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Abstract

The social norm movement in criminal justice has received a lot of attention in academic and public policy circles. This essay critically examines social norm writings and explores some of the implications for methods of proof and research design in the social sciences. In the process, the essay offers an alternative theoretical approach. This alternative focuses on the multiple ways in which the social meaning of practices (such as juvenile gun possession, gang membership, or disorderly conduct) and the social meaning of policing techniques (such as juvenile snitching policies, youth curfews, or order-maintenance policing) may shape us as contemporary subjects of society. This alternative theoretical approach has its own important implications for methods of proof and research design, and the essay develops these implications into a four-prong research agenda.

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Introduction

Under the rubric of "norm-focused scholarship" (Kahan & Meares 1998b:806) or norm theory within the "New Chicago School" (Lessig 1998:673, 661), a number of criminal law scholars and policy analysts are focusing attention on the way that law and social norms interact, and on how the interaction regulates human behavior. These scholars contend that certain policing techniques, such as anti–gang loitering ordinances, youth curfews, and order-maintenance policing, are effective because they change the social meaning of practices such as gang membership or juvenile gun possession; and that, by changing social meaning, these policing techniques reduce criminal behavior and encourage obedience to law. They argue, for example, that youth curfews curtail gang activity in part by reducing the perception among juveniles in the inner city that their peers value gang membership (Kahan & Meares 1998b:821).

Norm-focused scholarship is intensely practical and political. According to its proponents, it generates "an intensely practical agenda" of law enforcement policies. The scholarship affirmatively promotes these policies as "politically feasible and morally attractive alternatives to the severe punishments that now dominate America's inner-city crime-fighting prescriptions" (Kahan & Meares 1998b:806). The writings represent an intervention in contemporary criminal law policy analysis that is motivated as much by *political*, as by conceptual aims (Kahan & Meares 1998b:806).

Norm-focused scholarship has generated heated debate in law reviews (Alschuler & Schulhofer 1998; Cole 1999; Harcourt 1998; Massaro 1990; Posner 1998; Tushnet 1998), interdisciplinary journals (Massaro 1997), and political and cultural forums (*Boston Review* April/May 1999; Massaro 1998). The *Boston Review* recently dedicated one of its New Democracy Forums to the political implications of the norm-focused literature, showcasing a heated exchange between supporters, such as Tracey Meares, Dan Kahan, Jean Bethke Elshtain, and Wesley Skogan, and critics, such as Alan Dershowitz, Carol Steiker, Franklin Zimring, and Margaret Burnham (1999). Tracey Meares and Dan Kahan's recent article in this journal, *Law and (Norms of) Order in the Inner City* (1998b), is likely to generate similar heated debate.

An important question that norm-focused scholarship raises, but that has not yet been the source of much debate, is the implication of the "social meaning turn" for social scientific inquiry. What type of research design and methods of proof do norm-focused hypotheses call for? Specifically, given the constructivist nature of social meaning, what is the proper way to explore the explanations advanced by norm-focused scholars? This question has become all the more urgent given Kahan and Meares' provocative suggestion in this journal that criminal law policy analysts should approach their work "uninhibited by certain craft norms that sometimes temper social scientists' own willingness to engage in pragmatic policy speculation" (1998b:806–7). In particular, Kahan and Meares suggest that policy analysts should employ a "political confidence standard" that is less rigorous than "the scientific confidence standard that governs in social science" (1998b:807).

I address this question in a constructive spirit and, in this article, focus on what I consider to be the strength of the norm-focused project, namely its *conceptual*, rather than political, dimension. My response will not call for slavish adherence to prevailing social scientific norms, such as the traditional .05 threshold for statistical significance or the 95% confidence interval. On that score, the better practice is simply to be honest about one's level of confidence and to offer good reasons for policy action. The better practice is "to draw causal inferences where they seem appropriate but also provide the reader with the best and most honest estimate of the uncertainty of that inference" (King, Keohane, & Verba 1994:76). My response, instead, will call for a more fundamental reevaluation of *the type of evidence* that would support norm-focused hypotheses.

The emerging scholarship is best understood, I argue, as a constructivist social theory, in the sense that it focuses on the socially constructed meaning of such practices as gang membership, juvenile gun possession, and neighborhood disorder. The constructivist nature of norm-focused hypotheses has important implications for methods of proof. The very question of proof is rendered, though not impossible, certainly more complicated. In contrast to proof in the context of a more behavioralist hypothesis or a rational choice hypothesis, proving a social meaning traditionally involves offering a rich contextual analysis of multiple meanings and countermeanings, an analysis that intersects with and deepens other compelling accounts of

social meaning and that is based on in-depth knowledge acquired through intensive interviewing, participating, observing, and exploring by detached researchers, corroborated as much as possible by statistical analyses.

Although I am confident that norm-focused scholars would agree with me at this theoretical level, I am not confident that the scholarship *in practice* is sufficiently attentive to these implications. The scholarship is deeply ambiguous as to how much, *if anything*, has been proven and how it has been proven. In personal conversation, Dan Kahan and other norm-focused scholars repeatedly emphasize that their hypotheses have not yet been tested or verified and that their enterprise remains, at present, speculative. In their writings, norm-focused scholars suggest at times that their hypotheses have been established; for instance, they write that "the effects of order maintenance in reducing crime has been empirically documented" (Kahan & Meares 1998b:822). But their proofs, when put to the test, most often reduce to the argument that (a) practices, like gang membership, have social meaning (which is undoubtedly true) and that (b) there is a statistical correlation between enforcement of the policy and reduced levels of crime. *This type of proof relies excessively on the purported correlation between enforcement and crime rates. It does not even begin to address the complex task of interpreting and investigating social meaning.* For that, much more work, especially research that integrates qualitative and quantitative methods, is necessary. I discuss these important implications for norm-focused research in Part I.

My focus on methods of proof, however, raises more fundamental problems with the norm-focused project as a whole, which I discuss in Part II of this article. Norm-focused research must not only delve more deeply into the contested social meaning of practices such as gang membership or juvenile gun possession, it must also investigate the social meaning of the proposed policies and policing techniques, such as youth curfews, anti–gang loitering ordinances, or order-maintenance policing. More importantly, norm-focused scholars should explore how these social meanings may shape the contemporary subject and modern society. To be sure, curfew laws, order-maintenance policing, and snitching policies may influence our immediate perceptions of guns or gangs, and thereby affect short-term behavior. But these policing techniques may also more deeply affect our very understanding of order or disorder, and

may shape us as contemporary subjects of society. They may, in fact, reconfigure—for better or for worse—the way that we perceive, think, desire, or interrelate with others and judge others. This suggests a need to explore, beyond the effect of social meaning on behavior (especially short-term behavior), the way that these practices shape us as subjects of our time.

This shift in focus from social meaning to subject creation has its own important implications for research design and methods of proof. It raises additional questions and hypotheses. Instead of asking exclusively, for example, how a youth curfew may change the social meaning of gang membership, we may also want to know how youth curfews will shape our children in other ways. How will curfews affect the intellectual, cultural, and emotional development of our children? How have similar restrictions shaped children in other cultures or at other times? These alternative questions and hypotheses call for additional methods of proof, such as ethnographic studies of comparable social experiments or archival work into past experiences with curfews. They demand greater attention to the social meaning and influence of the proposed policing techniques themselves, and heightened sensitivity to the way that we—contemporary subjects of policing—may be affected by those public policies. Moreover, they also call for increased critical reflection on the role of the *researcher as subject*—since the researcher, too, is shaped by the public policies implemented in society. This is especially true when the researcher is a lawyer or a public figure with a stake in the policy decision, an advocate representing interested parties in political debate or litigation, or someone who is actually weighing in on the specific policy analysis.

