

NAUGHTY BY NURTURE: BLACK MALE JOYRIDING---IS EVERYTHING GONNA BE ALRIGHT?

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This Article is the final work of Professor Greene's extensive contribution to the study of the intersection of law and race. Professor Greene was still in the process of developing this work when he was murdered on July 5, 1993. The Journal collaborated with Professor Greene's friend and colleague, Professor Twyla Tharp of Rutgers University, and made only minimal editorial changes in this Article to preserve the integrity of the author's voice.

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Introduction:	(noises of babies crying in the background)
Dr. Blair (male):	Nurse Johnson, is the mother still in the recovery room?
Nurse Johnson (female):	Yes, Dr. Blair.
Dr.:	O.K., I'll go to the waiting room and inform the father it's a boy.
Nurse:	I'm afraid there is no father, sir.
Dr.:	Another ghetto bastard---uh---
Nurse:	I'm afraid so.
Dr.:	Well, put him with the rest of the born losers.
Nurse:	Alright, doctor, a shame isn't it?
Dr.:	It's not a shame, [it's] a problem.

[Narrator: A Young Black Male called "The Drifter"] Why am I worthless I didn't have jack but a black hat and nap sack, four scars, stolen cars, and a black jack.¹

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¹ "Everything's Gonna Be Alright" is by a rap/hip-hop group, Naughty by Nature. Naughty by Nature, Everything's Gonna Be Alright, on Naughty by Nature (Tommy Boy Records 1991). This song, like their popular hit, "OPP," was a commercial

Against hip-hop's backdrop are voices from a new post-civil rights Black America. These voices are those of certain young Black men who see themselves as hopeless and dispossessed from birth. These young men believe that society views Black men born to single mothers as a shame or a problem. With worthlessness as their birthright, and relentless poverty and denigration their life circumstances, entanglement with the criminal justice system may seem to loom as an inexorable fate.

The media portrays crimes committed by young Black men—from joyriding to carjacking, murder, and rape—as the undifferentiated behavior of a dangerous and irrational group that is victimizing white society. In MTV milliseconds, the response of lawmakers is that we must control these lawbreaking individuals through more extensive use of the criminal law.

This Article is about conflicting perceptions of lawbreaking by poor, young Black males. It contrasts the media's perception and portrayal of the lawbreaking of these youths with the young men's own perceptions of their actions. It raises a fundamental question this society must confront: "Is everything gonna be alright?"

Young Black males are a severely oppressed group. Because of exogenous forces and self-conscious awareness of society's negative stereotypes, young Black males do not have much of a chance in America. The statistics are well known: poor households,² unequal public education,³ and the nation's highest unemployment rate.⁴ Even if they are employed, the culture and stereotypes of gender and race are unique burdens.⁵ Often, a young Black male is suspected of being a criminal

success with young Black males in 1992. See Appendix.

² The economic condition of Black children deteriorated in the 1980's. Lynn Duke, *Success Looks Like a Shot: Dreams Vie With Harsh Realities as Young Black Men Size Up Life*, Wash. Post, July 26, 1992, at A1. Pulse, *Children and Poverty*, N.Y. Times, Nov. 9, 1992, at B1 (reporting Census Data that 39.8% of Black, 32.2% of Hispanic, and 12.5% of White children lived at or below the \$12,575 poverty level for a family of four). Census Bureau, *Center for Social Policy, the Challenge of Change* (1992).

³ Cf. Jonathan Kozol, *Savage Inequalities* (1991).

⁴ The national unemployment rate is approximately 7.3%. This represents a 5.9% White versus a 12.3% Black rate. Young Black men are so excluded from this society that many are not actively seeking employment anymore and therefore, are not included in these statistics. For this group, the actual unemployment rate is closer to 56.7%. National Urban League, *The African-American Worker*, no. 31 at 1, 5 (1992).

⁵ Black men are disadvantaged in workplaces because of stereotypes about their intelligence, belligerence, physical attributes, etc. The mere presence of Black men in the workplace in 1992 was considered a disabling cause of post-traumatic stress disorder for a White woman who was criminally assaulted by some other Black man. William Booth, *Phobia About Blacks Brings Worker's Compensation Award: Florida Woman Filed Claim After Parking-Lot Mugging*, Wash. Post, Aug. 13, 1992, at A3.

simply based on his status as a young Black male, rather than because of any act he may have committed.⁶ All too often, the impression is conveyed that America does not respect or want young Black men⁷---except perhaps, as athletes or entertainers. Not being American Express Gold Card people in a materialistic America, some young Black men see themselves as worthless onlookers, outsiders in their homeland.

While most young Black men continue to be law-abiding despite lives of oppression, others respond with rebellious, low-level crime. A paradigm of this behavior is what I call "protest joyriding." In Newark, New Jersey, for example, with its landscape still marred from the riots of the 1960's, some young Black men steal unattended cars or joyride with peers in stolen vehicles. These cars are like those the media dangles as the vehicles to manhood, happiness, and self-worth. Yet given the family circumstances and lawful earning potential of most young Black men, these are cars they will most likely never be able to ride in lawfully.

As with joyriding generally, for these young people, briefly possessing cars seems to be the primary goal. They do not profit from their "crime." They do not market or sell the cars or their parts. Uniquely, they drive in a high profile manner, sometimes spinning in circles at high speeds, leaving skid marks from screeching tires. When the inevitable occurs and police attention is attracted, some taunt the police in an evasive and confrontational fashion.

Out of this conduct arises the conflicting constructions of reality which are the subject of this Article.⁸ First, there are the realities of the media. Part I of this Article discusses the media's construction of the phenomenon of joyriding. I argue that the media has seized upon joyriding and treated it as if it is at the same level of seriousness as other car-related crimes such as car theft or carjacking. Using the common links of cars and stereotypes, the media has created the impression of an epidemic of out-of-control young Black men engaging in auto theft. This construction of reality relies on

⁶ Diana Jean Schemo, Singling Out Blacks Where Few Are to be Found, N.Y. Times, Oct. 20, 1992, at B1 (noting incident where all Black male students at Oneonta College were targeted as suspects in a rape investigation solely on the basis of their race). Race, gender, and class stereotypes sometimes form the basis for imposing criminal sanctions. Cf. Dorothy Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy, 104 Harv. L. Rev. 1419 (1991).

⁷ Some Blacks believe that Whites would willingly rid America of all Blacks. See, e.g., Derrick Bell, Faces At the Bottom of the Well: The Permanence of Racism (1992).

⁸ The conflict in perspectives may be like postmodern philosophy, embedded in people's lives and activities. That is, there may be no single totalizing "truth" here, just perception, action, and power. Cf. Jack M. Balkin, What is a Postmodern Constitutionalism?, 90 Mich. L. Rev. 1966, 1972 (1992).

dramatic but decontextualized facts. The incidents selected for presentation conform to dominant stereotypes about young Black men, single Black mothers, and White women in need of White male protection against a dangerous (Black) world. Through their power to construct pictures of reality which are misleading, the media has both exaggerated the problem and confused the issues.

Television virtually never reports that statistically, the overall problem of stolen cars has leveled off and indeed, has actually declined in the Northeast in recent years.⁹ Nor does television mention that car robberies have not been increasing recently in relation to the population, and only rarely result in physical harm to people.¹⁰ Part of the discussion in Part I will illustrate the way in which the media's reporting of statistics adds to the panic and increases the confusion between joyriding and more serious car-related crimes.

The second construction of reality I will address is that of the young Black men who actually engage in joyriding. I will offer a construction which argues that some joyriding is, within this world view, a form of social protest.

As the rap group Naughty by Nature suggests, the perspective of some young Black men defines manhood in material, propertied terms, with cars playing a special, symbolic role. Simultaneously, many young Black men feel trapped in a situation of permanent deprivation. They perceive all avenues out of their world and into the other as closed. Their status as Black males, poor, and often born to single mothers, assures that they will never have lawful access to the material world of manhood. They perceive their only power as negative---the power to confront the world they wish to be a part of, but which excludes them. So with their peers observing, they act---inverting the dominant normative order. These young men confront and take on two symbols---the car as the symbol of manly power and the police as the symbol of society's power---and momentarily, at least, control them both.

⁹ Prior to any new laws, car thefts were declining. According to the F.B.I. Uniform Crime Reports, car theft in Newark peaked at 15,674 in 1989 and has steadily declined to 13,961 in 1991. During the first nine months of 1992 there was a 14% decline as against the same period in 1991. Michael Marriott, *Car Thefts Decreasing in Newark*, N.Y. Times, Nov. 16, 1992, at B1.

¹⁰ Nationally, the F.B.I. reports that auto thefts plateaued in 1990 and have not increased in relation to the population since then. 1991 F.B.I. Uniform Crime Rep. for U.S. 50 (1992). See also Don Terry, *Carjacking: New Name for Old Crime*, N.Y. Times, Dec. 9, 1992, at A18 (indicating that carjacking represents a small percentage of either car theft or armed robbery and that the vast majority of carjacking results in neither injury nor death).

Third, there is the reality of the laws, mainstream politics, and the courts. Part II of the Article addresses this reality. Because they react to the exaggerated sense of risk and insecurity created by the media and the resulting pleas of constituents rather than empirical evidence, government perceives the need to control and dominate those individuals involved in crimes related to auto theft. Ignoring statistics that indicate that the problem is waning, government acts to impose tougher laws as quick political fixes. Legislators propose or adopt mandatory sentences, parental accountability laws, and curfews to dominate people without addressing their underlying needs. And the courts, for the most part, legitimate these control regimes with constitutional doctrines which are unable to register the group-based complaints of poor, young Black males.

In Part III, this Article takes issue with all of these constructions. Part III.A argues that in this society, we have hierarchies of the oppressed which constitute an impediment to forming coalitions that would nurture rather than dominate and control historically oppressed peoples. I argue that if these hierarchies were eliminated or at least minimized, a foundation could be laid for bridging differences and shifting paradigms away from control and towards nurturing all people, including young Black males. Towards this end, in Part III.B, I propose solutions designed to address at least some of the immediate problems associated with joyriding. Finally, in Part III.C, I propose an open-ended process for changing values in this society through the establishment of campgrounds of renewal. In these fora, conflicting constructions of reality could be articulated and heard, and work could begin to change the emphasis in American values from domination and control to human development.

I. JOYRIDING: REALITY V. MEDIA CONSTRUCTIONS

Background Chorus: Everything's Gonna Be Alright [repeated]

N:	A ghetto bastard, born next to the projects, living in the slums with bums and gotta watch it. Do I have to be like this? Mamma said I'm priceless. Why am I worthless? Starving is just what being nice gets. Sometimes I wish I could afford a pistol . . . I would have ended things awhile ago.
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I didn't have jack but a black hat and
nap sack, four scars, stolen cars, and
a black jack.
Drop that.¹¹

The story of stolen cars in Newark (and America) is about how we see ourselves as a country: dangerous cities versus safe suburbs; security in our homes and cars versus violent streets. This story is about popular culture, the media, and those portrayed as threats to domestic tranquility, young Black males. Cars, like our homes, are places of special privacy and solitude. But they are now being taken and invaded.¹² Newark, New Jersey, has the highest per capita car theft rate.¹³ The media and much of society want tougher controls. Special police anti-auto theft task forces have been organized and politicians have called for tougher laws. The televised image is that of macho, young, (mostly Black) males going up against macho (mostly White) police.¹⁴ The reality is more complex.

Stolen cars present a group of problems. Some issues relate to the peculiar attributes of adolescence, some to economics, some to sociopaths, but some involve sensational media-created perceptions that are not based on underlying realities. These acts are lumped together without careful analysis, undermining sober discourse. At least three different kinds of crimes are blended. They are: (1) unauthorized use of a motor vehicle, "joyriding,"¹⁵ (2) grand theft auto,¹⁶ and (3) carjacking,¹⁷ robbery of an

¹¹ Naughty by Nature, *supra* note 1.

¹² Iver Peterson, When Cars Are No Longer Havens From Fear, *N.Y. Times*, Nov. 10, 1992, at B1.

¹³ F.B.I. Unit to Fight "Carjacking," Facts On File, World News Digest, Sept. 17, 1992, at 685 (reporting for cities whose population is greater than 50,000, Newark had 5,094 thefts per 100,000 people in 1992). My own car was vandalized at Newark Airport in the summer of 1992.

¹⁴ In Newark, 53% of those arrested are juveniles under 18. Interview with Tom DeCastro, Detective and Head of the Union County Auto Theft Task Force (Nov. 2, 1992). Nationally, 44% were under 18, and 62% were under 21. See F.B.I. *supra* note 10, at 52.

¹⁵ "A person commits a disorderly persons offense if, with purpose to withhold temporarily from the owner, he takes, operates or exercises control over [a car] without consent of the owner." N.J. Stat. Ann. § 2C:20--10(a) (West 1992).

¹⁶ Auto theft is a property crime which requires an intent to deprive the owner permanently of the car and does not involve a forcible taking. See, e.g., N.J. Stat. Ann. §§ 2C:20--1, 2C:20--3 (West 1992).

¹⁷ The object of carjackings must be the forcible taking of a car. See, e.g., Anti Car Theft Act of 1992, Pub. L. No. 102-519, 106 Stat. 3384 (1992) ("Whoever, possessing a firearm . . . takes a motor vehicle . . . from [a] person . . . by force and violence or by intimidation . . . shall be imprisoned [up to 15 years or if injury results,

automobile by and from one or more person(s). These three crimes can overlap and encompass other crimes, but are distinguishable for purposes of determining their causes and designing remedies. In part, I will offer a statistical overview of the involvement of Black youth with stolen cars. I will make the distinction the media fails to make---the distinction between carjacking and joyriding. Following this analysis, I will offer my own interpretation of the activity of joyriding by Black youth through a concept which I call "protest joyriding."

A. Statistics and Differences Between Joyriding and Carjacking

Law enforcement statistics indicate that both auto thefts in Newark and carjackings in neighboring New York have been steadily declining over the last several years.¹⁸ Moreover, carjackings are an old problem and comprise only a small fraction, 1.1%, of all auto thefts and only about 3% of the robberies committed annually.¹⁹ Contrary to the impression created by the media, carjackings rarely result in any physical injury.²⁰ As with robberies in places like shopping centers,²¹ the media, and not aggregate crime, has created the sense that these are degenerative problems requiring immediate attention and action.²² There are essential and important

up to 25 years, or if death results, up to life]"); N.J. Stat. Ann. § 2C:15-1 (West 1992) (robbery but without firearm requirement).

¹⁸ See *supra* note 13 with respect to auto thefts. Like most law enforcement agencies, Newark does not classify car robbery separately, but New York City does. In New York, the number of carjackings has been declining over the last two and one half years. In 1990 there were 2,298 gunpoint robberies; in 1991, 2087; and for the first six months of 1992, 926. Carjacking Unit for New York, N.Y. Times, Nov. 25, 1992, at B6. A 1992 law requires the F.B.I. to track carjackings. See Anti Car Theft Act, *supra* note 17.

¹⁹ Nationally carjackings were estimated at 19,000 in 1991 and 21,000 for 1992, which when compared to population increases is not a statistically significant change. See Terry, *supra* note 10.

²⁰ See Terry, *supra* note 10 (according to Howard Apple, Head of the F.B.I.'s Interstate Theft Unit).

²¹ Fear of crime permeates shopping malls, but here again law enforcement and shopping center security firms report that this is an unfounded perception. It is estimated that about one in seven million cars are robbed. Jonathan Rabinovitz, Mall Stress Visible Security to Counter Fears, N.Y. Times, Nov. 27, 1992, at A1.

²² See, e.g., Linda Health and John Petratis, Television Viewing and Fear of Crime, 8 Basic and Applied Soc. Psychol. 97 (1987). My point is not that the current level of automobile related crime is not serious. Rather, that based on statistics, the rate of these crimes has already stabilized, and is declining in Newark and the Northeast.

differences among the crimes being blended through the use of stereotypes. Carjacking is different from joyriding; it is a robbery, the forcible taking of a car.

