

THE POLITICAL DELINQUENT: CRIME, DEVIANCE, AND RESISTANCE IN BLACK AMERICA

Trevor Gardner II*

I. INTRODUCTION

This Article is largely an argument that the pervasive sense of cultural resistance in the African American community must be considered by criminal theorists as, at least, a partial explanation of “criminality” within the African American community. Woven into the fabric of African American culture is a vital oppositional element. This element, spoken of in many circles as “oppositional culture” constitutes a bold and calculated rejection of destructive mainstream values that have perpetuated social inequalities and power imbalances. African American resistance culture is captured by novelist John Edgar Wideman in his account of his brother’s criminal lifestyle and the ambivalent attitude of some urban blacks toward street crime: “We can’t help but feel some satisfaction seeing a brother, a black man, get over on these people, on their system without playing by their rules. No matter how much we have incorporated these rules as our own, we know that they were forced on us by people who did not have our best interest at heart. . . . We know they represent rebellion—what little is left in us.”¹ If this sentiment is any way indicative of a broader cultural perspective, criminal theorists in law and social science should be more curious and critical about the meaning and consequences of the minority oppositional mindset.

To a lesser extent, this Project is a response to the moral poverty arguments of criminal theories that explain high arrest and incarceration rates among blacks as a failure in the transferal of social norms from “mainstream” communities to minority communities. The Article presents *Cul-*

* B.A., University of Michigan, Ann Arbor, 1999; J.D., Harvard Law School, 2003. I would like to thank Trevor Gardner, Sr., for his insight and encouragement; Professor Bernard Harcourt for giving me an academic space in which to think freely; Professor Guinier for inspiring ideas, effort, and excellence; Professor David Kennedy; Mandana Dashtaki; Jill Zimmerman; and the editing staff at the Harvard BlackLetter Law Journal. I would also like to thank the scholars cited in this Article, many of whom dared to step boldly across the boundaries of traditional academic discourse. Your courage to connect academia with everyday human realities fortifies my belief in the power of ideas.

1. Eleanor Brown, *Black Like Me? “Gangsta” Culture, Clarence Thomas, and Afrocentric Academies*, 75 N.Y.U. L. REV. 308, 334–35 (2000) (quoting JOHN EDGAR WIDEMAN, *BROTHERS AND KEEPERS* 57 (1984)).

tural Resistance Theory (RT) as an alternative explanation. Resistance Theory posits that elements of political resistance, inherent in African American culture after years of struggle against structural racism, may manifest in the realm of street-level crime, particularly when the black community finds itself decentralized in the face of pervasive social ills. Resistance Theory argues that a unique set of repercussions result when the individual is forced to exercise political resistance on his or her own. The critical inquiries of the Article examine how recognition of and reverence to a culture of political resistance may fit as one piece of a comprehensive theory of crime.

Popular conceptions of deviance often fall prey to very basic ideas of immorality, failing to realize that deviance—by strict definition—describes a separation between the labeled deviant and the dominant group. Typically, the dominant group is perceived as holding a passive role in this process of separation. Few acknowledge a dominant group's ability to create deviants merely through its power to define. In proving its thesis, this Article will attempt to frame crime committed by black youth as part of a greater cultural and political struggle between African Americans and mainstream culture, and consequently a subject of the "deviance" label. *For purposes of this discussion, neither crime nor deviance should be assumed to hold its popular negative connotation.* In the context of political struggle, viewpoints as to the legitimacy of crime depend heavily on perspective. Rather than argue for or against a particular perspective, I seek to theorize the perspective of the African American community and its criminally deviant contingent through RT.

The Article examines African American cultural deviance from a macro and intergenerational standpoint, and subsequently questions how social inequality and the cultural resistance impulse affect perspectives on law-breaking.

II. REINCARNATION: PERPETUATING CULTURE

A. *Resistance Theory*

The validity of RT is dependent on a belief in a latent political psychology present in criminal action committed by African Americans. The African American experience is predicated on a sentiment of resistance. From slave ship revolts to rap group N.W.A.'s "Fuck the Police," resistance sentiment has occupied most of the headlines on the black consciousness news network; so much so that the spirit of resistance has evolved into an important aspect of a cultural identity.