The critical methodological issue after the social meaning turn, then, is not whether legal scholars and policy analysts should abide by the craft norms of social scientists or adopt a less rigorous standard of political confidence. They, like public health officials, doctors, and others, will often have to act on less than perfect knowledge, in less than perfect conditions. Naturally, they cannot be expected to wait until they are 95% confident of the net effect of proposed policies before making policy recommendations. Instead, the critical methodological issue is fourfold: first, research design and methods should dovetail the underlying social theoretic approach. As my colleagues Mike Gottfredson and Travis Hirschi emphasize, "there must be an intimate connection between the conceptualization of a problem and the design of research

focused on that problem" (1990:252). In the case of a constructivist theory after the social meaning turn, it is imperative that the research integrate *in practice* qualitative and quantitative analyses. The research design and methods must focus on *interpreting* social meanings and *assessing* their effect on the modern subject, both of which call for integrated methods. Second, research should focus not only on the social meaning of practices such as juvenile gun possession or gang membership, but should also explore the social meaning of the proposed policing techniques and policies themselves. A juvenile curfew, for instance, may have a social meaning of its own that may influence, positively or negatively, the likelihood of success of such a policy. Third, research should focus less on the immediate impact of social meaning on short-term behavior and more on the way in which the social meaning of practices and public policies shape the contemporary subject. In addition to integrated methods, this also suggests the need for additional methods, such as comparative or historical analyses into analogous past or present social experiments with similar public policies. Finally, the researcher must critically reflect on his or her influence on research design, data collection, methods, findings, and conclusions. Again, in the case of a constructivist theory after the "social meaning turn," it is imperative that the researcher engage in the kind of reflexive sociological examination that is today associated with the complex task of "objectify[ing] the act of objectification and the objectifying subject" (Bourdieu 1990:59). The shift in focus from social meaning to subject creation simply demands greater awareness of the role of the researcher as subject.

An Illustration: Rewarding Juvenile Snitching

A concrete illustration may help ground this discussion. One of the earliest and long-lived recommendations of norm-focused scholars to reduce juvenile gun possession is the policy of encouraging and financially rewarding juveniles who turn in other juveniles who are carrying guns (Kahan 1997a:364; Kahan 1998:611–12; Kahan & Meares 1998b:824–25; Kahan 1999:1867). In support of this policy, Kahan and Meares argue that guns have social meaning among youths. As a general proposition, this is undoubtedly true (Fagan 1999:29–31; Pattillo & May 1994:16–29). Specifically, though, Kahan and Meares claim that "[g]un possession can confer status on the carrier because it expresses confidence and a willingness to defy authority.

Failure to carry a gun, on the other hand, may signal fear and thus invite aggression" (Kahan & Meares 1998b:824). The authors contend that the traditional policy of rewarding juveniles who voluntarily give up their own weapons and severely punishing those who do not is doomed to fail because the policy works *against* the present social meaning of gun possession. The traditional policy "reinforce[s] the message of defiance associated with carrying guns and thus *increase[s]* the expressive value of that behavior" (825).

In contrast to the traditional policy, Kahan and Meares endorse a policy of rewarding juveniles who turn in their classmates who are carrying guns. The authors write,

> When students fear that their peers will report them, they are less likely to display their guns; when students are reluctant to display them, guns become less valuable for conveying information about attitudes and intentions. In addition, the perception that onlookers are willing to sell out possessors counteracts the inference that possessors enjoy high status among their peers. Encouraging snitching thus reduces the incidence of gun possession both by deconstructing its positive meaning and by disrupting behavioral norms—including the ready display of guns—that are essential to that activity's expressive value. (Kahan & Meares 825)

The policy of encouraging "snitching," Kahan and Meares argue, changes the social meaning of gun possession and thereby lowers the incentive to carry.

This is a plausible account of social meaning, but it is by no means the only plausible account. Once we have taken the social meaning turn, other competing interpretations arise. This is true for juvenile gun possession, as it is for most other police initiatives, and techniques of punishment more generally. My colleague Toni Massaro's brilliant work on the social meaning of shaming penalties, for example, is a good illustration of the multiple meanings that may attach to contemporary punitive practices (Massaro 1997; 1999).

In the specific context of a policy of encouraging juvenile snitching, the question that arises is: *how else might such a policy affect social meaning?* Here are some rival hypotheses. Perhaps snitching will develop negative social meaning. Maybe snitches will be ostracized or, worse, physically harmed. Maybe snitching will be viewed as cowardly. Maybe snitching will eventually "signal fear and thus invite aggression" (Kahan & Meares 1998b:824). Perhaps juveniles will form into bands of non-snitches and become aggressive toward non-band-members

or other bands. Maybe, over time, juveniles will develop ways of determining to whom they can show their weapons and to whom they cannot. Maybe, with time, membership in a particular non-snitching band will replace open gun carrying as the vehicle that "confer[s] status on the carrier because it expresses confidence and a willingness to defy authority" (Kahan & Meares 1998b:824). Perhaps juveniles will recruit others into their non-snitching band or will require certain rites of admission to their group.

Several of these hypotheses may turn out to be correct at any one time, or sequentially. Perhaps there first will be a period in which gun possession declines as a result of the changed social meaning. But maybe that period will be followed by an increase in gun carrying as non-snitching bands emerge and snitches are physically harmed. Perhaps the initial decline in gun possession will only last a few days, or until the first snitch is murdered, or until the parents of that first snitch sue the school district for implementing a policy of snitching without affording snitches any protection. On the other hand, maybe the first period will bring about some order that will positively influence behavior away from gun possession more permanently.

Moreover, juvenile gun possession itself may carry altogether different meanings than Kahan and Meares suggest. Especially in the aftermath of the tragedy at Columbine High School, in Littleton, Colorado, juvenile gun possession in school may now be perceived by many students as extremely threatening, rather than a source of admiration. Some juveniles may regard gun possession in terms of self-reliance. Others may think of guns as purely a market commodity. Still others may regard firearms as an object of curiosity.

In a recent incident in a middle school in Tucson, Arizona, a sixth grader brought a .40-caliber pistol and approximately 30 rounds of ammunition to school. He had apparently obtained the weapon from his older brother, who belonged to a gang. According to the police officer who investigated the case and interviewed over 40 students, the juvenile's apparent intention was to sell the gun for cash. Two other students purportedly indicated that they were interested in buying the gun for approximately $80, because they felt they needed protection on their way home from school. They lived in a high-crime neighborhood. The gun passed through several hands and lockers at school, was displayed and examined by several students in the boys' bathroom, and was apparently fired in the air at a bus stop. Ultimately, a student told the

authorities. The gun and ammunition were seized and several students were punished (Huber 1999).[1]

The point of this tragic story is that the gun had *different* meaning for *different* children. Many of these different and complex meanings may have contributed to the juvenile gun possession. Yet many of these different and complex meanings may not have been amenable to change by means of a policy of encouraging snitching. The social meaning of *that* gun possession was multifaceted, complex, and highly contextual.

None of this is to suggest, in any way, that we should *not* engage in this kind of interpretive analysis. To the contrary, at the conceptual level, I support Kahan and Meares' effort to move criminal law policy analysis in the direction of social meaning. I agree that it is the social meaning of behavior—and not the behavior *standing alone*—that matters when we try to design public policies. But, the key question that this raises is a *question of proof*. How do you prove that an interpretation of social meaning is not just *plausible* but *correct*? What research design and methods of proof does the social meaning turn call for? As my colleague Ted Schneyer argues, the point "is not that policymakers should disregard the cultural consequences" of practices and institutions; but rather, that policymakers who assert that practices will have cultural meaning and effect "should be expected to support their assertions" (Schneyer 1993:384, n.139; *see also* Schneyer 1971:206–11).

I. The Implications of Norm-Focused Scholarship for Methods of Proof

Norm-focused scholarship is best understood as a type of constructivist social theory. The literature attempts to explain behavior by focusing on shared interpretations of social practices (Kahan & Meares 1998b:815; Kahan 1998:610; Kahan 1997a:362). These shared interpretations are socially constructed (Lessig 1995:949), and they move social actors to behave in certain ways. As Lawrence Lessig explains, "The regulatory effect of norms comes not from something

[1] I conducted this interview in preparation for a large research project on juvenile gun possession that I will conduct in the Fall of 2000. The discussion here is, accordingly, preliminary and sketchy. I do not intend here to convey hard evidence about the social meaning of juvenile gun possession, so much as to sketch different possible meanings and to illuminate the kind of research that is required after the "social meaning turn."

physical or behavioral. The regulatory effect comes from something interpretive" (Lessig 1998:680).

