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"THE BLACK COMMUNITY," ITS LAWBREAKERS, AND A POLITICS OF IDENTIFICATION*

REGINA AUSTIN**

I. DISTINCTION VERSUS IDENTIFICATION: REACTIONS TO THE IMPACT OF LAWBREAKING ON "THE BLACK COMMUNITY"

There exists out there, somewhere, "the black community." It once was a place where people both lived and worked. Now it is more of an idea, or an ideal, than a reality. It is like the mythical maroon colony of the Isle des Chevaliers (for those of you who have read Toni Morrison's Tar Baby) or like Brigadoon (for those of you who are culturally deprived). "The black community" of which I write is partly the manifestation of a nostalgic longing for a time when blacks were clearly distinguishable from whites and concern about the welfare of the poor was more natural than our hairdos. Perhaps my vision of the "'quintessential' black community" is ahistorical, transcendent, and picturesque. I will even concede that "the community's" infrastructure is weak, its cultural heritage is lost on too many of its young, and its contemporary

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** Professor of Law, University of Pennsylvania. B.A. 1970, University of Rochester; J.D. 1973, University of Pennsylvania. This Article is based on a talk given on October 2, 1989, at the Cardozo Law School symposium Deconstruction and the Possibility of Justice. Drafts of this Article were presented at faculty workshops at Harvard, Stanford, and the University of Iowa law schools. I wish to thank Jan-Michele Lemon, Angela Chadwick, Margo Brodie, and Ivonia Slade for their research assistance and Henry Steiner, Manthia Diawara, Gerald Frug, Gerald Lopez, Claire Potter, Barbara English-Scott, and Eugene Rivers for helping me to hone my arguments.
2. Brigadoon is a musical comedy, written by Alan Jay Lerner and Frederick Loewe and produced on Broadway in 1947, about a Scottish town of the same name that materializes once in a century. ABE LAUFFE, BROADWAY'S GREATEST MUSICALS 101-05 (rev. ed. 1977).
politics is in disarray. I nonetheless think of it as “Home” and refer to it whenever I want to convey the illusion that my arguments have the backing of millions.

“The black community” of which I write is in a constant state of flux because it is buffeted by challenges from without and from within. (The same is true for “the dominant society,” but that is another story.) There are tensions at the border with the dominant society, at the frontier between liberation and oppression. There is also internal dissension over indigenous threats to security and solidarity. “Difference” is as much a source of contention within “the community” as it is the factor marking the boundary between “the community” and everyone else. “The community’s” struggles are made all the more difficult because there is no bright line between its foreign affairs and its domestic relations.

Nothing illustrates the multiple threats to the ideal of “the black community” better than black criminal behavior and the debates it engenders. There is no shortage of controversy about the causes, consequences, and cures of black criminality. To the extent there is consensus, black appraisals of questionable behavior are often in accord with those prevailing in the dominant society, but sometimes they are not. In any event, there is typically no unanimity within “the community” on these issues.

For example, some blacks contend that in general the criminal justice system is working too well (putting too many folks in prison), while others maintain that it is not working well enough (leaving too many dangerous folks out on the streets). Black public officials and others have taken positions on both sides of the drug legalization issue. Black neighbors are split in cities where young black men have been stopped and

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3. In the District of Columbia, a black defendant charged with murder was reportedly acquitted because some members of the jury were convinced that there were already enough young black men in prison. Barton Gellman & Sari Horwitz, Letter Stirs Debate After Acquittal, WASH. POST, Apr. 22, 1990, at A1. On the role that racism continues to play or that blacks think it plays in the criminal justice system, see Sam Roberts, For Some Blacks, Justice Is Not Blind to Color, N.Y. TIMES, Sept. 9, 1990, § 4, at 5. See generally Developments in the Law—Race and the Criminal Process, 101 HARV. L. REV. 1472 (1988) (discussing recent developments in race-related criminal law issues).

searched by the police on a wholesale basis because of gang activity or drug trafficking in the area. Those with opposing views are arguing about the fairness of evicting an entire family from public housing on account of the drug-related activities of a single household member, the propriety of boycotting Asian store owners who have used what some consider to be excessive force in dealing with suspected shoplifters and would-be robbers, and the wisdom of prosecuting poor black women for fetal neglect because they consumed drugs during their pregnancies.


6. Section 5101 of the Anti-Drug Abuse Act of 1988 requires that public housing authority leases contain a provision that “criminal activity, including drug-related criminal activity, on or near public housing premises” by “a public housing tenant, any member of the tenant’s household, or a guest or other person under the tenant’s control . . . shall be cause for termination of tenancy.” Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5101, 102 Stat. 4181, 4300 (codified as amended at 42 U.S.C. § 1437d(d)(5) (1988)). Some tenants approve of the provision, see Drugs and Public Housing: Hearing Before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Affairs, 101st Cong., 1st Sess. 41 (1989) (statement by a resident of a housing development in the District of Columbia advocating evictions if household heads do not evict the offending children themselves); other tenants do not, see id. (statement by a resident of Chicago public housing arguing that evictions are inappropriate because the parents are not the keepers of their children and should not be punished); id. at 72 (maintaining that good, long-term tenants are unfairly and summarily being evicted for the conduct of their children, which is only remotely connected with public housing). See also The Drug Problem and Public Housing: Hearing Before the House Select Comm. on Narcotics Abuse and Control, 101st Cong., 1st Sess. 49-53, 80-81, 155-60 (1989) (presenting testimony and statements reflecting reservations about evicting the families of drug dealers).


8. There is evidence that the rate of usage of illicit drugs among pregnant women is fairly uniform across racial and socioeconomic groups. See Ira J. Chasnoff et al., The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida, 322 New Eng. J. Med. 1202 (1990). Yet the overwhelming majority of the women prosecuted for prenatal drug consumption are black and poor. See Gina Kolata, Bias Seen on Pregnant Addicts, N.Y. Times, July 20, 1990, at A13. The disparate treatment poor black women receive may be attributable to the fact that more of them obtain medical care from public facilities than from private physicians, who have a greater stake in protecting their patients’ privacy, and to the fact that
Whether "the black community" defends those who break the law or seeks to bring the full force of white justice down upon them depends on considerations not necessarily shared by the rest of the society. "The black community" evaluates behavior in terms of its impact on the overall progress of the race. Black criminals are pitied, praised, protected, emulated, or embraced if their behavior has a positive impact on the social, political, and economic well-being of black communal life. Otherwise, they are criticized, ostracized, scorned, abandoned, and betrayed. The various assessments of the social standing of black criminals within "the community" fall into roughly two predominant political approaches.

At times, "the black community" or an element thereof repudiates those who break the law and proclaims the distinctiveness and the worthiness of those who do not. This "politics of distinction" accounts in part for the contemporary emphasis on black exceptionalism. Role models and black "firsts" abound. Stress is placed on the difference that exists between the "better" elements of "the community" and the stereotypical "lowlifes" who richly merit the bad reputations the dominant society accords them. According to the politics of distinction, little enough attention is being paid to the law-abiding people who are the lawbreakers' victims. Drive-by shootings and random street crime have replaced lynchings as a source of intimidation, and the "culture of terror" practiced by armed crack dealers and warring adolescents has turned them into the urban equivalents of the Ku Klux Klan.


9. See Elijah Anderson, Streetwise: Race, Class, and Change in an Urban Community 66-69 (1990) (recounting the derision voiced by working and middle-class blacks toward members of the "underclass").

10. See Philippe Bourgois, In Search of Horatio Alger: Culture and Ideology in the Crack Economy, 16 CONTEMP. DRUG PROBS. 619, 631-37 (1990). Based on his ethnographic research in Spanish Harlem, Bourgois maintains that "upward mobility in the underground economy requires a systematic and effective use of violence against one's colleagues, one's neighbors, and to a certain extent, against oneself." Id. at 632. "Individuals involved in street activity cultivate the culture of terror in order to intimidate competitors, maintain credibility, develop new contacts, cement partnerships, and, ultimately, have a good time." Id. at 634. See also Carl S. Taylor, Dangerous Society 66-67 (1990) (noting that gangs use violence to discipline members and earn the respect of others).
excluding them from the orbit of our concern to concentrate on the innocent is a wise use of political resources.

Moreover, lawless behavior by some blacks stigmatizes all and impedes collective progress. For example, based on the behavior of a few, street crime is wrongly thought to be the near exclusive domain of black males; as a result, black men of all sorts encounter an almost hysterical suspicion as they negotiate public spaces in urban environments\(^{11}\) and attempt to engage in simple commercial exchanges.\(^{12}\) Condemnation and expulsion from "the community" are just what the lawbreakers who provoke these reactions deserve.

In certain circumstances the politics of distinction, with its reliance on traditional values of hard work, respectable living, and conformity to law, is a perfectly progressive maneuver for "the community" to make. Deviance confirms stereotypes and plays into the hands of an enemy eager to justify discrimination. The quest for distinction can save lives and preserve communal harmony.

On the downside, however, the politics of distinction intensifies divisions within "the community." It furthers the interests of a middle class uncertain of its material security and social status in white society. The persons who fare best under this approach are those who are the most exceptional (i.e., those most like successful white people). At the same time, concentrating on black exceptionalism does little to improve the material conditions of those who conform to the stereotypes. Unfortunately, there are too many young people caught up in the criminal justice system to write them all off or to provide for their reentry into the mainstream one or two at a time.\(^{13}\) In addition, the politics of distinction encourages greater surveillance and harassment of those black citizens who are most vulnerable to unjustified interference because they resemble


\(^{13}\) It was estimated that on any given day in mid-1989, 23% of black males between the ages of 20 and 29 were in prison, in jail, or on probation or parole, compared with 10.4% of Hispanic males and 6.2% of white males. MARK MAUER, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM 3 (1990). Given that young black men are continuously being admitted and released from the criminal justice system, the proportion of those actually processed in the course of the year probably exceeded one-quarter of the population. Id. According to the Sentencing Project, in 1990 the incarceration rate for black males was 3,370 per 100,000, compared with only 681 per 100,000 in South Africa. The American rate was five times higher than that of South Africa. See Fox Butterfield, U.S. Expands Its Lead in the Rate of Imprisonment, N.Y. TIMES, Feb. 11, 1992, at A16.
the lawbreakers in age, gender, and class. Finally, the power of the ideology of individual black advancement, of which the emphasis on role models and race pioneers is but a veneer, is unraveling in the face of collective lower-class decline. To be cynical about it, an alternative form of politics may be necessary if the bourgeoisie is to maintain even a semblance of control over the black masses.

Degenerates, drug addicts, ex-cons, and criminals are not always “the community’s” “others.” Differences that exist between black lawbreakers and the rest of us are sometimes ignored and even denied in the name of racial justice. “The black community” acknowledges the deviants’ membership, links their behavior to “the community’s” political agenda, and equates it with race resistance. “The community” chooses to identify itself with its lawbreakers and does so as an act of defiance. Such an approach might be termed the “politics of identification.”

In fact, there is not one version of the politics of identification but many. They vary with the class of the identifiers, their familiarity with the modes and mores of black lawbreakers, and the impact that black lawbreaking has on the identifiers’ economic, social, and political welfare. In the sections that follow, I will look first at the most romanticized form of identification that prompts emulation among the young and the poor; I will detail the dangers and limitations such identification holds for them. Still, lawbreakers do have something to contribute to black political discourse and practice. I will briefly describe how in the 1960s segments of the black middle class identified with black criminals as sources of authentic “blackness.” The young, new bourgeoisie extracted a style from lawbreaker culture and turned it into the trappings of a political militancy that still has currency today. I will evaluate the pros and cons of this effort. Next, I will consider black female lawbreakers, with whom there is little identification, and suggest why there ought to be more. Finally, I will look at the folks who are situated somewhere between the middle class and the lawbreakers. In leading their everyday lives, these bridge people draw a sensible line between the laws that may

14. For a critique of the emphasis on role models, see Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 574-76. The suggestion that black professionals are “positive role models in the community” elicited the following scathing criticism from a 13-year-old gang member:

Positive? You must be ill . . . . All them niggahs is fraudulent . . . They be perpetrators, they ain’t real. I know plenty of them kind of niggahs that get high and love some young tender ronies . . . The only role models we need is George Washington, Thomas Jefferson, Abe Lincoln, and the rest of the dead presidents on some hard green cash backs. If I can’t spend it, fuck it. I don’t need or want it.