Joyriding, on the other hand, is an entirely different crime. It involves the unauthorized use of a car with no intent to convert it to permanent use. No force is involved. The car is taken for "fun" and then abandoned.²³ This property crime puts young, usually untrained drivers on the streets for short durations.

Joyriding is by no means solely or even primarily a Black crime.²⁴ Historically, it has been a crime associated with White middle class youngsters, even in Newark.²⁵ What little systemic research there is suggests that White suburban youth were, at least up until the early 1980's, slightly more likely than their poor, Black, inner-city counterparts to be involved in joyriding.²⁶

This fact, however, may be changing. There has been an increase in the number of people under eighteen arrested for car theft during the last ten years from 32,195 in 1982 to 63,389 in 1991.²⁷ This sharp increase *may* reflect some shift towards more auto thefts by inner-city poor Blacks.²⁸ Even taking this possibility into account, joyriding still appears to be a problem of delinquency, White and Black. Yet the joyriders in the

²³ As discussed in Part II, I do not suggest that any joyriders be given a free ride. Being systemically locked out of the American Dream by reason of poverty explains, but does not excuse or justify criminal behavior. However, there are reasons not to increase the penalties and severity of treatment. My aim is a middle ground which augments the status quo of sometimes jailing joyriders with alternatives to jail and preventative programs to keep youngsters from joyriding in the first place.

²⁴ F.B.I. statistics of arrests are demonstrative: Whites accounted for 59.4% and Blacks 38.4%. F.B.I. Sourcebook of Criminal Justice Statistics Table 4.9 p. 444 (1992).

²⁵ Raul C. Higgins & Gary L. Albrecht, *Cars and Kids: A Self-Report Study of Juvenile Auto Theft and Traffic Violations*, 66 Soc. and Soc. Res. 29, 31 (1981) (reporting studies).

²⁶ This research is based on a self-report study of 1,410 Black and White 10th grade students in Atlanta. *Id.* Self-reports are a more reliable measure of White versus Black joyriding than are either media reports or police arrests. Self-reports do not reflect reporting and arrest biases.

²⁷ Sonya Ross, *Carjackers Found to be Young, Violent Have-Nots Seeking Status*, L.A. Times, Oct. 4, 1992, at A1.

²⁸ While arrest statistics support this conclusion, self-report data from Black and White youngsters would be a more reliable method for making this determination. Assuming *arguendo* there has been a shift toward inner-city joyriding, there may be economic factors at work. Increased unauthorized use of motor vehicles may reflect the deteriorating economic well-being of inner-city families. Poorer families probably have fewer cars. When inner-city youths reach the age when driving is taken for granted, they have no cars to drive lawfully. Increased joyriding may be related to rising expectations and more limited access.

media are almost invariably poor Black, and non-White Latino males. The perception that joyriding is a new social crisis has at its core a media-constructed picture based on cultural fears and stereotypes of out-of-control young men of color.

Carjacking is an entirely different kind of crime from joyriding. It is a car robbery, meaning force or the threat of force is used against one or more persons in taking a car. Like any robbery, this needs to be controlled and punished, especially when committed with a weapon. Yet, even in this quest, caution must be exercised.

The term "carjacking" is a recent media term created to dramatize events long ago made famous by Bonnie and Clyde. However, the term carjacking is misleading when it is used to conflate car theft with other crimes such as rape. For example, treating crimes against a woman such as rape during a carjacking as a carjacking, makes the property the nominal focus when it should be the woman. By failing to distinguish between the crime against the person, and the crime against the property, the media diminishes the value of the person, and the value of the property is seen as being of equal importance. The equalization of property and persons is a demeaning and outrageous media-shaping of perception.²⁹

Some opine that carjackings are committed by repeat offenders, professional thieves stealing to market the cars. To minimize the damage to the vehicles due to defeating anti-theft devices, robbery is preferred.³⁰ Some other carjackings are committed by people interested only in the short-term use of cars.³¹ These include atypical horrific crimes like the killing of Pamela Basu in Maryland.³² Although this specific crime was committed by Black males, not a great deal is known about the demographics of carjackers in general because these crimes have not been reported separately from other robberies until recently.

²⁹ Car robbery can overlap with other crimes, such as an abduction where a person is the primary object of the criminal conduct. Compare Robert Hanley, Ex-Convict is Charged in Abduction, N.Y. Times, Nov. 9, 1992, at B1 (reporting how crime initially reported as "carjacking" was actually a kidnapping, murder, and sexual assault where the car was abandoned) with Ian Fisher, Second Car is Hijacked in Two Days, N.Y. Times, Nov. 9, 1992, at B5 (reporting car robberies where occupants were forced from cars).

³⁰ Ross, *supra* note 27. Two related cases charging a continuing criminal enterprise illustrate carjacking as a business. The participants were charged with stealing luxury cars for export at gunpoint and shooting drivers as necessary. See *United States v. Reyes, et al.*, indictment, 92 Cr. 1123 (S.D.N.Y. 1992); *United States v. Galarza*, indictment, 92 Cr. 1124 (S.D.N.Y. 1992).

³¹ Terry, *supra* note 10.

³² *Id.*

This differentiation between joyriding and carjacking is not reflected in the media's portrayal of reality. The media's make-believe world portrays almost exclusively an exaggerated and increasing danger, Black violence against Whites.³³

B. The Media's Construction

Joyriding and its media companion, carjacking, are perfect for televised news. The media simplistically groups all problems related to stolen cars as if they were all the same, new and problematic.³⁴ Horror shows of nightmares on the streets of America are presented for their entertainment value. Visions of battered cars and people are shown, along with interviews with apparently recalcitrant, irrational Black youths, their single Black mothers, selected genuinely tragic victims (usually women and often White), and vigilant but frustrated police. These images create a sense of urgency as these crimes are portrayed as "epidemic."

The CBS "48 Hours" show on auto thefts, "Steal That Car,"³⁵ was an example of what is wrong with television news portrayals of contemporary American society. Capitalizing on fear and stereotypes, it sensationalized and misled as it purported to inform. The show relied on a steady stream of Black and Latino street level car thieves who were shown with only two White male professional car thieves and a number of White police officers.

The show opened with scenes of Newark and protest joyriding as viewed from within a police vehicle. The bystander youngsters interviewed in ten-second sound bites were an ebullient (unruly?) group of Black teenagers. A voice told us that this was no ordinary joyriding; these kids were killers.

48 HOURS made no attempt to refine or limit this rather dramatic but exaggerated statement. Instead, the next segment, after advertisements (including one with upper middle-class Whites drinking Champagne at a party), blended the statement about joyriders being killers with a report of a carjacking in Houston. This crime was actually not just a robbery of a car, as are most carjackings. This was a combination of a car robbery, abduction, and rape committed by two young adult Black males.³⁶ This

³³ White criminals are portrayed mostly in auto theft crimes not involving violence, such as grand theft auto and insurance fraud.

³⁴ While protest joyriding is a new phenomenon, there is nothing new about either joyriding or robbery of cars, now called by the cachet name, carjacking. Terry, *supra* note 10.

³⁵ 48 Hours: Steal That Car (CBS television series, Dec. 9, 1992).

³⁶ See Hanley, *supra* note 29.

was a horrible set of crimes where the two men forced their way into the car and raped the mother in the presence of her family while they rode along a highway "with loud music playing." Clips of ten to fifteen second sound bites of comments by the woman and her husband were juxtaposed with interviews of one of the criminals and a prosecutor. Interviews with other old and young White couples who had been victims of car robberies were shown with an introductory clip of a young Latino victim from San Diego.

In a subsequent segment, the camera rode along on an undercover sting operation where the culprit was a middle-aged White male locksmith who stole cars from automobile dealers in North Carolina. This segment was followed by a series of segments on how people tried to protect their cars with alarms. During one segment, two young Puerto Rican males, Carlos and Carmelo, who were "retired" car thieves, demonstrated how they could defeat most protective devices, including the much advertised "Club."

The show concluded by returning to Newark and following the career of what the show called a "typical" car thief, a young Black male who had been involved in several joyriding incidents. This segment featured his prior juvenile arrests for joyriding and what happened after he turned eighteen---yet another probationary sentence. One of his teachers was interviewed, an older White woman, who said he had promise. She sincerely started to cry. This segment ended with twenty-five seconds devoted to a scene where his mother was interviewed while bailing him out of jail. His mother, a single Black woman with two jobs, was asked whether she knew her son was out stealing cars while she was working. The mother responded that she had to work and there was no recreation available for kids in Newark. The young Black man ended 48 HOURS saying that he wanted a job. Just before this, a reporter commented that the audience could make of his comment what it wanted. The entertainment over, it was back to the regular news with a brief report from Dan Rather in Somalia with the Marines.

This kind of televised news is accepted by the public and politicians alike as truth to which legal responses reasonably can be made. Television has become the medium through which much of reality is constructed in the late 20th century.³⁷ It has become our society's principal mode of knowing itself. But television is designed as entertainment, not serious discourse. Protest joyriding and carjackings have great entertainment value, even if the entertainment is morbid. Visual shots of Black joyriding

³⁷ For an informative discussion of the relationship between profitability and entertainment-oriented news shows at CBS, the network broadcasting 48 HOURS with Dan Rather, see Peter J. Boyer, *Who Killed CBS* (1988).

youngsters making circular skids in front of peers, police, mutilated cars, and people participating in and victimized by both joyriding and carjackings are ready-made subjects for soundbites and ambitiously defined as "news."

Yet televised and printed snapshots do not accurately reflect more complex realities. They offer decontextualized information bites, where the visual image is both the strongest message and the entertainment. The misleading impression is given to the viewer that the whole picture is being seen, when it is not. This "truth" seems natural and in need of no further elaboration; after all we see it "with our own eyes," so it must be complete. Television, and its newsprint analogue,³⁸ portray this situation as an urgent problem and so viewers assume that an urgent solution must be found.

This misleading knowledge is often augmented by familiar stereotypes. Young Black men are presented with their single Black mothers standing by.³⁹ Their victims are usually White and female. This notwithstanding the fact that overwhelmingly, the victims of Black male robberies and other thefts are other Blacks. The media construction sells by appealing to the deep-seated race, gender, and class stereotypes in our popular culture. It creates a public panic, encouraging legislators to seek immediate control of young Black men.

With respect to protest joyriding, beyond indiscriminately blending it with other crimes, the media suggests either that it is irrational behavior by Black males or a rebellion without social meaning. The perspectives of some young Black male joyriders offer an alternate construction of reality.

C. Young Black Males' Construction of Joyriding

What I have named "protest joyriding" is a form of social protest, when viewed from the perspective embedded in the lives and actions of young Black males. To facilitate understanding of joyriding as social

³⁸ As Postman observes, even most print media conveys information in a television format. In publications like *USA Today* and the *New York Post*, pictures dominate and the story's printed information follows in headlines and captions and a few paragraphs. This is sensationalism. The complexity of problems or contrary statistics are rarely even mentioned. For example, virtually the entire front page of the *New York Post* on Nov. 26, 1992 contained a picture of a middle-aged White woman and the headline, **CAR JACK CITY---Gutsy Grandma Battles With Thug on Bronx Street---Pregnant Woman's Car Is Ripped Off on Upper West Side - Details Inside**. Inside were only sensational facts surrounding these two carjackings. There was no indication that carjackings in New York had been declining for almost three years! See *supra* note 18.

³⁹ There are many subtexts here. Some are about young Black males. Others are about single Black mothers. If this mother had a man, a hunter/gatherer, she could stay home (where women belong?) and supervise her son. Subtexts like this make single Black mothers the scapegoats for our social abdications.

protest, I first establish the behavior itself as consistent with lawbreaking found in other recognized social protests. Then I establish the conduct's expressive content by contextualizing it at the intersection of American popular male and young Black culture, particularly rap. My claim is that rap, like Black music before it, can provide context and meaning to the behavior of those who do not accept the legitimacy of their own oppression.⁴⁰

Whether behavior is a protest depends largely on how it is interpreted. Conduct is appropriately considered a protest when the acts are openly expressive of an oppositional social or political point of view. A protest includes "an expression . . . of objection, disapproval, or dissent, often in opposition to something a person is powerless to prevent or avoid: a protest against increased taxation."⁴¹

The dictionary's definition of the word "protest" is a useful starting point. First, it suggests that a protest can be an act which need not be verbal. The example used illustrates this idea. Tax protests have been recognized as protests over the years and many have entailed lawbreaking, from the Boston Tea Party to refusals to pay taxes as a means of lodging a protest against some social policy.⁴² Second, a protest is often an expression against something the protestor is powerless to avoid.

Some examples from case law provide useful analogies. For example, the conduct recognized by the Supreme Court in *Texas v. Johnson* as part of a protest shares some common features with protest joyriding.⁴³ In that case, a demonstrator against former President Reagan and certain corporations based in Dallas protested by burning a United States flag. The

⁴⁰ See John O. Calmore, Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World, 65 S. Cal. L. Rev. 2129, 2133, 2134 n.18, 2147, 2151, 2229 (1992) (Black music as a cultural manifestation in the voice of the oppressed, facilitates understanding Black perspectives by synthesizing and refining a lifestyle and world view on the middle road between invisibility and anger).

⁴¹ The Random House Dictionary of the English Language (2d ed. 1987).

⁴² *United States v. Catlett*, 584 F.2d 864, 865 (8th Cir. 1978) (protesting perceived unjust military tactics in Vietnam).

⁴³ 491 U.S. 397 (1989). By referring to *Johnson*, I do not suggest that whether conduct is a protest is determined only by courts. Courts just determine whether conduct is entitled to be considered "speech" for first amendment purposes. *United States v. O'Brien*, 391 U.S. 367, 376 (1968). By offering this construction, I do not claim that young Black males could sustain the legal burden of establishing their conduct as expressive from the perspective of the dominant group's courts. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 n.5 (1984). Whether, from the vantage points embedded in the lives and activities of young Black men, their conduct is a "protest" is an independent question. Reference to what and how courts have determined this is useful only as a comparison.

Court contextualized this by recognizing it as part of a larger demonstration during which criminal laws were violated. The flag had been stolen from one of the corporate buildings by a fellow demonstrator. Other demonstrators spray painted walls of buildings owned by the corporations and overturned potted plants. According to the Court, demonstrators broke the law to draw attention to themselves while expressing anti-nuclear sentiments understood by their peer group and some of the public.

Clearly, there are distinctions between the two contexts. In *Johnson*, the protesters focused on a particular issue; they had an audience; and the audience was aware of the protest. These factors are less clearly present in the context of protest joyriding. Nevertheless, several features of the protest in *Johnson* are comparable to those found in protest joyriding. First, the conduct involved minor crimes not entailing violence against people or the promotion of the long-term economic gain of the demonstrators.⁴⁴ Second, the crimes were not done in a manner designed to avoid detection. To the contrary, the style of the conduct was high-profile and demonstrative, designed to attract attention, including the attention of the police. Third, the conduct was reasonably understood as expressive of a social or political protest.⁴⁵

First, as assumed by the proponents of tougher laws, the youngsters involved in protest joyriding are cognizant that it is considered relatively minor lawbreaking. Most know this either through direct prior experience with the criminal justice system or vicariously through their peers. That is, these youngsters know that they are not likely to be punished severely if caught. In addition, this awareness is indicated by their behavior. They control and taunt the police, daring them to chase, knowing the police cannot pursue them because their crimes are not serious.⁴⁶ If cornered by

⁴⁴ This first comparative feature is not essential to characterizing behavior as a protest. Acts can be a protest if they involve felony level crimes like assassinations or violence. See *infra* note 133. These features, however, are not present in the cases used for comparison here or protest joyriding.