Socially constructed meaning is at the heart of the norm-focused project. With regard to each and every policy recommendation, social meaning plays a pivotal, if not *the* pivotal, role. For example, the reverse-sting strategy (the strategy of setting up and arresting purchasers, rather than drug dealers), it is argued, changes "the social meaning of drug-law policy" (Kahan & Meares 1998b:818–19). At present, the meaning stigmatizes African-Americans as lawbreakers because they are the predominant targets of sting operations. By redistributing the impact of drug convictions outside the inner city, reverse stings "can affect the social meaning of drug offending in ways that encourage residents of minority communities to cooperate with police officers and with each other to reduce crime" (Kahan & Meares 1998b:818–19). Anti–gang loitering ordinances and youth curfews allegedly affect behavior by changing the social meaning of gang membership. "The level of gang activity reflects whether individual juveniles believe that others value and expect gang membership" (1998b:819). Ordinances and curfews change the perception among juveniles that peers value gang criminality by reducing, for instance, the expressive function of the behavior: "being out at night becomes a less potent means of displaying toughness because fewer of one's peers are around to witness such behavior" (1998b:821). Order-maintenance policing (the policy of enforcing laws against minor misdemeanor offenses, such as public urination, public intoxication, panhandling, or graffiti writing) purportedly works because of the social meaning of order. Since order means that a neighborhood is in control, changing a neighborhood from disorderly to orderly will reduce crime (1998b:823). As we saw earlier, the policy of encouraging juvenile snitching supposedly works by changing the social meaning of gun carrying. By rewarding kids who turn in their peers, the strategy "interferes with norms that give guns their meaning" (1998b:825). Finally, church-police cooperation (such as the Eleventh District prayer vigil in Chicago) is purportedly effective, in part, because it changes the social meaning of the police—it casts the police in a new light within the social fabric of the community—and changes police officers' perceptions of suspects (1998b:829–30).

All of these proposed policing strategies operate on social meaning.[2] In this regard, norm-focused scholarship in criminal law traces back, primarily, to Lawrence Lessig's 1995 essay, *The Regulation of Social Meaning.*[3] In that essay, Lessig positions his conception of social meaning within the framework of constructivist theory. Lessig (1995) offers, in the margin, the following intellectual background to his use of the term "social meaning":

> It is constructivism that defines modern social theory. Emile Durkheim is one start: "(S)ocial reality is constructed by the operation of the society itself. . . . Social facts are the product of the group life of the total operation of a society." In our own time, the notion was advanced most forcefully in sociology by Peter L. Berger and Thomas Luckman's work, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* 19 (Doubleday, 1966), and in law most importantly by Roberto Unger. Unlike some of the earlier theorists, moderns think less about "society itself" constructing itself and more about how the actions of individuals and collectivities work to construct it. Nevertheless, the tradition has maintained its view about social reality's source: "Human reality is not provided at birth by the physical universe, but rather must be fashioned by individuals out of the culture into which they are born." (949 n.19, *citations omitted*)

Both Dan Kahan and Tracey Meares rely importantly on Lessig's conception of social meaning (Kahan 1997a:351, n.7; Kahan 1997b:2478, n.8; Kahan 1998:611; Kahan & Meares 1998a:1181; Kahan & Meares 1998b:815). On its basis, they offer explanations for the purported effectiveness of the proposed policing strategies. They make predictions, as evidenced by their claim that "disorderly norms create crime" (Kahan & Meares 1998b:806), and they endorse

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[2] In her generous comments to my draft, Tracey Meares suggests that I overemphasize the role of social meaning at the expense of the concept of social organization. Meares contends that she and Dan Kahan have offered a taxonomy of at least three mechanisms by which social norms operate, including social organization, social influence, and social meaning. I am not entirely persuaded, however, that these are three distinct mechanisms. In the first place, the concept of social influence, in my opinion, collapses into the notion of social meaning: social meaning has its effect through its influence on social action. Second, social organization, though slightly more conceptually independent than social influence, also operates importantly through social meaning and influence: the loss of social organization is a phenomenon that feeds into the web of meanings that make up a community, and socially influences neighborhood residents to act in ways that aggravate crime. In discussing social organization theory, Tracey Meares emphasizes, for instance, that "socially organized or cohesive communities are better able to engage in informal social control . . . because such communities are able to *realize common values*, which can be continually reinforced in daily community life through *conduct and discourse* that centers on law abidingness" (Meares 1998a:197; 1998b:675). This seems to suggest that social organization is not purely behavioral, but operates in large part through the meaning of social norms. In this sense, I still believe that it is social meaning that is at the heart of the norm-focused project.

[3] Although Lessig did not originate the social-norm turn—others, most notably, Robert Ellickson (1991) and Jon Elster (1989) preceded him in this respect—Lessig nevertheless initiated the focus on *social meaning* as the lens through which we understand social norms (Lessig 1995; 1996, & 1998; Ellickson 1998:549; Posner 1998:563). The norm-focused scholarship in the criminal law area adopts the social meaning lens, and, in this respect, traces back most directly to Lessig's work.

policy prescriptions. But they are candid about the fact that they are focusing on shared *interpretations* (1998b:815). And, in this sense, they are proposing "an interpretive turn" (Lessig 1996:2184)—a movement away, however slight, from behavioralism or more traditional economic modeling (Lessig 1998:682). This movement parallels the larger intellectual shift that has occurred in the social sciences (Foucault 1970:359).

To characterize any social theory as constructivist or interpretive today, however, calls for more specificity, since there are so many different types of constructivist theories in circulation, ranging from the historical, or ironic, to the unmasking, or reformist, to the more rebellious, or revolutionary (Hacking 1999:19–21). I would characterize norm-focused scholarship as moderate, instrumental, and, at times, reformist. It is moderate insofar as it does not suggest that *all* social meanings are constructed. As Lessig explains, "[*S*]*ome* social meanings are constructed" (1995:949), and even though more than one construction may be possible, not every construction is possible (1995:949, n.19). It is instrumental insofar as the scholarship seeks primarily to change social meaning in order to affect behavior. And it has an ambivalent relationship to reform insofar as it does sometimes, but not always, question, criticize, or seek to reform social meaning.

A. The Implications for Social Scientific Methods

The constructivist nature of norm-focused hypotheses has specific implications for social scientific methods and research design. Clifford Geertz's writings are the natural place to start. A fellow Chicagoan—at least in the 1960s, when he taught at the University of Chicago—Geertz led the interpretive turn in anthropology (Geertz 1995:114). The discipline of anthropology, at the time, was dominated by a notion of culture that had begun to lose its critical edge. Geertz narrowed the idea of culture and redefined it, in interpretive terms, as the structure of meaning within which we come to understand human actions, relations, emotions, thoughts, and desires. "The concept of culture I espouse," Geertz explained, "is essentially a semiotic one. Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning" (1973:5). Geertz participated in the

effort to redefine the ethnographical enterprise and to create what has come to be known as "symbolic anthropology." In Geertz's words,

> [T]his redefinition consisted in placing the systematic study of meaning, the vehicles of meaning, and the understanding of meaning at the very center of research and analysis: to make of anthropology, or anyway cultural anthropology, a hermeneutical discipline. (1995:114)

Geertz's use of the term "culture" bears a strong resemblance to the use of the term "social meaning" by norm-focused scholars. Geertz's explanation, for instance, of the social meaning of the Balinese cockfight as a dramatization of status concerns, and of the multiple expressive dimensions involved in the kinship loyalties, hostility relationships, or cross-loyalties in the center bet of a Balinese cockfight (1972:18–23) could be a model for Kahan and Meares' explanation of the social meaning of, for example, juvenile gun carrying or disorderly behavior. Both situations locate human activity within a web of meaning that helps us to make sense of the feelings, perceptions, emotions, and thoughts of the participants. Given the strong kinship, Geertz's writings are a natural place to look for a discussion of the implications of the interpretive turn for social scientific methods.

