CHAPTER **6**

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# ORDER MAINTENANCE POLICING

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PUBLIC spaces are shared spaces, and the people who share them often disagree about how they can legitimately be used. Their complaints range from the petty gripes of thin-skinned people unhappy with the hustle and bustle of urban life to the desperate pleas of the seriously aggrieved—complaints about raucous protestors in the city square trying to effect political change, complaints about hookers and drug pushers selling their vices on the sidewalks, complaints about teenagers trying to impress their friends in the park, complaints about street musicians collecting tips, complaints about gang members trying to assert control over turf, complaints about families drinking beer on the beach, complaints about misogynists harassing women from their front steps, complaints about immigrants roasting cuy in city parks, complaints about hawkers selling bootlegged videos on the sidewalk, complaints about skateboarders practicing kickflips on the softball bleachers, complaints about mentally ill people yelling at friends and strangers in city plazas, complaints about business owners dumping trash in the gutter, complaints about homeless men sleeping on bus stop benches, and complaints about college students milling around on the sidewalk clutching plastic cups while Lady Gaga blasts from the fraternity speakers an hour before kickoff. Some of the targets of these complaints are exercising socially-sanctioned rights that legally *cannot* be infringed, while others are exercising important personal freedoms worth protecting as far as possible. At the same time, all of them make use of the public realm—the sidewalks, parks, airwaves, beaches, plazas, and bus stops that the members of our dense and interdependent society share— in ways that other people using those spaces consider excessive and impolitic, crowding out (they say) their legitimate claims to use those spaces themselves. Order maintenance involves attempts to resolve these conflicts over the use of that shared environment; it is the police role in defining and regulating the fair use of public spaces.

That is a revisionary definition. It has to be, for our current understanding of order maintenance is in shambles. The contemporary use of the term "order maintenance" apparently began with James Q. Wilson, who defined it alternatively as the regulation of

behavior "that disturbs or threatens to disturb the public peace or that involves face-to-face conflict among two or more persons" (Wilson 1968, 16) or as "handling disputes...among citizens who accuse each other of being at fault" (as opposed to law enforcement work focused on the victimization of innocents) (Wilson 1969, 131), but those definitions have long since faded from view.[1] Today order maintenance usually gets defined by enumeration, as the enforcement of a wide range of quality of life standards including rules against public drinking, noise pollution, public indecency, verbal harassment, aggressive panhandling, and obstruction. (Wesley Skogan recently complained that such things "constitute an untidy list" united by no principle other than that "legislators do not like them" [Skogan 2008, 401].) It is often treated as a residual category that refers to most of the things police do besides enforcing the core elements of the criminal law.

This ambiguity has allowed the order maintenance function to degenerate. Most important, it has increasingly become identified with a form of aggressive policing aimed at providing more opportunities for police to question, search, and detain people they encounter on the street (Fagan and Davies 2000; Harcourt 2001; Gau and Brunson 2010). That meaning of "order maintenance" is hardly new. The police have always used the broad discretion that public order laws grant them as a covert tool to monitor and control suspicious and unpopular people in circumstances when doing so overtly would be forbidden. Disorderly conduct and vagrancy laws have been used to harass labor agitators like the Wobblies and the peaceful protesters of the civil rights era, to banish tramps from city limits ("if you ever come back to Philadelphia we'll arrest you"), and to round up people suspected of crimes that can't be proven (Foote 1956; Douglas 1960; Dubber 2001). These pretextual uses of public order law continue today, as many cities encourage police to enforce public drinking and loitering rules not out of any intrinsic concern about the behaviors they regulate but to give police more opportunity to search for guns and fugitives. Those practices have been the most significant lightning rod for controversy about order maintenance policing, and there is a danger that its abuse will drag down its legitimate uses as well.

This essay aims to pry apart the order maintenance function proper from the morally-ambiguous shadows it has always cast. Section 6.1 begins historically, clarifying the central place of order maintenance in the earliest modern police agencies and the evolution of that role up through the present. Section 6.2 then turns to the rationale for order maintenance policing today, and Sections 6.3 and 6.4 discuss two major complexities involved in carrying it out. Section 6.5 sketches some key questions for police scholarship about this topic in the future.

This essay emphasizes several conclusions:

- The heart of the order maintenance function involves regulating the fair use of public spaces by the members of a diverse public, who often have conflicting standards about how those spaces should be used.
- Order maintenance has been part of the police mandate since the inception of modern police agencies. Because public order is a collective good, the rise of full-time professional police was an essential step in providing it.

- The abuse of the order maintenance function to round up and harass suspicious and unpopular people has also been present from the start, as the ambiguity and flexibility of this role have repeatedly tempted police to hijack it for ulterior aims.
- The "broken windows" thesis may or may not be correct, but it is far less important for the justification of order maintenance than commonly appreciated.
- Order maintenance is best understood as a branch of problem-oriented policing concerned with a particular type of community problem called "disorder."
- A major frontier for order maintenance practice involves the development of more restrained forms of police authority short of arrest, including prevention tactics, persuasion, civil penalties, and temporary detention.

## 6.1  THE RISE AND FALL OF ORDER MAINTENACE

The modern police arose as a byproduct of nineteenth-century urbanization, and that connection clarifies the deep roots of their order maintenance role. Police historians often suggest that the establishment of full-time public police represented an attempt to substitute formal social control for the informal controls that urban life had eroded (Lane 1967, 2; Richardson 1970, 16; Miller 1977, 5; Monkkonen 1981b, 65; Walker 1998, 27), but urbanization had another implication for social control as well. In the city people made their homes in dense mixed-use environments that had not yet been sorted out and segregated along the lines of the modern metropolis, and when they ventured out of those homes they came together in the crowded streets, squares, and parks that began to proliferate in the nineteenth century. This complex environment made new demands on their behavior, as conduct that would have bothered no one in sparse rural spaces became problematic in the densely shared environments of the city (Lane 1968, 163; Schneider 1980).

The largely-mercenary system of law enforcement that preceded the modern police was badly-suited to enforce those demands, relying as it did on crime victims to detect and prosecute their own cases. The trouble was that disorder worth worrying about usually affects *many* people rather a single individual, so none of its "victims" has much incentive to combat it. The American colonies did pass laws designed to protect the public realm—rules against grazing cattle or removing trees from public lands, rules prohibiting disruptive behavior near the town meetinghouse, rules requiring homeowners to keep their chimneys clean, rules prohibiting the obstruction of roads and highways or riding horses on those designed for pedestrians—but most of them were rarely enforced (e.g., Smith 1961, 110–14, 124–26; Flaherty 1972, ch. 7). Like other jobs targeting offenses against intangible or diffuse victims (such as risk management, crime prevention, and morals policing), order maintenance only gets vigorous attention from professional police; it is a collective good, so only collective institutions can provide it effectively. Roger Lane (1968) put the point memorably: "Private citizens may initiate the processes of justice when injured directly, but professionals are usually required to deal with those

whose merely immoral or distasteful behavior hurts no one in particular. It takes real cops to make drunk arrests" (160).

### 6.1.1  The Roots of Order Maintenance: 1829–1900

In fact, drunk arrests skyrocketed after the arrival of the first modern police agencies, and other forms of order maintenance did too (Phillips 1977, 84–87). In Boston, home of the oldest police department in the United States, officers spent most of their time maintaining order in public spaces—regulating traffic, rounding up stray animals, controlling public drunkenness, forcing property owners to clean up ice and obstructions from adjacent sidewalks, and arresting would-be poachers from Boston Common, among other jobs (Lane 1967). Police in other cities did similar work. In the most extensive overview of nineteeth-century American police, Eric Monkkonen (1981b, 103) found that almost two-thirds of arrests in eighteen large cities fell into order maintenance categories like public drunkenness, disorderly conduct, and loitering. In London, more than 80 percent of arrests in 1838 invoked order maintenance charges (Ignatieff 1979).

It is hard to tell what exactly all this order maintenance work involved. On paper, it aimed to clarify and enforce the new standards of public behavior demanded by the urban environment, but in practice it often served other aims. The old vagrancy statutes, in particular, usually get categorized as "public order" rules, but police mainly used them to control and harass unpopular people. In the 1880s Christopher Tiedeman, one of the leading legal commentators of the era, explicitly advocated the use of vagrancy laws to detain and punish suspicious outsiders when police could not prove the crimes they were sure they had committed; and in the postbellum South, vagrancy rules were sometimes used to exert control over free blacks—even returning them to a version of slavery by pressuring them to enter exploitative labor contracts (Dubber 2001, 911–12). Some evidence suggests that the use of public order statutes for harassment increased over the course of the nineteenth century, as the share of public order arrests dismissed without prosecution grew (Monkkonen 1981b, 85).