TAYLOR, supra note 10, at 47-48.
be broken and the laws that must be obeyed. Their informal, illegal economic behavior could provide the basis for a praxis for an integrated politics of identification.

The politics of identification envisioned in this Article is a politics . . . which works with and through difference, which is able to build those forms of solidarity and identification which make common struggle and resistance possible but without suppressing the real heterogeneity of interests and identities, and which can effectively draw the political boundary lines without which political contestation is impossible, without fixing those boundaries for eternity.\textsuperscript{15}

It is a politics that demands recognition of the material importance of lawbreaking to blacks of different socioeconomic strata, however damaging such recognition may be to illusions of black moral superiority. Moreover, the politics of identification described herein would have as an explicit goal the restoration of some (but not all) lawbreakers to good standing in the community by treating them like resources, providing them with opportunities for redemption, and fighting for their entitlement to a fair share of the riches of this society.

There is an enormous comfort that comes from being able to think and talk about "the black community" without doing much more than thinking and talking to insure its continued existence. Many of us treat "the black community" like a capital investment made long ago; we feel entitled to sit back and live off the interest. The only problem is that the criminals are opting out of "the community" faster than we can jettison them. As a skeptical 16-year-old former gang member put it: "Neighbors? Neighbors is for my grandmother. I ain't got the time. Church? People trying to get neat on Sunday and dissing people on Monday. . . . Community? What's that? Only community I know is my boys—when we get together that's my church, home, and community!"\textsuperscript{16} There is much evidence that such sentiments are widespread and that the "'quintessential' black community" no longer exists. A new politics of identification, fueled by critically confronting the question of the positive significance of black lawbreaking, might restore some vitality to what has become a mere figure of speech.


\textsuperscript{16} \textit{TAYLOR, supra note 10, at 88.}
II. "NOT HARDLY SOCIAL BANDITS": IDENTIFICATION AND THE ROMANCE AND THE REALITY OF BLACK LAWBREAKING

In the black vernacular, a "bad" person may be a potent and respected force for good rather than a despised source of evil. In the culture of "the community," there has historically been a subtle admiration of criminals who are bold and brazen in their defiance of the legal regime of the external enemy. Tricksters who used their wits to get the better of the master and badmen, such as Stackolee, who thwarted white law enforcement are the black folklore antecedents of modern outlaw heroes like New Yorker Larry Davis, who allegedly killed drug dealers and eluded capture in a shoot-out with police, and the Briley brothers, whose bloodless escape with four others from a Virginia penitentiary's death row mightily embarrassed state officials, including then-Governor Charles Robb. A further reflection of this phenomenon is the respect shown to drug dealers by their neighbors and the beneficiaries of their philanthropic largess. Blacks, of course, are hardly unique in idolizing the criminal element of their ethnic group or race as social critics and

17. GENEVA SMITHERMAN, TALKIN AND TESTIFYIN 44, 59-60 (1977) (discussing the usage of the term "bad").
18. See generally JOHN W. ROBERTS, FROM TRICKSTER TO BADMAN: THE BLACK FOLK HERO IN SLAVERY AND FREEDOM 44-45, 171-215 (1989) (analyzing the role of the outlaw in black culture and suggesting that the badman was viewed as heroic because he responded to his victimization with justifiable retaliation).
resisters of oppression.\textsuperscript{22} It is possible to mount a substantial and quite coherent case for the appreciation of the black male lawbreaker.\textsuperscript{23}

Those who identify with black male lawbreakers accept the validity of the justifications the lawbreakers offer to rationalize their behavior. For some blacks who commit crimes, it makes economic sense to engage in such conduct. It is the best job available.\textsuperscript{24} The rewards to be gained by young urban males from the drug trade—for example, money ("paper"), fancy cars ("Benzo's," "Beemers," and "'vettes"), and fine females—seem worth the risk, given the alternatives of unemployment or a dead-end job.\textsuperscript{25} As one Detroit gang member put it:

\begin{quote}
I didn't do shit in school, my people ain't got no paper. I tried to join the Marines, I couldn't pass their written test. Ain't got no transportation to get a job. So what's a fella do? You talk all that righteous shit, but you got a job. Got one for me? So I'm going to get with somebody rolling. . . . That's the only job for fellas like me.\textsuperscript{26}
\end{quote}

The willingness to risk incarceration and physical harm, together with the high demand for drugs, can make drug dealing quite remunerative.\textsuperscript{27} Jail may be delayed or avoided even if one is caught because the criminal justice system is overburdened,\textsuperscript{28} and should one wind up serving time, the harshness of prison life may be cushioned by access to liquor, drugs, friends, and some of the comforts of home.\textsuperscript{29} Furthermore, death and injury from violence are constants in some urban areas whatever one does.\textsuperscript{30} Where one's physical survival is always in jeopardy, the line between offensive and defensive toughness and aggression wears thin.


\textsuperscript{23.} The discussion that follows largely pertains to men engaged in crime; black female lawbreakers are the subject of Part IV.


\textsuperscript{25.} Taylor, supra note 10, at 44, 47, 85. The rewards are not enjoyed equally by all participants in the drug trade. Particularly exploited are the foot soldiers, or crew members, who must endure the elements as well as the threat of arrest and violence for relatively small amounts of compensation. \textit{Id.} at 67; see also Gina Kolata, \textit{Despite Its Promise of Riches, the Crack Trade Seldom Pays}, N.Y. TIMES, Nov. 29, 1989, § 1, at 1.

\textsuperscript{26.} Taylor, supra note 10, at 100.


\textsuperscript{28.} Taylor, supra note 10, at 85.


\textsuperscript{30.} Taylor, supra note 10, at 88.
The relativity of what is legal and what is illegal is not lost on the lawbreakers:

It’s like this, if we don’t sell the shit, somebody else will. Niggahs getting paid in full, slinging dope hard every day. So why should we take some bullshit ass minimum wage McDonald’s job? Fuck, everything is illegal [laughing]. Pork is deadly, bacon can kill niggahs, whiskey, cigarettes, cars, guns, but ain’t nobody stopping them companies from selling them!

Crime provides lawbreakers “a social and occupational identity that has meaning beyond its monetary returns.”32 As Mercer Sullivan reports in “Getting Paid”: Youth Crime and Work in the Inner City, a ethnography comparing the criminal careers of teenage lawbreakers from three racially and ethnically distinct neighborhoods of New York City:

For a short time in their lives, crime provides some youths not only with money and goods but also with a social and occupational identity that has meaning beyond its monetary returns. They call success in crime “getting paid” and “getting over,” terms that convey a sense of triumph and of irony. . . . When they talk of “getting paid,” they are not equating crime and work with utter seriousness, as if they do not know the difference. Rather, they are inverting mainstream values with conscious, albeit savage, irony. “Getting over” is a more general term that refers to success at any endeavor in which it seems that one is not expected to succeed. It is equivalent to “beating the system”. . . . What they “get over on” is the system, a series of odds rigged against people like themselves. Both phrases are spoken in a tone of defiant pride.33

The refusal to surrender to the stranglehold of material deprivation and social constraints has a heroic quality, as is suggested by John Edgar Wideman’s brother Robert in Brothers and Keepers:

See. Ain’t all of us out there in the street crazy. We know what’s going down. We look round and what do we see? Homewood look like five miles of bad road. Ain’t nothing happening. . . . We see what’s going down. We supposed to die. Take our little welfare checks and be quiet and die. That ain’t news to nobody. . . . Them little checks and drugs. What else is out there? The streets out there.

31. Id. at 47. A 14-year-old gang member saw nothing wrong with selling drugs and thereby giving people what they want. Id. at 45-46. As for the illegality of his behavior: “Cigarettes should be illegal. They kill lots of stupid mutha-fuckas, but the rich-ass white man selling tons of squares, smoking bunches of dumb-ass people right to hell, so what’s illegal?” Id. at 46.
33. Id.
The hard-ass curb. That's why the highest thing you can say about a cat is he made his from the curb. ... What else he be but bad if he made all his shit from that hard rock.34

The resistance he and others see in black lawbreaking produced in Robert Wideman such feelings of admiration that he was inspired to pursue the street life himself. (He is presently serving a life term for felony murder):

[We can't help but feel some satisfaction seeing a brother, a black man, get over on these people, on these people, on their system without playing by their rules. No matter how much we have incorporated these rules as our own, we know that they were forced on us by people who did not have our best interests at heart. So this hip guy, this gangster or player or whatever label you give these brothers that we like to shun because of the poison they spread, we, black people, still look at them with some sense of pride and admiration, our children openly, us adults somewhere deep inside. We know they represent rebellion—what little is left in us.35

Similar sentiments are shared by many blacks who, unlike Robert Wideman, do not act on them. For example, Martín Sánchez Jankowski reports that "a significant number of adults from low-income areas identify with the 'resistance component' of gangs."36 He continues:

These people empathize with the desires, frustrations, and resentments that the youth of low-income neighborhoods experience because they have experienced them too. Thus they identify with the gang because they are sympathetic to the members' attempts to resist their poor socioeconomic position. Take the comments of Wayne, a fifty-seven-year-old African-American machinist who was the father of two girls:

I know people think gangs are terrible and that the kids are just disgusting individuals, but that just ain't what's going down with these kids. Hell, they ain't bad kids, sure you gots some, but most ain't bad, they just not willing to quietly sit back and let the society take everything and give them nothing. ... Sometimes I think some of the gangs go too far, but I understand where they're coming from, and I say, they ain't bad, they just made a bad decision that time, that's all.37

Some blacks follow the exploits of deviants with interest and sympathy because their criminal behavior generates tangible and intangible

35. Id. at 57.
36. JANKOWSKI, supra note 5, at 181.
37. Id. at 181-82.
self-destruction is operating as well. The killings of young blacks by other young blacks are mass suicide disguised as murder. In his seminal work *The Wretched of the Earth*, Frantz Fanon maintains that "a community of victims, unaware of its history and unable to control its destiny, tends to victimize itself viciously." So-called black-on-black crime "constitute[s] expressions of misdirected rebellion and collective autodestruction" that "cannot be explained apart from the prevailing structural and institutional violence in society." Unfortunately, Fanon’s insights are rarely invoked in analyses of contemporary black urban violence.

Black lawbreaking is in addition a form of collective economic suicide. Gauging the winners and losers of the underground economy is a complicated matter. To be sure, blacks are included among the realtors, clothiers (including purveyors of athletic shoes), car dealers (including the sellers of fancy foreign cars and popular cheap jeeps), and other business and professional persons (including lawyers) who are profiting

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For example, "I mean, these wasn’t citizens in midtown—these was niggers would have inflicted pain on us if we hadn’t inflicted pain on them. I’m sorry they shot, but glad it ain’t me." Eric Pooley, *Kids with Guns*, New York, Aug. 5, 1991, at 20, 28.

