit crime. Social organization and social capital “can be directed toward malevolent, antisocial purposes.” ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 22 (2001). Even if it is true that social institutions such as families, churches, and schools transmit norms, there is no necessary reason why they will transmit the norms that are favored by the criminal law. Bennett, Diulio, and Walters, and perhaps Meares and Kahan as well, would not want to support Black Panther families, Nation of Islam churches, and Marxist schools—a community with such institutions could have a great deal of social organization, but might still commit a great deal of crime.

In short, focus on structural factors alone can obscure ideological conflict. We should ask, then: Do disorganization theorists really believe that street culture lacks norms, or do they think that the norms of street culture are bad? Do they worry that the ghetto lacks effective norm-enforcing institutions, or do they worry that the current institutions enforce the wrong norms?

Meares and Kahan occasionally suggest that the problem in the ghetto is that traditional socializing processes have been replaced by youth-controlled socializing processes. See Meares & Kahan, supra note 2, at 810–11. (Here, as elsewhere, Meares and Kahan reflect the views of Elijah Anderson. See ANDERSON, supra note 48, at 77, 97–111.) There may be something correct about this, but we should at least be aware of the possibility that the alternative systems of social norms in street culture are not simply a product of teenage angst. Not all rebellion is juvenile. See supra note 27 and accompanying text.

179. KENNEDY, supra note 10, at 134–35.

At present, jail and prisons are among the most influential institutions of socialization in African-American communities. The extent to which authorities allow these institutions to remain dangerous, destructive, lawless hells is the extent to which authorities strengthen the belief held by an appreciable number of black Americans that the ‘white man’s’ system of criminal justice remains their enemy.

Id. “No African American spends much time in prison without being exposed to the doctrines of black Muslims. Ever since the Nation of Islam was founded . . . it has drawn a lot of its converts from prison . . . .” MCCALL, supra note 31, at 209. See also KITWANA, supra note 27, at 76–83 (discussing the influence of prison culture on hip hop culture).
ideologies, once produced, are unlikely to be contained within prison walls.

The criminal law produces norms, in part, by producing discourse. The passage of a law and the application of a punishment provide an opportunity for expressing and publicizing a certain norm, an occasion for "all reasonable men" to express their "hearty approbation" of the criminal and the crime. But the law has a limited ability to manage discourse. The criminal law can stimulate discussion and debate, but it does not always stimulate the right kind of discussion and debate, and thus its attempts to construct social meanings can fail. Criminal drug laws have produced discourse in prisons and ghettos, in the literature and music of street culture, but that discourse has largely been a discourse of opposition.

B. Functional Failure, and Its Instability

Of course, nearly every criminal policy produces at least some oppositional discourse. Those burdened by criminal punishment are likely to engage in some form of resistance, so some amount of counter-expression may be a necessary cost of any criminal law. To note the existence of resistance, therefore, is not to establish that expressive law has "failed." More darkly, the right kind of resistance might even be useful for expressive criminal law. Expressive failure can be functional because society's norms can be strengthened by contradistinction from the norms of outsiders, however defined. In the same way that the criminal justice system can function as a negative reference group for street culture, so too can street culture function as a negative reference group for members of mainstream society: If those people—poor Blacks (who are Marxists, no less!)—use drugs and oppose drug policy, so much the better. When white youth use the noun "crackhead" (like the adjective "ghetto") as a racialized insult, we might say that expressive drug policy has succeeded.


Professor McAdams has discussed how legislative action signals consensus. But each discrete act of enforcement can also help to publicize a norm, in that it might stimulate people to "express their disapproval" and thus make "clear what the consensus is." McAdams, supra note 2, at 362. The criminal law, because it has particular tools of surveillance that other institutions lack, can also raise the risk of detection, which, for McAdams, is another precondition for the existence of a norm. Id. at 361–62.

181. Cf. MICHAEL TONRY, MALIGN NEGLECT—RACE, CRIME, AND PUNISHMENT IN AMERICA 97–98 (1995) ("[T]he lives of black and Hispanic ghetto kids were destroyed in order to reinforce white kids' norms against drug use.").
Defining and excluding outsiders to produce norms in the larger society is a strategy that could be criticized on several levels. But even if such a strategy is justifiable, we should be aware of its instability. Resistance cannot always be cabined; opposition may spread beyond small oppositional subcultures.