In other cases, order maintenance degenerated into morals enforcement. By the end of the century, New York police used public order statutes so extensively to harass homosexuals that their internal records soon began noting which arrests for "disorderly conduct" fell into the subcategory of "degeneracy" (Chauncey 1995, 185), and Victorian moralists pressed the police to enforce middle-class standards of virtue on immigrant and working-class life. That last application of order maintenance inspired Sidney Harring's memorable comment that "the criminologist's definition of 'public order crimes' comes perilously close to the historian's description of 'working-class leisure-time activity'" (Harring 1983, 198).

It would be a mistake, however, to conclude that nineteenth-century order maintenance never went beyond morals policing. In many cities the police resisted pressures to convert their public order role into morals enforcement because they were too embedded in the communities they policed to enforce any outsiders' moral code (Walker

1998, 58–59; von Hoffman 1992, 318). In the 1860s London police and the British parliament pushed back against calls from influential Londoners to clamp down on noisy street musicians, insisting (as one member of parliament put it) that street music "was about the only innocent recreation the poor and powerless had left to them" (Winter 1993, 74–79). London police commissioners also refused to enforce the comprehensive ban on Sunday trading the Sabbatarians demanded, directing police "to prevent street cries which disturbed church services but to ignore quiet selling" (Miller 1977, 133). They handled the Sunday blue laws similarly, trying to prevent the disorderly drunks who spilled out of nearby gin palaces and taverns from disrupting church services but opposing a complete ban on alcohol sales (Miller 1977). In conflicts like these, the advocates of public order were not just prudes concerned with whether other people conformed with their own ideals of personal virtue. At least some of them plausibly claimed that the other side's use of public space disrupted their own.

## 6.1.2  Retrenchment: 1900–1980

In the century that followed, the police role began to change in fundamental ways that transformed and narrowed the order maintenance function. Eric Monkkonen's (1981a) detailed compendium of police statistics for large American cities over more than a century plots a steady decline in order maintenance arrests, from about 50 per 1,000 population in 1860 to one-fifth that number by 1980, leading him to conclude that "as arrest categories, drunkenness and disorderly conduct continue to diminish and may be destined to virtually disappear" (543). Elsewhere Monkkonen (1981b, ch. 4) suggests that this decline was part of a narrowing of the police function to focus on the control of serious crime, which had already begun by the final decades of the 19th century and was largely complete by 1920. Other historians date the timing of this shift somewhat later but argue even more strongly that it reflected a deliberate movement "away from public order offenses towards the more urgent task of protecting lives and property" (Wertsch 1987, 448; cf. Watts 1983, 357). In their eyes order maintenance is a relic of an older model of policing, one that institutional progress has rightfully left behind.[2]

The evidence for this common view is more fragmentary and ambiguous than commonly appreciated. When Eugene Watts (1983, 355) writes that the police department he studied "completed its transition to a primarily crime-fighting agency by the later 1940s," one wonders how he accounts for the large body of ethnographic research in the 1960s and 1970s that documented how little of *any* police agency's workload focused on "crime-fighting" even at those late dates. Progressive reformers at the beginning of the twentieth century did try mightily to refocus police attention on serious crime, but as Robert Fogelson (1977) has shown those reforms often failed.

As some of Watts's own work suggests, two factors make the broad decline in order maintenance arrests over the twentieth century hard to interpret. First, public order arrests cover a hodgepodge of different kinds of events, including not just order maintenance proper but also the many distortions of that task that have appeared throughout

history—particularly its use as a pretext to detain, question, and punish the suspicious and despised. Some of the decline in order maintenance arrests may reflect a decline in the share that fell into these degenerate categories rather than a decline in police regulation of public spaces. That seems particularly likely after the 1960s, when the share of all police arrests that involved drunkenness, disorderly conduct, and vagrancy fell dramatically (from 44 percent in 1965 to 9 percent in 2005). Near the beginning of this period Supreme Court Justice William Douglas (1960, 9) worried that police made widespread use of order maintenance statutes to "as a cloak or cover for arresting and convicting people for some other crime that cannot be proved or for conduct that is not a crime," but a decade later Douglas authored the Court's opinion in *Papachristou* v. *City of Jacksonville*, 405 U.S. 156 (1972), which struck down one of the most important statutory foundations of that practice. As Watts (1983) himself found in a different context, when police abandon the use of such catch-all statutes for crime control and investigation, the number of order maintenance arrests plummets while arrests for the crimes they had been used to target surge. *Papachristou* was only part of a broader legal revolution during the 1960s and 1970s that transformed the legal basis for order maintenance. As the courts struck down many state laws and local ordinances for vagueness and infringement on constitutionally-protected freedoms, they were replaced by more narrowly-tailored public order statutes (Livingston 1997). As Douglas's role in *Papachristou* suggests, one motivation for this legal transformation was precisely to rein in the pretextual use of order maintenance authority. To the extent that it succeeded, the drop in public order arrests since the 1960s may reflect a purification of the order maintenance function rather than its demise.

Second, order maintenance does not always or even usually end in arrest, so a declining number of public order arrests may reflect a shift in order maintenance tactics rather than a decline in its prevalence. Once again Watts himself provides an apt illustration. In 1912, the St. Louis Police Commissioners empowered officers to issue court notices for many public order violations rather than arresting the perpetrators, and order maintenance arrests immediately began a steep decline, falling 75 percent over the next decade (Watts 1983, 347). Four years earlier Cleveland police chief Fred Kohler had announced a policy encouraging officers to avoid arrests whenever possible for less-serious violations of the law, including most public order offenses. Instead he directed police to issue warnings or (in the case of juveniles) escort the offender home to his or her parents for discipline. Drunkenness and disorderly conduct arrests immediately dropped by two-thirds (Walker 1977, 95–96). Changes like these did reflect a judgment that arrest was often an inappropriate response to public disorder, but in each case police officials called for alternative tactics rather than no response at all.

Finally, insofar as the priority of order maintenance did decline over the course of the twentieth century, the decline may not reflect more enlightened police attitudes as much as it reflects social changes that many people regard with ambivalence. Over the past century the dense and relatively unsegregated cities of the nineteenth century gave way to sprawling and fragmented metropolitan areas with much less street life than their predecessors, and cultural ideals have increasingly directed Americans to the private home

rather than the public realm for fulfillment (Sennett 1977; Schneider 1978). Monkkonen (1981a, 555–57) once analyzed in considerable detail whether the steep decline in arrests for public drunkenness over the course of the twentieth century might be connected with the relatively modest changes in overall per capita alcohol consumption, but the proportion of alcohol consumed *at home* changed much more dramatically during this period. According to Ray Oldenberg (1999, 166) (who views the neighborhood tavern as an important social institution that once helped to bind many communities together), the share of alcohol consumed in public places like bars fell from around 90 percent in the first half of the twentieth century to somewhere between 10 and 30 percent by its end. Part of the decline in public order arrests may be the result of a decline in public life itself. As our social and recreational lives have increasingly retreated to the private home, the conflicts they generate fade out of the public realm and reappear, to some degree, in the domestic sphere.

### 6.1.3  Revival: 1980 to the Present

After decades of effort to rein in the order maintenance function, the 1980s saw a revival of enthusiasm in some quarters for expanding it. The watershed was clearly Wilson and Kelling's "Broken Windows" essay, which more than anything was a reaction to the transformation of public order law that had just transpired. After two decades of court decisions striking down many of the legal tools police had used to maintain order, Wilson and Kelling (1982, 35) argued that "this wish to 'decriminalize' behavior that 'harms no one'— and thus remove the ultimate sanction police can employ to maintain neighborhood order" was "a mistake." By the time "Broken Windows" appeared, disorder had already become a major public issue in cities like New York, where city officials had already begun to develop aggressive new strategies to tackle graffiti in the subways and streetwalking in Times Square (Vitale 2008). The accelerating deinstitutionalization of the mentally ill through the 1970s (Jencks 1992) probably contributed to the revival of attention to public order; in many cities the call to "restore order" to public spaces emphasized problems like aggressive panhandling, verbal harassment, public sleeping, and public urination commonly associated with the homeless mentally ill. For many critics, that focus made the revival of order maintenance look like an exclusionary and possibly mean-spirited attack on the disadvantaged (e.g., Waldron 1991; Beckett and Herbert 2010).

  A few years after "Broken Windows" appeared, police agencies around the country embarked on new aggressive order maintenance strategies. Most had given patrol officers no direction at all in this area, and several of them hired Kelling as a consultant to develop enforcement guidelines and disorder reduction programs. The most prominent was the New York City Transit Police, where Kelling worked with a transit system task force to develop a tailored strategy for restoring order. (A one-time student of Herman Goldstein, Kelling viewed this task as an application of problem-oriented policing to the "problem" of public order, and he circulated material from a draft of Goldstein's forthcoming book to some of the task force members.)