52. Frantz Fanon, *The Wretched of the Earth* (1963).
54. Id. See also Bernard D. Headley, "Black on Black" Crime: The Myth and the Reality, *Crime & Soc. Just.*, Winter 1983, at 50 (arguing that the emphasis on crime committed by blacks against other blacks obscures the greater threat of systemic violence).
55. Consider the conclusions reached by a study of the economic impact of crime committed by heroin abusers. Bruce D. Johnson et al., *Taking Care of Business: The Economics of Crime by Heroin Abusers* (1985). Researchers collected data between 1980 and 1982 on the economic activities of two groups of black and Latino heroin abusers in East Harlem (referred to as Spanish Harlem or El Barrio) and Central Harlem. Id. at 13-19. The researchers found that to some extent the adverse effects of crime associated with heroin usage are absorbed by the distribution system itself. Almost two-fifths of their informants’ income from crime came from drug-related business activities for which they were paid not in cash but in drugs. Id. at 82. Moreover, a quarter of those whom the subjects reported victimizing were said to be other “norm violators,” such as drug users and dealers, prostitutes, johns, and drunks. Id. at 173. The researchers concluded that “from a purely economic standpoint, heroin-abuser criminality is not all bad. In fact, although crime victims sustain important economic losses (not to mention noneconomic considerations, such as fear of crime, anger, frustration), more persons gain than lose.” Id. at 9. Via burglaries, robberies, shoplifting, and associated fencing operations, addicts “provide valued goods and merchandise at a sizable discount to low-income residents who could not otherwise afford them.” Id. at 9, 118. Moreover, the middle-class victims of such criminal behavior can in turn redistribute the losses “through theft insurance, higher retail prices, and tax deductions.” Id. at 9. The lower-income victims, of course, are not so favorably situated to pass on the costs of crime, and the overall distributive consequences of crime on those so classified depend on whether they gain more from buying in the underground economy than they lose by being the victims of crime.
from criminal enterprises in minority neighborhoods.\textsuperscript{56} Sales to white, middle-class suburban customers who frequent inner-city drug markets probably do contribute to the economies of the surrounding neighborhoods. But black drug dealers have few qualms about who their customers are. Women and older persons, segments of the population never before involved in drug usage, smoke crack; this means that profits are now being extracted from a broader base than ever before.\textsuperscript{57} Crack dealing to other poor folks depletes the resources of the community; the money travels out of the neighborhood, out of the state, and out of the country. Ansley Hamid’s assessment of the overall negative redistributive effect of the political economy of crack seems justified:

Crack may be thought of as a super-efficient “vacuum cleaner” that is going over the physical and social rubble of [the decaying Caribbean-American neighborhoods that were Hamid’s chosen] study sites to detect and draw in overlooked wealth. In my study sites, crack dollars are not reinvested at the local level. These dollars have not contributed a single vegetarian cookshop, nor is there evidence of other local-level secondary economic activity that it [sic] has stimulated. Instead, as youthful crack distributors spend on “gold cables” and luxury motorcars, there is evidence of more apartments being abandoned and more buildings being rendered derelict (and of others being gentrified). Crack dollars for the most part travel abroad to the supplier countries, leaving significant deposits only in the hands of corporate institutions that launder drug money or perform other roles in distribution.\textsuperscript{58}

The law plays an integral but somewhat obscure role in structuring opportunities in the underground economy and facilitating the depletion of the resources of poor black enclaves. For example, once upon a time poor young black children worked in shops and stores in the neighborhood or at jobs they made for themselves, like carrying groceries from the supermarket, delivering papers, or running errands for a small fee.\textsuperscript{59} Labor laws, economic disinvestment, and changing demographic patterns have narrowed employment opportunities for poor black children. Drug dealing is filling the void. Children are natural replacements for adults, who face harsher criminal penalties for drug dealing. “To a drug dealer, [children] can seem the perfect employee[s]: inconspicuous, loyal

\textsuperscript{56.} See TAYLOR, supra note 10, at 102-03 (equating transactions between drug-dealing gang members and legitimate businesspersons with treason to the community).


\textsuperscript{58.} Id. at 70.

\textsuperscript{59.} SULLIVAN, supra note 32, at 77.
and—perhaps their chief attraction—almost immune from the law. The law’s response has been to increase the stigma attached to juvenile participation in the drug trade and the sanctions meted out to juvenile offenders. Whatever the ethic or values these enterprising children espouse as they go about their work, their involvement in behavior that is now considered a serious crime reflects an alteration in the legal environment that first structures the means by which the children’s needs and aspirations can be satisfied and then judges the propriety of their conduct as if it had occurred in a vacuum. Moreover, concentrating the resources of the criminal justice system on the actors at the most localized distribution points—the crack corners in woebegone urban neighborhoods—deflects attention away from the real profiteers and the master exploiters who operate in the comfort and anonymity of distant offices. Drug enforcement efforts aimed at those in the lower echelons of the trade may be “proof of [the state’s] reinvigorated social and legal authority,” but they also produce higher drug prices and greater profits for the financiers and executives at the top. As Jefferson Morley concluded in an article in The Nation:

In this respect too, the cocaine economy resembles the national economy: The poor and the middle class pay the highest price for the new class conservative’s vision of social progress. Drug bureaucrats and the drug bankers have arrived in the catbird seat. The drug war is the health of the state.

The affirmative exploitation of black lawbreakers by the dominant society is not solely material; furthermore, the ideological response to black lawbreakers is not solely vilification and negative stereotyping. To some extent, the dominant society itself participates in elevating the black lawbreaker to the status of hero. Misogyny plays a substantial role

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60. Rick Hampson, “Crack Family” Cited in Warning That Drug Trade Uses Children, L.A. TIMES, Apr. 15, 1990, at A2. See also JANKOWSKI, supra note 5, at 266, 269-70 (describing the way dealers use the separation of the juvenile and adult court systems to their advantage).

61. JANKOWSKI, supra note 5, at 266. In the 1980s juvenile justice in general became much more punitive; incarceration rates climbed and more juveniles were treated like adults. See generally Martin L. Forst & Martha-Elin Blomquist, Cracking Down on Juveniles: The Changing Ideology of Youth Corrections, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 323 (1991) (discussing the removal of serious offenders from the juvenile justice system and the imposition of more serious punishments on those who remain); Ira M. Schwartz et al., Business as Usual: Juvenile Justice During the 1980s, 5 NOTRE DAME J.L. ETHICS & PUB. POL’Y 377 (1991) (discussing the effect of increased incarceration of juveniles for less serious offenses).


63. Id.

64. Id.
in defining the persona of the black male outlaw. In the mythology of black banditry, women—like cars, clothing, and jewelry—are prized possessions. (This objectification also occurs among women who prefer drug dealers as suitors because of the property the drug dealers own and the amount of money they have to spend.)

Sociologist Anthony Lemelle contends that “black masculinity is hustled by the white patriarchy. The relationship transforms the black male role into that of a prostitute to masculine institutional systems—athletics, the military, and prisons—where macho is the dress needed to pass through the forms; the more the better.” As a result of this glorification of black males as “macho heroes,” unacceptable attitudes about women are increasingly being displaced upon and associated with them so as to create the illusion that sexism has been contained by a form of ghettoization. Moreover, black masculine aggression reserves for black males an inordinate number of places in the country’s prisons and justifies the maintenance of a massive counterforce of police officers and prison guards whose own “macho” orientation is thereby legitimated.

Lemelle also contends that the bad black boy is a hero of our times because he “seek[s] joy and fulfillment through expression” and, Lemelle might have added, material consumption. “The ideal-type juvenile delinquent is every black boy,” and he may fall into several categories: “the hustler, playboy, athlete, school boy, G.Q. boy, [and] gangster, to name a few.” Lemelle provocatively theorizes that “black juvenile delinquents [are] anarchist models assisting in bringing about [the] transformation” to a postindustrial economy in which drudgery is relegated to machines and “Third World peoples” while leisure and play time increase at home. There is little gain for black kids in being such “superlative producers of [recreational] culture.” For one thing, they must defy expectations if they merely want to work at a regular job. Furthermore, their clever inventions are turned into merchandise that they feel compelled to buy in order to be full participants in the youth economy—and they never collect a royalty for their efforts.

More importantly, the values that even bona fide black delinquents are thought to exemplify are not necessarily the values by which they

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65. Taylor, supra note 10, at 59-60.
67. Id. at 220.
68. Id. at 221. “G.Q.” refers to Gentleman’s Quarterly, the men’s magazine.
69. Id. at 220.
actually live. Consider the youngsters employed in the urban crack trade. They are hardly shiftless and lazy leisure seekers. Many of them are as much Ronald Reagan’s children, as much “yuppies,” as the young urban professionals with whom the term is usually associated. Their commitment to the work ethic is incredible; they endure miserable working conditions, including long hours, exposure to the elements, beatings and shootings, mandatory abstinence from drugs, and low pay relative to their superiors. Indeed, their rejection of the dominant ideology is quite selective. They have been called “irrational materialists. Their rebellion is part of their conformism to the larger culture. They spurn the injunctions of parents, police, teachers and other authorities, but they embrace the entrepreneurial and consumption cultures of mainstream America.” Because they do not subscribe to the entire materialist program, however, they get no credit for being at least half right.

But closer analysis suggests that young black lawbreakers may not be conspiring in their own subordination to the full extent imagined. There are a multitude of reasons why young black lawbreakers spend their hard-earned money so conspicuously. Shopping is a device for laundering money. There are few viable investment opportunities for young black people who do not know how much they will earn or how long they will be free to spend it. In some communities, there is not much for adolescents and young adults to do during the day except shop or be seen shopping. Conspicuous consumption may be less an affirmation of the self or an expression of generalized materialism than a conscious defense mechanism that uses armor, camouflage, and artifice to protect a fragile self from exposure and annihilation. For example, sociologist Elijah Anderson describes the way young mothers compete with

71. The term “yuppy” has been used as an acronym for “young urban predator.” See Andrew H. Malcolm, New Strategies to Fight Crime Go Far Beyond Stiffer Terms and More Cells, N.Y. TIMES, Oct. 10, 1990, at A16. See generally JANKOWSKI, supra note 5, at 101-07, 312-13 (discussing the surprising strength of entrepreneurial attitudes in shaping the world view and motivating the behavior of gang members).
72. See supra note 25.
73. Morley, supra note 62, at 344.
75. The emphasis on “fast living” and immediate consumption in lieu of long-term improvement in their economic condition makes sense given that “most low-income dealers know little about the legal banking and credit system, have no legal ‘job’ to earn credit, and wish to avoid asset seizure in the event of arrest.” Bruce D. Johnson et al., Drug Abuse in the Inner City: Impact on Hard-Drug Users and the Community, in DRUGS AND CRIME 9, 30 (Michael Tonry & James Q. Wilson eds., 1990).
one another by dressing up their children in expensive outfits that common sense suggests the kids will soon outgrow and will never wear out.\textsuperscript{76} “On Sundays, the new little dresses and suits come out, and the cutest babies are passed around, and this attention serves as a social measure of the person.”\textsuperscript{77} Having lost status along conventional lines, the mothers try to make it up in another way. “‘Looking good’ negates the generalized notion that a teenage mother has ‘messed up’ her life, and in this sea of destitution nothing is more important than to show others you are doing all right.”\textsuperscript{78} The responses mask the mothers’ true economic situation but do little to challenge the societal put-down that makes the charade necessary in the first place. Nonetheless, the maneuver is not as harmful if the fronting is consciously recognized and employed. That was clearly the case for a young man described in a\textit{New York Times} article who takes the gold caps off his teeth when he goes to talk to the youth counselor and puts them back on when he negotiates the streets, to show that he is a streetwise person, not to be messed with.\textsuperscript{79}

In sum, then, the young lawbreakers wind up with little control over their images and less control than they imagine over their lives and their own world views. Far from being self-conscious political insurrection, most ordinary black male criminal behavior may not even be progressive. The lawbreakers’ rebellion is limited because it is not based on a thoroughgoing critique that attacks the systemic sources of their material deprivation. Nor is it likely to generate or exploit the sort of material and ideological dislocations that lead to economic and political reform.

Destructive at home and ineffective abroad, ordinary black criminals typically do not live up to the mantle of race-war guerrillas. But tempered identification persists among those with whom they live and work and among blacks who observe them from afar. This is partly because so much hypocrisy is entailed in labeling some activities illegal and other equally dangerous, detrimental, and larcenous activities not. There is also no other overtly political alternative that constitutes as provocative, creative, crass, hard-nosed, and daring an assault on the status quo as does the culture of young black male criminals. Blacks who would never think of emulating the risky entrepreneurial activities of lawbreakers nonetheless ambivalently admire them and point to their example when the subject turns to resistance.

\textsuperscript{76} Anderson, supra note 9, at 124-26.
\textsuperscript{77} Id. at 124.
\textsuperscript{78} Id.
III. IN VOGUE: BOURGEOIS IDENTIFICATION AS MILITANT STYLE

The urban poor are not the only segment of "the community" that can be seduced by the elan of black male lawbreakers. At times the black middle class has also bought into the quixotic view of the black criminal as race rebel.

During the late 1960s, black male lower-class and deviant cultures provided a source of up-to-date signs and symbols for the antiassimilationists. Leather jackets, big Afros, and "talking trash" were de rigueur for upwardly mobile yet nationalistic black college students. It is not clear what prompted this wave of identification. It may have been guilt about having escaped the ghetto, fear of losing the moral superiority associated with being black and oppressed, indignation over the supplicant role the Southern civil rights movement seemingly encouraged blacks to play, or a desire to extract concessions from a white society scared to death of black lawbreakers and any impersonators with similar styles of dress, speech, and carriage.  