⁴⁵ These features are also found in other cases of social protest. See, e.g., *Brown v. Louisiana*, 383 U.S. 503 (1966) (sit-in by Black students in "white only" library to protest Jim Crow segregation); *United States v. O'Brien*, 391 U.S. 367 (1968) (burning of a draft registration card to protest the Vietnam war); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (involving an unlawful demonstration in Lafayette Park to protest homelessness).

⁴⁶ The police are prohibited from the chase unless a violent felony has occurred. Michael Marriot, Mayor Offers 12-Point Proposal To Reduce Car Thefts in Newark, *N.Y. Times*, Aug. 14, 1992, at B4. The good reasons for this are almost never given media attention. It may be more dangerous for the police to chase than not to chase. Chases increase the risk to the youngsters, the police, and the public. They also may create tort liability. See, e.g., J. Whetsel & J.W. Bennett, Pursuits: A Deadly Force Issue: Liability Issues and The Police Executive, 59 *Police Chief* 30-1 (1992). A

the police, these youngsters scatter on foot, knowing the police cannot shoot fleeing non-felons. This legally sophisticated behavior reflects knowledge that their lawbreaking is minor.⁴⁷

With respect to the next feature, despite the fact that the youngsters know their conduct is criminal, protest joyriding is done openly and conspicuously. It appears purposefully designed to attract and then to defy the police. While their behavior is defiant, the actors do not necessarily want to be caught. The youngsters drive noisily and make 360-degree skid marks on the streets, called "doughnuts," by driving in circles at high speeds. This highly stylized driving is done at locations known to the police.⁴⁸

Such behavior is distinguished from traditional joyriding where youngsters try to avoid detection and behave as if they were lawfully in possession of the cars. Like the conduct in *Johnson*, the confrontational, open, and conspicuous fashion of this joyriding is designed to send a message to society through lawbreaking. The behavior is demonstratively oppositional.

This brings us to the third feature. The conduct is a public display of group feelings, communicative, or expressive acts understood by like-minded people. The locations and approximate times of protest joyriding are known to peers who come to observe the nightly joyriding. When the joyriders dare the police, it is a communicative act with peers. The observers see, and many admire, the defiance against the police who are the symbolic enforcers of the social order. Their shared antagonism confers status on young men based on how daring and frequent their oppositional conduct. But what is the political or social expression entailed in the demonstration?

Whether conduct is expressive depends upon its context. Sometimes the protestors more or less articulate their grievances and the lawbreaking is understood to be an expression thereof. For example, the vandalism and

tragic incident illustrates this point. A woman passenger in a car was killed when hit by a stolen car driven by a 16-year-old being pursued, but not chased by the police. Joseph F. Sullivan, *Four Are Killed In 2 Car Thefts In Newark: Worse Night in Plague of Teen-Age Joy Rides*, N.Y. Times, Nov. 12, 1992, at B1.

⁴⁷ At times, youngsters escalate from joyriding to assault by ramming the stolen vehicles into police vehicles. My comments about joyriding do not extend to this behavior. While this too could be a protest, the seriousness of the conduct matters. Violence against people as a social protest has a greater moral burden to bear, especially to those of us who want to transform America into a society more respectful of all human dignity.

⁴⁸ N.R. Kleinfeld & Michael Marriott, *On Stolen Wheels, Newark Youth Defy Authority*, N.Y. Times, Aug. 10, 1992, at A1. So well known are these locations, that the police know where to lie in wait for these joyriders. See Caesar story, *infra* text accompanying note 108.

flag theft in *Johnson* were considered part of a protest because they occurred in the context of an avowedly political demonstration. Such an articulation is not, however, required in order for conduct to be a protest.

A protestor need "not choose to articulate his views through printed or spoken words . . . [T]he nature of [the] activity, combined with the factual context and environment in which it was undertaken [can] lead to the conclusion that he engaged in a form of . . . expression."⁴⁹ To be expressive, conduct must be "intended to be communicative and that, in context, would reasonably be understood by the viewer to be communicative."⁵⁰ In a world of conflicting realities, this test translates into what a reasonable young Black person (in Newark) would understand the conduct to signify.⁵¹

To discern this, it is necessary to understand the unique nature of most oppositional behavior among oppressed peoples. Often communications among the oppressed are characterized by "hidden transcripts." "Every subordinate group creates, out of its ordeal, a "hidden transcript" that represents a critique of power spoken behind the back of the dominant."⁵² These transcripts are the product of mutual communication within oppressed groups. This is the more or less clandestine discourse of subordinate groups among their own members. This communication may be quasi-public, but its full meaning is kept beyond the sight of dominant groups. The text of hidden transcripts often consists of symbolic cultural acts, designed to communicate opposition without direct confrontation.

Blacks are, of necessity, masters at constructing hidden transcripts. Indeed, much of Black culture arises out of such transcripts. Having hidden transcripts is an old tradition in Black communities. It is the activity of which W.E.B. DuBois wrote when he described the "double life with double thoughts, double duties, and double social classes" giving rise to "double words and double ideals" that "tempt the mind to pretense or

⁴⁹ *Spence v. Washington*, 418 U.S. 405, 409--10 (1974).

⁵⁰ *Clark*, 468 U.S. at 294.

⁵¹ While courts define what is "reasonable" in cases, I concede no such power in interpreting what young Blacks understand their acts to signify. My use of this language only reflects that

knowledge of the oppressor
this is the oppressor's language
yet I need it to talk to you

Adrienne Rich, *The Burning of Paper Instead of Children*, in *The Fact of a Doorframe* 117 (1984).

⁵² See James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (1990) [hereinafter Scott].

revolt, to hypocrisy or radicalism."⁵³ Historically, it is exemplified by slaves' pilfering of the master's goods, while maintaining the public posture of being a "good" house or field slave. It is also exemplified by the language, walk, dance, music, rhyme, and rap which constitute Black American male "cool."⁵⁴ Whites can live and die in the midst of Blacks and know comparatively little of these ever-changing transcripts.⁵⁵

Two contemporary illustrations of hidden transcripts are styles of dress and of language. Many inner city young Black men wear their pants low around their hips and leave their sneakers untied. These styles, which developed initially in jailhouse culture where both belts and shoe strings were prohibited, have been adopted outside jail as anti-normative symbolic counters to the clothing styles of White males. In language, young Blacks are constantly creating hidden transcripts, often by inverting the meaning of words as used by Whites. Several examples are the use of "bad" to mean boldly or terrifically good, "nigga" to be an endearing term, "stupid" to mean superlative, and "dope" to mean "fly," "fresh," or wonderful. Finally, other terms from these hidden linguistic transcripts are pertinent because of their implicit references to cars. These include use of the words "gassed," or "gassed up," to mean to fill someone with flattering words to get what you want, as in gassing up a girl.⁵⁶ These ever changing hidden transcripts are developed and acted out where young Blacks make their culture, on their turf, the inner-city streets.⁵⁷

To make these transcripts partially explicit, to construct their text, I will discuss that part of American popular culture which emphasizes a connection between materialism, masculinity, and the possession of a car. This is America's voice, setting standards and making implicit promises. An understanding of this context aids in understanding the rise of rap. This too is America's voice, but often a more strident one, telling people's stories of disappointment and frustration.

Young Black males' knowledge of the material norm is based in part on the media. They see the American Dream portrayed in the Gold Card

⁵³ W.E.B. DuBois, *The Souls of Black Folks* 221 (1969).

⁵⁴ Richard Majors & Janet Mancini Billson, *Cool Pose: The Dilemmas of Black Manhood in America* (1992) [hereinafter *Cool Pose*].

⁵⁵ Lawrence Levine, *Black Culture and Black Consciousness: AfroAmerican Folk Thought From Slavery to Freedom* 101 (1977) (reporting a Black man's speech to White abolitionists).

⁵⁶ In her hip-hop song with Grand Puba, "What's the 411?," Mary Jay Blige sings: "I don't have no time for wham, bam, thank you ma'am. Gas-me-up, get me drunk, hit the skids and scam." Mary Jay Blige, *What's the 411?*, on *What's the 411?* (MCA Records, Inc. 1992).

⁵⁷ *Cool Pose*, supra note 54, at 85--86.

and Beverly Hills 90210. Without going into detail, it suffices to say that this is a world in which happiness is often defined in material terms and by a culture of consumerism. Some features are worth special mention: cars play a central and defining role in American materialism. "A car is not just transport; but a speech act" ⁵⁸ They appeal to sexual fantasy, status, power, and wish fulfillment, especially escape from everyday life. ⁵⁹ Today, these wishes include immortality, or at least some immunity against the risks of driving which is offered by car safety, handling, and durability. The more car you have, the more of your wishes can come true. These wishes are found in cars like the Honda Accord and its upscale cousin, the Acura Legend. These cars are among the most popular with Americans, including not coincidentally, joyriders. ⁶⁰

This defining relationship between people and cars is particularly powerful for men. Cars are a key possession, almost necessary to obtaining happiness and women. This vision, which is both sexist and materialistic, is also very American. While there are exceptions, manhood is often symbolically defined through a car. ⁶¹ The man with the best car is portrayed as the man who has the most status and freedom and as the man who gets the best woman. This symbolism is reflected in popular culture. For example, it is explicit in the music of New Jersey's Bruce Springsteen. In his music, cars are central and defining symbols of the relationship between men and women, and metaphoric vehicles to redemption, freedom, and escape from class boundaries. ⁶²

American consumerism has another feature that helps define the context of the joyriders' conduct. Advertising misleadingly suggests that

⁵⁸ John Fiske, *Understanding Popular Culture* 34 (1989).

⁵⁹ See Elizabeth Mensch & Alan Freeman, *Efficiency and Image: Advertising as an Antitrust Issue*, *Duke L.J.* 321, 364 (1990).

⁶⁰ Cf. James Harney, *It's a Crime of Opportunity, but Thieves Do Have Preferences*, *USA Today*, Oct. 7, 1992, at A2 (noting that Hondas and Acuras are the preferred cars of joyriders).

⁶¹ See generally, Marianne H. Whatley, *Raging Hormones and Powerful Cars: The Construction of Men's Sexuality in School Sex Education and Popular Adolescent Movies*, 170 *J. Educ.* 100 (1988).

⁶² Bruce Springsteen's earlier music illustrates the general cultural relationship between working class men and their cars. He portrays cars as essential to relationships with women and as vehicles to freedom. For example, in "Thunder Road" he sings: "All the redemption I can offer, girl, is beneath this dirty hood We got one last chance to make it real. To trade in these wings on some wheels Riding out tonight to case the promised land. Oh-oh Thunder Road And I know you're lonely for words that I ain't spoken. But tonight we'll be free And in the lonely cool before dawn you hear their engines roaring on It's a town full of losers and I'm pulling out of here to win." Bruce Springsteen, *Thunder Road*, on *Born to Run* (Columbia Records - CBS Inc. 1975).

materialism is democratic. That is, it implies that things are available to all on an equal opportunity basis.⁶³

Cars are an important part of this democratic consumerism. While a hierarchy is maintained through size, options, and price, if you cannot afford to pay for the best now, equality can be purchased on credit. This creates the expectation that all you have to do to have nice things, like cars, is to be an American (with credit) and want nice things. Democratic materialism creates a social contract: the promise that consumerism and the manhood it supposedly can buy are available to all Americans.

The background role of the law is to maintain the social order underlying these promises. Property rules tell us to respect others' property because our property will be protected. This promise is enforced through the criminal law, particularly by the police. This is another part of the social contract.

Young Black men have bought into the illusion of democratic consumerism. It creates expectations which America is not prepared to fulfill. Their youthful impression is that everyone has nice things, except in their neighborhoods. White poverty and angst are invisible.

The symbolic connections between cars and American manhood have not escaped young Black males. Some believe in cars as symbols of freedom and manhood. To be a "real" man you must have a car, and preferably a nice one.⁶⁴ This is reflected in Naughty by Nature's rap.⁶⁵

I couldn't keep a girlie.
They wanted kids with cars of chrome.
Some life---if you didn't wear gold your life was old . . .
and you had no juice.

Yet young Black men also believe that America has broken its promises. The avenues to participation appear all but closed to them, and their belief has some underlying justification.⁶⁶ Their inheritance is an

⁶³ See R. Maarchand, *Advertising The American Dream: Making Way For Modernity, 1920-1940*, 217--19 (1985). For an overview of the social history of consumerism and its illusory appeal to economic equality and gender imaging, see Mensch & Freeman, *supra* note 59, at 354--66.

⁶⁴ Cool Pose, *supra* note 54, at 82.

⁶⁵ Naughty by Nature, *supra* note 1. Rap, when its subject is oppressive social conditions, is an artistic manifestation of the hidden transcript.

⁶⁶ Young Black men, like many working class Americans, have been excluded from the economic structure. "Free trade" and changes in the economy have devastated their job opportunities, while favoring those of the most privileged. See, e.g., Thomas J. Lueck, *Trade Pact With Mexico Expected to Have Mixed Impact on Employers*, N.Y. Times, Oct. 13, 1992, at B5 (reporting loss of low-skilled employment as a result of the Free Trade pact). This exclusion is symbolically reflected in the exclusion of

inversion of the images of success. Their births are not celebrated but stigmatized,⁶⁷ and their lives are perceived as, and composed of, much systemic exclusion. This leads to a world view that is in opposition to mainstream society. Mostly, this exists at the level of the hidden transcripts, but at times it is verbalized, as in rap, or acted out using real life symbols, as in protest joyriding.

Rap reflects this sense of systemic exclusion and stigmatization. With its ironic title, "Everything's Gonna Be Alright," Naughty by Nature sings of the lives of young Black men, lives which are characterized by going up against a world where their family structure, age, race, gender, and class status made them "misfits" with bad luck even in school. Being from single-parent poor households, living in horrible neighborhoods, and being Black with "nappy hair" made them unemployable losers. They sing of these exogenously imposed realities and the futile necessity of their self-destructive challenges. The only way to get cars is to steal them, "get scars,"⁶⁸ and live in a jail cell. Although there must be a better way to achieve these goals, they do not see it. This song, popular at the time protest joyriding began, manifests the hidden transcript underlying protest joyriding. Young Black men see no one as enforcing the American promise on their behalf. For example, their property is vulnerable everyday on streets from which there is no escape. This too breaks the social contract and raises the question, why should they respect a system which protects property that does not and probably never will benefit them? So they protest. They challenge their fate in the only way they know how, with brief moments of glory, possessing other people's cars.⁶⁹ Their actions

many young Black men (and others) from unemployment statistics.

⁶⁷ The feeling of being stigmatized from birth is in part a response to attacks on the structures of most poor urban Black families, which are headed by mothers. Dan Quayle's attack is among the most infamous. John E. Yang & Ann Devroy, Quayle: "Hollywood Doesn't Get It": Administration Struggles To Explain Attack of T.V.'s Murphy Brown, Wash. Post, May 21, 1992, at A1. Officially, 60% of Black households are single parent households. Tamar Lewin, Rise In Single Parenthood is Reshaping U.S., N.Y. Times, Oct. 5, 1992, at A1 (common law relationships are not reflected in these statistics). The varied historical structures of American families are ignored by these attackers. See Steven Mintz & Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* (1988).

⁶⁸ See *supra* note 1 and accompanying text.