(Kelling 1997; Kelling and Coles 1996). Other cities soon followed suit throughout the country and elsewhere in the world; Britain's "Anti-Social Behavior" initiative, in particular, was often presented as an adaptation and extension of Broken Windows policing (Tonry and Bildsten 2009). Back in the United States, national agencies like the communitarian American Alliance for Rights and Responsibilities (AARR) began to develop and support legal tools designed to facilitate more vigorous order maintenance efforts, such as aggressive panhandling, curfew, and gang loitering ordinances (e.g., Teir 1993). More recently, the National Center for Problem-Oriented Policing (CPOP) has contributed to the development of order maintenance policing through guides focused on a wide variety of specific "disorder" problems, from disorder at day labor sites (Guerette 2006) to loud car stereos (Scott 2001). CPOP's work, in particular, has helped to move the revival of order maintenance beyond the narrow focus on the homeless where it has frequently become mired.

## 6.2  The Rationale for Order Maintenance

The history of the order maintenance function, filled as it is with controversy and abuse, invites the question of why the police should bother with it at all. Today the most widely-debated answer comes from Wilson and Kelling (1982), who argued (among other things) that vigorous order maintenance may reduce serious crime, as unchecked disorder drives law-abiding residents indoors and emboldens would-be criminals by signaling that the neighborhood is out of control. The debate about this hypothesis will be familiar to students of the police, and it makes little sense to provide a comprehensive review here.[3] (The literature it inspired has grown so large that a full review would make it impossible to discuss anything else in this essay. As Gary Sykes [1986] already lamented four years after "Broken Windows" appeared, that tendency to crowd out more substantive discussion of the order maintenance function has been the most unfortunate byproduct of the disorder-causes crime hypothesis.) Instead I will try to explain why this approach to the study of order maintenance policing may matter less than the attention it has gotten suggests.

### 6.2.1  The Limits of Broken Windows

First, many of the most significant order maintenance debates are debates about the kinds of behavior the police can and cannot legitimately regulate, and the disorder-causes-crime thesis could not resolve them even if it were correct. If public behavior like panhandling causes crime in the way that Wilson and Kelling suggested, the effect is too indirect to provide a reason for criminalizing it. We rarely hold people criminally responsible for the indirect effects that their otherwise-innocuous behavior has on the voluntary actions of others; for example, we do not hold moviemakers liable for the copycat crimes their films

inspire (Thacher 2004; von Hirsch 1996). Our reluctance to do that makes good sense, for abandoning these moral limitations on the extent of personal responsibility would threaten to undermine any principled limits to police authority. If a public behavior (or private, for that matter) can be shown to raise the odds of crime down the road, police can put a stop to it—regardless of the intrinsic character of the behavior, the motives underlying it, the attitude of the person engaged in it towards the crime it causes, or other factors that normally help to define the outer limits of moral responsibility. These are not academic worries. Many recent abuses of the order maintenance function seem to result from a sense that the ends justify the means, as police press order maintenance authority as hard as possible for the sake of crime control (Fagan and Davies 2000).

In principle, the effect of disorder on crime might still play a legitimate role in determining the priority that police assign to enforcing the public order standards that have been justified on other grounds, but it turns out to be much more difficult to determine what that effect *is* than either advocates or critics of the broken windows hypothesis usually acknowledge.[4] (The fact that they still disagree about the basic question of whether order maintenance has *any* effect on serious crime after thirty years of research seems to illustrate that difficulty.) My own sense, probably not shared by most criminologists, is that the most compelling experimental studies of order maintenance have identified significant effects on neighborhood crime in the initiatives they studied, though none of these studies is beyond reproach and others find no direct causal link between disorder and crime. Regardless, order maintenance can take so many different forms and play out in so many different neighborhood contexts that it seems unlikely that there is any one answer—or any manageable family of answers—to the question of whether it "works" to reduce serious crime.

The drive to arrive at that kind of answer reflects the influence of the program evaluation paradigm on recent police research, but there are other ways to study the link between disorder and crime. In particular, we might look for more robust scientific understanding through abstract studies of basic causal mechanisms (Heckman 2005; Cartwright and Pemberton 2011)—an approach illustrated by a recent Dutch experiment that demonstrated how disorder undermines the commitment to abide by social norms in favor of a "hedonistic" psychology of self-interest (Keizer, Lindenberg, and Steg 2008). (In one of the study's three experiments, for example, the researchers left an envelope containing a visible 5-Euro note sticking out of a mailbox. On days when the researchers left litter in the area or painted graffiti on the walls, a quarter of those who passed by stole the envelope, while only one-eighth did when the litter and graffiti were gone.) The study has been justly described as a major contribution to our understanding of the Broken Windows hypothesis. Unfortunately, when work like this does generate reliable knowledge of basic psychological mechanisms, that knowledge can be difficult to apply in the uncontrolled environments we ultimately want to intervene in because even when we can be sure those mechanisms operate, other forces may overwhelm them in particular cases (Cartwright 1999). After the Dutch study appeared, critics complained that the contrived and relatively trivial nature of the scenarios it examined make it foolhardy to apply its results to the serious crime problems of troubled neighborhoods (Kaplan 2008; Reisig 2010, 34).

Taken together, these two challenges pose a dilemma for complex interventions like order maintenance—interventions that take many forms and play out differently in different contexts. On one hand, program evaluations of realistic order maintenance interventions often do not generalize, while on the other hand, basic science focused on fundamental causal mechanisms that *do* operate fairly consistently across a wide range of contexts can be difficult to apply. This dilemma makes it hard to base policy decisions on the kinds of long-term and indirect effects that "Broken Windows" proposed, at least when the intervention that is supposed to bring them about is as variable and sensitive to context as order maintenance policing. Such effects may simply be too uncertain to provide a firm basis for policy choice (Rein and Winship 1998; Thacher 2004).

### 6.2.2  Beyond Broken Windows

Ironically, one of the most important legacies of "Broken Windows" may have been to entrench a mode of thought that Wilson and Kelling themselves lamented. Criticizing the decriminalization movements of the 1960s and 1970s, these authors complained about "a growing and not-so-commendable utilitarianism" that held that law should never restrict behavior "that does not 'hurt' another person" (1982, 35). The argument Broken Windows became famous for and thrived on exactly this utilitarian perspective. As Bernard Harcourt (2001, 207) put it, the theory aimed to "transform these quality-of-life offenses from mere nuisances or annoyances into *seriously harmful conduct*—conduct that in fact contributes to serious crimes." Instead of a challenge to the utilitarian perspective on police work, "Broken Windows" may be its most significant recruit.

In the process, the essay may have reinforced precisely the view of the police role that Wilson and Kelling meant to contest—the view that the one and only mission of policing is to combat serious crime. Over and over the most sophisticated police scholarship has shown that the image of the police as "crime-fighters" is an oversimplification or even a deliberate mystification, demonstrating that police perform a wide variety of tasks including crowd management, traffic patrol, accident investigation, and the mediation of disputes among neighbors (Goldstein 1977; Manning 1977; Bittner 1990; Ericson and Haggerty 1997; Kleinig 1996). To think about these tasks only in terms of their relationship with serious crime is to flatten the police function gratuitously. A full appreciation for the complexity and breadth of the police role will remain elusive until we have developed a rationale for these tasks that goes beyond their derivative significance for crime control.

### 6.2.3  Order Maintenance and Problem-Oriented Policing

The threats to public spaces at the center of the order maintenance function are community problems in their own right, regardless of the indirect effects they may or may not have on other problems like serious crime; they are *substantive police problems* in

Herman Goldstein's (1990) sense of that term. Earlier I noted how George Kelling relied explicitly on Goldstein's work to develop one of the most influential order maintenance initiatives a few years after "Broken Windows" appeared, conducting interviews and undertaking detailed observation of conditions in the New York City subway system to define the nature of the problem the transit police faced and develop tailored strategies for resolving it. In that sense the contemporary revival of order maintenance can be viewed as a particular application of problem-oriented policing.

More surprising, there is a case to be made that the relationship works the other way—that problem-oriented policing descends from order maintenance policing, as a generalization of the remarkable but neglected analysis of the order maintenance function published forty years ago by Tulane law professor Robert Force (1972). In *Problem-Oriented Policing* (1990) Goldstein credited Force with the central criticism that underlay his own reconceptualization of the police role, that "police are often responding to little more than the most overt, one-time symptom or manifestation of a problem rather than to the problem itself" (20), and he went on to assert that Force's work "still provides the best exploration" of how and why the police need to search for creative alternatives to arrest to resolve the problems they face (131). A major purpose of Force's essay was to develop a clearer understanding of the nature of public disorder as a community problem and to develop new strategies to control it.