This is not the place for a full-blown critique of the black nationalism movement of the 1960s. Some of its aspects undoubtedly ought not be repeated if a similar surge of lawbreaker identification should overtake the middle class anytime soon. The movement was fiercely misogynistic. The predominant leadership style was marked by masculine bravado and self-aggrandizement. The movement's bourgeois brand of racial animosity, or "acting out," was easily indulged and domesticated with bribes. The benefits the nationalists won from the dominant society inured disproportionately to those who now make their living providing governmental services to other minority people or acting as intermediaries between the white managements of private enterprises and

81. For an especially critical, class-conscious analysis of black radicalism in the 1960s, see Adolph Reed, Jr., The "Black Revolution" and the Reconstitution of Domination, in RACE, POLITICS, AND CULTURE, supra note 80, at 61.
their minority employees and customers. 83 Ironically, these bureaucrats supply images of bourgeois success that obscure the economic inequality that produces the disgruntlement they are paid to redirect. 84

The movement did not maximize opportunities for lower-status blacks to speak and act on their own behalf. In adopting the lawbreakers' style and using it to advance their own interests, the middle class preempted any claim that the style was the spontaneous and well-justified reaction of less-well-off folks to specific material conditions that warranted the society's direct attention. The identification temporarily lent an aura of respectability to those who earned their deviant status by virtue of actually breaking the law. But when the movement died, or was killed, the real lawbreakers and others on the bottom of the status hierarchy found themselves outsiders again. 85

In general, the "newly materializing" black militant bourgeoisie of the 1960s did not go very far in incorporating the concerns of lawbreakers into their demands or in adopting the more aggressive practices of criminals as the praxis of their movement. Others did. The Black Panthers, for example, employed black turtlenecks, leather jackets, berets, dark glasses, and shotguns as the accoutrements of militancy and attracted the attention of young northern urban blacks with their "belligerence and pride" and their outspokenness on issues of relevance to

84. SIMONE, supra note 43, at 87-89.
85. Barrio gangs underwent a similar elevation of status during the Chicano Movement of the late 1960s and a decline thereafter. See Joan W. Moore, Isolation and Stigmatization in the Development of an Underclass: The Case of Chicano Gangs in East Los Angeles, 33 SOC. PROBS. 1 (1985). The negative assessment of barrio gangs among community residents increased during the 1940s and 1950s with Anglo society's broad ascription of deviance to nongang youths and the gangs' increasing involvement with heroin. Id. at 6-7. By the late 1960s, the deviants had proved that they were not dangerous to the community, and their style was adopted by the bourgeoisie wanting to deny their assimilation. Id. at 3-4, 8. This in turn allowed the deviants to be reabsorbed into the community. The community's perception of the criminal deviants changed with (1) a romanticization of the deviants as resisters of repression, (2) their use in the specialized role of soldiers in connection with demonstrations, and (3) the placement of people connected to them via kinship and gang networks in positions with protest-oriented community movements and organizations. Id. at 7-8. The reincorporation of the achieved deviants ended when they ceased to be perceived as social bandits; the street demonstrations stopped, and there was no more need for soldiers; their families began to be ashamed of them; and those who had been associated with them were discredited, marginalized, and replaced in community-based organizations by professionals. Id. at 8-9. "In sum, there was a major erosion in the presence and legitimacy of structural and cultural resources for integrating street people into conventional roles." Id. at 9.
The Panthers specifically addressed the role white police officers played in black neighborhoods as well as the status of black criminal defendants and prisoners. They called for the release of "all black men held in federal, state, county and city prisons and jails" on the ground that "they had not received a fair and impartial trial." (No mention was made of incarcerated women.) Their close observation of white cops as they arrested black citizens on the street highlighted the problem of police brutality. The Panthers' posturing and head-on clashes with the authorities, however, provoked repression and government-instigated internal warfare. This in turn caused the Panthers to squander resources on bail and attorneys that might have been better spent on "Serve the People" medical clinics and free breakfasts for children. Such service activities stood a better chance of mobilizing grassroots support among ordinary blacks and overcoming neighborhood problems than did the Panthers' attempts at militaristic self-defense and socialist indoctrination.

Despite the shortcomings of the black militancy of the 1960s, identification with black lawbreakers still has something to contribute to political fashion and discourse. That blacks are once again fascinated with the outspoken nationalist leader Malcolm X illustrates this. Even the most bourgeois form of identification represents an opening, an opportunity, to press for a form of politics that could restore life to the ideal of

86. HERBERT H. HAINES, BLACK RADICALS AND THE CIVIL RIGHTS MAINSTREAM, 1954-1970 56-57 (1988). Unfortunately, the Panthers' "bad nigger shtick" also delighted white radicals, the media, and the "brothers off the block" who did not allow their Panther membership to deter them from continuing their normal criminal activity. See generally OFF THE PIGS! THE HISTORY AND LITERATURE OF THE BLACK PANTHER PARTY (G. Louis Heath ed., 1976) (offering a negative assessment of the Panthers' activities, including their involvement in ordinary crime).

87. See generally HENRY HAMPTON & STEVE FAYER WITH SARAH FLYNN, VOICES OF FREEDOM 348-72 (1990) (recounting the origins of the Black Panther Party and its platform through the words of Bobby Seale, Huey Newton, Eldridge Cleaver, and others).

88. REGINALD MAJOR, A PANTHER IS A BLACK CAT 292 (1971) (quoting the Black Panther Party Platform and Program (Oct. 1966)).

89. See, e.g., HAMPTON & FAYER, supra note 87, at 511-38 (discussing the murder of Panther Fred Hampton by the FBI and state and local authorities).

90. See Gregory Lewis, He Recalls Panthers' Civic Work, S.F. EXAMINER, Feb. 17, 1991, at B1 (quoting Ex-Panther Emory Douglas as concluding that the Panthers' "No. 1 threat [to the white establishment] was the breakfast program, not our guns.").

"the black community" by putting the interests of lawbreakers and their kin first. Drawing on lawbreaker culture would add a bit of toughness, resilience, bluntness, and defiance to contemporary mainstream black political discourse, which evidences a marked preoccupation with civility, respectability, sentimentality, and decorum. Lawbreaker culture supports the use of direct words and direct action that more refined segments of society would find distasteful. It might also support a bit of middle-class lawbreaking.

There is nothing that requires militant black male leaders to be selfish, stupid, shortsighted, or sexist. There is certainly nothing that requires militant black leaders to be men. As sources of militant style, women lawbreakers set a somewhat different example from the men. Furthermore, it is impossible to understand what lawbreakers can contribute to the substance of a politics of identification without considering women who break the law.

IV. JUSTIFYING IDENTIFICATION WHERE THERE IS NONE NOW: FEMALE LAWBREAKERS AND THE LESSONS OF STREET LIFE

Black men do not have a monopoly on lawbreaking. Black women too are engaged in a range of aggressive, antisocial, and criminal conduct that includes prostitution, shoplifting, credit card fraud, check forgery, petty larceny, and drug dealing. But unlike her male counterpart, the black female offender has little or no chance of being considered a rebel against racial, sexual, or class injustice. There is seemingly no basis in history or folklore for such an honor. The quiet rebellions slave women executed in the bedrooms of their masters and the kitchens of their mistresses are not well known today. Thus, the contemporary black female lawbreaker does not benefit from an association between herself and her defiant ancestors who resorted to arson, poisoning, and theft in the fight against white enslavement.

Aggressive and antisocial behavior on the part of black male lawbreakers is deemed compatible with mainstream masculine gender roles

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92. See Brill, supra note 82, at 176-77, 179.
94. Elizabeth Fox-Genovese, Strategies and Forms of Resistance: Focus on Slave Women in the United States, in In Resistance 143, 149-50, 155-56 (Gary Y. Okhiro ed., 1986). Black women played some role in armed revolts and maroon marauding, but it is not well documented. Id. at 146-47, 149-52; Rosalyn Terborg-Penn, Black Women in Resistance: A Cross-Cultural Perspective, in In Resistance, supra, at 188, 194, 201-02.
and is treated like race resistance, but the same sort of conduct on the part of black females is scorned as being unfeminine. Women are not supposed to engage in violent actions or leave their families to pursue a life of crime. Women who do such things may be breaking out of traditional female patterns of behavior, but their departures from the dictates of femininity are attributed to insanity or lesbianism without any basis in psychology or sociology.\footnote{Karlene Faith, Media, Myths and Masculinization: Images of Women in Prison, in Too Few to Count: Canadian Women in Conflict with the Law 181 (Ellen Adelberg & Claudia Currie eds., 1987).} No consideration is given to the structural conditions that make violence a significant factor in the lives of lower-class women and that suggest that their physical aggression is not pathological.\footnote{Cf. Jankowski, supra note 5, at 312 (describing the theory that gang behavior is the result of environmental conditions).} Conversely, forms of deviance associated with feminine traits like passivity and dependency are dismissed as collaboration with the white/male enemy. Black male lawbreaking also backfires, but black female criminals are not given the benefit of the doubt the males enjoy, either because the hole the women dig for themselves is more readily apparent or because their defiance of gender roles is treated as deviance of a higher order.

What most blacks are likely to know about the degradation and exploitation black women suffer in the course of lawbreaking and interacting with other lawbreakers provides no basis for identifying with them. Take the lot of black streetwalkers, for example. Minority women are overrepresented among street prostitutes and as a result are overrepresented among prostitutes arrested and incarcerated.\footnote{See Priscilla Alexander, Prostitution: A Difficult Issue for Feminists, in Sex Work: Writings by Women in the Sex Industry 184, 196-97 (Frédérique Delacoste & Priscilla Alexander eds., 1987) [hereinafter Sex Work]; Gloria Lockett, Leaving the Streets, in Sex Work, supra, at 96, 96-97.} Black and brown women are on the corner rather than in massage parlors or hotel suites in part because of the low value assigned to their sexuality. Many street prostitutes begin their careers addicted to cocaine, heroin, or both or develop addictions thereafter; drug habits damage their health, impair their appearance (and thereby their earnings), and increase their physical and mental vulnerability.\footnote{See Kathy Dobie, The Invisible Girls: Homeless and Hooking in the Neighborhood, Village Voice, Mar. 14, 1989, at 23.} Finally, streetwalkers encounter violence and
harassment from pimps, johns, police officers, assorted criminals, and even other women in the same line of work.99

Other factors work against black identification with black prostitutes. There is some glorification of prostitutes in literature, film, and the media, but not much.100 The hooker with a heart of gold and the streetwalker who needs only the love of a good man to save her are unusual creatures. Typically, though, "the pimps/players [the male actors in the sex trade] are seen as smooth, slick, and smart, [while] the girls [are seen] as stupid and dirty,"101 And "[t]here is no strata [sic] in contemporary society in which females have ever gained positive status from visible promiscuity."102 Because of this and the reality that the stereotype of the loose black woman, or Jezebel, is so pervasive, black women who consider themselves respectable are especially likely to be inhibited from identifying with black prostitutes.

Prostitution is but one form of criminal activity a woman in street life might be employed in at any particular time. Less is known about lawbreaking of a nonsexual nature. The exploitation, manipulation, and physical jeopardy associated with street prostitution are also experienced by female lawbreakers who are members of male-affiliated female gangs and criminal networks.103 These networks, which once were quite prevalent, consist of loosely affiliated households or pseudofamilies made up of a male head and one or more females, sometimes referred to as "wives-in-law."104 In such collectives the male hustlers hustle the females. In return for giving money, assistance in criminal endeavors, affection, and loyalty to "their men," the women get protection,105 tight controls on their sexual dalliances,106 and the privilege of competing with other

99. See Michael Zausner, The Streets: A Factual Portrait of Six Prostitutes as Told in Their Own Words 34-37, 50, 92 (1986); Gloria Lockett, What Happens When You Are Arrested, in Sex Work, supra note 97, at 39; Miller, supra note 93, at 138; Dobie, supra note 98.