⁶⁹ While not referring to criminal behavior, Springsteen echoes this sentiment in "Born to Run." He sings: "In the day we sweat it out in the streets of a runaway American Dream. At night we ride through mansions of glory in suicide machines. Sprung from cages out on Highway 9 Chrome wheeled, fuel injected and steppin' out over the line. Baby this . . . [town's] a death trap, its a suicide rap. We gotta get out while we're young. Cause tramps like us, baby we were born to run." Bruce Springsteen, *Born to Run*, on *Born to Run* (Columbia Records - CBS Inc. 1975).

are symbolic protuberances from their hidden transcripts. As Justice Kennedy stated, "symbols often are what we ourselves make of them."⁷⁰ These young people have made stolen cars their symbols, as others made a stolen flag theirs. That a hidden transcript underlies this joyriding is reflected in the very cars they select. Recall that in the New York City area, including Newark, the most frequently selected cars are the Honda Accord and its up-scale cousin, the Acura Legend. This is not random conduct. It has a pattern and meaning. These young men cannot be the joyous Yuppies they see on television riding along in the Legend, free on the country road,⁷¹ but they can joyride in the Yuppies' cars. They have the power to protest by inverting the symbols of the Yuppies' manhood, status, and safety. They become suicidal freedom riders in somebody else's car.⁷²

By joyriding in these pop symbols, the normative power relationships are inverted: young Black men are in control. They desecrate status symbols of the dominant, as they defy the police authority that keeps their material exclusion in place and treats them with disrespect on their turf.⁷³ Protest joyriding is a wilful breach of the normative order of domination, a throwing down of the gauntlet. It is the difference between pilfering and the open seizure of goods that occurs in riots.⁷⁴

⁷⁰ *Texas v. Johnson*, 491 U.S. at 421 (Kennedy, J., concurring).

⁷¹ Another Legend commercial portrayed two White Yuppies leaving their office to challenge each other in a basketball game. They raced to the inner-city basketball court in their respective Legends and played out the game.

⁷² See Richard Perez-Pena, *Friends Mourn A Youth They Say Was Reforming*, N.Y. Times, Nov. 12, 1992, at B9 (reporting three deaths, two of fourteen year olds, in a high-speed suicide ride in an Acura Legend. Friends said they would not be deterred).

⁷³ This is part of a larger turf war between indigenous adolescent Black males in Newark and the largely White male police force sent in to protect property and to keep Black males in their subordinated places. See, e.g., Mike Davis, *City of Quartz: Excavating the Future of Los Angeles* 268--322 (1990) (describing territorial confrontation between gangs in Los Angeles and police).

⁷⁴ Scott, *supra* note 52, at 203. In a sense, the expressive content of protest joyriding is like that found in modern urban riots. In both, the targets of the conduct, often the police, are selected because of their symbolic significance. The lawbreaking is initially confusing to those without access to the underlying hidden transcripts. The conduct appears irrational and self-destructive. The expressive content is translated into words only after the fact. America has understood, largely through contextual inference, that riots are expressive of a protest over not just the events which triggered them, but also general conditions, i.e., being excluded from the rioters' perception of the American Dream. In riots, like protest joyriding, the expressive acts are futile and alienate many people.

Newark Mayor Sharpe James implicitly acknowledged that some joyriding is a protest against poverty. He noted the need for recreational programs, but said: "Being poor is no excuse for committing crime." Joseph F. Sullivan, *Florio Vows to Help*

My argument that protest joyriding is expressive diverges from premises often held by contemporary social critics of dominant hegemony. Namely, that in order for action to be truly oppositional in significance, it must proceed from a perspective that stands outside of the ideology of the dominant culture.⁷⁵

This conception understates the oppositional capacity of oppressed peoples, by insisting that a self-consciousness outside of dominant values must precede genuine protest. While young Black males are acting because of their exclusion from normative society and its promotion of a sexist materialism, their acts are nevertheless appropriately considered protests with an alternative perspective. Their world is one in which they invert normative power relationships, as is done in some aspects of their hidden transcripts. Poor young Black men control property, not the dominant Whites who have broken their promises. "Falsely conscious subjects are quite capable, it seems, of taking revolutionary action."⁷⁶

Like Professor Scott, I contend that the subordinated have considerable imaginative capacity, which need not be endorsed in its entirety to recognize that it has its own implicit counter-hegemonic drive and conception of possibilities. Rather than conceptualizing radicalism as requiring a self-conscious rejection of dominant norms, imagine a "gradient of radicalism in the interrogation of domination. The least radical step is to criticize some of the dominant stratum for having violated the norms by which they claim to rule; the next . . . is to accuse the entire stratum of failing to observe the principles of its rule; and the most radical . . . is to repudiate the very principles by which the dominant stratum justifies its dominance."⁷⁷ Protest joyriding is closest to the first, albeit least radical step, in that it criticizes and, at least to some extent, repudiates the social contract as not working for young Black males.

While this conduct is not the sympathetic, articulate, dignified, strategically non-violent conduct of the Black civil rights movement, this is protest nevertheless. These protestors do not sing songs with the positive messages of "We Shall Overcome." Their songs, like "Everything's Gonna be Alright," say with "four scars, stolen cars, and a black jack," not to

Newark Fight Car Theft, N.Y. Times, Sept. 8, 1992, at B1, B4.

⁷⁵ For example, Gramsci suggests that "hegemony works primarily at the level of thought as distinct from the level of action [T]he active man-in-the-mass has a practical activity, but has no clear theoretical consciousness of his practical activity His theoretical consciousness . . . [often] does not permit of any action, any decision, or any choice, and produces a condition of moral and political passivity." Antonio Gramsci, *Selections from the Prison Notebook of Antonio Gramsci* 333 (1971).

⁷⁶ Scott, *supra* note 52, at 78.

⁷⁷ *Id.* at 92.

expect positive responses from those who do not see themselves as living in a positive world. Protest joyriding, in the lexicographer's words, is protest because it is "an expression . . . in opposition to something [the protestors are] powerless to prevent."

II. MAINSTREAM POLITICAL AND JUDICIAL CONSTRUCTIONS: THE BANKRUPTCY OF PROBLEM SOLVING THROUGH MORE CRIMINAL LAW

[N:]

And now you want me to rap and say something positive.

Well positive ain't where I live---

I live right around the corner from west hell, two blocks from south shit and once in a jail cell.

The sun never shines on my side of the street! . . .

But I'm the one who has been labelled as an outcast.

They teach in school that I'm the misfit.

But I'll slap them backwards.

That's what you get for fucking with a ghetto bastard.

If you ain't never been to the ghetto, don't ever come to the ghetto, 'cause you wouldn't understand the ghetto.

Stay the fuck out of the ghetto.⁷⁸

Death is ever present for young Black men. It is on America's streets. It is guns in the hands of other young Black men or the police. It is high-speed races against themselves in stolen cars or chases by the police.⁷⁹ The law cannot threaten young Black males any more than the streets already do. Threats of penalties, including state sanctioned death, are just gestures to Black adolescents who believe that they will never die, and simultaneously, that their lives are worthless. The loss of liberty to people who see themselves as imprisoned in ghettos is only a modest deterrent. As *Naughty by Nature* suggests, jail may be just one other hellish place

⁷⁸ *Naughty by Nature*, *supra* note 1.

⁷⁹ Statistics show that 93% of the Blacks murdered in 1990 were killed by other Blacks. 1990 F.B.I. Uniform Crime Rep. for U.S. 11 (1991). Statistics also demonstrate that Blacks are shot by the police in numbers significantly disproportionate to their numbers in the local population. William A. Geller & Michael Scott, *Deadly Force: What We Know*, Police Executive Research Forum at 147 (1992).

young Black men expect to live or die. In this context, society may have reached the limits of criminal sanctions to deter behavior.

These perspectives are not well understood by government officials trying to solve, in particular, the problem of protest joyriding. From the perspective of most lawmakers, the problem is conceived in terms of the individuals who break the law, not groups responding to underlying social conditions. This perception shapes responses. Lawmakers conclude that what is needed is not the development of a people, but the control of individuals through criminal sanctions, especially more jails. As a result, legislators pass more laws, the executive enforces them, and the judiciary reviews them within constitutional doctrines designed to sustain and legitimate all laws but the most irrational, explicitly unfair, and biased. This is the third conflicting reality.

In this Part, I shall articulate the legal construction of protest joyriding, distinguishing it somewhat from both that of the media and significantly from that of some young Black men. In the process, I shall critique this construction by pointing out ways in which its assumed constants do not hold true. In addition, I shall outline constitutional doctrines, showing they have limited capacity for incorporating the perspectives of young Black men.

In Newark, New Jersey, as a result of a largely media created perception of an increase in auto theft related crimes, the Governor, Mayor, and others called for and helped enact tougher laws. These included: a local option curfew statute for all young people, changes in the penalties for various auto theft related crimes, including a new crime for causing a death while trying to elude the police, mandatory custodial terms and community service for those trying to elude the police and for first time juvenile offenders, and provisions for parental accountability for stolen cars and breach of curfews.⁸⁰

These approaches are in theory rationally based. That is, the laws are intended to accomplish some legitimate governmental objective. Yet in the contemporary media shaped arena, politicians are expected to comment on and solve problems in an MTV millisecond. Fact-finding and deliberative policy formation are sacrificed as simplistic sound bite solutions to sensitive complex problems are encouraged.⁸¹ Facts not brought to the public's

⁸⁰ See Sullivan, *supra* note 74, at B1; Wayne King, *Bills Against Car Thefts Gain in Trenton*, N.Y. Times, Oct. 20, 1992, at B6. See discussion, *infra* notes 114--32 and accompanying text.

⁸¹ For example, after a highly publicized, particularly violent weekend, when four people died in Newark accidents related to stolen car joyriding, and in response to the apparent ineffectiveness of their new laws, members of the New Jersey Legislature called for yet tougher laws and even more control. Said one Assemblyman, "The crime

attention by the media get lost in the shuffle. The expedient, safe, and political response is to suggest more control.

At the outset, note that the legal construction generally differs from both that of the media and young Black males. Both the media and young Black males see these problems as group based problems, not just individual problems. Black males are explicit about this, and the media's construction implicitly reaches a similar conclusion through its use of stereotypes. The dominant legislative approach is different in that it assumes that these are individual acts of criminal behavior. This construction draws on the prevailing theories underlying the use of criminal laws to control individual behavior and is most vulnerable to judicial challenge when it varies from controlling individual behavior to controlling group behavior.

The traditional goals of criminal penalties are deterrence, retribution, rehabilitation, and incapacitation.⁸² In addition, some argue that the criminal law has a moral educational function in the sense of signaling strongly held social values in a way that changes the underlying values of the population and not just their behavior.⁸³ At a minimum, laws must be rationally based, that is, they cannot be arbitrary or based on race or gender without compelling or substantial justification. Each of these goals is considered here in theory and in light of any pertinent social scientific evidence data.

With respect to auto thefts and juveniles, there is shockingly little social scientific evidence as to what mix of law enforcement, tougher criminal laws, and non-coercive intervention tools work.⁸⁴ There is relatively little research about the causes and cures of property related juvenile crimes, probably because it is assumed that teenagers are just like adults.⁸⁵

is spreading at an epidemic proportion, and we will not stand for it." Wayne King, *Legislators Form Panel On Car Theft In Newark*, N.Y. Times, Nov. 13, 1992, at B4.

⁸² See, e.g., *Harmelin v. Michigan*, 111 S.Ct. 2680, 2683 (1991) (Kennedy, J. concurring); W. LaFare & A. Scott, *Substantive Criminal Law* 31--36 (1986).

⁸³ See, e.g., Kenneth G. Dau-Schmidt, *An Economic Analysis of the Criminal Law as a Preference Shaping Policy*, 1990 Duke L.J. 1.

⁸⁴ Little research has been done, and not much since the early 1980s. See Higgins & Albrecht, *supra* note 25, at 29.

⁸⁵ Over the last decade, it has been increasingly assumed that there is no difference between teenage and adult lawbreakers. Younger lawbreakers are just younger individuals who should be 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) (noting the treatment of more juveniles like adult offenders and the harsher penalties imposed on even those that remain in the juvenile justice system); Ira M. Schwartz et al., *Business as Usual: Juvenile Justice During the 1980's*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 377 (1991) (discussing some of the effects of the increasing tendency to incarcerate

Turning to the five bases for using criminal sanctions, we begin with deterrence theory to explore whether it can justify some of the harsher approaches being proposed. I shall discuss how these theories apply to joyriding, and refer to their application to other auto theft crimes for comparisons.

Under deterrence theory, the higher the risk of criminal penalty, the more individuals should avoid the behavior. This theory assumes the existence of individual rational decision makers, capable of realistically weighing the costs and assessing benefits.⁸⁶ In attempting to increase deterrence, there are two components that can be varied, the penalty and the likelihood of detection. The more serious the problem, the more either or both of these components can be increased.

From the criminological perspective it is necessary to first calibrate antisocial behavior, like joyriding, in relation to other behavior. The current calibration of the criminal law with respect to auto thefts makes sense from this model of criminals as rational decision makers. In broad outline there are three levels of crime: joyriding, auto theft, and car robbery, that is, "carjacking." Penalties increase from joyriding to car robbery to create greater disincentives for the more serious crimes.

Any attempt to change the penalty for one must take into account the penalties for the others, as well as the penalties for other crimes. These policy choices are complicated and must be done with deliberation and care. For example, while the aggregate of problems associated with auto thefts are serious, not all are equally serious, and in the aggregate, auto theft problems may not be more serious than those associated with bank fraud or drugs. The importance of proper calibration cannot be overstated. Mistakes can create unintended incentives. For example, if the penalties for joyriding were increased to the point where they were close to car robbery, society might actually encourage more robbery and less joyriding. If to avoid this, society increased the penalties for car robbery and these penalties approached those for murder, then murder might be unintentionally encouraged. If the victim is murdered, it is less likely the criminal will be caught, and if the penalty for the murder is no more than that for the robbery, the miscalibration of penalties could encourage not less robbery, but more murder.⁸⁷ Maintaining different levels of punishment

juveniles for less serious offenses). There is little to no evidence that this approach is deterring crime. Simon I. Singer & David McDowall, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 *Law & Soc. Rev.* 521 (1988).

⁸⁶ See, e.g., Steven Shavell, *Criminal Law and the Optimal Use of Nonmonetary Sanctions as a Deterrent*, 85 *Colum. L. Rev.* 1232, 1236 n.15 (1985).

⁸⁷ *Id.* at 1233--36.

for different crimes makes sense, but more punishment is not always going to produce the desired results. There are limits to the use of criminal sanctions to control behavior.⁸⁸

There is another problem with deterrence theory. The general assumption in deterrence theory is that the legal punishment offsets the motivation. Motivation is presumed to be constant across all offenders (although not across all crimes).⁸⁹ There is an assumption of one universal "reasonable person." This presumption may not hold true with auto thieves. That is, the offender group characteristics may be different for different crimes. There are at least three and possibly four distinct groups. There are at least (1) joyriders, (2) those taking cars with an intention to convert them permanently, and (3) those willing to use force to steal. A further possible refinement would distinguish between, as I have suggested, joyriders in general and Black protest joyriders.

Deterrence theory appears best suited for adults intending to convert cars permanently. The crime of auto theft is an economic crime requiring an intent to deprive the owner of the car permanently to make money. This rational albeit illegal conduct ought to be responded to in an appropriately calibrated regime of laws and enforcement in expected ways.⁹⁰ Stealing or trading in stolen cars or their parts should be deterred through somewhat harsher penalties and more certain criminal law enforcement.⁹¹

Beyond this application of deterrence theory in an economic arena, its basic assumptions break down in other areas. Motivation for crimes may not be constant for offenders. For example, the rational person model on which deterrence theory is predicated might not hold true for those stealing cars because of drug habits. Treatment might be more effective than prison.⁹²

⁸⁸ Cf. Michael H. Kalstein, et al., *Calculating Injustice: The Fixation on Punishment as Crime Control*, 27 Harv. C.R.-C.L. L. Rev. 555 (1992) (focusing on class as social determinant in influencing antisocial and criminal behavior).

⁸⁹ Ronald L. Akers, *Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken*, 81 J. Crim. L. & Criminology 653, 654 (1990).