To say that expressive drug policy has failed is to say that opposition has grown too large and that oppositional norms threaten to overwhelm the norms that the law intends to support. Criminal drug policy may simply be a victim of its own size.  

Millions of citizens have been arrested and punished for drug law violations, and many millions more have used illegal drugs. They, along with sympathetic family and friends, constitute a large pool of people—literally millions—who may oppose the stigma attached by punishment, and thus produce resistant dialogue.

The resistance, moreover, has not been confined to the outsider culture of the street. As hip hop culture becomes more influential in mainstream culture, ghetto youth no longer function as a negative reference group for suburban youth. Mainstream society has its own sources of cultural resistance to drug policy, and mainstream and street resistances are increasingly forming a relationship of mutual support. We can see this when right-libertarians oppose drug policy

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182. "Because esteem is relative, the intensity of disesteem directed at those who engage in a disapproved behavior is partly a function of the total number of the people who are thought to engage in that behavior." McAdams, supra note 2, at 366. See also Kahan, supra note 2, at 357 (describing how stigma loses its force when applied to too many people).

Professor Kahan has also noted how "the steady expansion of criminal punishment at some point risks triggering a backlash." Kahan, supra note 176, at 632. With marijuana laws in the 1970s, "at the point at which the law began to be applied to white middle-class college students, members of the social mainstream began to object, triggering a self-reinforcing wave of opposition." Id. Though the accuracy of this historical claim is questionable, the general point is correct: that imposition of the criminal law can trigger opposition. Cf. William N. Eskridge, Jr., Social Movements and Law Reform, Channeling: Identity-Based Social Movements and Public Law, 150 U. PA. L. REV. 419, 433–42 (2001) (discussing how legal punishments can trigger oppositional social movements by defining a disadvantaged class, raising the cost of stigma, and increasing incentives to object).

183. Eighty-seven million Americans have used illegal drugs. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., SUMMARY OF FINDINGS FROM THE 2000 NATIONAL HOUSEHOLD SURVEY ON DRUG ABUSE 131 tbl.F.1 (Sept. 2001).

For arrests statistics, see 2000 UCR, supra note 66, at 216. There are currently approximately 450,000 persons incarcerated for drug crimes. There are 251,200 and 68,360 drug offenders in state and federal prisons, respectively. See PRISONERS IN 2000, supra note 18, at 11–12. In 1996, the last year for which data are available, there were approximately 125,000 inmates in local jails for drug offenses. See BUREAU OF JUSTICE STATISTICS, PROFILE OF JAIL INMATES 1996, at 1 (Apr. 1998), available at http://www.ojp.usdoj.gov/bjs/pub/pdf/pji96.pdf. Since then, total jail populations have risen by over 10%.

184. See KITWANA, supra note 27, at 9–11.
because of its racially disparate enforcement, when members of street culture make libertarian arguments against drug policy, and when pro-marijuana rappers find a white audience of millions.

It is not correct to say that expressive drug policy has failed simply because it has produced resistance. The production of some opposition is an inevitable property of the criminal law and may often be a beneficial property of the criminal law—beneficial at least in the sense internal to the criminal law that outsider resistance can produce insider compliance with a net effect of reduced crime. Even if such a result is open to egalitarian or other objections external to the criminal law, we can see the possible crime-reducing function of drug policy’s resistance production. Resistance, which at first appears to mark a failure, may be functional. But depending in part on the nature of the interaction between oppositional and mainstream culture, the resistance may spread, leading to a more thoroughgoing failure. It may lead to a criminal law that is pathological not only in the sense of producing stratification and discord, but also in the sense of producing more crime overall. It is possible that drug policy has failed in precisely this manner.

C. Moving Forward

The analysis I have given does not suggest any simple prescriptions for how the criminal law can work better. Despite what I have said, after all, the current policy might be working fairly effectively to reduce crime. Any complex policy regime involves a complex mix of costs and benefits. Criminal drug policies have produced some opposition in street culture, but the other benefits might justify that cost. Still, even if current drug polices reduce crime on the whole, their cost in other regards is great, and lawmakers should search for a better mix of policies.