100. See Pierre L. Horn & Mary B. Pringle, Introduction to the Image of the Prostitute in Modern Literature 1, 3-5 (Pierre L. Horn & Mary B. Pringle eds., 1984) (hereinafter Image); James M. Hughes, The Uncommon Prostitute: The Contemporary Image in an American Age of Pornography, in Image, supra, at 101. A few seasons ago, the movie Pretty Woman, the Cinderella tale of a hooker and a handsome, young, ruthless but troubled tycoon, was a commercial success. Pretty Woman (Touchstone Pictures 1989).

101. Williams & Kornblum, supra note 24, at 69.


103. See generally id. (describing the life of women in urban gangs); Miller, supra note 93; Kim Romenesko & Eleanor M. Miller, The Second Step in Double Jeopardy: Appropriating the Labor of Female Street Hustlers, 35 Crime & Delinq. 109 (1989) (describing the social, political, economic, and psychological aspects of women's lives on the streets).

104. Miller, supra note 93, at 36-43; Romenesko & Miller, supra note 103, at 110-11.

105. Romenesko & Miller, supra note 103, at 116-17.

106. Campbell, supra note 102, at 243-45; Romenesko & Miller, supra note 103, at 116-17.
females for attention.\textsuperscript{107} Try as they might to break out of traditional
gender roles with aggressive criminal or antisocial behavior, the female
members of traditional girl gangs and networks sink deeper into the
optionlessness of low-status, low-income female existence.\textsuperscript{108} That
hardly makes them fitting candidates for admiration or emulation.

Life in criminal subcultures is dynamic, and much suggests that,
with the ascendancy of crack, the lot of black women who engage in
deviant activity has taken a turn for the worse. There is little in the way
of systematic research on the impact that crack and the not totally unre­
related AIDS epidemic\textsuperscript{109} have had on black female deviance. According
to news accounts and some scholarly writing, crack usage has driven
more black women into lawbreaking, particularly prostitution and vio­
lent property offenses. There has been both a decline in the collective
and cooperative enterprises associated with networks (which would nor­
mally provide women with some protection from violence and exploita­
tion) and a reduction in the remuneration the women receive for their
activities.\textsuperscript{110} Some females are participating in the entrepreneurial
aspects of the crack trade on a nearly equal basis with men, but they are
in the minority.\textsuperscript{111}

The multigenerational use of crack across gender lines and changing
gender roles add to the variety of forms black female deviance takes.\textsuperscript{112}
For example, some mothers condone the involvement of their children in
the crack trade because it increases the mothers' access to drugs or
enables their children to give them luxury items as presents.\textsuperscript{113} Some

\textsuperscript{107} Romenesko & Miller, supra note 103, at 122-23, 126-27; Campbell, supra note 102, at
257-59.

\textsuperscript{108} Campbell, supra note 102, at 255-57.

29. In some parts of the Northeast AIDS is the leading cause of death for black women between the
ages of 15 and 44. Susan Y. Chu et al., Impact of the Human Immunodeficiency Virus Epidemic on

\textsuperscript{110} See Sally Jacobs, Captives of Crack, Boston Globe, Dec. 13, 1989, § I, at 1; James
Kindall, On Streets to Nowhere, Newsday Mag., Jan. 21, 1990, at 10 (noting that the director of a
prostitute-rights organization hesitates to call women who exchange sex for crack “prostitutes”);
Hamid, supra note 57, at 66-67; James A. Inciardi, Trading Sex for Crack Among Juvenile Drug

\textsuperscript{111} Taylor, supra note 10, at 38; Bourgois, supra note 10, at 644-45.

\textsuperscript{112} See Gina Kolata, On Streets Ruled by Crack, Families Die, N.Y. Times, Aug. 11, 1989, at
Al.

\textsuperscript{113} Id. at A13; Taylor, supra note 10, at 64.
drug-abusing females steal from friends and relatives or leave their children with grandmothers and aunts and disappear.\textsuperscript{114}

According to Philippe Bourgois,

[The] greater female involvement in crack reflects in a rather straightforward manner the growing emancipation of women throughout all aspects of inner-city life, culture and economy. Women—especially the emerging generation, which is most at risk for crack addiction—are no longer as obliged to stay at home and maintain the family as they were a generation ago. They no longer so readily sacrifice public life or forgo independent opportunities to generate personally disposable income. A most visible documentation of this is the frequent visits to the crack houses by pregnant women and by mothers accompanied by toddlers or infant children.\textsuperscript{115}

Unfortunately, Bourgois is not very specific about the linkage between his female subjects’ increasing independence and their drug usage. Their addictions may be more a cause of their “liberated” behavior than a consequence or symptom. In any event, real emancipation is not to be achieved this way. Still very much restricted by the customary sexual division of labor, addicted women resort to prostitution to support their crack habits. Their very numbers and their desperation earn them the status of the most depreciated sex objects.\textsuperscript{116} Bourgois concludes that given their public visibility, they have “a strong negative effect on the community’s—and on mainstream society’s—perception of Third World women; ultimately it reinforces an ideological domination of females in general.”\textsuperscript{117} Such stereotyping is unfair and twisted, not the least because many straight black women are put off, if not disgusted, by the exploits of crack prostitutes and do not see any relationship between themselves and such licentious women. It would be asking a lot for them to go beyond that assessment to identify with these women and their life circumstances.

There is accordingly much for which respectable black women can rebuke black females who participate in crime and seemingly little with which respectable women can identify. Hierarchy will not crumble, however, if the wicked do not get a shot at upending the righteous. Where community depends upon challenging the social, economic, and

\textsuperscript{114} See ANDERSON, supra note 9, at 86-90; Jane Gross, Grandmothers Bear a Burden Sired by Drugs, N.Y. TIMES, Apr. 9, 1989, § 1, at 1; ZE'EV CHAFETS, DEVIL’S NIGHT: AND OTHER TRUE TALES OF DETROIT 58-59 (1990).
\textsuperscript{115} Bourgois, supra note 10, at 643-44.
\textsuperscript{116} Id. at 644-45.
\textsuperscript{117} Id. at 645.
political stratification produced by traditional mainstream values, vice must have some virtue.

In the black vernacular, “the streets” are not just the territory beyond home and work, nor merely the place where deviants ply their trades. More figuratively, they are also a “source of practical experience and knowledge necessary for survival.”\(^{118}\) The notion of a politics of identification suggests that “the streets” might be the wellspring of a valuable pedagogy for a vibrant black female community if straight black women had more contact with and a better understanding of what motivates black women in street life. Black women from the street might teach straight black women a thing or two about “heroine-ism” if straight women let themselves be taught.

I cannot predict what lessons might be learned from an interaction between straight and street black women. Ethnographers report that women engaged in street life typically see more than the negative about their careers. (It is unclear what precise differences there are in this regard between the cultural orientations of black street women and those of white and Latino street women.) In addition to citing economic necessity, street women in general justify their deviant conduct by criticizing straight life. Black street women in particular come from the worst material circumstances. They start life poor and do not acquire the education or skills with which to improve their economic positions.\(^{119}\) Compared with the “restricted and tedious jobs available to them” in the legitimate market, hustling offers these women “money, excitement, independence, and flexibility.”\(^{120}\) In their view, straight life is “filled with drudgery and disappointment”; it is “the epitome of boredom.”\(^{121}\) Street life, on the other hand, gives women “opportunities to feel a sense of mastery, independence, individual accomplishment, and immediate reward.”\(^{122}\) For example, a semi-reformed black female drug user, whose son was the subject of an in-depth two-part story in The New Yorker, spoke fondly and longingly of being “Out There”:

Angelica . . . talks about it constantly, as if it were a place, a destination on a map. If she doesn’t keep busy, if she gets too bored or lonely, she’ll go Out There again, she knows she will. It’s dangerous Out

\(^{118}\) Edith A. Folb, Runnin’ Down Some Lines 256 (1980).
\(^{119}\) See Marsha Rosenbaum, Women on Heroin 24-26.
\(^{120}\) Alexander, supra note 97, at 188. See also Miller, supra note 93, at 81-82 (explaining why some young mothers prefer street life to the legitimate, dead-end jobs available to them).
\(^{121}\) Miller, supra note 93, at 148.
\(^{122}\) Id. at 140.
There, and hard—you’re often broke, and may have no place to live—but it’s exciting, and the worries of ordinary life recede.123

A Harlem prostitute viewed the perils of her work in a similar way: The risk is the thrill. I feel one has to be adventurous, daring, and mischievous to a point. The first thing one has to keep in mind is that you’re going to get caught. Not by the authorities, no! That’s the last thing in my mind. When I say get caught, I mean by the street. If you’re dealing in anything against the law, you always have heavy competition. If your game is good, people want to tear it down. It’s a constant battle in the streets for survival. There is a lot of planning, scheming, lying, cheating, and a little bit of fear out there. The fear has to be natural or you’re doomed. You have to love danger.124

The significance of the control a woman can achieve in street life was emphasized by a prostitute interviewed by Studs Terkel for his book Working:125

The overt hustling society is the microcosm of the rest of the society. The power relationships are the same and the games are the same. Only this one I was in control of. The greater one I wasn’t. . . . As a bright, assertive woman, I had no power. As a cold, manipulative hustler, I had a lot. I knew I was playing a role. . . . All I did was act out the reality of American womanhood.126

Eleanor Miller, in her seminal study Street Woman, reports that street women are more likely to blame their lot on racial and class inequalities than on gender inequality.127 Moreover, they perceive the criminal justice system as “unjust and unpredictable.” This “perception . . . had the . . . effect of making the majority of the women feel that the moral world was somehow out of balance and that they were ‘owed’ some illegal acts without punishment as result.”128

Finally, the value system of Miller’s informants was reflected in their notion of “having the wisdom.”

124. Williams & Kornblum, supra note 24, at 69.
126. Id. at 65. In assessing the moral dimensions of their occupation, street women are not above drawing analogies between their work and the work of such nonstreet women as secretaries and their sexual behavior and the sexual behavior of such nonstreet women as wives. Williams & Kornblum, supra note 24, at 69; Terkel, supra note 125, at 57, 65. As wives and lovers, straight women struggle to break the connections among sex, monetary support, and the social status a woman derives from affiliation with a man. The search for self-worth and dignity in interactions with men is one that straight and street women have in common.
127. Miller, supra note 93, at 161.
128. Id. at 168.
[The term] refers to a particular set of qualities and skills that make a "good" (successful) street woman. Primary among them is the ability to manipulate [sic] people or "con" people into giving you their money without resorting to violence. If you're good at what you do, the implication is that this can be accomplished without having to give much of yourself in return. . . . A woman with the wisdom would, in turn, not allow herself to be conned. . . . The term was also used to describe women who could distinguish "good men" from "men" who "weren't nothin' but pimps."129

Wisdom was not an unqualified good because it enabled one to hurt others and to hurt one's self.130 On the whole, though, having the wisdom was a sign of professional status, a characteristic that distinguished street women from women engaged in other occupations. It was also a skill that would enable the women "to make a living, even after they were no longer active in street life" or when there was no man to take care of them.131

Identification with black street women will be difficult for many in "the community" but not impossible, if we take the women on their own terms as we do the men. What can possibly be wrong with wanting a job that pays well, is controlled by the workers, provides a bit of a thrill, and represents a payback for injustices suffered? To be sure, street women will not accomplish their goals on any sustained basis through lawbreaking. But that does not mean that they should abandon their aspirations, which, after all, are not so very different from those of many straight black women who battle alienation and boredom in their work lives. Street women may be correct in thinking that some kind of risk taking will provide an antidote for a fairly common misery.

Street life is public life. It entails being "Out There," aggressive and brazen, in a realm normally foreclosed to women. Operating on the streets takes wisdom, cunning, and conning. The ways of black women should be infused into black political activism, and young black women should be allowed to be militant political leaders, just like their male counterparts. The search for political styles and points of view should extend broadly among different groups and categories of black women, including lesbians, adolescent mothers,132 rebellious employees,133 and

129. Id. at 164-65.
130. Id. at 165.
131. Id. at 166.
132. See Austin, supra note 14, at 574-76.
lawbreakers immersed in street life. In a real black community, everyone would be a resource, especially those whom the dominant society would write off as having little or nothing to contribute. That, in essence, is what a politics of identification is all about.