To retain culture, some degree of deviance must be maintained. A culture, whether formed organically or through force, is distinguished from the rest of society in specific ways. This abstract separation is fortified through socialization and deepens as deviance persists over time. Without deviance, black culture loses its significance as "other," risks total assimilation, and consequently, extinction. Tension arises when culture (as a direct manifestation of deviance) consists of more than traditional rituals and food preparation. When, as is the case of the African American experience, a significant part of culture is formulated by generations of active political resistance, a lasting veil of illegitimacy is cast over the subject of

that resistance, resulting in a tacit and continuing rejection of the establishment.

It may seem presumptuous to tie a community history of political resistance to youth criminal deviance. However, compelling evidence exists linking the prevalence of crime in poor urban communities to a rejection of a perceived establishment.

B. *Oppositional Culture*

In the *New York University Law Review*, Eleanor Brown writes that youth oppositional culture must be counteracted. Her primary weapon wielded in this cultural battle is the Afrocentric education. She constructs her proposal around the writings of Supreme Court Justice Clarence Thomas in *Missouri v. Jenkins*.² In *Jenkins*, Thomas criticizes the notion that integration is the most effective method of securing educational equity in America.³ Brown takes his viewpoint as an insistence that the black community look inward to fully utilize its resources. From her vantage point, black intellectuals on both ends of the political spectrum are growing weary of the integrationist ideal, which often fails to make blacks the subjects of history and human experience.⁴ From this theoretical basis, Brown argues that “gangsta norms” have overrun inner-city communities and “are substantially responsible for the crisis besieging black youth.”⁵ In Brown’s eyes, among the catastrophes of gangsta norm’s inner-city reign are the “depletion of the job base, the declining presence of middle class blacks, and the corresponding decline in the community groups that middle class blacks historically organized and that served as important mechanisms for the validation of ‘mainstream’ behaviors.”⁶

To halt the erosion of such qualities Brown proposes a reintroduction of Afrocentrism into black primary and secondary education. To Brown, the destructive nature of oppositional street culture lies in its condemnation of black achievement. “A primary feature of this gangsta framework is the willingness of its adherents to demonize and ostracize black students who prioritize academic goals and to denigrate educational institutions. Indeed, since academic achievement is associated with whiteness among black urban youth, it is rejected by gangsta culture.”⁷ From this standpoint, the absence of validation for black youth in contemporary American education results in the adoption of antisocial behaviors as symbols of blackness. “Afrocentric academies are a necessary mechanism to displace the oppositional norms that have overtaken certain inner-city communities. In order to displace the oppositional process of validation, an alternative series of authentically ‘black’ norms must be articulated.”⁸

Brown’s arguments come dangerously close to the cultural poverty explanation of American crime pushed by William Bennett and John Dilu-

2. See *id.* at 312 (discussing *Missouri v. Jenkins* 515 U.S. 70, 114–38 (1995) (Thomas, J., concurring)).

3. See *Jenkins*, 515 U.S. at 114–38.

4. See Brown, *supra* note 1, at 313.

5. *Id.*

6. *Id.*

7. *Id.* at 321–22.

8. *Id.* at 322.

lio, Jr. in *Body Count*.⁹ She blames oppositional street culture for much more than faulty ideology. Indeed, she holds it almost entirely responsible for the crisis facing black men in America, claiming that in its wake lies exceptional homicide rates among black males, the African American community's disproportionate representation in the criminal justice system, and high black teen-pregnancy rates.¹⁰

The primary feature of an oppositional culture is its emphasis on valorizing those values that the larger society denigrates, and on denigrating values that the larger society has traditionally prized.

... They not only invert the traditional value base, but they also view the inversion of this value base as their only available form of rebellion. Thus, these inverted norms themselves become associated with being black.¹¹

Brown presents a moral framework in which the mainstream or middle class lies at the center. The use of the terms "mainstream" and "middle class" seems to indicate the white community as, on some level, a moral model to which the black community can measure itself. Such a conception grossly simplifies the moral factors at play. What is the "mainstream" or white sentiment toward economic inequality, white-skin privilege, and racial inequality, generally? How do these popular sentiments regarding these justice issues inform notions of white morality? A recognition and subsequent critique of oppositional street culture should at the very least acknowledge that the culture is a bold and calculated rejection of destructive mainstream values that have perpetuated social inequalities and power imbalances. Rather than constructing an oppositional culture to counter an oppositional culture, Brown and like-minded culture critics should find the obvious common ground they hold with the resistance sentiments within minority youth communities.