⁹⁰ New laws and better enforcement should counter the economic incentives for activities like chop shop operations, insurance fraud, and the export of stolen cars. This is a significant piece of the auto theft picture. It is estimated by the F.B.I. that insurance fraud alone accounts for 15% of all auto theft claims. Richard Weizel, *State Vexed By Its Rank As a Leader In Car Thefts*, N.Y. Times, April 12, 1992, at 1.

⁹¹ See Harney, *supra* note 60, at A2. The federal law which includes provisions for marking and identifying car parts, is a sound approach to inhibiting this trade by making detection and prosecution easier. *Anti Car Theft Act*, *supra* note 17.

⁹² See Kurt L. Schmoke, *An Argument in Favor of Decriminalization*, 18 Hofstra L. Rev. 501 (1990) (arguing that many drug offenders are sick, not criminal). Young Blacks are more likely to be processed through the criminal justice system even when sick than are similarly situated Whites. Stuart L. Kaplan and Joan Busner, *Racial Bias*

Deterrence assumptions also may not hold true for juvenile offenders. Adolescents may not "reason" as adults. Deterrence theories assume the existence of rational decision maker, capable of realistically weighing costs and assessing benefits.⁹³ This assumption raises two issues. The first is whether juveniles make calculations in the rational manner assumed. Deterrence does not deter if the target group's youth inhibits adult risk assessments, rational decisionmaking, and calculations. Adolescents may not accurately assess the risk of punishment, for they often believe they are invulnerable to life's risks.

There is some evidence that decisions by juveniles to abstain from criminal behavior are not influenced by their perceptions of the certainty or severity of punishment. This is contrary to the customary assumptions made with respect to adult violators. For some juveniles, increasing the risk of getting caught and the severity of punishment may increase their likelihood of committing the crimes.⁹⁴ Adolescents may interpret these actions as challenges and want to try their luck at betting against the odds. Moreover, this behavior may vary for different kinds of crimes. This suggests that what forms of social intervention are selected must be tailored to specific crimes for juveniles.⁹⁵ There is some other evidence that the certainty of getting caught but not the severity of the punishment may affect patterns of juvenile crimes.⁹⁶

The existence of relatively minor penalties may be enough to deter most joyriding.⁹⁷ For those who get caught in stolen cars (whether or not they stole them), the experience of getting arrested, appearing before a stern

in the Admission of Children and Adolescents to State Mental Health Facilities Versus Correctional Facilities, 149 *Am. J. of Psychiatry* 768 (1992). To the extent that grand auto theft is a crime of opportunity engaged in by the sick, like drug addicts, greater law enforcement may only lead to a shift in the type of crime rather than a reduction in total crime.

⁹³ Shavell, *supra* note 86.

⁹⁴ Anne L. Schneider & Laurie Ervin, Specific Deterrence, Rational Choice, and Decision Heuristics: Application in Juvenile Justice, 71 *Soc. Sci. Q.* 585, 598 (1990).

⁹⁵ Not surprisingly, there is some evidence to the contrary suggesting juvenile behavior is somewhat rational, responding to the availability and quality of jobs. Emily Anderson Allan & Darrel J. Stefensmeier, Youth, Underemployment, and Property Crime: Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates, 54 *Am. Soc. Rev.* 107 (1989).

⁹⁶ Raymond Paternoster, Decisions to Participate in and Desist From Four Types of Common Delinquency: Deterrence and the Rational Choice Perspective, 23 *Law & Soc'y Rev.* 7 (1989).

⁹⁷ The available risk prediction instruments taking into account factors such as age, prior history, peer group, etc., have limited predictive power for recidivism. Jose B. Ashford & Craig Winston LeCroy, Juvenile Recidivism: A Comparison of Three Prediction Instruments, in *Adolescence*, Summer 1990, at 441.

judge, and spending even a short period of time in jail and thereafter under rigorous released supervision may be enough to specifically deter that youngster from repeat criminal behavior.⁹⁸ This evidence is consistent with a hypothesis that greater enforcement of current laws through anti-theft task forces may account for some of the decline in car thefts.⁹⁹ The current laws may be adequate deterrents for most; thus new tougher laws may not be necessary.

Next, tougher laws may not deter juvenile Black crime nor educate Black youth in the sense of changing their values. Poor Blacks are subject to different cultural forces than White youths. Within the contemporary Black community,¹⁰⁰ it is questionable that criminal sanctions have the kind of effect anticipated by mainstream society. Generally, it is assumed that making certain antisocial behavior either criminal or more serious crimes changes social values. The law is supposed to inculcate different values by indicating social disapproval. The assumption is that negatively labeling behavior changes people's views of it. But this theory depends for its force on both the moral legitimacy of the lawgivers and the assumption that disapproval by the society stigmatizes those labeled as violators of the new legal norms.

The efficacy of tougher laws may be diluted by the normative standards of some contemporary Black youth. Their value determinations may be somewhat insulated. Being labeled criminals may not stigmatize offenders where jail has been normalized and the expectation of being sent to jail is considered an inexorable Black fate. Although misunderstood by

⁹⁸ There are model programs of intensive social service intervention with the youths and their families which offer promise. Felicia R. Lee, *Trying to Mend the Ties That Bind*, N.Y. Times, Nov. 30, 1992, at B1. While these programs hold promise, without wide scale implementation their general applicability is not known.

⁹⁹ Auto thefts in Newark began to decline in 1989, one year before the police enforcement unit was formed. Reduction in numbers of adolescents may also account for some of the decline.

¹⁰⁰ What this phrase means in the context of Black lawbreakers has been the subject of scholarship. Regina Austin, *The Black Community, Its Lawbreakers, and a Politics of Identification*, 65 S. Cal. L. Rev. 1769, 1810, 1817 (1992) (referring to the Black community as variously more of an ideal than a reality, in flux, a place within which cash might be pooled for investment, and the place, "home," to which one must return every once in a while to interact with the folks). As used here the phrase has both a territorial component and an emotional component, that is, a psychological connection among Black people.

some, particularly White lawmakers,¹⁰¹ such an expectation may have developed in segments of Black communities.

Today in urban America many young males will spend some time in jail.¹⁰² Current statistics indicate that Black men are more likely to be in jail in the United States than are Black men in South Africa.¹⁰³ Recent studies from Washington, D.C., Baltimore, and New York City indicate that more or less 50% of Black males in those areas were, had been under, or were sought for criminal court jurisdiction.¹⁰⁴

When arrest and conviction are considered the norm, they probably do not carry as much stigma. For these youngsters, challenges may be counterproductive, increasing the tendency to rebel,¹⁰⁵ particularly if going to jail has been somewhat destigmatized and normalized among young Black men.¹⁰⁶ Moreover, the degree to which harsher laws can change values may depend upon what motivated the crimes. If some joyriding is a form of social protest, then for these joyriders, the tougher laws will not

¹⁰¹ A White lawmaker in New Jersey reported a story of a juvenile who said he wanted to be arrested so he could be with his friends. His response was that tougher laws were needed because these youngsters "should not look at incarceration like summer camp." Wayne King, *Bills Against Car Thefts Gain in Trenton*, N.Y. Times, Oct. 20, 1992, at B6. Such responses ignore the fact that when the criminal law is in the aggregate overused as a solution to social problems, even jail can be normalized. A primary school teacher friend tells me that when he asked his students what they wanted to do when they grow up, a 6th grade Black boy said "Go to jail so I can get muscles like the big guys." The ship of state's law-and-order perspective and that of young Black men, are hopelessly passing each other in the night.

¹⁰² Don Terry, *More Familiar, Life in a Cell Seems Less Terrible*, N.Y. Times, Sept. 13, 1992, at A1 (reporting expectation within communities of color that young males will spend some time in jail and that those returning are idealized by younger males as positive role models of manly survival).

¹⁰³ According to a recent study, Black men in this country are imprisoned at five times the rate of those in South Africa. The Sentencing Project, *Americans Behind Bars: A Comparison of International Rates of Incarceration* (1992).

¹⁰⁴ National Center On Institutions And Alternatives, *Hobbling A Generation: Young African American Males in the Criminal Justice System of America's Cities*, Baltimore, Maryland (1992); Correctional Association of N.Y. and New York State Coalition for Criminal Justice, *Imprisoned Generation: Young Men Under Criminal Justice Custody in New York State (The Association and the Coalition)* (1990) (reporting that one in four young African American men are under the control of New York's criminal justice system).

¹⁰⁵ Michael Marriot, *On Meaner Streets, The Violent Are More So*, N.Y. Times, Sept. 13, 1992, at E6 (discussing the efficacy of criminal justice remedies aimed at stricter and harsher penalties for offenses).

¹⁰⁶ Keith Harriston, *Going to Jail Is Rite of Passage for Many D.C. Men*, Report Says: Statistics on Incarceration of Blacks Challenged by City Officials, Wash. Post, Apr. 18, 1992, at B3 (discussing increased incarceration of Black males). The feedback of jail culture among young Blacks is evidenced by some clothing styles. See *infra* p.17.

change their values. Lawbreaking may be motivated by group impulses of protest, not individual cost benefit analysis. Efforts to control the protestors without addressing their grievances may only intensify the impulses underlying their opposition. Tougher laws may exacerbate the problem or shift its manifestations to other areas of behavior. The other possible reasons for greater penalties are retribution and rehabilitation. Considering rehabilitation first, while not currently a popular criminological theory, at least the anecdotal evidence suggests that some of the young offenders could be rehabilitated without incarceration.

Many of the youngsters involved are reportedly bright students. No imagination is necessary to see the connection between the failures in educational and other socialization institutions and their delinquent behavior. With respect to protest joyriders and some other delinquents, I might go further. It may be precisely some of the brightest and most creative young men in Black communities who more intensely feel their exclusion from the American dream and rebel in self-destructive ways.¹⁰⁷ If there is hope in America, if the potential of all people is assumed, then contrary to the law and order approach of control for these youngsters, rehabilitative efforts are necessary.

Whether the goal of retribution against these youngsters should be pursued as logically consistent with the perspective of the control model is a more complex subject. Given the frustration and anger felt in society, the extent to which these feelings are motivating the movement for harsher laws needs more frank discussion. I sense that some of what is rhetorically justified under deterrence and incapacitation theories is a thin disguise for a modern day retribution, an "eye for an eye."

Retribution is a double-edged sword. While society feels justified in its anger against defiant joyriders, the joyriders feel justified in striking out against a society whose social structure largely predetermines that their lives will be spent on the outside looking in. Which perspective, that of society or the youngsters, is more justified, may turn out to be a moral stalemate, an irreconcilable conflict of perspectives, solvable only by force and power, not by moral authority.

Moreover, retribution can encourage extreme extralegal reactions. The case of Howard Caesar is instructive. On June 9, 1992, Caesar was riding with others in a stolen car in Newark. As the car approached an intersection known for protest joyriding, it made doughnuts on the street.

¹⁰⁷ For example, a teenager recognized as a National Youth Hero by President Reagan in 1986 for his gospel talents and work with other youths, was charged with the unauthorized use of former Mayor, then Councilperson Marion Barry, Jr.'s car. 'National Youth Hero' Held in the Theft of Barry's Auto, N.Y. Times, Jan. 7, 1993, at A14.

Unbeknownst to Caesar and the other occupants, the stolen car in which they were riding belonged to a Newark police officer. This off-duty officer and five others waited in ambush. When they saw the car, these vigilante police officers attempted to capture the youths inside. A policeman shot Caesar with an unauthorized gun and then, with other officers, attempted a cover up.¹⁰⁸ Caesar suffered critical abdominal wounds and had at least ten operations.¹⁰⁹

The Caesar case illustrates some dangers of retribution. Black youngsters should not be shot for joyriding. Adult reaction should be proportionate to the offense and not merely reflect frustration with delinquency. Yet the Caesar case also shows that the current approach of leniency without close supervision and nurturing is unsatisfactory.¹¹⁰

The theory underlying incapacitation is that certain people are incorrigible, and locking them up will at least prevent them from repeating the offense for the period of incarceration. Such an approach may seem warranted for the group of adolescents involved in joyriding as nightly recreation. Their numbers are relatively small,¹¹¹ and as they mature, they may grow out of their rebellious behavior. At least while in jail, they will not be stealing or riding dangerously in stolen cars.

While incapacitation for recidivist youth has some appeal, it can be criticized. First, it may be unnecessary and more expensive than supervised alternatives.¹¹² Second, jail is not a place for youngsters to grow up. It

¹⁰⁸ According to indictments, this was the second youth shot in a two day period by this police officer concerning the same car. Charles Strum, 2 Officers Are Indicted in Shooting and Cover-Up, N.Y. Times, Dec. 16, 1992, at B1.

¹⁰⁹ In 1992, four car theft suspects were killed by Newark police and three others wounded. Eleven people were killed in stolen car accidents. Robert D. McFadden, Youth Dies As Stolen Car Slams Girder in Newark, N.Y. Times, Oct. 5, 1992, at B5; Joseph F. Sullivan, 4 Are Killed in 2 Car Thefts in Newark: Worse Night in Plague of Teen-Age Joy Rides, N.Y. Times, Nov. 12, 1992, at B1. The community is split over whether the police are too harsh or the penalties too lenient. Joseph F. Sullivan, 2 Funerals Ask Youths to Reject Street Life, N.Y. Times, Aug. 29, 1992, at A1.

¹¹⁰ Caesar who was 18 years old at the time he was shot, had been jailed twice before. He was first arrested at 13 and spent his 16th and 17th birthdays in juvenile detention centers, including, in 1990 when his father died of cancer. Evelyn Nieves, Youth's Wounds Mends As Family Speaks Out, N.Y. Times, Oct. 8, 1992, at B5. Caesar was the product of a lower middle-class working family. Yet critics of releasing youngsters, like Caesar, on an unsupervised basis after arrest, have a valid point. But that does not mean that youngsters should be shot on sight. Having been alerted to Caesar's antisocial behavior, society should have expended resources to supervise him, work with his struggling parents, and channel his potential into productive activities.

¹¹¹ Recidivists in Newark are a small fraction of the city's youth. Police estimate about 80 out of more than 50,000 school-age children are repeat offenders. Evelyn Nieves, Dreams Intact, Newark Youths Resist Violent Surrounding, N.Y. Times, Sept. 8, 1992, at B1.

¹¹² In New York City it costs \$7,500 per year to intensively supervise delinquents

may be a schoolhouse for future criminals. Finally, the aggregate effect of jailing so many young Black males is having disastrous consequences within the Black community, setting questionable norms, discussed above, and further disenfranchising the already disenfranchised.¹¹³

Incapacitation, however, may be appropriate for sociopaths, especially those involved in assaultive behavior like ramming police vehicles. Even here, preserving judicial discretion and resisting the temptation to pass laws that demand mandatory sentences may be more sensible.¹¹⁴

The prospects of changing this legislative approach appear dim. Most legislators are committed to the paradigm of control rather than the more difficult solutions to group based structural race and class problems. Legislators are influenced by the media and probably will not respond with the best interests of young Black males as their goal. They have already heard some arguments against tough laws for juvenile crime. The nature of representative democracy does not assure that legislators will be responsive to the voices of young Black men.

In general, youngsters below the age of eighteen are not assured of representation. Juveniles cannot vote and do not control wealth. It is assumed, however, that they are virtually represented by older men and women. Yet there may be no virtual representation of young Black males, even by "minority" elected officials. With notable exceptions like Mayor Kurt Schmoke of Baltimore,¹¹⁵ most Black politicians speak out for only those that vote and otherwise participate in the mainstream political process.¹¹⁶ Poor young Black males do neither, nor do many of their relatives, friends, or neighbors. Many are from segments of Black communities which are so convinced America's promises do not apply to

and their families versus \$70,000 to jail youths. See Paternoster, *supra* note 96.

¹¹³ Criminal convictions in most jurisdictions disqualify people from voting. They also often prevent employment.