And, as Geertz eloquently demonstrated, those implications are profound. The interpretive turn entails a different sensitivity to methods of proof, to conceptions of knowledge, and to notions of objectivity. In anthropology, Geertz suggests, proof is more a matter of detailed and convincing case studies, of thick descriptions derived from intense participant observation, and of immersion into language, customs, and practices than it is of using someone else's data and running regressions. Although Geertz concedes that "numbers normally carry the day," he suggests that "they remain somehow ancillary: necessary of course, but insufficient, not quite the point. The problem—rightness, warrant, objectivity, truth—lies elsewhere, rather less accessible to dexterities of method" (1995:18). Where it lies, according to Geertz, is in facilitating further understanding, further insight, further meaning. It lies in creating a structure of representation that helps make sense of events. "What recommends [certain interpretations], or disrecommends them if they are ill-constructed, is the further figures that issue from them: their capacity to lead on to extended accounts which, intersecting other accounts of other matters, widen their

implications and deepen their hold" (Geertz 1995:19). As Geertz (1995) explains, speaking for himself, but also for his colleagues now at the Institute for Advanced Studies,

> we are all suspicious of casting the social sciences in the image of the natural sciences, and of general schemes which explain too much. We have sought, rather, to advance a conception of research centered on the analysis of the significance of social actions for those who carry them out and of the beliefs and institutions that lend to those actions that significance. Human beings, gifted with language and living in history, are, for better or worse, possessed of intentions, visions, memories, hopes, and moods, as well as of passions and judgments, and these have more than a little to do with what they do and why they do it. An attempt to understand their social and cultural life in terms of forces, mechanisms, and drives alone, objectivized variables set in systems of closed causality, seems unlikely of success. (127)

The interpretive turn also calls for a methodology that recognizes, among other things, the important role of the researcher in formulating and building structures of representation. It calls for a self-conscious and critical assessment of the researcher's role in interpreting meaning. The perceived force or aptness of an interpretation may depend on the intellectual context, as well as the wider moral and cultural setting that frames the representation. These may change as a result of personal and professional experiences, and political shifts in academia and beyond. In anthropology and other social sciences, for instance, the framework of meaning based on earlier ethnographic methods have been undermined by later writings, especially post-colonialist writings (Geertz 1995:128–30). Changing political, professional, and disciplinary landscapes, as well as one's own professional and emotional development and engagement in observation, inevitably affect the perceived strength of proposed interpretations. This is not something to ignore, but rather to adjust to, to work through, to understand, and, most important, to value.

B. Assessing the Methods of Proof in Norm-Focused Scholarship

Geertz's writings are representative of how interpretive theory affects—or should affect—social science methodology: insofar as norm-focused scholarship is a moderate type of constructivist theory, it should go hand in hand with what Geertz calls a "post-positivist critique of empirical realism" (1995:167). And it is here that I sense a disconnect in the emerging norm-focused writings. Though interpretive *in theory*, the norm-focused writings *in practice* rely too

often on numerical studies that correlate police enforcement with criminal conduct.[4] These studies tell us little, if anything, about *social meaning*. The problem is most evident if we look closely at specific examples of policy analyses in norm-focused writings. I have previously reexamined and criticized the social-norm argument for order-maintenance policing (Harcourt 1998:308–39), so I turn here to two other examples: the discussions of anti–gang loitering ordinances and juvenile snitching policies.

(i) Anti–gang loitering ordinances.

Kahan and Meares contend—again, correctly, I believe—that gang membership has social meaning. Specifically, however, they argue that, in high-crime neighborhoods, a majority of teens believe that their peers predominantly admire gang activity. Kahan and Meares suggest that, in order to reduce gang activity, "the law should regulate the sources of social meaning that construct th[ese] impression[s]" (1998b:819). The authors advocate, on these grounds, the use of anti–gang loitering ordinances, such as the ordinance that was enacted by the city of Chicago in 1992 and recently held unconstitutionally vague by the United States Supreme Court in *City of Chicago v. Morales* (1999). They write,

> By preventing gangs from openly displaying their authority, such laws counter-act the perception that gang members enjoy high status in the community. As that perception recedes, the perceived reputation pressure to join and emulate them should diminish. (Kahan & Meares 1998b:821)

The specific norm-focused hypothesis, then, is that anti–gang loitering ordinances change the social meaning of gang membership, and that the change in social meaning affects the behavior of teens, thereby reducing the amount of gang activity.

How do Kahan and Meares prove that their interpretation of social meaning is not only plausible but correct? First, as I just discussed, they contend that gang activity has a "high status" social meaning in the inner city. Second, they argue that "there is already a respectable

[4] Tracey Meares informed me that she recently completed a two-year data collection for her research on church-police cooperation—the research project that she discusses in Kahan & Meares 1998b:829—and that her research includes extensive interviews, several surveys, and ample field notes. That research undoubtedly will make an important contribution to this debate. My remarks here, of course, address only the existing body of published norm-focused scholarship.

body of evidence documenting the effectiveness of norm-focused strategies for fighting gangs" (Kahan & Meares 1998b:822). In support of this claim, the authors state that "[l]aw enforcement officials in Chicago, for example, report dramatic reductions in violent offenses in neighborhoods in which that city's gang-loitering ordinance is most vigorously enforced" (Kahan & Meares 1998b:822). Noting a study that reaches a contrary conclusion with regard to curfews in California, the authors caution that the evidence in Chicago may not be conclusive since controlled studies have not yet been conducted. Kahan and Meares emphasize the need to conduct "properly controlled studies" that "control for the myriad other influences on crime rates" (1998b:822, and n.24).

The crucial problem here is that Kahan and Meares' proof does not begin to address the *social norm* component of the norm-focused hypothesis. The authors have offered no evidence in support of the claim that *social norms* have influenced criminal conduct. The supposed effectiveness of the anti–gang loitering ordinance in Chicago tells us nothing about its *social meaning*.

As a preliminary matter, the purported statistical correlation between enforcement of the anti–gang loitering ordinance and reduced criminal activity does not appear to hold (Schulhofer & Alschuler 2000; Roberts 1999:794–95). The ordinance was enforced beginning in the latter part of 1992, and throughout 1993, 1994, and most of 1995. During that period, with the exception of 1995, the principal measures of gang-related crime increased sharply at the citywide level: gang-related homicides, for instance, rose from 116 in 1992 to 291 in 1994, and then down to 218 in 1995, which is still 88% higher than in 1992, when enforcement of the ordinance began (Schulhofer & Alschuler 2000:12). Moreover, as Justice Stevens observed, writing for the majority in *Morales*, "gang-related homicides [in Chicago] fell by 19% in 1997, over a year after the suspension of the ordinance" (*Morales* 1999:9, n.7; Roberts 1999:794). Unless one assumes a two-or-more-year delay in social influence, the correlation is absent at the citywide level.[5] And,

[5] Schulhofer and Alschuler discuss the possibility of a multiyear delay in the operation of social influence, and cast serious doubt on it (2000:13–14). I would only emphasize, though, that the very possibility of a two-or-more-year delay is *precisely* what creates the urgent need for in-depth, qualitative analyses regarding the social meaning and influence of the ordinance. Barring this kind of research, there is really no way to assess whether the speculation about a time delay has any basis in reality. And the same would be true even if there *were* a simultaneous temporal correlation between enforcement and reductions in gang-related crime. Such a correlation

as Stephen Schulhofer and Albert Alschuler demonstrate in great detail, the correlation is also absent at the district level: "[W]hether judged in absolute terms or relative to crime trends elsewhere in Chicago, the number of violent offenses *did not* drop dramatically in the high-crime districts where the ordinance was most vigorously enforced. On the contrary, the most dramatic reductions occurred in the low-crime districts where the ordinance was *least* vigorously enforced" (Schulhofer & Alschuler 2000:7). Murder and aggravated assault are the two types of crime that are considered most significantly related to gang activity. Yet, as Schulhofer and Alschuler demonstrate, from 1992 to 1995, the number of murders fell by 55% in the districts where the ordinance was least actively enforced, but rose by 3% in the districts of most active enforcement (8). With regard to aggravated assaults, Schulhofer and Alschuler report that, while the citywide numbers fell by just under 5% between 1992 and 1995, "the number of aggravated assaults fell more sharply (by 15%) in the districts of least active enforcement. In the districts of most active enforcement, aggravated assaults registered a 5% decline, mirroring the city-wide trend" (8–9). Plainly, the statistical correlation itself is not established.

This empirical gap is merely a symptom of a more fundamental problem with Kahan and Meares' method of proof: even if there were a statistical correlation between the enforcement of the ordinance and a drop in gang activity (holding constant other influences on crime rates), the statistical relationship would tell us little, if anything, about *changes in social meaning*. It would tell us nothing about the specific norm-focused hypothesis, other than that the hypothesis is not obviously false. It would give us practically no information about the social meaning of gang membership, about the possibility that the social meaning can be changed, or about whether the social meaning has in fact changed under the ordinance. Even if it were possible to control fully for the myriad other influences on crime, a statistical correlation still would not reveal whether it was the purported change in *social meaning*, and not some *other* phenomenon associated with anti–gang loitering ordinances (such as incapacitation or deterrence), that brought about the reduction in gang activity.

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might simply reflect the operation of *earlier* social norms and practices. Barring qualitative research, the quantitative data are essentially uninterpretable.