Lawmakers might simply reduce the scope of drug policy: drug policy could reduce expressions of opposition by reducing the number of people it targets. It might, for example, focus attention on dealing and “hard” drug offenses, while relaxing enforcement of marijuana and mere possession violations. As a predictive matter, this strategy seems likely—it might be said that it has already begun. But we


187. Most recent drug law reforms, such as “medical marijuana” initiatives, have focused on reducing sanctions for marijuana and possession offenses. Several other countries have
should worry that such reforms will primarily benefit white, upper- and middle-class drug users, and will not substantially change the situation in street culture—other than isolating its opposition. If lawmakers want to change social meanings in street culture, they should consider other tactics.

It is tempting to think that the problems of drug policy result from false perceptions on the street. To make expressive drug policy work better, lawmakers could attempt to change street beliefs about the facts of drug policy. The state could try to advertise, for example, that it does not support the importation of drugs. But to those who hold conspiracy theories, denials by the alleged conspirators have little weight.  

Perceptions of drug-related police corruption may be even harder to combat because they may be based on personal experiences, which are highly salient to individual believers even if they are not representative. It is, moreover, extremely difficult to know the extent to which perceptions of widespread police corruption are accurate.

188. Cf. W. V. Quine, Two Dogmas of Empiricism, in FROM A LOGICAL POINT OF VIEW (2d ed. 1980) (describing how any statement can be held true).

Professors Meares and Kahan have proposed that we combat (accurate) perceptions of racially disparate enforcement by using a policing tactic of "reverse stings," and thus arresting and punishing more suburban users.\footnote{190} Their proposal has some merit, but it is not certain that reverse stings would radically change the racial make-up of drug arrests.\footnote{191} And given that the criminal law punishes drug


Such corruption is notoriously difficult to combat—given the incentives created by a black market, a substantial amount of corruption may simply be an inevitable cost of prohibition. Cf. SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM 1–6 (1999) (discussing how underlying economic incentives are the central determinant of corruption).


\footnote{191} Professors Meares and Kahan seem to assume the accuracy of the story that suburban users generally come to the ghetto to buy drugs from minority dealers on the street. See supra note 100. (They also seem to assume that dealers sell in their own neighborhoods, but this is not necessarily true. See FINNEGAN, supra note 66, at 15–16.). Meares does cite a few cases where reverse sting operations resulted in more suburban offenders arrested, see Meares, supra note 190, at 221 n.105, but this tactic might not always work.

Drug markets are fluid and adaptive; they are not the same at all times and all places. Since the mid-1990s, for example, there has been a dramatic rise in ecstasy use, see MTF, supra note 67, at 28–29, especially among white youth, see Press Release, The University of Michigan, Rise in Ecstasy Use Among American Teens Begins to Slow (Dec. 19, 2001), available at http://www.umich.edu/~newsinfo/Releases/2001/Dec01/r121901d.html (noting that in 2001, 10% of white twelfth graders reported using ecstasy, compared to 2% of African-American twelfth graders). Ecstasy is not typically bought and sold on ghetto streets—it is "sold primarily at legitimate nightclubs and bars."
distribution much more severely than mere drug possession, reverse stings might not substantially alter the racial composition of the prison population. Moreover, to the extent that reverse stings would result in greater punishment of white users, it might simply cause an increase in opposition to drug policy in mainstream society.¹⁹²

Even more fundamentally, my analysis of street ideology suggests that beliefs about the facts of drug policy are not driven so much by evidence and the "objective reality" of the situation as they are by background belief systems. Neither drug policy nor assessments of it exist in a vacuum. In street culture, the social meanings of drugs are largely a function of background perceptions of racism and inequality. Belief systems are holistic. Street perceptions (and mainstream denials) of drug-related conspiracies, police corruption, and disparate enforcement are molded to a great degree by factors external to drug policy. Attempts to change the "actual facts" of drug law enforcement (or perceptions thereof) might therefore have only limited effect. These considerations should give us reason to question the extent to which expressive criminal law can be used to construct social reality, especially in alienated and subordinated subcultures.