¹¹⁴ This raises the question of whether such faith can be placed in the judiciary. With guidelines, judges, advised by lawyers and supported by supervising social workers, should be able to make these determinations on a case by case basis for each individual youngster.

¹¹⁵ Schmoke has spoken in defense of some Black lawbreakers. See *supra* note 92.

¹¹⁶ Some of the legislation in New Jersey has been offered by Black legislators from Newark with the support of Mayor James. I intend to cast no aspersions on politicians like Mayor James. He has done much to revitalize the economic and social landscape of Newark. Nevertheless, his approach has been to make Newark attractive to mainstream business interests and the middle-class, both worthy goals. Lauren Adams DeLeon, *Newark's New Look*, 4 *Emerge* 3, at 42 (1992). But this does little to address the seemingly intractable problems of poor young Black males. A study of another Black run city, Atlanta, has demonstrated that this kind of economic and social development has little impact on less privileged Blacks. Gary Orfield & Carole Ashinaze, *The Closing Door: Conservative Policy And Black Opportunity* (1991).

them that the promises of electoral democracy seem worthless too. So, they do not bother to participate. This self-fulfilling prophecy assures the passage of laws by those that do not represent their perspectives. Under these conditions, the only fora within which to review these laws are the courts.

Some new laws can be challenged on constitutional grounds. I am not suggesting, however, that challenges should be made to all new laws. Challenges ought not be knee-jerk defenses of antisocial behavior because some lawbreakers are members of oppressed groups. Some behavior, like carjacking or assaultive conduct against the police, must be controlled with severity appropriate to the crime and the defendant. In any event, most of these laws, such as the new ten-year penalty for causing injury while fleeing the police, raise no substantial constitutional issues. My constitutional review is limited to new laws related to joyriding and generalized efforts to control and punish the youngsters and their parents. These include curfews and parental accountability statutes, changes in minimum mandatory sentences for joyriding, and evasion of the police. Other laws may be proposed, but much of the same analytic framework should apply. As the doctrines are well known, my review is cursory.

Youngsters in Newark may be subject to a curfew from ten o'clock in the evening to six o'clock in the morning and their parents held accountable for the violations.¹¹⁷ The new curfew statute empowers local governments, like Newark, to pass optional curfews on unaccompanied youths. Violations can be punished with community service and up to a \$1000 fine. It provides three general areas of exceptions: if the youngster is (1) engaged in a legally recognized juvenile business or occupation, (2) errands involving medical emergencies, or (3) extracurricular school, religious, or community-based organizations and other cultural, educational, and social events after 10 p.m.

This statute could be challenged on several grounds. While the new statute makes some exceptions for religious and other activities as required by New Jersey case law,¹¹⁸ it still suffers from several defects found in an earlier ordinance. First, it requires that youngsters exercise their fundamental rights in connection with institutions. Whether, as required by case law, this limitation is supported by a compelling state interest is not clear since none is given in the statute or its history. Second, to the extent that the clause in quotes is open-ended, the statute may be constitutionally defective because it is vague and imprecise. Vagueness doctrines essentially provide that statutory language must be capable of being understood by

¹¹⁷ N.J. Stat. Ann. § 40:48-2.52 (West 1992).

¹¹⁸ *Allen v. City of Bordentown*, 524 A.2d 478, 485 (N.J. Super. Ct. 1987).

persons of ordinary intelligence; if not, the statute does not give fair notice of what is prohibited and denies due process.¹¹⁹ Third, the law may be vulnerable to attack because of its overbreadth, since it includes all youngsters, not just those involved in otherwise disorderly or criminal behavior. The overbreadth doctrine might be applicable as it prohibits laws which do not aim with sufficient specificity at evil conduct, but sweeps within its ambit other activities that in ordinary circumstances constitute exercise of protected First Amendment and other fundamental liberty interests.¹²⁰ The final clause in quotes is especially troubling. It provides too much discretion for the court. The statute attempts to address these last two issues by requiring that clear standards in precise language must be used to apprise juveniles and parents of that which is unlawful and to circumscribe police discretion. Whether this is consistent with the Bordentown case law is doubtful.¹²¹

Legislation imposing parental accountability has been criticized for infringing upon the same fundamental interests threatened by legislation directed toward the behavior of youngsters. Thus, if the curfew statute is constitutionally deficient as to the youngsters, it also would fail as to the parents.¹²²

Other proposed parental accountability laws are questionable. One would provide for parental accountability if their youngsters are involved in auto thefts. The parent(s) would have to pay a fine and/or be liable for community service. The statute thus makes the parents liable for the sins of their children not through the traditional payment of money damages,¹²³ but with involuntary servitude in the form of community service.¹²⁴ This law seems irrational as to the parents of many of these

¹¹⁹ Id. at 481--82.

¹²⁰ Id. at 482--83.

¹²¹ Id. at 484. Other state courts have declared unconstitutional laws passed to prevent crime which proscribed more conduct than endangered the public by deterring some lawful activity. For example, a law prohibiting any juvenile from carrying a knife or other sharp instrument in New York was stricken. *People v. Munoz*, 9 N.Y.2d 51 (1961) (contrasting knives with brass knuckles). It should be noted, however, that at least in New Jersey "it is within the competency of the lawgiver, in the common interest, to declare an act criminal irrespective of the . . . motive of the doer of the act. The Legislature may make the doing of the prohibited act criminal . . . regardless of a corrupt or criminal purpose" *State v. Labato*, A.2d 617 (N.J. 1951).

¹²² As noted by the court in Bordentown, there is a split of state court authority with respect to these curfew statutes.

¹²³ See, e.g., N.J. Stat. Ann. § 2A:53A-15 (West 1992). Liability of parent or guardian for willful destruction of property by infant under 18.

¹²⁴ This raises novel Thirteenth Amendment questions with respect to whether parents can be "duly convicted" for the crimes of their children.

youngsters because it assumes that law abiding working parents like those of Caesar and the young man featured in the 48 HOURS segment were remiss in working while their youngsters went joyriding. While parental accountability for the acts of juveniles should be encouraged, in the absence of recreational and other support mechanisms, these laws are irrational. They provide incentives for the parents not to work when there is no evidence this would stop youngsters from joyriding.¹²⁵

Moreover, the assumptions underlying these approaches are wrong. Most parents of these youngsters are devastated when their children commit social suicide through lawbreaking. These are, after all, their children, their hopes, and their broken dreams. These parents need our support, not condemnation and punishment.

A proposal to deny release of juveniles on their own recognizance is less objectionable. This would not be preventive detention, which generally requires a showing that the individual would present a danger to the community.¹²⁶ Rather, this would require parents or responsible adults to be present before a youth could be released. In light of precedent, this should be sustainable against an attack on constitutional grounds.¹²⁷ Moreover, the proposal may be a sensible way to impress upon the youths the unacceptable nature of their conduct, even as protest, without increasing penalties. If augmented with social services to work with the youths' families and communities, this would be rational.

In general, increases in minimum mandatory sentences would not violate constitutional prohibitions. Equal protection challenges would probably be subjected to minimum scrutiny and would be sustained if there were a rational basis under one of the recognized criminological theories.¹²⁸ Eighth Amendment proportionality challenges would be

¹²⁵ Cf. *State v. Guminga*, 395 N.W.2d 344 (Minn. 1986) (holding unconstitutional under substantive due process a law imposing vicarious criminal liability upon an employer whose employee serves liquor to a minor).

¹²⁶ *United States v. Salerno*, 481 U.S. 739 (1987).

¹²⁷ *Schall v. Martin*, 467 U.S. 253 (1984) (upholding pretrial detention of juveniles under Eighth Amendment bail clause).

¹²⁸ The Supreme Court generally refuses to consider the "adequacy or practicability of the law" challenged. *Nebbia v. N.Y.*, 291 U.S. 502 (1934). Even a purely hypothetical supposition can be used to uphold legislation. See, e.g., *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). Substantive due process challenges could be made based on doctrine that conduct may not be punished unless it bears a substantial relationship to injury to the public. There must be evidence that tougher laws are an effective means of dealing with the problems. Compare, *State v. Guminga*, *supra* note 125, with *Town of North Hempstead v. Exxon Corp.*, 53 N.Y.2d 747 (1981) (holding valid a law which prohibited self-service gas stations). These cases, however, usually involve commercial regulations and probably would not be applied to criminal laws. See, e.g., *State v. Redman Petroleum Corp.*, 360 P.2d 842 (Neb. 1961); *Gundaker*

unsuccessful. Reviewing courts grant legislatures substantial deference in making phenological judgments, especially in light of differing attitudes and perceptions of local conditions. The constitution does not mandate adoption of any one rationale or proportionality between crime and sentence; it prohibits only extreme sentences that are grossly disproportionate to the crime.¹²⁹

One final category of proposals that might be challenged are those calling for stiffer penalties for evasive behavior while joyriding or similar laws which treat the behavior of (non-assaultive) protest joyriding more harshly than other joyriding. Such laws might be challenged under the Equal Protection Clause and as First Amendment expressive conduct.

While these laws do not use explicit racial classifications, legislators have said that "some municipalities are experiencing an increase in auto theft committed by juveniles," a clear reference to places like Newark with its mostly Black and Latino population. If the impact of proposed laws were racially disparate without adequate showing of a provable difference in the danger they pose to society, state law equal protection analysis might be used to strike them down if it were demonstrated that facially neutral classifications were intended to have a race-based impact.¹³⁰

Challenges could also be made to any laws which treat more harshly protest joyriding than other kinds of joyriding because of its expressive content. Based on *R.A.V. v. City of St. Paul, Minnesota*,¹³¹ the theory would be that the First Amendment prohibits regulating behavior because of its expressive content.¹³²

Whether protest joyriding could be singled out would depend upon how it was attempted and if the youngsters could sustain the burden of showing the conduct to be expressive. While the Court has been willing to

Central Motors v. Gassert, 127 A.2d 566, 573 (N.J. 1956).

¹²⁹ King, *supra* note 80.

¹³⁰ Under federal standards, intentionality would have to be proven under the rigorous standards articulated in *McCleskey v. Kemp*, 481 U.S. 279 (1987) (holding that racial statistical disparity is not sufficient to overcome facially neutral governmental action. Intentional or purposeful discrimination must be proven). Some state courts do not adopt such rigorous standards of proof. See *State v. Russell*, 477 N.W.2d 886 (Minn. 1991) (holding that differentiation of penalties for possession of cocaine and crack was not actually rationally based, only hypothetically possible, and violated state, not federal, Equal Protection Clause).

¹³¹ 112 S.Ct. 2538 (1992).

¹³² Special prohibitions directed against protest joyriding fall with greater force upon individuals and groups, here young Black males, who fear majoritarian disapproval and reprisal and should be unconstitutional. Cf. *Talley v. State of California*, 362 U.S. 60 (1960). This alone might not be enough. To run afoul of *R.A.V.*, the law would have to regulate the expressive element of this disorderly conduct.

protect the burning of a cross by youthful White racists on a Black family's lawn in *R.A.V.*, given the Court's myopic interpretation of evasive behavior by Black youngsters on urban streets,¹³³ it is doubtful that young Black men could sustain the burden of showing that their conduct was expressive. Yet if this burden were sustained and some of the targeted joyriding were considered to be a protest for First Amendment purposes, any law directed specifically at the expression might not survive *R.A.V.* On the other hand, if legislation focused on the behavior, like the fire in *R.A.V.*,¹³⁴ then the statute would pass constitutional muster.¹³⁵

As this review indicates, the scope of challenges to new and proposed laws under prevailing constitutional doctrine is fairly limited. Current doctrine gives some protection to individual liberty, but allows the state-wide latitude to use criminal sanctions against individual conduct. Most new laws should survive constitutional challenge. This does not mean that the laws are not deficient. What it indicates is that courts are not doctrinally equipped to redress grievances raising the complaints of young Black males as a group to the effect that America has broken its social contracts at the intersections of their lives. These are post-civil rights complaints, raising issues left dangling by *Brown v. Board of Education*,¹³⁶ having to do with resource redistribution and substantive social equity. These are claims for forty acres and a mule (with compounded interest and dignity). This does not mean laws should not be challenged; they should be, in order to encourage discourse and raise questions about the prudence of harsher penalties and remedies. Yet the needed policy initiatives are beyond constitutional doctrines as currently conceived.¹³⁷

¹³³ *California v. Hodari D.*, 499 U.S. 621 (1991).

¹³⁴ *R.A.V.*, 112 S.Ct. at 2544. The new law penalizing youths for injuries caused during joyriding would not appear to be such a law since it appears tied to the conduct, not its expressive element.

¹³⁵ The Supreme Court may reconsider the breadth of *R.A.V.* in *Wisconsin v. Mitchell*, ___ U.S. ___, 113 S.Ct. 2194 (1993), granting cert. sub nom *State v. Mitchell*, 485 N.W.2d 807 (1992). As recognized in *R.A.V.*, 112 S.Ct. at 2541 n.1, 2546, violent actions can be recognized as protests intended to send a message, but on balance this does not prevent the government from regulating the violence. See also *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 301 (1984) (Marshall, J., dissenting) (discussing political assassinations and bombing buildings).

¹³⁶ 348 U.S. 886 (1954).

¹³⁷ Since *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), the Supreme Court has all but abdicated any role in helping to foster claims for substantive social justice beyond the most minimal level of public education. See, e.g., *Plyler v. Doe*, 457 U.S. 202 (1982). Some state courts have been more active in the limited area of education, e.g., *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990). Even these cases do not begin to address the massive social deficit faced by young Black men.

The legal regime's construction of reality is in need of reorganization and augmentation. Excessive reliance on law and order predicated on theories of individual lawbreaking has locked society into a futile struggle to control human souls, who with their conflicting perception of reality, resist because that may be their only self-affirmation. Jailing young Black males controls their bodies, as it corrupts their souls.¹³⁸ It makes prisons grow, not people.¹³⁹ These souls become role models, replicated by sons, brothers, and neighbors, recreating a caste for which opposition to society has been normalized. Constitutional doctrine is incapable of adequately adjudicating these phenomena.

As an intervention strategy, the attempt to control people through criminal laws needs to be augmented with different perspectives. These perspectives entail community-based support for youngsters and their families while work is begun to evolve values other than materialistic consumerism. Using the politics of identification,¹⁴⁰ Black youngsters should not be written off as if they have little or nothing to contribute.¹⁴¹ Only lawbreakers in real need of control should be jailed, distinguishing between those "who are truly deserving of ostracism and those who are not beyond help or hope."¹⁴² It would require the minimization of hierarchies of oppression and the work of those who can see beyond stereotypes and instruments of control to achieve this goal.

¹³⁸ Foucault suggests modern prisons are not only political exercises of power over the body but also over the soul born "out of methods of punishment, supervision and constraint." Michel Foucault, *Discipline & Punish: The Birth of the Prison* 29 (1979).

¹³⁹ Imprisoning people is a growth industry. Whole towns, police, and correctional unions, and business interests, exercise power to assure a steady flow of inmates. See Don Terry, *This Town Wants Convicts: Town Builds a Prison and Stores Its Hopes There*, N.Y. Times, Jan. 3, 1993, at A1. Reducing prison populations is opposed by those with financial interests, usually White males. Cf. Selwyn Rabb, *Jails Switch May Prove Problematic*, N.Y. Times, Nov. 14, 1992, at 22 (reporting how closing New York City jails upstate will create unemployment there and the political problems such efforts ignite).

¹⁴⁰ The politics of identification promotes an empathy with lawbreakers as rebels against oppression. Regina Austin, *The Black Community, Its Lawbreakers, and a Politics of Identification*, 65 S. Cal. L. Rev. 1769, 1799, 1815 (1992).