The controlled study that Kahan and Meares call for is just the tip of the iceberg. It serves merely as a preliminary check to determine whether the norm-focused hypothesis has any chance of being verified. If there is *no* correlation between enforcement and lower crime rates, then clearly the *norm component* of the norm-focused hypothesis is unlikely to be correct. If there is a correlation, then a lot more research needs to be done. We would need to conduct in-depth qualitative analyses that explore the structure of meaning in the relevant community, the possibility of change in social meaning, and the effect on behavior. The study of social meaning is a complex, delicate, and difficult task. Social meanings are fluid: they may be socially constructed, they may change, and they may be changed. In addition, they are not necessarily transparent: they may be somewhat buried in our consciousness and may require some digging. The study of social meaning calls for intensive participant observation, open-ended interviews and conversations with multiple informants, and in-depth exploration of particular communities. It also calls for longitudinal studies in order to fully investigate any change in social meaning over time. In addition, once the qualitative data have been carefully obtained, it may be possible to code the data and run quantitative analyses on the relationships between the policing initiative and changes in social meaning, and between those changes in social meaning and their effect on behavior.

The study of social meaning calls for the integration of qualitative and quantitative methods, an approach that is increasingly reflected in the social sciences today. From political science and sociology to program evaluation in psychology, there is a growing movement to overcome the traditional paradigm war, and to combine qualitative and quantitative approaches in order to increase the amount of information to bring to bear on hypotheses (King, Keohane, & Verba 1994:229; 1995:479–80; Seale 1998:2; Reichardt & Rallis 1994:10–11). Researchers are increasingly finding that different methodological approaches complement each other, and that "all good research . . . is best understood . . . to derive from the same underlying logic of inference" (King, Keohane, & Verba 1994:4). This is true as well in the field of criminal law policy analysis after the social meaning turn.[6]

[6] There are excellent examples of integrated studies in the area of criminal law policy analysis. For example, Jeffrey Fagan, in an unpublished manuscript entitled "Social Contagion of Violence" (1999), uses the concept of "social contagion" and the model of contagious epidemics as metaphors to study homicides in New

(ii) Rewarding juvenile snitching.

As discussed earlier, norm-focused scholars also endorse the policy of rewarding juveniles who turn in their classmates who are carrying guns (Kahan 1997a:364; 1998:611–12; Kahan & Meares 1998b:824–25; Kahan 1999:1867). The specific norm-focused hypothesis here is that snitching changes the social meaning of gun possession, and thereby reduces the amount of juvenile gun carrying. How do Kahan and Meares prove that their account of social meaning is correct? They write: "A policy that *is* believed to be effective is to pay rewards to students who turn in gun possessors. This tactic works not just because it facilitates seizure of weapons, but also because it interferes with norms that give guns their meaning." The authors cite three references for their argument: Blumstein & Cork 1996; Harrington-Lueker 1992; and Butterfield 1996a (Kahan & Meares 1998b:825, & n.27; Kahan 1998:612, n.8; Kahan 1999:1867, & n.29).

The crucial problem, again, is that these studies do not establish the *norm component* of the norm-focused hypothesis. The excellent study by Alfred Blumstein and Daniel Cork, entitled "Linking Gun Availability to Youth Gun Violence," does not purport to prove or even address the efficacy of snitching policies. The study examines trends in crime rates in the United States from 1972 to 1995. It disaggregates the data by age, weapon used, race, and offense, and then performs time-series and regression analyses of the data. The study concludes that (a) homicides committed by youthful offenders have grown dramatically since 1985, and (b) "an important factor in that growth has been a significant increase in the availability of guns to young people" (Blumstein & Cork 1996:5). In conclusion, the article discusses the policy implications, the first and foremost being the need to reduce gun availability among juveniles. It lists many approaches

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York City. Fagan suggests that gun homicides during the years 1985–1996 fit a contagion model, where gun homicides are seen as the contagious agent that diffused across New York City neighborhoods from 1986 to 1991 and then retreated just as quickly from 1991 to 1996 (18). Fagan's hypothesis can be expressed in terms of social norms, meanings, and influence (38). In order to study what could be called "an endogenous process of social influence," Fagan conducts both quantitative and qualitative analyses. On the one hand, Fagan uses a sophisticated mixed effects regression model to study the spatial diffusion of youth homicide in the different neighborhoods over the 11-year period (20–26). On the other hand, Fagan also conducts in-depth interviews with young males active in gun violence during this period to explore the process of social contagion. Another good illustration is Steve Schulhofer's 1984 study of the bench trial system in Philadelphia. Schulhofer there explored whether bench trials could be genuinely adversary proceedings, and at what cost a system of bench trials could replace the more pervasive system of plea bargaining. Schulhofer specifically developed in his study quantitative data on the basis of qualitative observations of the "adversariness" of bench trials, thereby integrating research methods (1984:1075–82; 1986).

that "have been tried with considerable success" (Blumstein & Cork 1996:16). It then proposes an alternative strategy of developing improved socialization to alleviate the problems associated with dysfunctional families.

It is in the course of listing the "[m]any approaches [that] have been tried with considerable success" that Blumstein and Cork mention the snitching policy. Based on communications with Police Chief Reuben Greenberg of Charleston, South Carolina, Blumstein and Cork note that "Charleston has offered a $100 bounty for reports of illegal guns that can be confiscated" (17). Other than classifying this policy as one that has "been tried with considerable success," they do not purport to establish that the snitching policy has been successful. Later, they refer to the policy, and the other approaches listed, as "focused primarily on achieving short-term effects" and they propose, for the long-term, a focus on socialization. Blumstein and Cork's study does not attempt to prove how a policy of snitching will change the social meaning of juvenile gun possession and reduce carrying.

The Harrington-Lueker reference is to a two-page article entitled "Metal Detectors: Schools Turn to Devices Once Aimed Only at Airport Terrorists," published in *The American School Board Journal* in May 1992. The author discusses the use of metal detectors. In passing, she reports that, according to Prince George's County, MD, public school security chief Peter Blauvelt, "most of the guns found this year in the Prince George's County Public Schools have been found as a result of [student] reports. Detroit's gun hot line gives students a similar chance; students can simply dial 871-HELP to report a weapon on school premises" (Harrington-Lueker 1992:27). This article does not discuss the policy of rewarding snitching, and does not purport to establish an interpretive theory of social meaning.

The final reference is to a Fox Butterfield article in the *New York Times*, entitled "Police Chief's Success in Charleston, S.C., Is What's Raising Eyebrows Now." In that article, Butterfield reports that Police Chief Reuben Greenberg—the same person with whom Blumstein and Cork communicated—stated that "[k]ids are the greatest snitches in the world" and suggested that the snitching policy reversed the psychology of carrying. Butterfield's lone interview with the Charleston police chief, however, is hardly evidence that "this tactic works."

The important point is that, even if reliable data did suggest that the snitching policy in Charleston was accompanied by decreased gun carrying, the correlation itself could not establish that the snitching policy changed the *social meaning* of gun carrying. Nor would it establish that it was the *change in social meaning*, and not some other feature of the snitching policy, such as the reward itself in classic cost-benefit terms, that had an effect on behavior. To establish the specific norm-focused hypothesis, more research would be necessary.

My independent review of the literature has not revealed any other studies concerning the specific use of juvenile snitching policies to combat juvenile gun possession. At the more general level of juvenile informants and juvenile gun possession, the literature raises two potential concerns: first, about the safety of juvenile informants, and second, about the possible effectiveness of rewarding snitching. One general study on the management of juvenile informants, conducted in England and Wales, raises questions about the safety of juvenile informants. Of the 75 police officer informant handlers interviewed in that study, 39 (or 56%) "stated that they believed that juveniles should not be used for serious or major crime, or in circumstances in which they may come to harm" because of concern for their safety (Balsdon 1996:15). In a study of juvenile gun possession in New Mexico, based in part on a self-report questionnaire administered to 380 juvenile delinquents in confinement, the investigators report that only 16.9% of the respondents thought that juveniles themselves might be effective in reducing juvenile gun possession (LaFree & Birkbeck 1998:51). Of course, neither of these two studies address the specific norm-focused hypothesis, and I am not here endorsing the methods or reliability of either of these two studies. But this preliminary review of the literature suggests that there may be additional costs and confirms that more research needs to be done before we implement a policy of encouraging juvenile snitching.