But perhaps we should also question the extent to which expressive criminal law is needed. Most ghetto residents did not need

¹⁹² Relatedly, the widespread use of reverse stings may not be politically feasible. Currently in the United States, there is a widespread moral sentiment that drug dealing is worse than drug use. This sentiment is reflected in the criminal law's radically disparate treatment of distribution and possession, and it is also reflected in the actions of police, prosecutors, judges, and juries. Even from our current disparate baseline, most Americans are likely to support more attention to dealers rather than less. A 1996 Gallup Poll found that 22% of respondents thought the best way to solve the drug problem was for police to focus more attention on dealers, while 6% thought police should focus more attention on users. See U.S. Dep't of Justice, Bureau of Justice Statistics, Public Opinion About Drugs, available at http://www.ojp.usdoj.gov/bjs/dcf/poad.htm (last modified May 9, 2002). These polls themselves are suggestive of insider-outsider norm differences related to drugs.
the criminal law to teach them the dangers of crack.\footnote{Professor Ellickson has argued that welfare-maximizing norms can arise without legal intervention. \textit{Robert C. Ellickson, Order Without Law: How Neighbors Settle Disputes} 167–83 (1991).} Justifications about the need for intervention often rest on assumptions that the ghetto is a place of extreme moral poverty and normlessness. But the ghetto is not so primitive and helpless—it is capable of developing and supporting norms on its own. In the case of crack, we can see how the direct personal experience led many members of street culture to shun crack, and thus to support anti-crack norms. Criminal drug prohibitions may have some important function, but they may not be needed to teach people that crack is dangerous. It takes a certain conceit for lawmakers and lawyers to assert that the criminal law is the "master teacher" in society. Some people learn a great deal from other institutions and experiences.

To the extent that government intervention is needed to support norms, the state should pay closer attention to issues of legitimacy. Some policies might have greater legitimacy—and thus greater expressive force—if performed on a more localized, decentralized basis. Local leaders—especially leaders within close-knit communities—may have greater legitimacy than the federal government. Those in street culture who distrust the federal government and mainstream American society might be more receptive to anti-drug messages if those messages were primarily expressed by local institutions. Decentralization would allow greater experimentation with different techniques for successful drug policy, and it would allow drug policy to be more responsive to the norms and interests of particular communities.\footnote{The Supreme Court may have some inchoate recognition of these values in drug policy. The Court has recently hinted that some federal drug policies may be subject to constitutional challenges under the new federalism Commerce Clause jurisprudence. See \textit{Oral Arguments, United States v. Morrison}, Jan. 11, 2000, at 29–30, 40–42, \textit{available at 2000 U.S. Trans Lexis 22}. The Court in \textit{Morrison} ruled that the "economic nature of the regulated activity" plays a central role in Commerce Clause analysis, and suggested that Congress has limited power to regulate conduct of a "noneconomic, criminal nature." \textit{United States v. Morrison}, 529 U.S. 598, 610 (2000). Subsequently, Justice Thomas pointed out that the Court's statutory ruling on medical marijuana did not preclude a Commerce Clause challenge: "Nor are we passing today on a constitutional question, such as whether the Controlled Substances Act exceeds Congress' power under the Commerce Clause." \textit{United States v. Oakland Cannabis Buyers' Cooperative}, 532 U.S. 483, 494–95 n.7 (2001).

Judge Kozinski on the Ninth Circuit has provided the strongest indication to date that some federal drug laws may be vulnerable to Commerce Clause challenges. In a case examining doctors' ability to prescribe marijuana, he noted that some federal regulations of drugs are near the "outer limits" of Congress' Commerce Clause power: "Medical marijuana, when grown locally for personal consumption, does not have any direct or obvious effect on interstate commerce." \textit{Conant v. Walters}, 309 F.3d 629, 647 (9th Cir. 2002) (Kozinski, J., concurring).}
In addition to choosing between national and local responses, expressive law policies should choose among different kinds of institutions to maximize efficacy. The criminal law is not the only norm-shaping weapon that the state has in its arsenal. Members of street culture have a particular distrust of the criminal justice system—to them, messages sent by other government institutions might have greater legitimacy. Perhaps the Surgeon General would be a better messenger than the Attorney General. Moreover, other forms of institutional response might be less likely to provoke opposition.\textsuperscript{195} The criminal law has a particular power to stigmatize and exclude; we have seen how stigmatization and exclusion can produce oppositional ideologies and crime. In some situations, government institutions other than the criminal justice system can express messages without inspiring so much rebellion.