As a problem-solving enterprise, one of the distinctive features of order maintenance work is that many of its most pressing questions focus on ends rather than means—on what kind of public behavior should be prohibited, rather than how exactly to put a stop to it once we know what it is. Of course, all problem-oriented policing efforts must spend time defining and redefining the nature of the condition police aim to establish (Goldstein 1990, ch. 6), and questions about means are hardly absent from order maintenance work. Nevertheless, the moral ambiguity and conflict surrounding "disorder" make this normative task loom especially large.

Force (1972, 406) himself argued that the historical legacy of the order maintenance function weighed it down with illegitimate efforts to control the "diversions and morals of the poor," insisting that a new morally-defensible conception needed to be developed to rein these abuses in. In that respect, the most pressing task in the analysis of disorder as a substantive community problem lies in clarifying the moral basis of the standards of public behavior that define it. The conception of disorder as unfair use of public space provides that basis.

## 6.2.4  Disorder as Unfair Use of Shared Space

As the history of order maintenance illustrates, the kind of rules a society needs depends on the kind of society it is. To the extent that a society is mainly a collection of individuals who live side by side in private homes, coming together in privately-run offices and stores to work and shop but scattering to their individual enclaves to consume and live (Lofland 1998, 196), it needs rules that protect their individual interests and safeguard

the boundaries that define the private spheres where they carry out their lives. A police focused entirely on protecting life and property may be all this sort of society needs. But if a society is more collective than that, so that its members live important parts of their lives together, sharing some of their resources and their environment rather than carving everything up into individual portions for private use, then it needs rules defining how they are going to regulate the sharing. If their children play on public playgrounds as well as in their backyards; if they shop in public bazaars as well as private stores and mail-order shops; if they engage with politics on the sidewalks as well as in commercial media; if they move from place to place on public roads, sidewalks, buses, and subways; if they invest wealth and cultural meaning in collective enterprises like public parks and monuments rather than private consumption alone; then they need to clarify terms of use for these collective assets that will ensure everyone fair access and safeguard the purposes for which the public has created them. A society with ambitious hopes for its public realm needs an equally ambitious conception of the police role.[5]

It is often difficult to determine what counts as unfair or inapt use of a public space—this ideal describes an approach to analysis rather than an unambiguous principle—but clear examples exist. Many fall into the category of "accumulative harms" (Feinberg 1984, 225–32), acts that are trivial in isolation but make up part of a larger whole that *does* pose a significant danger. (Wesley Skogan [2008, 196] observes that residents experience such transgressions as "conditions" rather than "incidents.") It is a serious mistake to ignore such harms simply because each seems so minor on its own (Glover 1975; Parfit 1984, ch. 3; Kagan 2011). The clearest examples are littering and (further afield) pollution: Each individual act of littering or pollution is a minor annoyance rather than the sort of serious harm that typically justifies criminal justice intervention, but if *everyone* littered or drove cars with dirty engines then important shared resources would be destroyed. To prevent that we agree to fair terms of cooperation that will keep the accumulated damage below the crucial threshold where inconvenience fades into harm—for example, by prohibiting littering altogether and requiring everyone to follow strict emissions standards—and then back those restrictions up with legal sanctions. This basic model captures many instances of disorder, such as prohibitions on amplified music, lying down in transit stations, soliciting on crowded sidewalks, and even trampling the grass or picking flowers in public parks. Whether or not such things cause more crime and disorder, they are wrong because these individually-trivial acts would destroy the livability of our public spaces if everyone engaged in them. As a matter of fairness, everyone ought to share the burdens of self-restraint (with some exceptions discussed in Thacher 2004).

In other cases, a single disorderly act may unacceptably burden other users of public space on its own; public lewdness and verbal harassment of pedestrians are examples. Such actions may not "harm" anyone in the sense that our most familiar crimes do, but they frighten, disgust, anger, worry, or humiliate their unwilling targets and onlookers in indefensible ways—in other words, they *offend* them in the idiosyncratic sense of that word defined by legal philosopher Joel Feinberg (1985). In a diverse society we all need to have thick skins, but tolerance has limits; it just is unreasonable to expect to indulge our most offensive whims in public places that we share with others. The people using sidewalks,

buses, plazas, parks, and beaches are taking advantage of collective assets designed to be used by everyone, and when needless offense crowds them out they have a legitimate complaint.[6] Of course, not all offenses are proper subjects for government regulation. If an offensive action serves a vital purpose or only offends the skittish, then the police have no business putting a stop to it. But if the action is maliciously *designed* to offend, or if it could easily be performed somewhere else less disruptively, police action may well be appropriate.[7] It can be difficult both in theory and practice to draw these distinctions—one attempt comes from First Amendment law, which allows government to regulate the time, place, and manner of offensive speech but not eliminate it entirely—and police constantly find themselves caught between demands to crack down and to lay off. Feinberg (1985) himself made the most substantial effort to develop criteria for isolating true "offenses" that plausibly warrant criminal justice intervention (ch. 8), believing that this line of thought provided the most defensible basis for breach of the peace statutes and similar public order rules (46).

There are other ways of using public spaces unfairly, but these two categories suffice to demonstrate that the justification for order maintenance does not depend on its uncertain link to crime control. Legal decisions about order maintenance tactics rarely if ever turn on the indirect consequences of disorder for crime; instead they focus on more immediate offenses and harms (Thacher 2004, 388–89). "Broken Windows" itself has become too closely identified with one of many arguments Wilson and Kelling (1982, 29, 31) made. Their essay began with a call to "understand what most often frightens people in public places," insisting that "outside observers should not assume that they know how much of the anxiety now endemic in many big city neighborhoods stems from fear of 'real' crime and how much from a sense that the street is disorderly, a source of distasteful, worrisome encounters." Not everything that scares other people warrants police intervention, and there are ways to make unfair claims on public space other than instilling fear, but this central theme of "Broken Windows" makes most sense as a discussion of *offense*. To go on to speculate that these worrisome encounters might generate crime added an interesting hypothesis for social scientists to investigate but nothing essential for the justification of order maintenance.

Of course, many of the existing rules that govern public spaces do not reflect any principle of fairness but instead bear the imprint of illicit moralism, political power, and prejudice. Rules regulating street vendors often reflect the protectionist interests of fixed-location businesses and nativism more than real concerns about traffic, safety, and the fair allocation of tax burdens (Bluestone 1991; Kettles 2004); gang injunctions and loitering rules sometimes reflect racist overreaction rather than legitimate concerns about public intimidation (Roberts 1999; Sampson and Raudenbush 2004); and youth curfews and skateboard bans may reflect cultural anxieties about youth and their political disenfranchisement rather than any actual danger posed by their activity (Valentine 2004). When public order rules do target disruptive uses of public space, they sometimes ignore the significant personal freedoms those uses involve, enforcing a sterile homogeneity that undermines a central purpose of public space—the room it makes for experimentation, diversity, and surprise (Sennett 1970; Lynch 1990). They may also ignore inequality in access to *private* space, which influences the share of their lives

different groups must live out in the public realm (Stinchcombe 1963). At the extreme, homelessness is defined by the fact that the homeless person has no unconditional access to private space, so the rules of behavior in public spaces mark out the extent of his freedom. Beginning from this simple observation, Jeremy Waldron (1991) mounted a powerful attack on many recent public order laws, arguing that they represent a dramatic incursion into the freedom of the homeless to take care of a variety of basic human needs. "What is emerging," Waldron warned, "is a state of affairs in which a million or more citizens have no place to perform elementary human activities like urinating, washing, sleeping, cooking, eating, and standing around" (301).

Those who believe that public order should be a major police priority ought to advocate not the enforcement of existing public order standards but their reconstruction to make them worth enforcing. Legitimate order maintenance only targets public behaviors that really do use public spaces unfairly, such as accumulative harms and Feinberg's "offenses," and it does so equitably and with due respect for personal freedom, particularly for the homeless and others with limited access to private space. The task is undoubtedly difficult and complex, but most sophisticated agencies have risen to the challenge (Kelling 1997; Livingston 1997; Thacher 2004).

## 6.3  Matching Means to Ends

The job of maintaining order in subways, parks, and sidewalks is no more dispensable than the physical maintenance of these public assets is, but *individual* acts of disorder often seem too trivial to warrant the time and effort it takes to combat them. For that reason police and their critics alike often argue that their time would be spent better fighting serious crime (Bratton 1995, 450; Kelling and Coles 1996, 131; Zimring and Hawkins 1997, 14); it is the trivial nature of many instances of disorder that led Albert Reiss (1985) to dub them "soft" crimes.