In the section titled "Contemporary Attitudes to Law Abidance: Criminality as the Authentic Form of Rebellion," Brown moves the discussion directly into the topic of the chaotic resistance project. "A primary feature of an oppositional culture is the rejection of traditional attitudes to law abidance and the idolization of precisely those criminals who were traditionally condemned."¹² To illustrate, the author predictably turns to hip-hop music.

A paradigmatic example is the reaction to the release from jail and subsequent death of Tupac Shakur, a rap artist who had previously been convicted for attempted felony murder and rape. The death of rap artist Notorious B.I.G., who had previously been indicted for drug dealing and attempted murder, occasioned similar celebration. Indeed, in the vernacular of urban neighborhoods, Tupac and B.I.G. are paradigmatic "bad people."

9. See WILLIAM J. BENNETT, JOHN DILULIO, JR. & JOHN P. WALTERS, *BODY COUNT* 27–28 (1996).

10. Brown, *supra* note 1, at 324, 325.

11. *Id.* at 326.

12. *Id.* at 333–34.

The meaning of the word “bad” has become inverted in this context. In the conventional usage of the term, “bad” has a negative connotation.¹³

Dismissing the fame and celebration of Tupac and The Notorious B.I.G. as an underclass phenomenon segments the black community in a way that does not comport with reality. The reverence paid these cultural icons run across the black economic spectrum. I witnessed my black colleagues at Harvard Law School heatedly debate to determine the superior MC—Tupac or B.I.G.—and parse the artists’ lyrics to find new meaning. Perhaps Brown would be just as vigilant in condemning this glorification of “bad” characters at the middle- and upper-class-heavy black student community at Harvard, but she would at least be forced to concede that young African Americans can have the consciousness of oppositional culture and reach mainstream standards of success. Here, I do not intend to suggest that Harvard should serve as the quintessential example of black success. I am instead making the comment to posit first, that oppositional culture is not restricted to the black underclass, and second, that an oppositional consciousness does not preclude minority youth from mainstream definitions of success.

Brown and I might agree that the oppositional consciousness, whether on the streets of Harlem or in the halls of Harvard Law School, encourages an intense and consuming critique of mainstream institutions. It seems logical that the oppositional mindset will create a certain disconnect between minority youth and these institutions. Many minority youth walk a tightrope between bolstering the institutions that perpetuate racial inequalities and using the same institutions to engage in effective reformation projects.

In the article *A Delinquent Solution*, Albert Cohen promotes “Strain Theory” as a compelling explanation for crime, and illustrates how the Strain Theory phenomenon develops into a pervasive cultural attitude. Cohen explains that despite it being logical to consider family wealth and privilege when assessing individual success, American culture discourages recognition of privilege. “If others are richer, more nobly-born or more able than oneself, it is by the will of an inscrutable Providence and not to be imputed to one’s own moral defect. . . . We have suggested, however, that an important feature of American ‘democracy,’ perhaps of the Western European tradition in general, is the tendency to measure oneself against ‘all corners.’”¹⁴ Cohen argues that many impoverished minority children and similarly situated Americans are socialized with a value system that is incongruent with that which is needed to achieve “success” as defined by broader society. He argues that the rejection of the middle-class condition is thus a result of both an inability to utilize readily available resources and an unwillingness to accept the “discipline which upward striving entails.”¹⁵ I submit that a more complex rationale involving political resistance exists from what Cohen refers to as “cultural ambivalence,” and that rationale can be linked to criminal activity.

13. *Id.* at 334.

14. ALBERT K. COHEN, *DELINQUENT BOYS: THE CULTURE OF THE GANG* 122 (1955).

15. *Id.* at 125.