II. Shifting the Focus from Social Meaning to Subject Creation

Norm-focused explanations emphasize the mediating role of social meaning in the relationship between policing practices and criminal behavior. The typical hypothesis is of the following type:

Police Technique	Behavior	Change in Social Meaning	Change in Criminal Behavior
[A]	[B]	[C]	[D]

So, for instance, a policy of rewarding snitching [A] will produce some snitching [B], which will change the social meaning of gun possession [C] and thereby reduce gun carrying [D]. Or, youth curfews [A] will result in less nighttime loitering [B], which will change the meaning of gang membership [C] and reduce gang activity [D]. Reverse stings [A] will result in the arrest of suburban buyers [B], which will change the social meaning of drug-enforcement policies [C] and result in more respect for the police in the inner city [D].

The implications for methods of proof are clear: if our research focuses exclusively on the quantitative relationship between a police practice [A] and the change in criminal activity [D], we will learn very little, if anything, about the change in social norms and its effect on social meaning [C]. In order to study the norm-focused hypothesis, we need to engage in careful analyses of [C], and, if possible, integrate that information into our quantitative research.

The theoretical implication is equally clear: it is the interpretive element of the norm-focused hypothesis that yields predictive knowledge. Although the "social meaning turn" may not originally have been intended to be predictive (see Geertz 1973:14), social meaning plays a predictive role in norm-focused scholarship in criminal law. The purely behavioral relationship between [A] and [D] alone is not what allows social norm theorists to predict the effectiveness of other proposed policing strategies. It is the interpretive element of social meaning [C] that allows for generalization and prediction.

In this regard, social norm theorists depart from more traditional views of the social sciences. Many scholars, especially in the law and society movement, associate the social sciences with *explanation* in contrast to *interpretation,* which they associate with literary, or postmodern, or other interdisciplinary approaches like feminism, critical race theory, or critical legal studies (see, e.g., Galanter & Edwards 1997:377 and 384). Explanation is traditionally linked with causality and prediction, interpretation with description and critique. Marc Galanter and his co-author, Mark Edwards, for instance, suggest that “if there is a pivotal intellectual rivalry in the legal academy, it exists not among the economic and other social scientific versions of explanatory inquiry, but between explanatory and interpretive approaches to understanding

law and its social context" (1997:384). By espousing both the "interpretive turn" as well as predictions based on norm-focused hypotheses, the social norm scholars directly challenge this traditional understanding.

A. The Social Meaning of Order and Disorder

What is puzzling, though, is that the norm-focused explanation regarding the effectiveness of *order-maintenance policing* does not fit their typical model. Order-maintenance policing works, we are told, because it displaces disorder with order, and order has a *different* social meaning than disorder. In the case of order-maintenance policing, there is, in effect, no *change* in social meaning: the meaning of order and disorder remain constant. In sharp contrast to other meanings, like the meaning of gang membership or gun carrying, which they seek to reconstruct, norm-focused scholars treat the social meaning of order and disorder as natural, fixed, or necessary. They do not contest the meaning of order and disorder, nor do they seek to change their meaning. This is surprising because the central insight of a constructivist approach is precisely that social meanings may be constructed and may change, but that, when the meanings are not contested, they become fixed or natural. As Lessig explains:

> when these understandings or expectations become uncontested and invisible, social meanings derived from them appear natural, or necessary. The more they appear natural, or necessary, or uncontested, or invisible, the more powerful or unavoidable or natural social meanings drawn from them appear to be. The converse is also true: the more contested or contingent, the less powerful meanings appear to be. Social meanings carry with them, or transmit, the force, or contestability, of the presuppositions that constitute them. They come with the pedigree, presumed or argued for, of their foundation. (1995:960–61)

Norm-focused scholars in criminal law fully appreciate Lessig's argument. In fact, most of the proposed police strategies depend for their effectiveness on contesting and changing the social meaning of practices like gang membership or gun carrying. Yet, with regard to the most central practices of all, order and disorder, the literature is silent. And there is no explanation why these meanings should have a different ontological status than all the social meanings that can be changed. A theory of social meaning should, at the very least, account for this crucial difference (Lessig 1998:684–85).

On close examination, the meaning of order and disorder do not seem as stable or as fixed as norm-focused scholars suggest. In practice, it is not always easy to distinguish order from disorder. There is a lot of disorder in order, and a lot of order in disorder. If one reexamines the founding document of contemporary order-maintenance policing, James Q. Wilson and George L. Kelling's *Broken Windows* article, the disorder in order becomes more apparent. How is it, after all, that the police deal with the disorderly? "In the words of one officer," Wilson and Kelling report, "'We kick ass'" (1982:35). Or, as the authors explain elsewhere, the police "rough up" young toughs, and arrest on suspicion (Wilson & Kelling 1982:33). On closer inspection, the desired order and regularity in order-maintenance policing may depend on a lot of irregularity. At the same time, the disorder has order to it. The targets of order-maintenance policing are not selected at random.

The order that seems at first so natural, so apparent, and so obvious—the order that is just waiting to be expressed—is at one and the same time disorderly; and the disorder does not allow itself to be minimized, compartmentalized, or explained away. When we begin to investigate the order, it turns out to be more complicated. There is a striking passage in Michel Foucault's *The Order of Things* that describes this experience:

> The fundamental codes of a culture—those governing its language . . .—establish for every man, from the very first, the empirical orders with which he will be dealing and within which he will be at home. At the other extremity of thought, there are the scientific theories or the philosophical interpretations which explain why order exists in general, what universal law it obeys, what principle can account for it, and why this particular order has been established and not some other. But between these two regions . . . lies a domain which, even though its role is mainly an intermediary one, is nonetheless fundamental . . . It is here that a culture, imperceptibly deviating from the empirical orders prescribed for it by its primary codes, instituting an initial separation from them, causes them to lose their original transparency, relinquishes its immediate and invisible powers, frees itself sufficiently to discover that these orders are perhaps not the only possible ones or the best ones; . . . that there exists, below the level of its spontaneous orders, things that are in themselves capable of being ordered, that belong to a certain unspoken order; the fact, in short, that order *exists*. (Foucault 1970:xx; 1966:11–12)

The meaning of order in norm-focused scholarship seems to be unmediated in this very way. It resembles a "fundamental code" of a culture, a code that has not yet been questioned and has not yet lost its "original transparency."

The meaning of order, it turns out, may be constructed, and constructed in important ways by the techniques of policing that prevail in society. Specifically, it may be shaped by the practice of order-maintenance policing. In other words, in addition to changing perceptions and short-term behavior in the manner described by Kahan and Meares, policing techniques may also shape the contemporary subject more fundamentally and mold the way that we understand order. Order-maintenance policing may influence the way that we perceive the person who is out of order—who is dirty or apparently loitering—as dangerous, as a source of transgression, in need of being controlled or arrested or banished. According to the unwritten rules of a Newark police officer maintaining order, "drunks and addicts could sit on the stoops, but could not lie down. People could drink on side streets, but not at the main intersection. Bottles had to be in paper bags. Talking to, bothering, or begging from people waiting at the bus stop was strictly forbidden" (Wilson & Kelling 1982:30). This fine art of patrolling, observing, and relocating, these intricate rules of neighborhood hygiene, this aesthetic policing shapes the subject.

Order-maintenance policing may also influence the way that we understand order by reinforcing notions of Black criminality. Dorothy Roberts (1999) has explored the racial meaning of order-maintenance policing in the most recent Foreword to the *Journal of Criminal Law & Criminology*'s Supreme Court Review. Roberts has shown how the categories of order and disorder—of law-abiders and the disorderly—though created in part by these policing techniques, are also shaped by pernicious racial stereotypes about criminality. The way that we define "visibly lawless people," Roberts explains, "adopts America's longstanding association between blackness and criminality" (1999:805). Roberts catalogues the numerous ways in which blackness is associated with crime. Psychological studies, for instance, have revealed a disproportionate rate of error in eyewitness identification when the witness is white and the suspect African-American (Roberts 1999:805–6). In addition, many police officers consider race in their decision to investigate, and defend racial profiling. This results in a disproportionate arrest of African-American men and women for traffic and drug offenses (1999:806–9). Heightened arrests become, in turn, self-fulfilling prophecies: when the authority to arrest is exercised along racial lines, it likely increases the racial imbalance for convictions of other crimes (Roberts 1999:818). In sum, Roberts explains,

> [o]ne of the main tests in American culture for distinguishing law-abiding from lawless people is their race. Many, if not most, Americans believe that Black people are "prone to violence" and make race-based assessments of the danger posed by strangers they encounter. One of the most telling reflections of the association of Blacks with crime is the biased reporting of crime by white victims and eyewitnesses. The myth of Black criminality is part of a belief system deeply embedded in American culture that is premised on the superiority of whites and inferiority of Blacks. Stereotypes that originated in slavery are perpetuated today by the media and reinforced by the huge numbers of Blacks under criminal justice supervision. As Jody Armour puts it, "it is unrealistic to dispute the depressing conclusion that, for many Americans, crime has a black face." (1999:805)

These racial stereotypes may affect our understanding of—or the meaning we give to—order. This may facilitate, in turn, the very policies of youth curfews, order-maintenance crackdowns, and anti–gang loitering ordinances. Once order is defined in terms of preventing serious crime, there may be little else to do but to crack down on the disorderly. Who in their right mind, after all, would side with people who break windows, hang out with gang members, aggressively accost passers-by, or vandalize other people's property? Who in their right mind would condone urinating in the streets or carrying guns in schools? The persons who are arrested *are disorderly*—they have committed crimes, they are the type of people who will commit more crimes or promote criminal activity. They *should* be punished.