These objections contain an element of truth, but often they are overblown. In practice, the main task that competes with order maintenance is not crimefighting but response to 911 calls (Moskos 2008, 109), which only rarely have much to do with serious crime, and which tend to skew police effort towards private priorities (no matter how trivial) rather than public problems. It also bears remembering that the impact of a single act of public disorder is typically felt by many people, so the aggregate harm or offense may be more substantial than it appears to any one "victim" in particular. (Wilson and Kelling [1982, 38] were right to conclude that "public drunkenness, street prostitution, and pornographic displays can destroy a community more quickly than any team of professional burglars" even if such incivilities have no effect on crime itself.) Finally, the prospects for deterrence may be especially encouraging for many public disorder crimes compared with the most familiar *mala in se* wrongs covered by the criminal law; in this area internal moral restraints are often weak and "nearly all of us are potential criminals" (Andenaes 1974, 10–11). To ascertain what rules of conduct govern a public place we

often take our cues from the way other people behave. In that respect disorderly conduct often arises from imitation or precedent, so that (in a more modest version of the Broken Windows thesis) putting a stop to the first act of disorder may prevent much more than the harm of that act alone (Thacher 2011). A single arrest for farebeating costs the police more than the $2 fare to process, but if it is an arrest for the *first* act of farebeating in what otherwise would become an epidemic it may make sense in purely financial terms.

All of that said, arrest and prosecution often still seem like grossly disproportionate responses to a single merely offensive act, or to the tiny fraction of an accumulative harm contributed by one transgression. An important frontier in order maintenance theory and practice involves the development of responses and tactics proportionate to the venial harms associated with individual incidents of disorder. The earlier examples of Cleveland and St. Louis illustrate how progressive police agencies have pursued that task for at least a century.

## 6.3.1  Preventing Disorder

Ideally order maintenance can be accomplished without police enforcement at all. The users of public spaces regulate each other with subtle stares and mild rebukes (Goffman 1966), and recognized public figures like newsstand operators, transit station managers, and respected elders step in when those least formal sanctions fail (e.g., Jacobs 1961; Whyte 1988). These informal efforts provide the bulk of order maintenance in most public spaces. Nevertheless, they may be discounted and lose their effectiveness unless everyone implicitly recognizes that the police can be called in as backup, and by themselves they risk worse forms of intolerance and discrimination than the police themselves are likely to mete out (Thacher 2009).

When community members and institutions do complain to the police about disorder, the police have a wide range of responses to draw from. As an application of problem-oriented policing, order maintenance has often searched for ways to reduce opportunities for disorder rather than simply enforce the rules against it. Public drunkenness has been reduced through controls on alcohol sales (Björ, Knuttson, and Kühlhorn 1992), disruptive gatherings of youth have been alleviated by staggering the end of the school day or arranging transportation as soon as a popular roller rink closes (Scott 2004, 16–17; Eck and Spelman 1987), careful zoning rules prevent conflicts over noise and other nuisance complaints (Garnett 2010, ch. 4), public urination can be prevented by improving public restroom facilities (Duneier 1999, 173–87), neighborhood disruption caused by feeding the hungry and homeless in parks has been alleviated by moving these programs indoors (Zeveloff 2008), and in many contexts simply clarifying and publicizing rules of conduct may help restore public order (Clarke 1997, 23–24). On George Kelling and Catherine Cole's account, New York's influential effort to restore order in the subways began in 1984 with Transit president David Gunn's "Clean Car Program," which tackled rampant graffiti by rolling out new clean subway cars one-by-one and then immediately removing them from service for rapid repainting as soon as graffiti struck. By depriving

graffiti artists of the visibility and fame they sought, the program succeeded where arrest and deterrence had failed (Sloan-Howitt and Kelling 1990). Kelling and Coles (1996, 117) conclude approvingly that transit agency succeeded "because the Gunn administration abandoned the use of a law-enforcement strategy in dealing with graffiti."

## 6.3.2  The Educational Role of the Police

When prevention fails and patrol officers come across or get summoned to disorderly conduct, reminders and admonitions may be enough to put a stop to it. Precisely because disorder's harms can be so hard to detect and the rules that define it so complex and variable, disorder often results from thoughtlessness rather than malice.

In that respect the police role in regulating the use of public spaces often has more to do with teaching and reminding people about appropriate standards of conduct than with the enforcement of clear-cut rules that everyone already understands. This is a very different role for the police than the more familiar one of controlling malicious wrongdoing; its central tool is education rather than deterrence. Its best and earliest exponent was Frederick Law Olmsted, who directed the Central Park Police force at its inception in 1858. Where municipal police focused on crime control aimed to "overawe, outwit, and bring to punishment the constant enemies of society," as Olmsted put it, the park police focused on order maintenance had a very different aim—to "respectfully aid" the users of public space "toward a better understanding of what is due to others, as one gentlemen might manage to aid another who was a stranger to him" (Thacher 2011). Olmsted's quaint Victorian language sounds antiquated today, but it has important contemporary echoes. One comes from the order maintenance guidelines for the New Haven, Connecticut Police Department, which call on officers first and foremost to "educate the public about civility, the consequences of incivility, and the laws that oblige citizens to behave in particular ways" on the assumption that "some citizens do not fully understand their obligations, and if those obligations—for example, regarding a noisy car or public drinking in parks—are patiently explained, they will adhere to the law"; only when these efforts at persuasion fail should they resort to citations or arrest (Kelling 1997, 50).

Recognizing this educative role for police is crucial in the order maintenance context. When we conceive of the police's job in the more familiar way, as focused on the control of deliberate predation through deterrence and incapacitation, hamfisted responses to disorder like the "zero tolerance" approach that gained currency over the past two decades seem to follow naturally.

## 6.3.3 Enforcement

The harder questions come when, despite our best efforts to prevent disorder and control it informally, serious and debilitating problems still plague our public spaces. When prevention and persuasion fail, how can police respond?

They can and sometimes they should resort to arrest, but they may have more appropriate sources of authority to draw from as well. Police handle a wide range of minor infractions like public drinking, unlicensed vending, obstructing traffic, and public urination using citations and court summonses that do not carry the same severe consequences as misdemeanor arrests; indeed those severe consequences make it hard to justify the continuing practice of cities that *do* customarily arrest people for such things. Other sanctions short of arrest may exist depending on where disorder occurs. One factor that makes order maintenance easier in quasi-public spaces like subway systems and stadiums is the legal possibility of simply ejecting disruptive people for short periods rather than arresting them (e.g., Wilson and Kelling 1982, 38). Some cities have extended this kind of authority to a much wider range of true public spaces for much longer periods, but that strategy has received incisive criticism (von Hirsch and Shearing 2000; Beckett and Herbert 2010). Police have also used asset forfeiture, liquor license suspensions, and "padlock laws" that allow them to temporarily close nuisance properties as order maintenance tools (Bratton 1995), though again these interventions raise civil liberties concerns that call for careful safeguards and limits.

Legal innovation continues to add to these alternative sanctions. Forty years ago Robert Force (1972, 407) worried that "one reason for the great number of arrests and prosecutions for petty offenses today is that, in many cases, those are the only authorized governmental responses," and he proposed giving police authority to take a variety of less intrusive steps to maintain order depending on the circumstances—including forcibly escorting the violator to his home, a hospital, or a social welfare agency; detaining him temporarily on the street; or taking him into custody in police lockup for up to four hours with no intention of filing charges, housing him separately from people charged with criminal offenses, and protecting him from interrogation and most searches. Force's proposals were never enacted in full (Goldstein 1993, 50), but many states have authorized police to detain disruptive drunks and drive them home or to detox facilities (Goldstein 1990, 130–31), and shortly after Force wrote, the Swedish legislature empowered police in that country to detain disorderly people for up to six hours (Kühlhorn 1978). This kind of police authority raises obvious concerns. Detentions without prosecution lack an important opportunity for judicial oversight, and the very fact that they seem less intrusive may encourage police to overuse them. Force and others have argued that the first concern may be more apparent than real—it is possible to provide legal safeguards for temporary detention, and a very large share of order maintenance arrests *already* end with no prosecution (Force 1972, 403; Goldstein 1990, 137–38)—and an evaluation of the Swedish law found no evidence of net-widening (Kühlhorn 1978, 8). Nevertheless, such concerns deserve serious attention.

A major challenge facing all of these less-intrusive sanctions for disorderly conduct is the possibility that offenders will just disregard them. The most important role for arrest and prosecution may be to serve as a last resort in the face of such defiance. New York City's famous "squeegiemen" had received citations for years but rarely appeared in court to pay or contest them; police finally put a stop to the problem by rigorously serving arrest warrants for those who ignored their summons (Kelling and Coles 1996,

141–43). In cases like these, the severe sanction of arrest is not used to punish disorderly conduct itself but to punish defiance of less intrusive sanctions—a serious offense that threatens the very possibility of a moderate but effective system of justice.

