

The writing of this article would not have been possible without the work of Gary Stewart. His work, “Black Codes and Broken Windows,” was featured in the Yale Law Journal in May 1998 and painted a very clear picture of age-old racialized politics at play. I encourage all readers of this article—regardless of your position—to pick up a copy of his work. It is important that we all share a common starting point if it is truly justice and equity that we want.

The Skid Row Safer City Initiative [SCI] is but a manifestation of an old, ingrained anti-poor and anti-minority sentiment that has permeated the fabric of life in the United States. Removing the veneer and holding accountable those who support the erosion of civil and human rights must be the first order of the day. Sadly enough, the most vocal supporters of this policing method look exactly like most of us who have been targeted by it. Mayor Villaraigosa, Councilmember Parks, Councilmember Perry and City Attorney Delgadillo must understand the price that we all pay when they grace the podium with words of support for the SCI. They must understand that in their moment of support they have ultimately supported the sentiment that led to lynching, castration, separation of family and community, degradation of women...and the list goes on.

We remain imprisoned by the past as long as we deny its influence in the present.
—Justice William Brennan

Justice Brennan’s quote is very timely when it comes to “unpacking” the real impetus driving the Skid Row Safer City Initiative [SCI]. This article attempts to connect the post-bellum journey of African-Americans leaving the manacles of slavery to their very similar experiences today. It attempts to shed light on the fact that the preservation of a certain pecking order is still the order of the day. It is a statement to the masses to organize or be organized. We have all heard the adage “that if we don’t understand our history we will certainly repeat it” and it is our hope not to repeat it with SCI. While this maxim is most certainly true for the sum of us, the impact of not knowing our collective history is very different for those who currently make-up the minority.

Vagrancy laws—which happen to be the original name for today’s quality-of-life policing strategy—have roots that extend back as far as 14th Century England. The original purpose was to create a

substitute form of serfdom [slavery] by legislatively tying workers to the master’s land; but by the middle of the 17th century, and up until the 19th century, the number of masterless men and families that crowded the streets led to a change of emphasis in vagrancy laws. The new thrust was to create methods of control and ways to banish those that were undesirable, financial burdens, nuisances and potential criminals. Sound familiar? I am sure it does but lets power forward.

Leaving England and making our way to the United States—post Civil War—we find other shining examples of vagrancy ordinances targeting the United States’ favorite target, Black people. The utilization of Black Codes—vagrancy ordinances that were

created by Southern legislators to retain control of their recently freed property—were used to discourage former slaves from leaving the “master’s” plantation. It created a system where the likelihood of being arrested, charged and punished far outweighed the risks of continued servitude.

While economic concerns were high on the white supremacy checklist, they were not the only concern. Next up on the list were the implications associated with scores of free, poor Black people roaming through their communities, and what that would do to their “quality of life.” To help us put into context the sentiment of the day, the following is an example of how black vagrants were defined. This definition comes from Mississippi’s Black Code which reads;

“Runaways, drunkards, pilferers; lewd wanton, or lascivious [exciting lust] persons, in speech or behavior; those who neglect their employment, misspend their earnings, and fail to support their families; and all idle and disorderly persons.”

The definition was also applied to white people who threatened the “white way of life.” Association with Black people in any way that suggested equality, or, being found guilty of having sexual relations with them was a quick way to get caught up in the vagrancy dragnet. From the late 1860s through the 1960s, states created harsher and stiffer vagrancy laws which were written in a very detailed manner. However, they allowed for broad and ambiguous interpretation. These laws served as the essential tool of defining and policing the racial landscape.

Reversing the Vagrancy Movement

The first landmark decision falling on the side of the oppressed was *Shuttlesworth v. City of Birmingham*. In this case the Birmingham Police Department charged a Black civil rights advocate [Shuttlesworth] with vagrancy simply because he was picketing in front of a department store that was discriminating against Black employees. Shuttlesworth was subsequently sentenced to 241 days of hard labor. The Supreme Court eventually dismissed the charges against Shuttlesworth stating;

“literally read, ... [speaking of the vagrancy ordinance] says that a person may stand on a public sidewalk in Birmingham only at the whim of any police officer of that city...Instinct with its ever-present potential for arbitrarily suppressing First Amendment liberties, that kind of law bears the hallmark of a police state.”