Moreover, the meaning of order—understood in terms of preventing serious crime—may facilitate these police policies by overshadowing the numerous costs associated with the proposed policing strategies. As I discuss in my previous article, "Reflecting on the Subject" (Harcourt 1998), order maintenance in New York City has been achieved, in large part, by means of a 50% increase in misdemeanor arrests—up from 133,446 in 1993 to 205,277 in 1996. Those arrests can be quite an ordeal: being arrested, handcuffed, transported, booked, often strip-searched (at least prior to recent litigation), and spending the night in jail can be a harrowing experience. The policing initiative in New York City has been accompanied by a significant increase in the number of complaints of police misconduct. The Civilian Complaint Review Board in New York City received 5,550 and 4,816 complaints of police misconduct for 1996 and 1997, respectively, up from 3,580 complaints in 1993. Moreover, a law enforcement strategy that emphasizes misdemeanor arrests has a disproportionate effect on minorities—not necessarily in

relation to the racial composition of misdemeanor offenders, but simply in relation to the racial composition of the community. The brute fact is that the *decision to arrest* for misdemeanors results in the arrest of many minorities. In cities in the United States, for example, 46.4% of persons arrested for vagrancy in 1995 were black, although the population inside metropolitan areas was approximately 13% African-American. Order-maintenance policing may delegate the power to define order and disorder to police officers and designated community members in a manner inconsistent with our conception of democratic theory or constitutional principles. And the costs of arrest and prosecution of minor misdemeanor offenses may add up to a considerable investment (Harcourt 1998:377–84). The important point here is that many of these potential costs may be overshadowed by the meaning we may attribute to order.

B. Beyond Short-Term Behavioral Effects

Police practices may shape us as subjects and affect our understanding of order.[7] This raises the question whether norm-focused explanations are overly behavioral: do they focus too narrowly on the interplay between social meaning and short-term behavioral changes? A youth curfew, after all, may have an immediate effect on juveniles' perception of gang membership and may impact behavior, but it may also have a more pervasive effect on the mentality of our children. Youth curfews do not just prevent juveniles from cruising and hanging out at night, they also may prevent some juveniles from attending a reading group, a chess club, a meaningful movie, or a concert—and, especially, from attending any one of those events on their own, independently and maturely. These effects on our children are important and they need to be

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[7] It is precisely for this reason that I am also concerned about Kahan and Meares' proposal that we allow inner-city residents to "choose *for themselves* the law enforcement policies that will work for them" (Kahan & Meares 1998b:832; Kahan & Meares 1998a & 1999). These important choices about policing techniques may shape us all and, for that reason, we all have a stake in the matter. Order-maintenance policing, youth curfew laws, and police-church cooperation are going to affect our conception of authority, of political power, and of citizenship, and they are going to impact the experiences and outlooks, and the cultural and intellectual lives, of all our children. The answer is not to revert the decision making process to inner-city residents or to those most immediately affected by the policing practices. This solution is simply not democratic enough. The answer, instead, is to continue to explore how policing techniques shape the subject, to invigorate public discussion of police strategies and their affect on us, and to promote political participation and transparent judicial decision making (Harcourt 1999a:20). Kahan and Meares do not do justice to this argument when they suggest that it locks in the initial preferences of the founding decision makers (1999:23). We may decide, as a society, to support new policing techniques that deeply reshape us and our understandings of privacy, authority and citizenship. But, if we do, it should be a collective decision with eyes wide open—not the prerogative of a small segment of society.

critically examined. They cannot simply be dismissed on the grounds of paternalism, as Kahan and Meares suggest (1999:4). The task of criminal law policy analysis *necessarily* involves making judgments about what is best for people and society. This is paternalistic. It is no less paternalistic than social norm theory itself. After all, norm-focused scholarship relies on a critical social theory of consciousness formation. It contends that certain beliefs and perceptions—like the respect afforded gang members or gun carriers—are *distorted* and need to be changed in order to promote social order. It refers to "juveniles' *(mis)perception* that their peers value gang activity" (Kahan & Meares 1998b:820 [emphasis added]). This too is plainly paternalistic. But the charge of paternalism is misdirected. The goal of policy analysis is precisely to unearth the way that these beliefs and perceptions affect our behaviors and shape us as subjects, and then to form judgments about whether this is for the better or for the worse.

Nor can these concerns about the effects of policing strategies be dismissed because they lead to complacency, or, as Kahan and Meares contend, because "only someone who is complacent about the status quo would treat such speculation as sufficient grounds to abort experimentation with milder public-order alternatives to the crack-down policies that dominate law enforcement today" (1999:23). Concern about the possible effects of these policing strategies on the contemporary subject does not reflect what Dan Kahan playfully describes as a conservative Burkean sensibility. As a preliminary matter, though the proposed policies may be milder, they are not without consequence. A policy of encouraging juvenile snitching may result in juvenile deaths. During the three years that the Chicago anti–gang loitering ordinance was enforced, the Chicago police arrested more than 42,000 persons for violating the ordinance (*Morales* 1999:9). As Dorothy Roberts persuasively demonstrates, these milder public-order alternatives are "connected to lengthy imprisonment in a more practical way" (1999:818). In other words, these "milder" policing strategies are not without significant costs and risks.

More importantly, though, I am not suggesting that we need to complete the full complement of research or achieve 95% confidence levels before implementing any public policy. In the policy making context, we will often need to act on less than perfect knowledge. We will often want to implement a policy based on our considered judgment that the likelihood of success outweighs the possible costs. Nevertheless, even in the context of policy making, we

do need *some indicia* of the effectiveness of proposed policies, *some evidence* that the policies will likely have the desired consequence, particularly when these policies have already been implemented in some jurisdictions and when there is reason to believe that the policies may also have some adverse consequences. Absent any reliable evidence or indication of effectiveness, we should not implement controversial public policies. As I suggested earlier, there does not appear to be any reliable evidence that anti–gang loitering ordinances are effective in reducing gang related criminal activity (Schulhofer & Alschuler 2000:7–12; Roberts 1999:794–95; *Morales* 1999:9, n.7). Similarly, there does not appear to be any reliable evidence that juvenile snitching policies are effective in reducing juvenile gun possession. The only indicia here is a statement by the Chief of Police of Charleston, South Carolina (Blumstein & Cork 1996:17; Butterfield 1996). What is missing, though, is any longitudinal evidence about rates of juvenile gun possession. On these grounds, I argue, it would be foolish to implement these policies without some further basis to believe that they will be effective.

To be sure, the desirability of complete and comprehensive research should not paralyze policy making or insert a conservative tilt in policy analysis. Public policies often will be implemented, correctly I believe, on the basis of sketchy evidence or preliminary findings. But, that sketchy or preliminary evidence should, at the very least, point in the right direction. And the converse is equally true and important: policy making should not inhibit social scientific inquiry. In other words, while we are implementing certain policies and not implementing others, it is our responsibility as legal scholars, social scientists, and policy analysts to conduct the rich kind of research that will help us to fully assess or reassess these policy proposals. The ideal type of research that I propose here certainly should not inhibit policy implementation, but it should also not be inhibited by the demands of policy making.

C. Further Implications for Social Scientific Inquiry and Methods

Rather than focus exclusively on the immediate interplay between social meaning and behavior, we should also concentrate on the relationship between, on the one hand, the norms and meaning of order and, on the other hand, the perceptions, thoughts, feelings, understandings, and relations of the contemporary subject. This alternative research project raises additional

questions and hypotheses. Instead of limiting our attention to the effect of order-maintenance policing on gang behavior, we might also ask how order-maintenance policing changes the way we think about, and thus behave toward, the homeless. We might explore whether there is a link between a policy of aggressive misdemeanor arrests and police brutality, or what impact such a policy is likely to have on race relations in our communities.