None of this is to deny that arrest and prosecution may sometimes be appropriate responses to disorderly conduct, but an ideal approach to order maintenance strives to craft more measured responses—responses that are proportionate to the often venial character of the offenses involved, reserving more serious sanctions like arrest as last resorts to deal with extreme cases and defiance. Significant organizational barriers may stand in the way of this ideal; in particular, performance measurement and supervision systems often demand arrest statistics and therefore get them. Because of those barriers, reorienting order maintenance practice along these lines will require organizational innovations that go beyond front-line practice. The effort is worthwhile, though, and not only because of the intrinsic fairness of responding to minor offenses with mild sanctions. It may also provide a bulwark against some of the pretextual uses of order maintenance authority I have repeatedly returned to. If a disorderly person *does* move along when the police ask her, then the police may not search her (Livingston 1999, 187), and neither citations nor even temporary detention provide police with as much scope for harassment and investigatory fishing expeditions as arrests for disorderly conduct do (Force 1972, 422–23).

## 6.4  Regulating Police Discretion

Pretextual uses of order maintenance authority represent only one example of the potential for police to abuse it. Even when police do invoke their order maintenance authority to regulate the fair use of public spaces, they may do so selectively, cracking down on disorder more zealously when the guilty party is a poor minority (Roberts 1999). Order maintenance may also serve exclusionary purposes, aiming to eject undesirable people from elite neighborhoods and business districts rather than instilling standards of conduct designed to allow different groups to coexist (Beckett and Herbert 2010; Waldron 1991, 314). In each case police become, as Wilson and Kelling (1982, 35) themselves put it, "the agents of neighborhood bigotry." That danger is an inherent part of the order maintenance function: Empowering police with the legal tools to maintain order almost inevitably means enhancing their discretion, with all the potential for abuse and inequity that unchecked discretion involves.

The legal transformation of the 1960s and 1970s made progress on this front, putting an end to the nearly unrestricted authority police once had to maintain order however they saw fit (Livingston 1997, 595). Today police must focus on a person's behavior rather than her status; they must respect her constitutional rights to free speech, assembly, and travel; and the rules they enforce must be clear enough to inform her of what is forbidden (e.g. *Robinson v. California*, 370 U.S. 660 [1962]; *Gooding v. Wilson,* 405 U.S. 518 [1972]; *Coates v. Cincinnati*, 402 U.S. 611 [1971]). These new standards forced police to

stay within the boundaries of increasingly restrictive public order rules—for example, rules against "aggressive" solicitation that includes touching or following (as opposed to broad bans on any panhandling whatsoever), rules against *intending* to annoy passersby (as opposed to acting in any manner that happens to have that effect), and rules against loitering for the purpose of prostitution or other vices (as opposed to broad bans on standing on the sidewalk with no apparent purpose).

This legal transformation eliminated some of the worst abuses of order maintenance authority, but Debra Livingston (1997, 1999) has made a compelling argument that scrutiny of public order authority by the courts may have reached a point of diminishing returns—and that in some cases it has actually become counterproductive. The central thrust of this legal transformation aimed to restrict police discretion by forcing legislatures to eliminate vague public order standards, but the demand for clarity often drives legislators to pass precise but extremely broad laws that no one expects the police to enforce consistently, such as comprehensive youth curfews in place of vague "youth loitering" laws. Such broad laws hand officers at least as much discretion as the vaguely-worded statutes they replaced (Livingston 1999, 172–73).

Livingston herself argues that legal oversight should increasingly give way to organizational measures for reining in abuse, and she points to many efforts that the most progressive police agencies have carried out. Police agencies should develop formal guidelines for the use of their discretion (Kelling 1997), improve order maintenance training (Bittner 1967, 715), provide greater accountability by "auditing" officer practice through community surveys and peer review (Kelling, Wasserman, and Williams 1988), and increase the role of community members and democratic representatives in police decision-making (Goldstein 1990, 21–27), among other reforms (Livingston 1997, 650–67).

All of these strategies hold promise, but they are generic. They describe the task of management in general—the management of human resources, information systems, accountability and control, and external relations—rather than that of managing order maintenance work in particular. The key task of guiding the use of *order maintenance* discretion will be accomplished or not depending on how well these generic management strategies are guided by a sense of the order maintenance mission—by a sense of the public value this aspect of police work aims to create (Moore 1995). The bulk of this essay has tried to provide a general account of that mission, drawing out its implications both for the nature of the substantive problems police should attend to and for the tactics they can legitimately rely on.

## 6.5  FUTURE RESEARCH

The most important frontiers in order maintenance policing involve the further clarification of these two aspects of its practice—of how police should understand the concept of "public order" they ultimately aim to defend, and of the tactics they should use to

accomplish that goal. Real progress on these tasks will require a different approach to the study of policing than the narrowly social scientific model that has dominated police research over the past three decades.

Most important, a robust research agenda about order maintenance policing needs to turn away from the nearly-exclusive emphasis on the disorder-causes-crime thesis that has dominated this topic for three decades. The question of whether order maintenance policing is worthwhile and what form it should take cannot be reduced to the question of whether it reduces serious crime in the long run. The tendency to try do just that over the past three decades has flattened our understanding both of what "disorder" is and of the tactics police should use to regulate it, corroding important moral restraints on the practice of this delicate police function along the way. "Order" and "order maintenance" are essentially moral concepts, and when we view them through the lens of social scientific study we risk distorting them (Thacher forthcoming). At minimum, if further research into the disorder-causes-crime thesis proves irresistible to social scientists, it should rely on a much more sophisticated concept of "disorder" than most of the survey research and observational studies so far.[8]

Critics who have complained about the conceptual confusion surrounding order maintenance (Harcourt 2001; Thacher 2004; Kubrin 2010) are surely right that future research and practice in this area badly need to clarify what "disorder" means. That task of conceptual clarification represents one of the most important avenues for advancing practice in this area. It is a task, however, that requires something more than familiar approaches to social science provide. For example, turning over the definition of "disorder" more wholeheartedly to neighborhood residents through intensive survey research, as Kubrin (2010) seems to recommend, may actually move us further away from a morally-legitimate conception of disorder because the police have no business regulating many things that neighborhood residents find objectionable. Real progress in our understanding of how police should conceptualize the crucial concept of "disorder" requires moral and legal analysis, not just social science. In that respect, this area is one of many where interpretive fields like philosophy, history, and law would have much to contribute to advancing the practice of policing. Best of all would be a morally-informed approach to ethnographic research about order maintenance practice that draws simultaneously from social science and the humanities (Thacher 2001, 2004, 2006).

A second major avenue for future research and practice would aim to broaden the range of tactics that police can use to maintain order and scrutinize their worth. Wesley Skogan recently lamented that the scholarly discussion of order maintenance policing has often been remarkably stilted, treating "order maintenance policing" as a homogenous "policy intervention" that police are free to adopt or not, and that researchers typically identify it with a focus on strict enforcement that they rightfully reject in other contexts (Skogan 2008, 403–06). As a branch of problem-oriented policing, order maintenance should draw from a much wider range of tactics than that. I have tried to illustrate throughout this essay how legal scholarship and policing practice have made important contributions in this area for more than a century. Social science could contribute more than it typically has to this alternative tradition through close study

and scrutiny of the variations in practice that sophisticated practitioners have adopted (Thacher 2004, 2008). Evaluation efforts should stop treating order maintenance as a homogenous intervention that "works" or "doesn't work" and turn to more nuanced studies of the components of an agency's practice that show the most promise (e.g., Braga and Bond 2008). Those evaluations, moreover, need to study the intrinsic fairness of policing practice at least as much as they study their long-term consequences, which may prove inscrutable in any event (Thacher 2001).

More broadly, future scholarship and practice related to order maintenance policing should recognize the moral significance of order maintenance practice more than most recent scholarship has. Order maintenance is not just a neutral tool that can be used arbitrarily to manipulate neighborhood outcomes. It involves the exercise of police authority against people who are often vulnerable and despised, and who in any case should not be treated simply as means to the achievement of other people's ends. None of that is to say that order maintenance is never justified. At its best, order maintenance vindicates the fair terms of cooperation our common spaces require, and in that respect it can claim a moral justification separate from any instrumental consequences it may or may not produce. Spelling out what those fair terms of cooperation are and how police can fairly and effectively enforce them has not been the central focus of recent scholarship about order maintenance policing, but it can and should be in the future.