At this point in America's history, there is no glaring black issue that demands the hearts and minds of every African American. In this post-abolition, post-suffrage, post-Jim Crow, post-*Brown v. Board* society, there is no single black issue that resurrects the African American tradition of community resistance—this despite vastly disproportionate poverty and incarceration rates. For a culture in which resistance is necessary to confirm a traditional sense of identity, black cultural deviance has begun to manifest itself in new, decentralized, yet consistently subversive ways.

C. *The Superpredator*

Conceiving African American criminal deviance as being intertwined with resistance is an attempt to probe culture as the enigmatic third piece of the triangle formed along with poverty and crime. Conservative theoretical forays into crime and culture often produce more disparaging explanations, which snowball in popularity in the absence of alternative interpretation.

Former Reagan Administration drug czar and current Republican icon William Bennett writes with John Dilulio and John Walters to package a "moral poverty" argument in their book *Body Count: Moral Poverty . . . And How to Win America's War Against Crime and Drugs*. Their analysis focuses on gory, violent crimes committed by minority youth whom the authors dub "super predators." The book claims that these theorized groups of violent perpetrators are the end result of a large-scale failure of value transferal between mainstream America and parents and children in the inner-city. The authors portray a moral abyss where children grow up "almost completely unmoralized."¹⁶ At the core, the authors determine that the problem "is that most inner-city children grow up surrounded by teenagers and adults who are themselves deviant, delinquent, or criminal."¹⁷

I write this Article at the risk of giving credence to *Body Count*, a book with overtly racist and dehumanizing overtones. Bennett, Dilulio, and Walters clumsily poke at the phenomenon that this Article seeks to illuminate. The thesis of moral poverty is a bold judgment call on the moral character of the inner city. *Body Count's* sensational conclusions take a shallow dive into the psychological motivations for crime and fail to escape a very narrow conception of morality. Perhaps the authors were afraid of what they would find. Cohen's subculture theory in *Delinquent Boys* captures a more calculated and cognizant deviant subculture. "In terms of the norms of the delinquent subculture, defined by its negative polarity to the respectable status system, the delinquent's very nonconformity to middle-class standards sets him above the most exemplary college boy."¹⁸ In other words, the delinquent's commitment to rejecting establishment norms and values is systematic and disciplined. Parents and children transfer values, but values very different from what the authors of *Body Count* would approve or even detect. The primary value transferred across

16. BENNETT ET AL., *supra* note 14, at 27–28.

17. *Id.* at 28.

18. COHEN, *supra* note 14, at 131.

generations of African Americans, as the culture reinvents itself, is that of resistance.

The emergence of hip-hop culture as a hub for young, minority philosophical thought requires inquiry into the minority youth culture to at least pass through some of the important cultural overtones propelling the genre. One such influence is the infamous recording artist, Tupac Shakur. Shakur is a poignant example of the battle today's generation wages with the African American culture's history of resistance.

The life and works of Tupac Shakur epitomize the interplay among deviance, resistance, and politics, and illustrate the basis for cultural resistance theory. As a hip-hop artist, Shakur held the spotlight in a genre that sometimes parallels or substitutes religion for inner-city youth. In the same vein as rock-and-roll, hip-hop has served as a communicative tool for a deviant community. Its music describes the ills of the inner city, instilling pride in the impoverished while simultaneously incorporating subversive themes that often promote open disrespect for the law.

Rap music from the 1980s and 1990s addressed the police-community conflict and, more generally, the oppressive nature of the legal system. Tupac, as arguably the most popular artist in the history of the genre, and the son of a former Black Panther, found himself overwhelmed trying to balance what seemed to be two worlds of black resistance: that of the past and that of the present. His life and philosophical struggle demonstrated the volatility of a culture where deviance is an ingrained characteristic, a culture which ebbs and flows according to the cyclical nature of political movements and the vitality of collective political consciousness.

The Black Power movement of the 1960s took on an anti-establishment fervor that is largely absent from the contemporary adult, black middle and upper classes, but in however crude a form is still alive in the consciousness of black youth and the inner-city. Mary Patillo-McCoy's *Black Picket Fences* presents collaborating evidence of this claim as a number of the middle-class youth interviewed in her book express their disdain for perceived sentiments flowing from African American middle-class culture, and a desire to remain involved in the styles, philosophies, and illegal activities of their underclass peers.¹⁹ The compelling point is that black youth, and perhaps blacks generally, seem to collect around the sources of anti-establishment sentiments and activity within African American culture.