In relation to social-norm theory, this alternative research agenda entails an additional, marginal, movement away from behavioralism, a greater emphasis on the meaning and effect of the public policies themselves, more willingness to question the other consequences and implications of purportedly effective policing techniques, and heightened sensitivity to the way that affected citizens think, feel, desire, judge, and relate to others. These important differences will influence research design and methods of proof. It is likely, for instance, that in-depth open-ended interviews of neighborhood residents may better identify perceptions of the homeless than a survey or opinion poll. Likewise, an ethnographic analysis of a comparable social situation, or historical research into similar social phenomena, will probably increase our understanding of how police practices shape the subject, above and beyond interviewing contemporary informants.

Another important implication for research is the need for heightened critical reflection about the role of the *researcher as subject*. Clifford Geertz had alerted us to this issue in his discussion of the interpretive turn. Geertz emphasized the important role of his own experience, history, and identity in his own understanding of the anthropological enterprise. "It is in the trajectory of *my professional life*," Geertz writes, "neither regular nor representative, very fitfully planned, very inspecifically aimed, that the anthropologist is to be found" (1995:98 [emphasis added]). Geertz's insights are, if anything, even more penetrating in the context of this alternative research agenda.

The researcher as subject is also shaped in part by the policing practices that exist today. There is, accordingly, a need to imbue research with ongoing examination of the researcher's role—a need for what Pierre Bourdieu has referred to as "a full sociological objectivation of the object *and* of the subject's relation to the object" or "participant objectivation" (Bourdieu 1992:68). It is crucial to the research enterprise to take a critical, reflexive look at the very act of

research and at the subject that does the research; to make a full investigation of, in Bourdieu's words, "not only everything he is, his own social conditions of production and thereby the 'limits of his mind,' but also his very work of objectivation, the hidden interests that are invested in it and the profits that it promises" (Bourdieu 1992:68 n.9). The researcher must try to understand how his or her own intellectual framework and methods are influenced by prior experience and by his or her own web of meaning, including the meaning of police practices.

This type of reflexive sociological examination is likely to have theoretic implications for the interpretation of social meaning. Pierre Bourdieu famously explored these issues through his own "epistemological experiment" of researching, what were to him, familiar environments; namely, the community in which he grew up in Bearn, France, and the higher education system of which he is an integral part. In this way, Bourdieu investigated "the effects produced on the observation, on the description of the thing observed, by the situation of the observer" in order to "uncover all the presuppositions inherent in the *theoretical* posture as an external, remote, distant or, quite simply, non-practical, non-committed, non-involved vision" (Bourdieu 1990:60; 1992:67; 1994:11). In the process, Bourdieu discovered that

> there was an entire, basically false social philosophy which stemmed from the fact that the ethnologist has 'nothing to do' with the people he studies, with their practices and their representations, except to study them: there is an enormous difference between trying to understand the nature of matrimonial relations between two families so as to get your son or daughter married off, investing the same interest in this as people in our own world invest in their choice of the best school for their son or daughter, and trying to understand these relations so as to construct a theoretical model of them. (Bourdieu 1990:60)

Heightened sensitivity to the researcher as subject, therefore, may entail a different research relationship to social meaning. Instead of approaching social norms as rules that may cause certain behavior or as rules that may be changed in order to shift behavior, we may want to approach social norms and meaning more as the environment within which juveniles engage strategically in their daily activity (Taylor 1999:42–43). Instead of approaching social meaning as a social scientist trying to construct a theoretical model, we may want to approach social meaning from the perspective of the actor whose conduct we are trying to understand. Instead of approaching social norms mechanistically, we may want to approach them more strategically and

flexibly. In the case of juvenile gun possession, for instance, we might investigate the meaning of guns not just to change that meaning, but rather, to affect the environment that gives the meaning its importance. If, for example, some juveniles view guns as important for their personal safety when they walk home from the bus stop, then our focus on social meaning should not be geared toward changing *that* meaning, but rather the environment within which the teenagers strategically operate, by, for instance, escorting the school children home, and, obviously, addressing neighborhood crime.

D. Back to the Illustration: Rewarding Juvenile Snitching

Let me return to my original illustration, namely the policy of encouraging snitching among juveniles. What would my proposed alternative research project call for? The answer is, research along three axes. First, the alternative approach would involve qualitative research concerning how juveniles perceive gun possession and snitching, why they would or would not own and carry a firearm, why they would or would not snitch, and whether and how snitching might change their perceptions and thoughts about gun carrying and about themselves. At a minimum, it would call for interviewing teenagers, including those who have been convicted of gun possession, those who have snitched on others, those who have never carried guns, and those who would not snitch; interviewing police officers, school counselors, teachers, and parents of school children; and observing school routines, neighborhood interactions, extracurricular activities, and teenage practices (such as cruising and hanging out). In addition, it would be important to try to quantify these observations in order to explore whether there are useful correlations between meaning, behavior, and self-conception.

Second, this alternative approach would call for historical, comparative, and ethnographic analyses exploring other social systems in which snitching plays or played an important role. These analyses could involve an ethnographic study of the prison system, or, more generally, the criminal justice system in the United States, where snitching is encouraged. Such studies would explore the consequences of encouraging snitching on gang activity in prisons; or the meaning in prison of snitching. They could involve a historical study of other societies in which snitching has been encouraged, such as 18th-century France or the Stalinist Soviet Union—if, in fact,

snitching was encouraged there. They might involve studying and interpreting the *lettres de cachet* in the Bastille archives (Farge & Foucault 1982). Such studies would investigate how the encouragement of snitching affected those societies, and whether and how it shaped the subjects in those societies.

Third, this alternative approach would, of course, also involve quantitative analyses of the jurisdictions that have implemented snitching policies to determine whether they have been accompanied by decreased gun carrying, and, if so, what other factors may play a role in causing the decrease. This alternative research agenda would attempt to focus on mental processes in addition to behavior, and would integrate several methodological approaches in order to increase the amount of information to bring to bear on the question and enrich our public policy debate.

Moreover, in all of this research, it is critically important that the researcher continually reflect on his or her own feelings and judgments about snitching and about gun possession. These are two very significant and loaded phenomena, and it is crucial that the researcher account for his or her own biases with respect to both. Moreover, it is equally important that the researcher continually conceptualize the social norms and meanings not as rules that determine behavior, but rather as the environment within which the juveniles make strategic choices. The researcher must investigate social meaning not simply from the perspective of the social scientist trying to extract rules, but also from the perspective of the juvenile trying to negotiate strategically his or her own world. This three-prong research agenda is the type of research project that is called for after the "social meaning turn." I have described, naturally, an ideal type. I emphasize, again, that it is not a prerequisite to policy implementation. But it is the type of research that should continually accompany the implementation and rejection of policy initiatives.

Conclusion

Clifford Geertz once remarked that "'the move toward meaning' has proved a proper revolution: sweeping, durable, turbulent, and consequential" (1995:115). This is certainly true in criminal law policy analysis. The social meaning turn has been turbulent, and, in my opinion, it has been very consequential. In this article, I have developed some of the further consequences

and implications of the social meaning turn, and, in the process, have proposed an alternative path to that of the New Chicago School. This alternative path builds on the important *conceptual* contributions of social-norm theory to criminal law policy analysis. To be sure, the alternative path does not immediately produce easily articulated crime-fighting policies, like anti–gang loitering ordinances, youth curfews, or reverse stings. It does not come with a package of policy prescriptions. It does not cater as well to the demands of public policy debate. And it may well give rise to policies that are not as "politically feasible" as those endorsed by norm-focused scholars. But it may generate compelling alternatives both to the more traditional solution of severe incarceration and also to the renewed call for order-maintenance crackdowns.

This alternative path is concerned, above all, with the kind of people and the kind of society our policing practices produce. It projects an image of the researcher as a critically reflective actor, immersed in the field, knee-deep in archives, interpreting practices and texts, interviewing informants, attending meetings, compiling and comparing historical material, collecting and regressing data, and looking for clues as to how practices shape us as contemporary subjects. It is concerned with how practices fundamentally reconfigure our ways of thinking, above and beyond our immediate perceptions and short-term behavior, and how practices influence our belief in the rightness of public policies and policing strategies.

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