## Notes

 \* Thanks to Bob Axelrod, Jeff Fagan, George Kelling, and Michael Reisig for helpful discussion and comments.
 1. Wilson drew heavily from Michael Banton's (1964) and Egon Bittner's (1967) idea of "peacekeeping," and like them he stressed the fact that order maintenance work often did not culminate with an arrest (Wilson 1968, 18). For Banton, that was its defining feature, but that definition is unsatisfactory partly because police may intervene in situations without knowing whether an arrest will result; and while informal intervention surely dominates the police response to disorder, the most venerable "public order" offenses have always figured prominently in police arrest statistics too. Wilson's later defense of order maintenance in "Broken Windows" seems to abandon his earlier definitions.
 2. Monkkonen's own view is more complex. He apparently saw the decline in order maintenance arrests partly as a result of a real decline in public disorder (1981a) and partly as an unintended consequence of police bureaucratization (1981b, 143–46).
 3. One thorough, balanced, and recent review is Reisig (2010, 24–35).
 4. The first wave of observational research on the disorder-causes-crime hypothesis culminated with Sampson and Raudenbush's (1999, 638) widely-cited study of Chicago, which found that neighborhoods with high levels of daytime disorder do not generally have higher crime rates than we would expect given their other measured characteristics; on that basis they concluded that the enthusiasm for using order maintenance to reduce crime was "simplistic and largely misplaced." More recent studies have turned to experimental designs. Two field experiments led by Anthony Braga (Braga et. al. 1999; Braga and Bond 2008) both found that crime fell substantially in neighborhoods where police had been

randomly assigned to conduct aggressive order maintenance compared to the control neighborhoods where they had not—though critics have argued that the crime reduction in the first study may have resulted simply from heightened police presence, and the same concern may apply to the second. (It is worth noting that the second of Braga's studies, which concluded that order maintenance has the greatest impact on crime when it targets identified hot spots and relies on broad situational crime prevention strategies rather than a narrow focus on misdemeanor arrests, is the only study in this literature I am aware of that attempts to address the concern expressed at the end of the paragraph in the text.)

5. For example, when New York City removed 700 acres from private ownership to create an elaborate rural park that would serve as a respite from the crowded commercial city surrounding it, it had to develop rules that would protect the physical and social environment that its residents had invested so much to create—rules against vending and commercial traffic to insulate it (as Walt Whitman put it) from "the hand of Mammon," rules against clipping flowers and feeding the swans to protect the park's elaborate and delicate natural environment, rules against verbal harassment to safeguard the park's tranquility, and many others. The task of defining and enforcing those rules fell to the nascent park police, whose work differed fundamentally from that of the municipal police charged with controlling serious crime (Thacher 2011). The history of controversy surrounding Central Park's rules (e.g., Rosensweig and Blackmar 1992) also vividly illustrates the challenges involved in determining what counts as unfair use of public spaces.

6. Feinberg himself set his scenes of offensive conduct on a crowded city bus, and other authors who discuss the offense principle also emphasize shared spaces (e.g., Simester and von Hirsch 2002, 274, 292).

7. A telling example comes from an 1864 petition asking the English parliament to strengthen the laws regulating street musicians in residential areas. The petition alleged that many of the musicians were after extortion rather than entertainment, as they staked out spots outside the homes of wealthy families until the owner sent a servant out to pay them to leave. The petition is telling because one of its signatories was John Stuart Mill (Winter 1993, 73–74), who five years earlier had published the decisive statement of the idea that the state should only regulate behavior if it positively harms other people (Mill 1978 [1859]). Apparently this kind of (allegedly) gratuitous offense qualified as a "harm" in Mill's eyes.

8. For example, in the most prominent social scientific study of the link between disorder and crime, the measure of "social disorder" in each neighborhood essentially amounts to the number of groups of three or more people on the street (Sampson and Raudenbush 1999; Thacher forthcoming). The most such a study can tell us about social disorder is that neighborhoods with many groups of people on the sidewalks generally do not have higher crime rates than we would expect given their other measured characteristics. That conclusion tells us nothing about the impact of any legitimate form of order maintenance policing on crime because order maintenance policing does not aim to eliminate groups of people from sidewalks; it aims to ensure that they abide by defensible norms of order.

## References

Andenaes, Johannes. 1974. *Punishment and Deterrence*. Ann Arbor: University of Michigan Press.
Banton, Michael. 1964. *The Policeman in the Community*. New York: Basic Books.

Beckett, Katherine, and Steven Herbert. 2010. *Banished*. New York: Oxford University Press.

Bittner, Egon.1967. "The Police on Skid Row." *American Sociological Review* 32:699–715.

——. 1990. *Aspects of Police Work*. Boston: Northeastern University Press.

Björ, Jill, Johannes Knutsson, and Eckhart Kühlhorn. 1992. "The Celebration of Midsummer Eve in Sweden." *Security Journal* 3:169–74.

Bluestone, Daniel. 1991. "The Pushcart Evil." *Journal of Urban History* 18:68–92.

Braga, Anthony, and Brenda Bond. 2008. "Policing Crime and Disorder Hotspots." *Criminology* 46:577–607.

Braga, Anthony, David Weisburd, Elin Waring, Lorraine Green Mazerolle, William Spelman, and Francis Gajewski. 1999. "Problem-Oriented Policing in Violent Crime Places." *Criminology* 37:541–80.

Bratton, William. 1995. "New York City Police Department's Civil Enforcement of Quality-of-Life Crimes." *Journal of Law and Policy* 3:447–64.

Cartwright, Nancy. 1999. *The Dappled World.* New York: Cambridge University Press.

Cartwright, Nancy, and Pemberton, John. 2011. "Aristotelian Powers." In *Powers and Capacities in Philosophy,* edited by John Greco and Ruth Groff, 93–112. New York: Routledge.

Chauncey, George. 1995. *Gay New York*. New York: Basic Books.

Clarke, Ronald. 1997. *Situational Crime Prevention*. Albany: Harrow and Heston.

Douglas, William. 1960. "Vagrancy and Arrest on Suspicion." *Yale Law Journal* 70:1–14.

Dubber, Markus. 2001. "Policing Possession." *Journal of Criminal Law and Criminology* 91:829–996.

Duneier, Mitchell. 1999. *Sidewalk*. New York: Farrar, Straus, and Giroux.

Eck, John, and William Spelman. 1987. *Problem-Oriented Policing in Newport News*. Washington, DC: Police Executive Research Forum.

Ericson, Richard, and Kevin Haggerty. 1997. *Policing the Risk Society*. Toronto: University of Toronto Press.

Fagan, Jeffrey, and Garth Davies. 2000. "Street Stops and Broken Windows." *Fordham Urban Law Journal* 28:457–504.

Feinberg, Joel. 1984. *Harm to Others*. New York: Oxford University Press.

——. 1985. *Offense to Others*. New York: Oxford University Press.

Flaherty, David. 1972. *Privacy in Colonial New England*. Charlottesville: University of Virginia Press.

Fogelson, Robert. 1977. *Big-City Police*. Cambridge: Harvard University Press.

Foote, Caleb. 1956. "Vagrancy-Type Law and Its Administration." *University of Pennsylvania Law Review* 104:603–50.

Force, Robert. 1972. "Decriminalization of Breach of the Peace Statutes." *Tulane Law Review* 46:367–493.

Garnett, Nicole. 2010. *Ordering the City*. New Haven: Yale University Press.

Gau, Jacinta, and Robert Brunson. 2010. "Procedural Justice and Order Maintenance Policing." *Justice Quarterly* 27:255–79.

Glover, Jonathan. 1975. "It Makes No Difference Whether or Not I Do It." *Proceedings of the Aristotelian Society, Supplementary Volumes* 49:171–90.

Goffman, Erving. 1966. *Behavior in Public Places*. New York: Free Press.

Goldstein, Herman. 1977. *Policing a Free Society*. Cambridge: Ballinger.

——. 1990. *Problem-Oriented Policing.* New York: McGraw-Hill.

——. 1993. "Confronting the Complexity of the Policing Function." In *Discretion in Criminal Justice*, edited by Lloyd E. Ohlin and Frank J. Remington, 23–72. Albany: State University of New York Press.

Guerette, Robert. 2006. *Disorder at Day Laborer Sites.* Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services.

Harcourt, Bernard. 2001. *Illusion of Order.* Cambridge: Harvard University Press.

Harring, Sidney. 1983. *Policing a Class Society*. New Brunswick: Rutgers University Press.

Heckman, James. 2005. "The Scientific Model of Causality." *Sociological Methods and Research* 35:1–97.

Ignatieff, Michael. 1979. "Police and People." *New Society* 30 (August): 443–45.

Jacobs, Jane. 1961. *The Death and Life of Great American Cities.* New York: Vintage.