And finally, street women accept the justifiability of engaging in illegal conduct to rectify past injustices and to earn a living. This may prove to be the hardest lesson for straight black women to learn—and the most valuable.

V. NEITHER STREET NOR STRAIGHT: BRIDGE PEOPLE, THE INFORMAL ECONOMY, AND A PRAXIS FOR A POLITICS OF IDENTIFICATION

Melding the virtues of street life with the attractions of straight life may be foreign to some black people, but not to all. "The black community" is not really divided into two distinct segments—one straight, the other street. There are folks in the middle. If blacks who consider themselves totally respectable need role models to help them identify with lawbreakers, the prime candidates are the "bridge people" who straddle both worlds.

Bridge people have a real stake in negotiating the gulf that separates straight and street people and in understanding what constitutes an appropriate balance of the modes and mores of each. Bridge people bear the brunt of the hardship posed by a physical and familial proximity to those heavily engaged in street life. The opportunities of the bridge people for an improved existence are bound up with the life chances of their deviant kin, all of whom cannot be locked up even if we wanted them to be. Bridge people accordingly maintain a critical yet balanced assessment of the deviance of other community members and of the responsibility that the larger society bears for all their troubles.134

Oppressed people need to know when to obey the law and when to ignore it. In the way of promulgating an informal, customary jurisprudence, bridge people are involved in a dialogue with the lawbreakers, their most ardent admirers, and each other over the line between legality and illegality, between "getting over" and self-delusion, between collaboration and resistance, and between victimizing one's own and extracting

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134. See James C. McKinley, Jr., Friendships and Fear Undermine a Will to Fight Drugs in Brooklyn, N.Y. TIMES, Sept. 18, 1989, § 1, at 1.
justice from the enemy. 135 The discussions occur in homes, day care centers, welfare offices, health clinics, gyms, playgrounds, alternative schools, beauty parlors, and barber shops.

More importantly, the bridge people actualize the distinctions in their own everyday economic activities. Though many of them endure dull and unexciting lives just like straight women and men, bridge people also know how to hustle, in the sense of working aggressively, energetically, and without too much illegality. Hustling is "a way of life" and a "means [of] surviving" for those who must deal with low wages, layoffs, unemployment, and other flaws in the regular job market. 136 It includes "a wide variety of unconventional, sometimes extralegal or illegal activities, often frowned upon by the wider community but widely accepted and practiced in [black urban enclaves]." 137

Anecdotal evidence suggests that the "hidden," "underground," "irregular," "cash," "off-the-books," or (please excuse the expression) "black market" economy is quite significant in low-income and working-class black neighborhoods. 138 My own observations and a survey of selected informants (who shall remain nameless) reveals that without the benefit of licenses, zoning variances, formal training, or tax reporting, black women are cleaning offices or doing domestic work, catering, providing child care in the home or elder care at the beds of the infirm, styling hair in basements, and conducting home demonstrations of Avon and Amway products. The men are engaged in "jackleg" home maintenance, yard work, back-alley car and appliance repair, gypsy cab driving, moving and hauling, and newspaper delivery. Some of these folks are essentially self-employed, while others merely supplement salaries from full-time jobs or their retirement income with a bit of hustling on the side. Those with extra space in their homes turn it into rental units or take in boarders. Neighbors sell water ice and sweets from the front porch and conduct flea markets and yard sales from the garage in back. Street vendors are, of course, everywhere. 139 All sorts of folks lined up for surplus butter and cheese when the government held its big give-

135. See VALENTINE, supra note 93, at 126-27.
136. WILLIAMS & KORNBLUM, supra note 24, at 56.
137. VALENTINE, supra note 93, at 23.
139. Most of the black vendors I see are men. Women constitute a distinct minority of vendors, no doubt in part because they are harassed by the police, male vendors, and their customers. See Roberta M. Spalter-Roth, Vending on the Streets: City Policy, Gentrification, and Public Patriarchy,
away. Clerks in stores cut their friends a break on merchandise, and pilfering employees spread their contraband around the neighborhood. Residential speak-easies have better prices and longer hours than bars and liquor stores. A card party offering good soul food and alcohol for sale may run from Friday night to Sunday morning. Skilled players can pick up more than a few dollars playing cards. Even the kids hustle; they perform in the streets (playing musical instruments or dancing) or sell candy door-to-door. Men on the margins scavenge to fill their shopping carts with recyclable cans and bottles or metal stripped from empty buildings and junk set out on the curb. As for the young men, they do not seem to be doing much of anything but selling drugs.

Further documenting the nature and extent of hustling in black enclaves is difficult. The norms regarding socially acceptable lawbreaking are unwritten, and the activity must be clandestine in order for it to succeed. Scant academic energy has been devoted to investigating how those connected to both the street and straight worlds survive financially. Kathryn Edin’s dissertation, There’s a Lot of Month Left at the End of the Money: How Welfare Recipients in Chicago Make Ends Meet, marks a notable departure from the norm. Edin presents an extended financial profile of a group of twenty-five beneficiaries of Aid to Families with Dependent Children. Included in the sample were not only blacks but also Mexican-Americans, Puerto Ricans, and whites. All resided in the Chicago area. “[O]nly seven out of these twenty-five families received enough money [from welfare] to cover their rent, food and utilities.” In assessing their overall budgets, Edin concludes that her informants “did not ‘waste’ much money,” although there were a few nonnecessities (like cigarettes and soda) and luxury items (like telephones and VCRs) that they might have done without.

Edin catalogues the various ways the women made up the monthly budget deficits that remained after their welfare allotments and food stamps were exhausted. Some of her subjects could rely on help from

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141. Id. at 1.
142. Id. at 9-33.
143. Id. at 1.
144. Id. at 166-69, 172-73.
145. Id. at 9-33, 112-130.
food pantries and gifts from friends and relatives. All engaged in activities that were illegal because they were not reported to the welfare authorities. This category included doing household chores for neighbors, collecting cans for recycling, mowing lawns, pocketing whatever was left over from an educational grant after books and tuition were paid for, sharing a boyfriend’s earnings, and receiving child support directly from the children’s fathers. Nearly a third of Edin’s informants also did things that were illegal enough to land them in jail (though none apparently did go to jail), and in the case of one informant, illegal enough to get her killed. This category included working at a regular job using a false name and social security number, operating a small-scale lottery or raffle, fencing stolen goods, dealing marijuana, dealing cocaine, occasionally engaging in sexual intercourse for money, and shoplifting. A recipient’s opportunity structure (her family, friends, neighborhood milieu, and skill level) determined whether her income-generating activity included the unreportable. Edin concludes that “of the welfare clients observed, most work as hard as their middle class counterparts.”

By and large, hustling consists of little more than self-sustaining survival mechanisms. The participants in such economic activity lack the wherewithal to increase its productivity and profitability. This is well illustrated by anthropologist Louise Jones’s study of black street peddlers in “Riverview,” a black enclave of a river-port city of the upper South. Professor Jones concludes that the vendors’ lack of financial assets and access to relevant decision-makers meant that they had to rely upon their... skills and resources [which were not such as to allow them] to compete with enterprises having expansive resources and range. ... [The] Riverview street peddlers ... while exhibiting all the features necessary for successful adaptation to an ethnically segregated urban arena in which there were few retail firms,

146. Edin draws a distinction between activities that are illegal because they are not reported and activities that are “illegal in and of themselves” and therefore unreportable. The former she considers part of the informal economy, the latter part of the underground economy. Id. at 118-19. For her informants, the distinction between the two sorts of activities may be more nuanced than Edin suggests. All “reported feeling guilty about not reporting income.” Id. at 222. One informant sold drugs and fenced stolen goods for her brother only on a part-time basis because she thought that greater involvement in crime conflicted with her image of herself as a good mother. Id. at 122-23. Another, who disliked dealing marijuana and being involved in prostitution, “engaged in them only when she ran out of money ... [and] only to the point where she could pay her bills.” Id. at 121.

147. Id. at 152-53, 204-20.

148. Id. at 70.

were largely incapable of transforming their skills into those necessary for the successful operation of a sedentary retail site.\textsuperscript{150}

The vendors' strengths were their ability to make flexible marketing decisions that took advantage of changing supply and demand and their capacity to capitalize on their personalities and charisma to foster personal relationships with customers. They were handicapped, however, by being "structurally isolated from professional and service-related firms which functioned to provide a variety of managerial and financial assistance to business enterprises. Thus accountants, tax specialists, bankers, and insurance agents were absent from the marketing arena of Riverview street peddlers."\textsuperscript{151} Moreover, they used only cash, and no credit, in transactions with distributors and customers. Finally, Jones maintains, "they lacked control over their marketing niches, as well as those political and economic arenas which were fixed on transforming the economic landscape into an environment conducive to the profitability of the large-scale firms of the formal market sector."\textsuperscript{152}

Whatever its limitations, hustling may nonetheless be an important factor in the development of more self-reliant black urban communities. Social scientists would classify much of the hustling described above under the rubric of "the informal economy." There is no single definition of the term. For the purposes of the discussion here, the informal economy encompasses "the range of overlapping subeconomies that are not taken into account by formal measures of economic activity."\textsuperscript{153} Moreover, whether the activities are considered illegal or extralegal, the informal economy tends to escape direct regulation by the institutions of society, although other similar activities are not so immune.\textsuperscript{154} At the same time, the informal economy is responsive to the regulatory environment whose actual jurisdiction it seeks to avoid or evade. The description in Part II of the way harsher penalties for adult drug dealers created "employment opportunities" for juveniles illustrates how the law and the

\begin{flushleft}
\textsuperscript{150} Id. at 166-67.
\textsuperscript{151} Id. at 167.
\textsuperscript{152} Id. at 168.
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informal economy are dialectically related. Finally, the informal economy is characterized by operations that are "small scale," "labor intensive, requiring little capital," and "locally based," with business transacted "through face-to-face relationships between friends, relatives, or acquaintances in a limited geographical area."

The informal economy has social and entrepreneurial aspects. It may manifest itself largely as a social undertaking, fueled not by money exchanges but by reciprocal gift giving and bartering. Informal activities assure social cohesion and protect folks "from total and abject economic failure" by providing a community with "its own informal safety net." The informal economy also encompasses entrepreneurial market operations whose connection to the dominant economy may be close or distant. In some instances, the informal activity reflects the community's isolation from the formal economy. As such, the informal economy is primarily "a mechanism for maximizing the returns on whatever resources are available . . . . by providing jobs, entrepreneurial opportunities, and enough diversity to maximize recirculation of money inside the community where the jobs are located and the goods or services are produced." Alternatively, a community's informal sector may be highly connected to the formal economy in that it produces goods and services for external markets, competes for business with firms in the formal economy, and generates substantial income.

155. See supra text accompanying notes 59-64.
156. Henry, supra note 153, at 140.
158. Saskia Sassen-Koob, New York City's Informal Economy, in THE INFORMAL ECONOMY, supra note 154, at 60, 71.
159. See Alex Stepick, Miami's Two Informal Sectors, in THE INFORMAL ECONOMY, supra note 154, at 111. The distinction is illustrated by Stepick's comparison of the Haitian and Cuban informal economies in Miami. Among the Haitian immigrants, the most common small businesses were devoted to supplying custom-made clothes, food, child care, taxi service, home remodeling, and auto and electronic repair to an exclusively Haitian clientele. Id. at 121-25. On the other hand, the Cuban informal sector was integrated into the broader economy. Cuban women, skilled in the needle trades, worked either in sweatshops or illegally at home under contract with factories. Cuban-owned home construction firms employed men from the community on an informal, cash-only basis. Moreover, some Cuban enterprises that began as informal operations have made the transition to the formal economy. Id. at 116-121. See also M. Patricia Fernandez-Kelly & Anna M. Garcia, Informalization at the Core: Hispanic Women, Homework, and the Advanced Capitalist State, in THE INFORMAL ECONOMY, supra note 154, at 247 (examining the informal economy in the context of the garment industries of Los Angeles and Miami); Kenneth L. Wilson & W. Allen Martin, Ethnic Enclaves: A Comparison of the Cuban and Black Economic Economies in Miami, 88 AM. J. SOC. 135 (1982) (showing that black businesses were atomized and peripheral to the main economy while Cuban businesses were collectively integrated and at the center of a separate enclave economy).
Ventures in the informal economy have some of the advantages of legitimate small enterprises, which employment statistics indicate are making somewhat of a comeback. Economists hypothesize that the reemergence of small firms is attributable to either a need for flexibility and specialization that mass production cannot satisfy or an effort on the part of large concerns to reassert managerial control over labor through decentralization. Small enterprises in the informal economy, which escape regulation, can certainly top those in the formal economy, at least in terms of maximally exploiting workers. Operations in the informal sector are characterized by low wages, few fringe benefits, poor working conditions, no job security, and work forces composed of women and/or racial and ethnic minorities, categories of employees who have historically been the victims of job discrimination. At the same time, however, the informal economy blurs the line between employer and employee by turning workers into self-employed artisans, part-time home workers, and small-scale entrepreneurs. In the informal economy, "workers [may] voluntarily submit to high levels of exploitation in return for assistance in subsequently establishing and maintaining their own businesses."