¹⁴¹ Some Black lawbreaking can be understood as part of a liberation effort, albeit strategically misguided and self-destructive. With this perspective, solutions may be fashioned which harness these impulses into more productive activities. This variation on the politics of identification is premised on the idea that in a "real black community, everyone would be a resource, especially those who the dominant society would write off as having little or nothing to contribute." *Id.*

¹⁴² *Id.*

III. CONSTRUCTING NEW VISIONS THROUGH CAMPGROUNDS OF RENEWAL

N: I'm better off dead, that's what my neighbor said.
Some say I'm nothing but a dog now.
I answer that with a fuck you and a bow-wow.
I been through more shit in the last week.
I was born dead wrong. That's been my life.
Oh---you don't know the song.
So don't say jack [shit].
Please don't say you understand.
All that man to man talk can walk---damn.
If you ain't lived it, you can't feel it.
And all that talk about [it] won't help it out. Will it?
But I'm the one who has been labelled as an outcast.
They teach in school that I'm the misfit.
But I'll slap 'em backwards.
That's what you get for fucking with a ghetto bastard.
If you ain't never been to the ghetto, don't ever come to the ghetto, cause you wouldn't understand the ghetto.
Stay the fuck out of the ghetto.
Why me?
Why me?¹⁴³

Young Black males are victims and sometimes victimizers.¹⁴⁴ Naughty by Nature tells the young Black male story about broken promises and defiant despair. They speak of youthful Black power exercised in negative, often self-destructive responses. This construction of reality is neither all right nor all wrong. It must be heard and focused upon, however, to find better paths for them and society.

¹⁴³ Naughty by Nature, *supra* note 1.

¹⁴⁴ Even though there is no bodily harm, joyriding causes real inconvenience and hardship to many people, including other unprivileged people. N.R. Kleinfeld & Michael Marriott, *On Stolen Wheels*, Newark Youth Defy Authority, N.Y. Times, Aug. 10, 1992, at A1 (citing the personal costs to Newark residents).

Similarly, other constructions of reality must be heard but not uncritically. The media's construction reflects real feelings and fears of the law-abiding public, even as it reinforces stereotypes and encourages the protest behavior by giving it high-profile attention. The perspective of those who believe in individual responsibility and the use of criminal laws as the primary tool for controlling behavior are both correct and incorrect. Young Black males bear some measure of responsibility for their actions, even if overused criminal sanctions now are counterproductive pursuits of unachievable control. All the current constructions of reality are in need of a social Chapter 11 reorganization.

New constructions of reality and a process to build them are necessary. These must offer interim solutions to specific problems even as they bring the conflicting perspectives into the same discourse for long-term social reorganization. This latter project must be undertaken in fora which simultaneously can include and respect the various perspectives while challenging aspects of their goals and consciousness. This part of my article proposes the use of outsider perspectives in ways that accommodate uniqueness and still allow coalitions for change. It suggests minimizing divisive hierarchies of oppression while utilizing lessons learned from outsider perspectives to fashion new approaches to ameliorate particular problems and address larger issues of social transformation. It concludes with an ambitious and more indeterminate approach to evolve new visions of community through campgrounds of renewal.

A. Better Alliances: Space for Unique Differences and Coalitions

The oppressed must coalesce in new alliances for social justice, but these alliances must allow space for individuality and unique group differences.¹⁴⁵ Mainstream society has oppressed young Black males, partially because the similarly oppressed do not coalesce around each others' issues. Each group is isolated. Issues relating to the excessive use of the criminal law as a means for controlling young Black men are seen as separate from issues such as reproductive rights and domestic relations which have to do with domination and control of other oppressed groups. This isolation of issues reflects divisive competition among oppressed peoples.

¹⁴⁵ Trina Grillo and Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or other -isms)*, 1991 Duke L.J. 397.

In some social and legal discourse, there is a contest for which group--and which of their academic representatives---is most oppressed. This is an inverted "race to the bottom" of a social oppression hierarchy. The winner (loser?) within critical circles is the most authentic and authoritative among oppressed voices. To be an entrant, a group must fall within at least one category of oppression.¹⁴⁶

Categories of oppression reflect group-based disadvantage. They include: race, class, gender, (physical) ability or disability, religion, and sexual orientation. If one's group is at the historically oppressed end of one of these classifications, one has a place in the discourse among the oppressed. How much claim one has is often hierarchical, although different people rank-order categories of oppression and their aggregation differently.

The only common agreement among the oppressed is that White men who are Christian, affluent, and straight are the quintessence of privilege and have scant claim to be heard in the chorus of the oppressed. Beyond this agreement, the contest is on for which group is most oppressed. Currently, this dubious accolade might go to African American, poor, disabled, lesbian mothers.

Rank-ordering oppressed people should be avoided; it leads to counterproductive descension among the oppressed. By claiming that "my group is more oppressed than your group," each group asserts that its category or categories of oppression trump that of other groups. Instead of working with other groups whose human potential also has been denied, the focus for discourse becomes legitimizing justifications for why one oppressed group deserves more resources, attention, or empathy than another. This approach is divisive, reducing opportunities to create new social possibilities based on coalitions aggregating the strengths of diverse groups and new models for nurturing all human potential and talents.

This excessive focus upon the uniqueness of oppression should be minimized for other reasons. Descension often excludes oppressed groups with the greatest commonalities from the dominant and most privileged. This exclusion can lead to unwise coalitions. Affluent straight White males remain dominant by being allowed to remain the central defining, least common social denominators of that which is good.

Excessive focus on uniqueness also oversimplifies the range and diversity within the categories, as it tends to essentialize classifications

¹⁴⁶ See Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 *Colum. J. Gender & L.* 1, 19 (1992); Martha Albertson Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 *Fla. L. Rev.* 25 (1990).

which are more imposed constructs than nature has given.¹⁴⁷ Categories originally imposed on us must not straightjacket the development of alternate consciousness. Understanding ourselves through the categories of race, gender, class, etc. does not do justice to our complex social identities. In most discussions, one is either Black or White,¹⁴⁸ man or woman, straight or gay,¹⁴⁹ etc. Yet these categories are not toggle switches; but approximations of more or less-shared experiences and characteristics. They ignore the dualities, nuances, and complexities in much-experienced reality.¹⁵⁰

Nevertheless, some reliance on categories of oppression is still necessary and useful.¹⁵¹ Some of the least heard voices today within social and legal discourse are those of young Black males, as exemplified

¹⁴⁷ Essentialism lends itself to genetic arguments and the equation of criminal behavior with disease. In the context of criminal behavior, genetics is controversial in part because the predisposition to disease is equated with a predisposition to commit certain kinds of crime, usually violent. What is criminal, however, is socially, not physiologically determined. The same act of violence may or may not be a crime depending upon the social significance attached to the violence. Hitting on a football field may be sanctioned while hitting on a street corner may not. In both cases, the propensity for violence may be identical.

Yet some believe genetics may reveal keys to understanding criminal violence. Charles Babington, U-Md. Cancels Conference On Genetic Link to Crime; NIH Pulled Funds Over Proposed Content, Wash. Post, Sept. 5, 1992, at A1. A Bush health official suggested that since inner-city violence has not been deterred by harsh laws, studying monkeys, and genetic research can provide keys to control. See Lynne Duke, Controversy Flares Over Crime, Heredity; NIH Suspends Funding for Conference, Wash. Post, Aug. 19, 1992, at A4.

¹⁴⁸ Although rarely a part of social discourse, being "white" is as much a constructed social reality as being "black." Cf., T. Alexander Alynikoff, A Case for Race Consciousness, 91 Colum. L. Rev. 1060 (1991).

¹⁴⁹ See, e.g., David F. Greenberg, *The Construction Of Homosexuality* (1988). My point is not that everyone is bisexual, but rather that sexual orientation generally is treated as if it were only bipolar, when for many it is more nuanced and complex. See, e.g., Allison Abner, *Bisexuality: Out of the Closet*, 23 *Essence* 61 (1992). Interestingly, on issues of class, where the goal is to minimize intergroup tension, the dominant formulation resists rich/poor dichotomies and encourages people to see themselves in the blended "middle-class."

¹⁵⁰ If there is one thing those of us who are African American know, it is that far more things in life come in shades of grey than in black and white. Yet a fierce insistence on seeing the world through a bipolar black and white lens is a persistent legacy of Anglo slavery. Property rules required this clarity. A child could not be half the property of its master/parent. Patricia J. Williams, *On the Object of Being Property*, 14 *Signs* 5, 7--11 (1988). Race in contemporary America is more complex.

¹⁵¹ Like Martha Fineman and others, I do not find essentialist discussions very helpful. They are fraught with epistemological questions that have little to do with the ongoing social conditions with which the law is concerned and on which the law must in practice act. Whether essential or nurtured, categories of historical oppression should be approached as if they are still generally useful. See *supra* note 146.

by protest joyriding and its rap counterparts. I do not suggest these voices be added to the chorus of the oppressed to create a new entrant in the race to the bottom. To the contrary, I suggest that the category of young Black male be focused upon because it is still a powerful and unique social determinant. The law of race and gender, in theory and practice, must recognize their oppression. Discourse must recognize their words, experienced realities, and responses as central to conversations with them. Current discourse is incomplete in not recognizing that the presumptive privilege of being a male, does not operate for males who are young, Black, and poor. Focus allows these misunderstood voices to be included in the development of a less hierarchical social order respectful of all human dignity and self-determination.

Neither is building this essay around some young Black male voices and actions an endorsement of what is said and done. Some of the consciousness expressed in rap and acted out by some young Black males reflects and compounds the oppression of themselves and others.¹⁵² Yet this expression must not prevent listening to the cries of another oppressed people. Assuring recognition time for each group's accomplishments and success in working through its unique problems should not mean division of the world into "us" versus "them." This impedes seeing common interests where they exist, and formulating joint social projects where possible. Thus, it is necessary to focus on seeing both the uniqueness and the commonalities of categories of oppression. Like some feminist and critical race theorists,¹⁵³ I am suggesting that those with outsider perspectives on the law use their multiple consciousness to critique the reflexive use of control mechanisms with respect to antisocial behavior by other oppressed groups, like young Black males. Lessons learned about how America systemically ignores the voices and legitimate complaints of outsiders, substituting regimes of control instead of discourse, should be applied to discern similar treatment of other outsider groups.¹⁵⁴

¹⁵² For example, in "Everything's Gonna Be Alright" there are condemnable expressions of sexism and homophobia. Additionally, the willingness to turn guns on other Black males in both rap and life reflects a deadly lack of positive self-consciousness.

¹⁵³ Lani Guinier, *Of Gentlemen and Role Models*, 6 *Berkeley Women's L.J.* 93, 96--97 (1991) (discussing multiple consciousness as enhancing the ability to listen, empathize, hear the passion, anger, and fear of clients who are alienated and intimidated).

¹⁵⁴ This partially bridges the "interest convergence" dilemma discussed by Derrick Bell. He observed that Whites participating with Blacks in efforts to change social conditions, have acted out of self-interest as well as beneficent motives. Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518 (1980).

The current approach to the problem of joyriding by Black young men employs a "command-and-control" style of managing associated with White males.¹⁵⁵ Outsider perspectives can help critique this approach, illuminating its limitations and opening the way to alternate possibilities. They can provide an understanding of legal methods and suggest alternatives.¹⁵⁶ Multiple consciousness can be used as I have done in Parts I and II to discern assumptions in current approaches to the problems of Black youth joyriding and open us to new responses.

Oppressed groups ought to be wary of joining coalitions which enhance the dominant groups' control over any other oppressed group. Majoritarian initiatives to control any historically oppressed groups, whether through criminal or civil law, should be opposed by substituting a nurturing perspective. The adoption of an oppositional stance should be done both because it is the right thing to do in terms of a general theory of respect for human dignity and self-determination and because it is in the long-term self-interest of other dominated groups. Young Black males are potential allies.

A personal experience helped me understand how gender, race, age, and class stereotypes are animating society's responses and the need for me to listen more attentively to the voices of young Black males. In September, 1992, I was stopped by a White Nassau County Police Officer at night while driving my Acura Legend. I was not driving fast and was not violating any law. I am certain about this because I saw the police car hiding along the roadside before he started following me and was sure not to give him any excuse to stop me. When he pulled me over, I asked him "What seems to be the problem, Officer?," in my best Harvard-trained diction. He said: "Just give me your registration and I will tell you later." When he returned to the car shortly thereafter he politely apologized, saying that "I thought you were younger when I stopped you." He explained that there had been six carjackings of Legends within recent weeks.¹⁵⁷ I did not engage him in further conversation; but I thought to myself, what if my teenage son had been driving our car and not I, would my son's justifiable rage at having been stopped have led to a tragedy?

¹⁵⁵ See Judy Rosener, *Ways Women Lead*, 90 Harv. Bus. Rev. 119 Nov./Dec. 1990.

¹⁵⁶ Katharine T. Bartlett, *Feminist Legal Methods*, 103 Harv. L. Rev. 829 (1990) (proffering tentative legal methods used by feminists); Martha A. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 Fla. L. Rev. 25 (1990). This is not a claim about essential differences between men and women, Black and White. Cf. Naomi R. Cahn, *The Integration of Progressive Thought and Action: Styles of Lawyering*, 43 Hastings L.J. 1039 (1992).

¹⁵⁷ See Harney, *supra* note 60.

Ensnared in my world, I did not fully appreciate the extent to which I had been seduced into not hearing the voices of young Black males. It took the (police) force of dominant culture imposed on me because of my race and gender to open my ears. I escaped the full detentive power of the state because of my age and perhaps class or education as reflected through language. I still did not know what the everyday lives of young Black males are like; but I knew I (we) had to begin listening to them (and others). I saw the dominant social constructions imposed on all of us and that I had an interest in listening to young, Black men and women, poor women, gays and lesbians, Jews and Muslims, etc. I saw that we had to resist and oppose all of the ways law is used to coerce and limit people because of group status.

Young Black males and joyriding in Newark present a challenge. What should be our responses?

B. Nurturing Young Black Males Like Other Children

Some nurturing responses to the problems of young Black males require coalitions of progressive people to formulate and implement them.¹⁵⁸ Others will require special efforts primarily by Black people. Even in these efforts, coalitions can support the loving and nurturing of Black children, including the errant protestors of Newark, as supporting friends.

Current discourse suggests that control models and nurturing models are dichotomous.¹⁵⁹ This dichotomy is false. There is a need for both some control and a great deal of nurturing to compensate for social deprivation and the legacies of oppression. Disinvesting in Black youth has created quite a social deficit.

The materialistic objectification of manhood discussed in Part I.C should be counteracted by efforts to prevent and deter antisocial behavior without criminal sanctions. More social scientific study of the precise

¹⁵⁸ I mean to use a style of problem solving associated with feminist traditions of nurturing, an ethic of caring, and connection to people as a method of constructing alternative approaches to the problem of young Black male joyriding. See Cahn, *supra* note 156, at 1054--1068.

¹⁵⁹ In response to the car theft situation, then Gov. Florio stated "first and foremost we need a strong law enforcement response. Sullivan, *supra* note 74. Often people of color join with centrist control coalitions. For the comments of Black Newark Mayor Sharpe James, see Sullivan, *supra* note 74. Although he, like many Black politicians, acknowledges the need for recreation and services for poor urban youngsters, in fact, he cannot deliver the needed social services. Virtually all that Black politicians can actually do is join dominant coalitions for more control. If other oppressed people coalesced, this balance of power could be altered and options for nurturing created.

causes of this antisocial adolescent group conduct and non-coercive intervention strategies would be helpful. Special attention should be given to the unique aspects of poor-urban-young-Black-male group dynamics. In the interim, I suggest two simultaneous guiding principles.¹⁶⁰

First, resource investments in young Blacks should be the same as the investments in young Whites. The society must invest in them what their parents cannot: time and resources, just as if they were the children of White and privileged parents. Second, we must join together in the hope of changing values away from materialism and toward different values of Black manhood, perhaps drawing on the community service values of some Black ministers.¹⁶¹

As *Naughty by Nature's* lyrics suggest, talk alone is not a solution. Solutions require resources of time and money. Nurturing models are attractive when we consider strategies for our own children---but when the problem is related to poor, young Black males, other people's children, most of us are all too willing to abandon human development models and fall back on control models. Black males are treated as if they need a life of controls whereas other children are treated as if they need to be nurtured. If some parents cannot afford to create a nurturing environment, then it is incumbent upon the rest of us to fund and create such environments. Rather than offer an abstract exposition on this point, I shall make specific proposals related to some of the problems of stolen cars and young Black males. These proposals may seem simplistic, but when considered in tandem with the ideas in the next part on ways to change values, these proposals provide a balance between the reality that young Black males live in a society that places emphasis on males and cars, and the hope that some of these values can be changed.