Similarly, even within the criminal justice system, there are forms of regulation that are less likely to result in opposition and expressive failure. The criminal law can condemn and punish criminals without locking them in prison for decades. Consider how the state polices and punishes activities such as drunken driving\textsuperscript{196} and prescription drug fraud\textsuperscript{197}: It sends a message that the conduct is wrong, but those who are punished are not permanently stigmatized and excluded from society. As a result, these policies do not provoke significant backlash, and they may be more likely to succeed in shaping social meanings and social norms. To the extent that lawmakers need to incarcerate drug offenders, they should consider shortening sentences, and should search for ways to allow offenders to shed their stigmata and re-integrate into society once their terms are completed.\textsuperscript{198}

Because of legitimacy problems and oppositional responses to severe punishments, the expressive aims of drug policy have failed in street culture. If the state wants to do a better job of regulating social

\textsuperscript{195} John Braithwaite has argued that while certain forms of punishment function as stigmatizing shaming sanctions that solidify deviant identity, other forms of punishment can function as reintegrative shaming sanctions that restore ties between the offender and the community. Because it typically functions as a stigmatizing sanction, formal criminal punishment is often ineffective at controlling crime. See JOHN BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION 12–14 (1989).

\textsuperscript{196} See Congressman’s Son to Enter Plea, ARKANSAS DEMOCRAT-GAZETTE, May 10, 2001, at A5 (describing Asa Hutchinson’s son’s second drunk driving conviction).


\textsuperscript{198} For a proposal along these lines, see Note, Winning the War on Drugs: A “Second Chance” for Nonviolent Drug Offenders, 113 HARV. L. REV. 1485 (2000).
meanings in street culture, it should consider decentralizing drug policy, relying more on institutions other than the criminal law, and imposing less extreme forms of punishment. More generally, those who seek to use law to construct social reality should remember that they can choose from a wide array of policy strategies. The choice is not simply criminalization or legalization, long prison sentences or no prison sentences. Different situations will call for different mixes of regulatory programs.

V. CONCLUSION

It takes a certain quixotic innocence (or stupidity) to propose that the state reduce punishments for drug crimes. The low likelihood of substantial reform—especially any reform that benefits the politically powerless members of street culture—can lead to an overwhelming pessimism. Legal arrangements, like the belief systems they reflect and reproduce, are intransigent. The arguments of this Article are unlikely to change many minds.

For one thing, the arguments I have made rest on complicated empirical judgments. My descriptions of the social meanings in street culture are contestable. Even more contestable are my causal claims about how the criminal law has produced those meanings. At some level, their plausibility rests on an elaborate counterfactual about what social meanings would be under some alternate policy regime. Of such alternate worlds, we have no knowledge, and my argument might therefore be seen as no more than story-telling. The story is based on an analysis of culture—but culture is fecund; it is capable of generating an endless supply of narratives and counter-narratives. Thus, it would not be difficult for someone else to tell a different story about street culture and drug laws, and that story might have dramatically different policy implications than the one I have told. The empirical debate about how the criminal law affects social meanings and social norms can never be settled.

We might wonder, however, whether the endless empirical debates about the practical success of the criminal law masks a different sort of disagreement about what constitutes success and failure in expressive criminal law.199 Current drug policy could be called a success not simply because the situation in street culture would be no better under an alternate policy regime, but because the situation in street culture is actually beneficial in some ways. The

criminal law simultaneously confers burdens and benefits. The costs of drug policy are inextricably linked to its benefits—not simply the crude benefits of employment, corrupt profits, or political power that some receive, but (more importantly) the status benefits we all receive by using the criminal law to mark others as inferior. We should hope for a better criminal law, but we should fear that the criminal law is functioning perfectly.