Jencks, Christopher. 1992. *The Homeless.* New York: Basic Books.

Kagan, Shelley. 2011. "Do I Make a Difference?" *Philosophy and Public Affairs* 39:105–41.

Kaplan, Karen. 2008. "Wherefore, Litterbug?" *Los Angeles Times* (November 21).

Keizer, Kees, Siegwart Lindenberg, and Linda Steg. 2008. "The Spreading of Disorder." *Science* 322:1681–85.

Kelling, George. 1997. *"Broken Windows" and Police Discretion.* Washington, DC: National Institute of Justice.

Kelling, George, and Catherine Coles. 1996. *Fixing Broken Windows*. New York: Touchstone.

Kelling, George, Robert Wasserman, and Hubert Williams. 1988. "Police Accountability and Community Policing." Perspectives on Policing No. 7. Washington, DC: U.S. Department of Justice.

Kettles, Gregg. 2004. "Regulating Vending in the Sidewalk Commons." *Temple Law Review* 77:1–46.

Kleinig, John. 1996. *The Ethics of Policing.* New York: Cambridge University Press.

Kubrin, Charis E. 2008. "Making Order of Disorder: A Call for Conceptual Clarity." *Criminology and Public Policy* 7:203–14.

Kühlhorn, Eckhart. 1978. *Deprivation of Freedom and the Police*. Stockholm: The National Swedish Council for Crime Prevention.

Lane, Roger. 1967. *Policing the City*. Cambridge: Harvard University Press.

——. 1968. "Crime and Criminal Statistics in Nineteenth-Century Massachusetts." *Journal of Social History* 2:156–63.

Livingston, Debra. 1997. "Police Discretion and the Quality of Life in Public Places." *Columbia Law Review* 97:551–672.

Livingston, Debra. 1999. "Gang Loitering, The Court, and Some Realism about Police Patrol." *Supreme Court Review* 1999:141–202.

Lofland, Lynn. 1998. *The Public Realm*. New York: Adline de Gruyter.

Lynch, Kevin. 1990. "The Openness of Open Space." In *City Sense and City Design,* edited by Tridib Banerjee and Michael Southworth. Cambridge: MIT Press.

Manning, Peter. 1977. *Police Work*. Cambridge: MIT Press.

Mill, John Stuart. 1978 [1859]. *On Liberty*. Indianapolis: Hackett.

Miller, Wilbur. 1977. *Cops and Bobbies*. Chicago: University of Chicago Press.

Monkkonen, Eric. 1981a. "A Disorderly People?" *Journal of American History* 68:539–59.

——. 1981b. *Police in Urban America*. New York: Cambridge University Press.

Moore, Mark. 1995. *Creating Public Value*. Cambridge: Harvard University Press.

Moskos, Peter. 2008. *Cop in the Hood*. Princeton: Princeton University Press.

Oldenberg, Ray. 1999. *The Great Good Place*. New York: Marlowe and Company.

Parfit, Derek. 1984. *Reasons and Persons*. New York: Oxford University Press.

Philips, David. 1977. *Crime and Authority in Victorian England*. London: Croom Helm.

Rein, Martin, and Christopher Winship. 1999. "The Dangers of Strong Causal Reasoning." *Society* 36:38–46.

Reisig, Michael. 2010. "Community and Problem-Oriented Policing." *Crime and Justice* 39:2–53.

Reiss, Albert J., Jr. 1985. *Policing a City's Central District: The Oakland Story*. Washington, DC: U.S. Department of Justice, National Institute of Justice.

Richardson, James. 1970. *The New York Police: Colonial Times to 1901*. New York: Oxford University Press.

Roberts, Dorothy. 1999. "Race, Vagueness, and the Social Meaning of Order-Maintenance Policing." *Journal of Criminal Law and Criminology* 89:775–836.

Rosensweig, Roy, and Elizabeth Blackmar. 1992. *The Park and the People.* Ithaca, NY: Cornell University Press.

Sampson, Robert, and Stephen Raudenbush. 1999. "Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods." *American Journal of Sociology* 105:603–51.

——. 2004. "Seeing Disorder." *Social Psychology Quarterly* 67:319–42.

Schneider, John. 1978. "Public Order and the Geography of the City." *Journal of Urban History* 4:183–208.

——. 1980. *Detroit and the Problem of Order*. Lincoln: University of Nebraska Press.

Scott, Michael. 2001. *The Problem of Loud Car Stereos.* Washington, DC: Office of Community Oriented Policing Services.

——. 2004. *Disorderly Youth in Public Places.* Washington, DC: Office of Community Oriented Policing Services.

Sennett, Richard. 1970. *The Uses of Disorder*. New York: Knopf.

——. 1977. *The Fall of Public Man.* New York: Knopf.

Simester, A.P., and Andrew von Hirsch. 2002. "Rethinking the Offense Principle." *Legal Theory* 8:269–95.

Skogan, Wesley G. 2008. "Broken Windows: Why—and How—We Should Take Them Seriously." *Criminology and Public Policy* 7:195–202.

Sloan-Howitt, Maryalice, and George Kelling. 1990. "Subway Graffiti in New York City." *Security Journal* 1:131–36.

Smith, Joseph. 1961. *Colonial Justice in Western Massachusetts*. Cambridge: Harvard University Press.

Stinchcombe, Arthur. 1963. "Institutions of Privacy in the Determination of Police Administrative Practice." *American Journal of Sociology* 69:150–60.

Sykes, Gary. 1986. "Street Justice: A Moral Defense of Order Maintenance Policing." *Justice Quarterly* 3:497–512.

Teir, Robert. 1993. "Maintaining Safety and Civility in Public Spaces." *Louisiana Law Review* 54:285–338.

Thacher, David. 2001. "Policing is Not a Treatment: Alternatives to the Medical Model of Police Research." *Journal of Research in Crime and Delinquency* 38:387–415.

——. 2004. "Order Maintenance Reconsidered." *Journal of Criminal Law and Criminology* 94:381–414.

——. 2006. "The Normative Case Study." *American Journal of Sociology* 111:1631–76.

——. 2008. "Research for the Front Lines." *Policing and Society* 18:46–59.

——. 2009. "Community Policing Without the Police?" In *Community Policing and Peacekeeping*, edited by Peter Grabosky, 55–70. London: Taylor and Francis.

——. 2011. "Olmsted's Police." Unpublished Manuscript. Ann Arbor: University of Michigan.

——. Forthcoming. "Perils of Value Neutrality." *Research in the Sociology of Organizations.*

Tonry, Michael, and Harriet Bildsten. 2009. "Anti-Social Behavior." In *The Oxford Handbook of Crime and Public Policy*, edited by Michael Tonry, 578–598. New York: Oxford University Press.

Valentine, Gill. 2004. *Public Space and the Culture of Childhood*. London: Ashgate.

Vitale, Alex. 2008. *City of Disorder*. New York: New York University Press.

von Hirsch, Andrew. 1996. "'Remote' Harms and Fair Imputation." In *Harm and Culpability,* edited by Andrew Simester and Tony Smith, 259–276. Oxford: Clarendon.

von Hirsch, Andrew, and Clifford Shearing. 2000. "Exclusion from Public Space." In *Ethical and Social Issues in Situational Crime Prevention*, edited by Andrew von Hirsch, David Garland, and Allison Wakefield, 77–98. London: Hart.

von Hoffman, Alexander. 1992. "An Officer of the Neighborhood." *Journal of Social History* 26:309–30.

Waldron, Jeremy. 1991. "Homelessness and the Issue of Freedom." *UCLA Law Review* 39:295–324.

Walker, Samuel. 1977. *A Critical History of Police Reform*. Lexington, Mass.: DC Heath.

——. 1998. *Popular Justice*. New York: Oxford University Press.

Watts, Eugene. 1983. "Police Response to Crime and Disorder in Twentieth-Century St. Louis." *Journal of American History* 70:340–58.

Wertsch, Douglas. 1987. "The Evolution of the Des Moines Police Department." *Annals of Iowa* 48:435–49.

Whyte, William. 1988. *City*. New York: Anchor Books.

Wilson, James Q. 1968. *Varieties of Police Behavior*. Cambridge: Harvard University Press.

Wilson, James Q. 1969. "What Makes a Better Policeman." *Atlantic Monthly* (March):129–35.

Wilson, James Q., and George Kelling. 1982. "Broken Windows." *Atlantic Monthly* (March):29–38.

Winter, James. 1993. *London's Teeming Streets*. New York: Routledge.

Zeveloff, Naomi. 2008. "Denver Rids Parks of Homeless Meals." *Denver Post* (July 14).

Zimring, Franklin, and Gordon Hawkins. 1997. *Crime Is Not the Problem*. New York: Oxford University Press.