In assessing a broad range of informal economic activity in Europe, Central and South America, and Asia, one group of scholars has concluded that the informal economy has experienced growth under the following circumstances: (1) the informal sector took advantage of technological advancement and "capture[d] a niche in upscale segments of the market"; (2) there was a strong "export orientation" that generated goods and services not exclusively for the local market; and (3) the enterprises were relatively autonomous and were not vertically connected to other, larger businesses via multiple layers of subcontracting. Moreover, sociocultural factors played a role. In the most successful

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160. See generally Michael J. Piore, United States of America, in The Re-emergence of Small Enterprises: Industrial Restructuring in Industrialised Countries 261 (W. Sengenberger et al. eds., 1990) (laying out statistical evidence to show the increased share of employment held by small businesses) [hereinafter The Re-emergence of Small Enterprises].
163. Alejandro Portes et al., Conclusion: The Policy Implications of Informality, in THE INFORMAL ECONOMY, supra note 154, at 298, 308.
164. Stepick, supra note 159, at 125.
165. Portes et al., supra note 163, at 302-03.
informal economies, there existed an "unusual receptivity to technological innovation and entrepreneurial opportunities," \(^{166}\) "a concentration of entrepreneurial abilities in a given location and the consequent emergence of a strong business culture in which later arrivals were socialized," and a common culture that created "overarching solidarity that facilitate[d] . . . cooperation . . . rules of conduct, and obligations which can alter . . . what would otherwise be pure market relationships." \(^{167}\) Finally, the state also made a contribution. "[E]very successful instance register[ed] evidence of an official attitude that downplays the lack of observance of certain rules and actively supports the growth of entrepreneurial ventures through training programs, credit facilities, marketing assistance, and similar policies." \(^{168}\)

This list of what are in essence the preconditions for optimal growth of the informal sector strongly suggests that the informal economy is not a "generalizable solution[] to [the problems of] economic underdevelopment." \(^{169}\) Nonetheless, given high levels of poverty and unemployment in poor black urban enclaves, "the possibility of semiformal neighborhood subeconomies should be regarded with interest." \(^{170}\) Poor black communities will unquestionably have difficulties strengthening and enlarging their informal economies because their inhabitants lack technical skills, business expertise, start-up capital, access to credit, and links to external markets. Yet there may be ways to overcome these obstacles.

Poor and working-class enclaves have an abundance of workers unskilled except in the hard work of hustling. They need on-the-job training. Both the politics of identification and the processes of the informal economy teach the same lesson: Start with people where they are and work with what you get! Grounded in communal kinship and altruism, the informal economy is one in which the son who just got out of jail and the niece who is in a drug rehabilitation program can find employment. It should remain that way. The importance attached to social ties ensures that deviants will have a role in the economic life of the community. We must not forget them. They have something to contribute, and we must bring them along, training them as we go. The social aspects of the informal economy should be infused into as much economic activity

\(^{166}\) Id. at 304.
\(^{167}\) Id. at 304-05.
\(^{168}\) Id. at 303-04.
\(^{169}\) Id. at 302.
\(^{170}\) Sassen-Koob, supra note 158, at 74.
as possible.\textsuperscript{171} A politics of identification should fight against the extension of market operations into relationships that are now quite adequately governed by social considerations.

The black middle class might provide the expertise that informal entrepreneurs and the poor and poorly trained labor force presently lack. Historically, members of the black middle class were not simply role models for their less-well-off neighbors. They also served as conduits through which family, friends, and young folks from the neighborhood found jobs with mainstream employers. Through employment in the larger society, they generated income that they spent in the community and, as professionals and entrepreneurs, aided in the recycling of income earned by their patients, clients, customers, and parishioners.\textsuperscript{172} Members of the black middle class could be substantial generators and recyclers of income, suppliers of technical expertise, and links to the formal economy for individuals and businesses ready to cross over—if the black middle class were willing to accept the entrepreneurial and juridical risks associated with participation in the informal economy.

This call for the bourgeoisie to assist poorer black communities through informal enterprises should not be taken as an invitation to economic abuse. Their incursion should be limited in scope and duration.\textsuperscript{173} Members of the middle class who are motivated by racial solidarity and a desire to sustain “the black community” might contribute through nonprofit or cooperative ventures. In any event, being a black person employed in an informal black-owned enterprise located in a black neighborhood is not the ideal situation, but it may be better than the next best alternative. Whatever form the informal economic intercourse between the bourgeoisie and unskilled community folks initially takes, the politics of identification suggests that the latter should become their own bosses and attain incomes that will entitle them to think of themselves as middle-class if that is their desire.

The state might be urged to provide the training programs and credit and marketing assistance other governments have accorded successful informal economies. Social welfare benefits that are not wage-based, such as income guarantees or universal health insurance, would


\textsuperscript{172} See \textit{William Julius Wilson, The Truly Disadvantaged} 56, 137-38 (1987) (arguing that the exodus of higher-income families from ghetto areas undermined significant institutions like churches, stores, schools, and recreational centers, and through them the social fabric of the community).

\textsuperscript{173} See Portes et al., \textit{supra} note 163, at 300-02.
also protect workers from some of the exploitation and abuse that accompany jobs in the informal sector.\textsuperscript{174} In addition, the state might support new forms of communal or cooperative ownership that break down the distinction between capital and labor.\textsuperscript{175} Unfortunately, the prospects for government assistance do not look particularly bright. Programs that require substantial expenditures have very little chance of being enacted in today’s reactionary and recessionary political climate, although efforts to encourage entrepreneurship throughout society may generate some enthusiasm. Furthermore, black capitalism and minority self-help tend to be oversold as panaceas for the structural ills of poverty and limited employment opportunities in regular labor markets.\textsuperscript{176} The ideological utility to the government of measures to assist the informal economy in black communities may far exceed their actual monetary payout.

Nonetheless, any liberal politics of economic reform should push for governmental support of black informal entrepreneurship. A politics of identification, however, would take a somewhat different, more deviant tack toward the role of the state. Informal enterprises shrink from the light; their operations are aided by their invisibility and covertness. Legal regulation is what they avoid and undermine, not necessarily what they require in order to prosper. To facilitate the growth of the informal economy, a politics of identification would, upon occasion, work to keep the law at bay. The progressive nature of its support of regulatory avoidance distinguishes it from similar approaches advocated by others. For example, Robert Woodson, a prominent advocate of black capitalism, has also called for curbs on regulations that supposedly interfere with the threes E’s: “[e]mpowerment, economic development or entrepreneurship, and education.”\textsuperscript{177} He leaves out a fourth E implicit in his proposals: exploitation. While a politics of identification might agree with Woodson regarding laws that impede black economic self-sufficiency, it would demand that blacks be the chief beneficiaries of any regulatory-avoidance effort and the owners or controllers of any enterprises thereby promoted. To this end, a politics of identification might support selective enforcement, rather than total elimination of governmental oversight, so as to better protect the interests of the least-well-off blacks working in the informal sector.

\textsuperscript{174} Id. at 309-10.
\textsuperscript{176} Ferman et al., \textit{supra} note 171, at 169.
There are several areas in which competition from the informal sector has prompted actors in the formal economy to invoke the law to kill off their rivals. The interests of poorer blacks were on the side of informality in each. For example, squatters who move into and fix up abandoned or unoccupied properties with their sweat equity are informal producers of housing stock. Their lawlessness provokes the ire of the private sector, which has no real interest in taking up the slack of unmet demand but which is put out by the squatters’ threat to the concept of private property. Local governments, which cannot supply sufficient decent public housing, respond with evictions or concessions in the form of formal homesteading programs that may co-opt the energy of squatting initiatives.\textsuperscript{178} Squatting, which is essentially a form of self-help, is not the answer to the housing shortage in poor black neighborhoods, but it is an informal stopgap measure and a starting point for addressing the larger structural problems.\textsuperscript{179}

Sidewalk entrepreneurs compete with more formal purveyors of goods and merchandise whose greater political clout not infrequently translates into regulations and ordinances restricting sidewalk vending.\textsuperscript{180} Yet the contributions of many of these fixed-location enterprises to the economies of the surrounding neighborhood are limited because


\textsuperscript{180} See, e.g., Huelsman v. Civic Ctr. Corp., 873 F.2d 1171 (8th Cir. 1989) (holding that an antitrust action brought by self-employed licensed vendors was barred by an ordinance prohibiting sales in an area bordering a ball park by others than the stadium owner and operator); Brown v. Barry, 710 F. Supp. 352 (D.D.C. 1989) (involving a successful equal protection claim against a 1905 regulation prohibiting the shining of shoes on public streets). The court failed to reach a second claim that the regulation was "a vestige of the Jim Crow era when laws were intentionally designed to thwart the economic self-sufficiency of blacks." \textit{Id.} at 353. See also Service Employees Int’l Union Local 82 v. District of Columbia, 608 F. Supp. 1434, 1444 (D.D.C. 1985) (upholding regulations even though the purpose of protecting shop owners from street vendors was deemed "a goal of
their prices are high, their utilization of local suppliers low, and their track record for hiring community residents virtually nonexistent. Furthermore, vendors’ stalls once were loaded down with counterfeit high-status, trademark-bearing watches, handbags, and T-shirts. The industries’ efforts to curb the manufacture and sale of such goods seem to be working. The presence of these items on the market had real subversive potential. They made status a commodity within the financial reach of almost everyone. The goods were a tangible critique of the materialism of those who were insecure enough to buy the genuine article. Most purchasers knew from the asking price and the quality that the merchandise was bogus. This should constitute a defense to trademark infringement, but it does not. Here, then, are several instances at the margins between legality and illegality in which a politics of identification could champion the cause of informality. There are surely others.

With regard to credit, a politics of identification might favor more legal formality over less. If really casual mechanisms exist in black communities for pooling cash and lending it to provide capital for informal ventures, they remain hidden (at least to me). Useful devices for laundering money are not likely to be well publicized. Living in an economy fueled by cash, many poor blacks are more familiar with the workings of currency exchanges and check-cashing outlets than with those of banks,
savings and loans, and credit unions.\textsuperscript{184} Informal credit associations appear to be fairly common among immigrants,\textsuperscript{185} but they are not common among indigenous blacks. Pyramid schemes attract large stakes, but because they are not attached to any entrepreneurial activity, they simply redistribute resources in favor of the scams’ unscrupulous originators and early “investors.”\textsuperscript{186} Too many black folks look to state-run lotteries for “dividends,” even though lotteries are little more than regressive schemes of taxation that may be less effective at keeping capital within black enclaves than the illegal numbers rackets.\textsuperscript{187} Informal arrangements modeled after community loan funds and community-based credit unions\textsuperscript{188} would probably help supply investment capital to support entrepreneurial activity. Still, there must be some means to ensure that they are trustworthy and reliable. Whether loan funds and credit unions can exist in a state of purgatory somewhere between the formal and the informal and the legal and the illegal is not clear.\textsuperscript{189}


\textsuperscript{187.} See generally \textit{CHARLES T. CLOTFELTER & PHILIP J. COOK, SELLING HOPE: STATE LOTTERIES IN AMERICA} 95-106, 130-33, 222-30 (1989) (describing the demographics of the players, the relationship between lotteries and the illegal numbers racket, and the regressivity of the implicit lottery tax). In what might be seen as a sign of hope, \textit{Ebony} reports that some blacks are becoming disgruntled with the lotteries because blacks do not appear to be winning big prizes. \textit{Are State Lotteries Stacked Against Blacks?}, \textit{Ebony}, June 1991, at 126.