Middle-class White adolescents in America expect to learn how to drive a car and then have access to a car at least some of the time. Getting one's learner permit, driver license, and the family car are all part of the normal rite of passage for America's young. But what happens if in your neighborhood this norm does not apply? Where there is no drivers' education at your school and your mother does not have a car, you as an adolescent still want to drive like "everybody" else.

¹⁶⁰ While all of my proposals should be available to both men and women, I recognize that the problem being addressed and the solutions proposed are designed to address a predominately poor Black male phenomenon. The problems of other oppressed peoples, like Black females, need to be addressed separately. The proposal in Part III.C is less specific and could be adapted for evolving new values and programs across a wide range of groups and subject matters.

¹⁶¹ Cf. bell hooks, *Black Looks*, 87--113 (1992).

This is the situation for many youngsters in our inner cities. "Normalcy" is not available, and the incentives for waiting until they can lawfully earn what their parents and neighbors do not have are not in place. Realistically, they do not know many people who have lawfully earned their way into the American dream,¹⁶² and the prospects for their succeeding down this path are dim if there at all.

To remedy this narrow problem, Black youngsters should be provided what their parents cannot give them: opportunities to learn how to drive and perhaps have recreational access to automobiles. The merits of the educational component is obvious. There is no better forum than the schoolhouse to teach youngsters the do's and don't's of responsible driving. The dangers of automobiles could be taught and safe driving habits inculcated. Such education should not be a luxury reserved for the affluent.

In addition, providing youngsters with opportunities to drive would satisfy some of the adolescent curiosity reflected in joyriding. At the same time it would teach many the dangers to themselves and others of irresponsible driving. Recognizing that many youngsters leave school early, these educational programs also should be available at public expense through community-based centers in churches and elsewhere.¹⁶³

While these proposals would not solve the larger problems of social inequities facing poor, young Blacks, they would ameliorate a problem important to adolescents themselves. Practical objections based on costs and logistics must take into account the current costs in terms of law enforcement, wasted lives in expensive jails, and insurance. Ultimately, the question is not the feasibility of the particulars, but whether for my own son, a police officer and jail would be the only solutions I would devise in response to his wanting to drive a car. Part of the problem is that most of us do not see poor Blacks as our own children.

C. Campground of Renewal

The social critique must be inward as well as outward. There is a need for a new self-consciousness for some young Black males, one that is less materialistic and values people and community more. Naughty by

¹⁶² Except on television shows like NBC's "The Bill Cosby Show," the Black middle-class has become invisible to many poor Blacks.

¹⁶³ A more ambitious program might entail providing access to cars for community service and some recreation. Once licensed, vehicles could be made available for various purposes, including assisting the elderly in their marketing and helping women take children to day care. Additionally, these vehicles could be made available with slightly older peer counselors to attend purely social functions with other youngsters from the center. Drivers would be designated and pledge not to become intoxicated.

Nature, as well as Black people in Newark, speak of each other as neighbors. There is missing, however, a sense of what "neighbor" should mean in a democracy¹⁶⁴ and in a Black community. To some extent this is due to enchantment with the mythology of the Black bandit, with its focus on possessions—including women, cars, clothing, and jewelry—which serves White patriarchy. "[Yet] there is nothing that requires militant black male leaders to be selfish, stupid, shortsighted, or sexist."¹⁶⁵ A new emphasis in Black male consciousness is needed to liberate young Black males and the rest of us from the chains of American materialistic and sexist manhood and the impulses of self-destructive oppositionality.

Starting with where people are, we should work from there in evolving new consciousness. Today, the Black young male lawbreakers, including the protest joyriders discussed in this article, "wind up with little control over their images and less control than they imagine over their lives and their own world views."¹⁶⁶ Their rebellion is limited because it is not based on a thorough systemic critique of their deprivation and recognition of strengths. Blacks have a special role to play in helping rebellious youth develop a constructive social critique and positive self-esteem. The first step in this process would be treating all Black children as if they belonged to all of us.¹⁶⁷ Society, and in particular those emotionally tied to the Black community, must gather around Black children to strengthen and develop their positive attributes.

In doing this there is a need for other images of maleness, Blackness, and Black maleness.¹⁶⁸ A useful place to start the process is building on traditional attributes ascribed to Black men that are more positive.¹⁶⁹ There are within the Black community figures even today that conform to this model: one example is the Black minister. The Black minister remains one of the few Black role models on the scene not so consumed by American materialism and self-interest to be disqualified as an agent to change the values of the young. Notions of a new Black masculinity might

¹⁶⁴ Benjamin R. Barber, *Strong Democracy* 223 passim (1984) (suggesting that we should use notions of neighbor, rather than the formality of citizen, to fashion a more satisfactory relationship both among individuals and between individuals and the government).

¹⁶⁵ Regina Austin, *The Black Community, Its Lawbreakers, and a Politics of Identification*, 65 S. Cal. L. Rev. 1769, 1785, 1791 (1992).

¹⁶⁶ *Id.* at 1787.

¹⁶⁷ This would not mean that everyone has to play social worker. Working with adolescents is not easy. But at the very least everyone has to contribute something.

¹⁶⁸ Cf. Mitchell Duneier, *Slim's Table: Race, Respectability, and Masculinity* (University of California Press 1992).

¹⁶⁹ This is a somewhat analogous process to that suggested by women. See, e.g., Joan C. Williams, *Deconstructing Gender*, 87 Mich. L. Rev. 797 (1989).

build upon their positive attributes, as well as other role models---including Black women, White women, Jews, Moslems, gays and lesbians---¹⁷⁰ in order to transform protest, anguish, and rebellion for the benefit of Black communities and society in general.¹⁷¹

These strengths of Black males (and females) might be taught in what historian Vincent Harding calls "campgrounds of renewal."¹⁷² In special places---within or, if possible, away from ghettos---young Black men and women, with their families and other elders from their communities, should be brought together.¹⁷³

At these gatherings, which would be voluntary for most, but perhaps alternatives to jail for lawbreakers, focus might be provided by using films. These might include: *Eyes on the Prize*, with its focus on the causes and self-destructive aspects of the riots of the 1960's and Dr. King's developing strategy to effect an economic redistribution of wealth, and *X: The Life of Malcolm X*, with its focus on the evolution of one Black man's political consciousness and sense of social responsibility. The participants would view the films and from there share their perspectives on history and contemporary events.

By examining and interacting with earlier experiences through role playing and personal storytelling, these groups could begin the process of developing a new set of personal life options and visions for themselves and their communities. These conversations and interactions across generational and class lines would provide fora for respectful inclusion of different experiences and voices. From this process, new beginnings, self-

¹⁷⁰ Dr. King's vision was heavily modelled on that of Ghandi. But selection should not be limited to men or just Blacks. Women like Marion Wright Edelman, Congresswomen like Lydia Velasquez and Maxine Waters, single Black mothers like Senator Carol Mosely Braun, and men like New York City Human Rights Commissioner Dennis DeLeon are terrific role models for all. This list of the variety of people to be included is limited only by space and imagination. Similar, more localized models should predominate.

¹⁷¹ For a discussion of these traditions, see, e.g., Gayraud S. Wilmore, *Black Religion and Black Radicalism* (2d ed. 1984).

¹⁷² Vincent Harding, *Hope and History: Why We Must Share the Story of the Movement*, passim 190--200 (1990). New funding sources could be sought or facilities like churches or centers used. An idea similar to Harding's has been suggested for retreats between randomly selected citizens and presidential candidates. James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (1991).

¹⁷³ This idea could be expanded over time to include other groups. Jews and Blacks could be brought together to share their experiences of oppression and work toward understanding each other's issues and mutual empowerment. Even tough situations like New York City's Crown Heights might benefit. See Andrew W. Cooper, *The Two Nations of Crown Heights*, N.Y. Times, Jan. 6, 1993, at A21.

definitions, and redemption could arise.¹⁷⁴ Rap could be one constitutive voice. From dark musical voices America can learn.¹⁷⁵

Young Black men (and women) would be taught to invest in relationships, community, and culture as the primary sources of a "rich" life as opposed to gold chains and automobiles. Renewal could help to change the values of the young (and old). This approach would assure "recognition time" for young Black males and, as a model, be available for other groups which need recognition time, including Black gays and lesbians (Tongues Untied), sisters (Just Another Girl on the IRT), Blacks and Jews, and so on. In these supportive settings, people could work together to develop new concepts of Black manhood (or womanhood) and, more generally, learn how to participate in communities of men and women, black, white, brown, red, yellow, straight, gay and lesbian, able-bodied and physically challenged, etc. In short, people would learn to be members of less hierarchical communities.

IV. CONCLUSION

For he is a God of Justice,
who knows no favorites.
Though not unduly partial toward the weak,
yet he hears the cry of the oppressed.¹⁷⁶

¹⁷⁴ In this I share with Professor Austin in the politics of identification. That is, adopting as an explicit goal the restoration of some (but not all) lawbreakers to good standing in the community by treating them like a resource, providing them with opportunities of redemption, and fighting for their entitlement to a fair share of the riches of this society. Austin, *supra* note 165, at 1775. I made this same argument with respect to a partially fictionalized young Dominican drug dealer in *Drug Decriminalization: A Chorus in Needs of Masterrap's Voice*, 18 *Hofstra L. Rev.* 457 (1990).

¹⁷⁵ As Langston Hughs, through his character Simple, put it in connection with another Black musical expression: "That is where Bop comes from . . . out of them dark days we have seen. That is why BeBop is so mad, wild, frantic, crazy. And not to be dug unless you have seen dark days, too. That's why folks who ain't suffered much cannot play Bop, and do not understand it. They think . . . it's just crazy crazy. They do not know it is also MAD crazy, SAD crazy, FRANTIC WILD CRAZY---beat right out of some bloody black head! That's what Bop is. These young kids who play it best, they know." Quoted in Harding, *supra* note 172, at 141.

¹⁷⁶ Sirach 35:12. I conclude with this quote for two reasons. First, its vision commends itself to our national belief in equality for all. Second, equality may be only a religious hope interposed against a reality of oppressive structures so ingrained that they are effectively inexorable fates. See, e.g., *Naughty by Nature*, *supra* note 1; cf. Bell, *supra* note 7 (suggesting that contemporary race oppressions are insoluble, in the

From some stolen cars can be heard the voices of protest. Some young Black males are angry. Through rap and protest joyriding, they are confronting society with their indignation and frustration with America's broken promises. Their views are in conflict with those of the media and with those of the public mainstream lawmakers. To connect these various and seemingly irreconcilable perspectives, we must shift the basis of social coalitions away from an overreliance on the criminal law as a tool of social control and towards new perspectives on social problems. This will require avoiding divisive hierarchies among historically oppressed groups as new coalitions are formed, while providing spaces for focus on particular kinds of oppression. Out of this, hopefully, should come more nurturing solutions to the problems and less reliance on legal control regimes. In addition, a process could be begun to evolve different, less materialistic, nonsexist, nonracist, or otherwise hierarchical values through "campgrounds of renewal."

Creating a society that does not revolve around dominating and controlling other people will require allowing uniqueness while understanding our commonality. The maximization of all human dignity must be emphasized. Whether the paths I have outlined will result in a better world is uncertain. The one thing about which I have little doubt is that the relentless pursuit of control of young Black males through increasing reliance on criminal laws and coercive sanctions will not yield positive answers to the question: Is Everything Gonna Be Alright?

sense that America does not have the will to understand and do anything substantial about them). In an exercise of faith reflected in the quote above, I pray they are wrong.

APPENDIX

Everything's Gonna to Be Alright by Naughty by Nature:

Introduction:	Noises of Babies crying in background
Dr. Blair (male):	Nurse Johnson, is the mother still in the recovery room?
Nurse Johnson (female):	Yes, Dr. Blair.
Dr. Blair:	O.K., I'll go to the waiting room and inform the father it's a boy.
Nurse Johnson:	I'm afraid there is no father, sir.
Dr. Blair:	Another ghetto bastard---uh---
Nurse Johnson:	I'm afraid so.
Dr. Blair:	Well, put him with the rest of the born losers.
Nurse Blair:	Alright, doctor, a shame isn't it?
Dr. Blair:	It's not a shame, [it's] a problem.

(Music begins, nursery noises fade)

Narrator:	This is a story about the Drifter, who waited for the worse but the best lived cross town
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Background Chorus:	Everything's Gonna Be Alright, Alright---Everything's Gonna Be Alright, Alright
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N:	Some get a little and some get none And some leave the job half done. I was one who never had and [was] always mad. Never knew my dad . . . motherfuck the fag. Well anyway I did pick-ups [delivery boy], lifts [shoplifting] and stickups--- cause I couldn't get a job--- Nappy hair was not allowed. My mother couldn't afford us all. She had to throw me out. I walked the strip I had to eat I throw on braids, I wasn't paid enough.
----	--

I kept them long; I couldn't afford a hair cut.

I got laughed at, I got chumped, I got dissed [spoken to or treated in a disrespectful manner],

I got upset, I got a tech [a Tech-9 pistol] and a banana clip [a bullet cartridge clip curved in shape like a banana].

If not for bad luck I wouldn't have none.

Why did I have to live the life of such a bad one?

Background Chorus: Everything's Gonna Be Alright---
Everything's Gonna Be Alright

N: A ghetto bastard,
born next to the projects,
living in the slums with bums and
gotta watch it.
Do I have to be like this?
Momma said I'm priceless.
Why am I worthless?
Starving is just what being nice gets.
Sometimes I wish I could afford a
pistol
I would have ended things awhile
ago.
I didn't have jack [shit] but a black
hat and nap sack, four scars, stolen
cars and a black jack.
Drop that.
And now you want me to rap and say
something positive.
Well positive ain't where I live---
I live right around the corner from
west hell, two blocks from south shit
and once in a jail cell.
The sun never shines on my side of
the street!
I walked alone.
My state of mind was home sweet
home.
I couldn't keep a girlie.
They wanted kids with cars of chrome.
Some life---if you didn't wear gold
your life was old
and you had no juice.

Hell no, I say there's gotta be a better
way. . . . How will I do? How will
I make it?
I won't that's how!

Background Chorus: Everything's Gonna Be Alright---
Everything's Gonna Be Alright . . .

N: I'm better off dead, that's what my
neighbor said.
Some say I'm nothing but a dog now.
I answer that with a fuck you and a
bow-wow.
I been through more shit in the last
week.
I was born dead wrong. That's been
my life.
Oh---you don't know the song.
So don't say jack [shit].
Please don't say you understand.
All that man to man talk can walk---
damn.
If you ain't lived it, you can't feel it.
And all that talk about [it] won't help
it out. Will it?
But I'm the one who has been
labelled as an outcast.
They teach in school that I'm the
misfit.
But I'll slap 'em backwards.
That's what you get for fucking with
a ghetto bastard.
If you ain't never been to the ghetto,
don't ever come to the ghetto, cause
you wouldn't understand the ghetto.
Stay the fuck out of the ghetto.
Why me?
Why me?

Background Chorus: Alright alright . . .