Utilizing the momentum built in *Shuttlesworth v. City of Birmingham* the Supreme Court dealt another temporary death blow to quality-of-life advocates when it rendered its opinion in *Papachristou v. City of Jacksonville*. This case was brought as a result of Florida police officers pulling over four motorists—two white women and two black men—and charging them with vagrancy. Florida argued that vagrancy statutes should be allowed because they have the chilling effect of stopping crime before it starts (Broken Windows language used today), suggesting that crime was imminent between this

colorful cast of daters. However, the Supreme Court worried that broadly-worded statutes possessed the real danger of potentially harassing and controlling minority groups.

The Court Opined:

Those generally implicated by the imprecise terms of the ordinance—poor people, non-conformists, dissenters, idlers—may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme...furnishes a convenient tool for “harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.” It results in a regime in which the poor and the unpopular are permitted to “stand on a public sidewalk...only at the whim of any police officer.”

While these occurrences happened in the 1960s, they could have just as easily happened yesterday or the day before. In many respects the same occurrences are happening on a daily basis in downtown’s Skid Row, where everyone who is a darker shade of Brown is being profiled for the crimes they could potentially commit. In a recent public meeting, an officer said that they sometimes arrest people for their own safety. I can only wonder what the Supreme Court would have to say about that one.

Broken Windows [Safer City Initiative] or the Return of State-Sanctioned Repression? James Q. Wilson and Dr. George Kelling signaled the return of post-bellum policing of America’s ghettos, plus, a new way to get around the *Papachristou v. City of Jacksonville* opinion. In their March 1982 *Atlantic Monthly* article entitled *Broken Windows: The Police and Neighborhood Safety*, they single-handedly created the movement to employ a community-based policing model based in the old vagrancy framework. They explicitly argued that broad police discretion is necessary for effective police enforcement even if that discretion leads to some infringement of civil rights. The authors note, “Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community.”

One can further ascertain the focus and spirit of the broken windows duo by reading Wilson’s quote from his book *Varieties of Police Behavior*, Cambridge, Mass, Harvard University Press, 1968. Wilson states:

“A noisy drunk, a rowdy teenager shouting or racing his car in the middle of the night, a loud radio in the apartment next door, a panhandler soliciting money from passersby, persons wearing eccentric clothes and unusual hair styles loitering in public places—all these are examples of behavior which the “public” (an onlooker, a neighbor, the community at large) may disapprove of. (1968:16)”

He goes on to say:

“a teenager hanging out on a street corner late at night, especially one dressed in eccentric manner, a Negro wearing a “conk rag” (a piece of cloth tied around the head to hold flat hair being “processed”—that is straightened), girls in shorts and boys in long hair parked in a flashy car talking loudly to friends on the curb, or interracial couples—all of these are seen by many police officers as persons displaying unconventional and improper behavior.” (1968:39-40)

Bernard Harcourt—one of the broken window theory’s most vocal critics—has written extensively on the “cracks” that exist in the theory. In addition to writing, he has spoken at great length on the subject matter, calling on Kelling, Bratton and other broken windows proponents to debate their success. For example, on March 15, 2006, Kelling was asked by “Good Day Colorado” (KDVR-TV) to discuss the policing strategy (Denver, CO is another city that is implementing broken windows policing). What Kelling did not know was that “Good Day Colorado” had also asked Bernard Harcourt to provide the opposing viewpoint. After the anchor introduced Kelling—who was more than willing to be the expert—he was abruptly interrupted by Kelling who insisted he was not willing to debate the matter with Harcourt. The reporter wanted to know why, if this was such a sound theory, he would not debate it publicly and to that Kelling hung up. This was all done during a live news broadcast—I will let you figure out what that really means.

The bottom line is that broken windows policing is in itself broken. It is blatantly based in racist policies used from the 1860s to the 1960s, many of which were overturned by the Courts. The authors themselves won’t publicly defend their own theory. Yet, the City of LA has paid one of the authors, George Kelling, over \$450,000 to craft and implement broken windows policing focused right now on the Skid Row community. Angelenos who believe in racial justice and the protection of civil and human rights must act. Join LA CAN in holding the Mayor and City Council accountable and ending broken windows policing downtown and throughout LA. We can and will defend ourselves.