\textsuperscript{189.} In Washington, D.C., a concern known as Latin Investment Corporation performed banking functions for a largely Salvadoran immigrant clientele until it went bankrupt. The corporation was never chartered as a bank, its deposits were not insured, and its operations were known to bank...
Better than anything, rap music illustrates the possibilities for melding the mores of street and straight cultures with the methods of the informal and formal economies. Rap music is the paradigm for the praxis of a politics of identification. The vocal portion of rap—the message, the poetry—reflects the culture and concerns of poor and working-class urban black youth, particularly the b-boys. It invokes such black modes of discourse as toasting, boasting, and signifying. It aims to alienate and challenge white authority. It is misogynistic, self-congratulatory, and very competitive. Whatever else might be said about it, rap does address subjects like guns, gangs, police brutality, racism, nationalism, money, and sex. And it has also generated its own internal debates, with the strongest opposition to the standard fare coming from some female rappers who are making their presence felt with a strong black brand of feminism.

Rap’s material appropriation of sound and speech, however, may be more subversive than its ideological message. The background over which the rap artist orates is a synthesis of modern technology and a flaunting of the laws of private property. Rap is meant to be danced to, yet it requires no musical instruments and no original notes. At its origin, rap (or hip-hop, as it was first known) partook of none of the romanticism and the pseudosophistication of disco. It was an outgrowth of the same circumstances that produced the street art forms of regulators, who contended that they were without authority to stop them. See Carlos Sanchez & Joel G. Brenner, Investors in Limbo After D.C. Firm Shuts, WASH. POST, Dec. 6, 1990, at C1; Joel G. Brenner & Carlos Sanchez, D.C. Knew Firm Had No Bank Charter, WASH. POST, Dec. 7, 1990, at A1. See also Joel G. Brenner & Carlos Sanchez, Uninsured Credit Firm Faces Probe, WASH. POST, Dec. 29, 1990, at B1 (reporting that chain called Community Credit Union Services is not really a credit union; treasurer says firm considers itself "an investment club").

190. MARK COSTELLO & DAVID F. WALLACE, SIGNIFYING RAPPERS: RAP AND RACE IN THE URBAN PRESENT 23 (1990). It is difficult to find a precise definition of the term “b-boys.” The “b” could refer to black, bad, block, or breakdancing. Music critic Nelson George says b-boys are “urban males who in style, dress, speech, and attitude exemplified hip-hop culture.” NELSON GEORGE, THE DEATH OF RHYTHM & BLUES 193 (1988).


193. COSTELLO & WALLACE, supra note 190, at 85-86.

194. See GEORGE, supra note 190, at 154-55 (contending that disco was romantic music for the upwardly mobile while rap was raw, positive, and imbued with the attitude of self-determination); DAVID TOOPE, THE RAP ATTACK 78 (1984) (characterizing disco as nostalgic and pseudosophisticated).
breakdancing and graffiti.\textsuperscript{195} DJs such as the legendary Kool DJ Herc and Grandmaster Flash worked with the equipment they had. “[R]ecords and tapes were the only source of professional-quality sounds available to people unable to buy anything but prerecorded music and the equipment to listen [to it].”\textsuperscript{196} These early hip-hop DJs “turned two turntables into a sound system through the technical addition of a beat box, heavy amplification, headphones, and very, very fast hands.”\textsuperscript{197} The DJs began to broadcast the scratching that results from cuing a record and further developed the technique of moving a record back and forth over the same chord or beat for as long as the “enraptured” crowd could take it.\textsuperscript{198} They also held an audience’s attention by playing unfamiliar and obscure selections from their record libraries.\textsuperscript{199}

With time and exposure, rap’s focus moved from live performance to recordings and the turntable gave way to the digital synthesizer. The background over which the rappers recite their lines can now be produced by borrowing, editing, and combining digital sound bytes.\textsuperscript{200} Technology makes for a crazier quilt of snippets and scrapes of this or that bit of sound. The technique of “taking a portion (phrase, riff, percussive vamp, etc.) of a known or unknown record (or a video game squawk, a touch-tone telephone medley, a verbal tag from Malcolm X or Martin Luther King) and combining it in the overall mix” is known as “sampling.”\textsuperscript{201} “[S]ampling, the mother methodology [of rap music], was itself understood in-Scene as an outlaw credential.”\textsuperscript{202} Rappers didn’t pay royalties. Rap was “a domain of the improper, where copyright and ‘professional courtesy’ are held in contempt. Rappers will take what is ‘yours’ and turn it into a ‘parody’ of you—and not even begin to pay you in full.”\textsuperscript{203}

As rap has crossed the threshold and won a place in the (white, middle-class) mainstream, its production has moved from the subterranean depths of the informal to the limelight of the formal economy. Many of the small independent labels that first produced rap have been bought up by the major recording companies. As a result, rap’s message

\begin{itemize}
  \item \textsuperscript{195} \textit{Toop, supra} note 194, at 12-15.
  \item \textsuperscript{196} \textit{Costello & Wallace, supra} note 190, at 85.
  \item \textsuperscript{197} Houston A. Baker, Jr., \textit{Hybridity, the Rap Race, and Pedagogy for the 1990s, in Technoculture} 197, 200 (Constance Penley & Andrew Ross eds., 1991).
  \item \textsuperscript{198} \textit{Toop, supra} note 194, at 26, 65.
  \item \textsuperscript{199} \textit{Id.} at 65.
  \item \textsuperscript{200} \textit{Costello & Wallace, supra} note 190, at 85.
  \item \textsuperscript{201} Baker, \textit{supra} note 197, at 201.
  \item \textsuperscript{202} \textit{Costello & Wallace, supra} note 190, at 105.
  \item \textsuperscript{203} Baker, \textit{supra} note 197, at 204.
\end{itemize}
may not be as bold as it once was, and there are concerns that rap will lose its "integrity." 204 More importantly, the samplers are being required to pay royalties.205 Rap has become a commodity that is sold to the very same community that used to get it for free.206 Some rappers are getting rich. The question is not how many or by how much, but how deep does it go. One hopes that down on the street, among those left out again, the process of innovation and incubation is continuing and that something else is developing to take rap's place.

Rap music is emblematic for a number of reasons of what a politics of identification might accomplish. The rappers capture the drama of street life and serve it up to an audience that is white or middle-class or both, an audience both thrilled and chilled to be reminded of the existence of an angry black mass that might someday rise up and take what it will never be given. Someone should be preparing a list of demands. Rap is a political art form that is strengthened by the clash of viewpoints. It is an arena in which women are coming on strong. Furthermore, the perils of the informal economy—its riskiness, its skirting of the boundaries of legality, its sampling, and its scratching—are explicitly legitimated by rap's appeal and implicitly legitimated by its material success. Rap suggests that for those who want to get ahead and see "the black community" do the same, the bridge, a way station between the street and straight worlds, is an attractive place to be.

204. Tony Van Der Meer, Introduction to TOOP, supra note 194, at 5-6. But see George, supra note 190, at 194 (suggesting that rap's "rebel status and integrity" are not yet lost).


206. To get exposure, DJs would set up in parks or at block parties and perform for free, TOOP, supra note 194, at 60, 71, and give away tapes of their performances to friends and acquaintances. Id. at 78.
VI. "BRINGING IT HOME": A LEGAL AGENDA FOR A POLITICS OF IDENTIFICATION

The politics of identification delineated in this Article recognizes that blacks from different classes have different talents and strengths to contribute to "a revitalized black community." In general, this politics of identification would blend the defiance, boldness, and risk taking that fuel street life with the sacrifice, perseverance, and solidity of straight life. Taking a leaf from the lawbreakers' style manual, it would confront the status quo with a rhetoric that is hard-nosed, pragmatic, aggressive, streetwise, and spare. In recognition of the struggles of street women, it would foster a public life that is inclusive of deviants and allows both females and males to play an equal role. In order to have an impact on the material conditions that promote black criminal behavior, it would draw its praxis from the informal economic activity of the bridge people. In this way, a politics of identification would promote a critical engagement between lawbreakers and the middle class in order to move some of the lawbreakers beyond the self-destruction that threatens to bring the rest of us down with them.

The laws of the dominant society are not intended to distinguish between members of "the black community" who are truly deserving of ostracism and those who are not yet beyond help or hope. In addition, it is unlikely that the standards by which "the community" differentiates among lawbreakers can be codified for use by the legal system because of the informal, customary process by which the standards develop. Still, one of the goals of a legal agenda tied to a politics of identification would be to make the legal system more sensitive to the social connection that links "the community" and its lawbreakers and affects black assessments of black criminality.207

"The community" acknowledges that some, but not all, lawbreakers act out of a will to survive and an impulse not to be forgotten, and it admires them for this even though it concludes that their acts ought not to be emulated. In recognition of this, the legal program of a politics of identification would advocate changes in the criminal justice system and in other institutions of the dominant society in order to increase the lawbreakers' chances for redemption. "To redeem" is not only "to atone"
but also "to rescue," "ransom," "reclaim," "recover," and "release." Thus, redemption may be actively or passively acquired. The lawbreakers need both types of redemption. They need challenging employment that will contribute to the transformation of their neighborhoods and earn them the respect of "the community." They also need to be freed from the material conditions that promote deviance and death. If persuasion, argument, and conflict within the law fail to prompt the dominant society to reallocate resources and reorder priorities, then a jurisprudence that aims to secure redemption for lawbreakers must acknowledge that activity outside the law, against the law, and around the law may be required.

The development of the informal economy in poor black enclaves is crucial to the lawbreakers' redemption and the revitalization of "the black community." The jurisprudential component of a politics of identification would make an issue of the fact that the boundary between legal economic conduct and illegal economic conduct is contingent. It varies with the interests at stake, and the financial self-reliance or self-sufficiency of the minority poor is almost never a top priority. A legal praxis associated with a politics of identification would find its reference points in the "folk law" of those black people who, as a matter of survival, concretely assess what laws must be obeyed and what laws may be justifiably ignored. It would investigate the operations of the informal economy, which is really the illegitimate offspring of legal regulation. It would seek to stifle attempts to criminalize or restrict behavior merely because it competes with enterprises in the formal economy. At the same time, it would push for criminalization or regulation where informal activity destroys communal life or exploits a part of the population that cannot be protected informally. It would seek to legalize both informal activity that must be controlled to ensure its integrity and informal activity that needs the imprimatur of legitimacy in order to attract greater investment or to enter broader markets. Basically, then, a politics of

208. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1902 (1981). In black Christian theology, for example, redemption refers to more than repentance and deliverance from one's sins. OLIN P. MOYD, REDEMPTION IN BLACK THEOLOGY 15-59 (1979). In talking about redemption, black worshipers are not just thinking about heaven, but about "deliverance and rescue from [the] disabilities and constraints" of this world while they are still in it. Id. at 53. Redemption is "salvation from woes, salvation from bondage, salvation from oppression, salvation from death, and salvation from other states and circumstances in the here and now." Id. at 44, "that destroy the value of human existence." Id. at 38. Redemption, then, entails both a pay back and a pay out. Id. at 38 (quoting Donald Daniel Leslie, Redemption, in ENCYCLOPAEDIA JUDAICA (1971)).

identification requires that its legal adherents work the line between the legal and the illegal, the formal and the informal, the socially (within "the community") acceptable and the socially despised, and the merely different and the truly deviant.

Working the line is one thing. Living on or near the line is another. All blacks do not do that, and some folks who are not black do. Though the ubiquitous experience of racism provides the basis for group solidarity, differences of gender, class, geography, and political affiliations keep blacks apart. These differences may be the best evidence that a single black community no longer exists. Only blacks who are bound by shared economic, social, and political constraints, and who pursue their freedom through affective engagement with each other, live in real black communities. To be a part of a real black community requires that one go Home every once in a while and interact with the folks. To keep up one's membership in such a community requires that one do something on-site. A politics of identification is not a way around this. It just suggests what one might do when one gets there.