The philosophy of cultural resistance practiced by the late hip-hop artist Tupac Shakur illustrates the tension between the old and the new guard of the black community. As the offspring of a Black Panther, Shakur was conscious of past efforts in support of organized political resistance. However, the new wave of resistance sweeping through Shakur's generation seemed to emphasize resistance through lifestyle choices. Tupac's generation rejected society's proposed legitimate means not only because of daunting racial inequality, but also in small part because wholesale acceptance of the "legitimate means" method is perceived as compliance with the establishment and, in theory, a denial of culture.

19. See MARY PATILLO-McCOY, *BLACK PICKET FENCES* 11, 117–45 (1999).

In his biography on Tupac Shakur, Michael Dyson comments on the Black Panthers' view of Tupac's generation as well as its perceived inability to organize. According to Dyson,

Panther purists claim that Tupac's extravagant materialism and defiant hedonism are the death knell of political conscience, the ultimate sellout of revolutionary ideals. Critics of the movement contend that Tupac's thug fantasies fulfilled the submerged logic of Panther gangsterism, what with its sexual abuse of women, financial malfeasance, and brutal factionalism. In either case Tupac is the conflicted metaphor of black revolution's large aspirations and failed agendas. Early in his life he sought to confirm practical survival to revolutionary idealism.²⁰

Dyson also expresses frustration over Tupac's willingness to restrict himself to what Dyson believes to be an ignorant perception of black authenticity.

Tupac's powerful, prophetic—and too often, self-destructive—work is the final basis of how we can judge his artistic achievements. But his preoccupation with being a “real nigga” looms over nearly everything he did. The question of black authenticity haunts the culture; within hip-hop it is essentially vicious, with artists often adopting a stance as a thug or gangsta to prove their bona fides and their ability to represent the street.²¹

Dyson may have missed a motivation deeper than the trite notion of being an authentic black individual. Throughout her examination of black middle-class youth culture, Mary Patillo-McCoy frequently marvels at the extent to which African American upper- and middle-class kids cling to inner-city culture, modeling many aspects of their lives after trends, habits, and mentalities of impoverished black youth despite a tenuous connection to the subculture.²² Dyson fails to recognize two important cultural phenomena. First, without a galvanizing civil-rights or black empowerment initiative to rally around, the epicenter of black deviance or black resistance is found in the anti-establishment lifestyles found within the African American community. Secondly, that within youth culture, regardless of class, there may be a subconscious recognition and fear of a splintering black consciousness. As the black middle class expands at a pace disturbingly similar to black poverty rates, African Americans find themselves in an increasingly economically bi-polar community exacerbated by middle-class affirmative action programs and cutbacks in government poverty programs. At risk is the remarkable black unity that has been a hallmark of African American existence. Black authenticity, from the perspective of the current generation of black youth, is therefore an acknowledgement of tradition and the demonstration of an unwillingness to release the cultural grip on a single, unifying identity.

20. MICHAEL E. DYSON, *HOLLER IF YOU HEAR ME: SEARCHING FOR TUPAC SHAKUR* 48–49 (2001).

21. *Id.* at 15.

22. See PATILLO-McCOY, *supra* note 19, at 125.

Today's youth culture may also be shifting philosophy to a more capitalist-friendly revolution mold. Perhaps this is a tacit endorsement of economic prosperity as the most promising avenue toward black empowerment. Materialism is a theme throughout much of mainstream hip-hop as evidenced in numerous cash-littered music videos. Afeni Shakur noted that her son, after seeing his general welfare being sacrificed in the interest of Black Panther initiatives, eventually taught her how to balance economic prosperity and a spirit of resistance. Dyson writes that Tupac believed that, "one could be—in fact, should be—a rich revolutionary. If revolution can't pay the bills . . . then the revolution has already failed."²³ Tupac's mother spoke of adopting her son's philosophy: "I think I am learning how to live in a capitalist society, which I did not know how to do But I learned that from Tupac. . . . I just knew how to be mad with capitalism."²⁴

This fresh perspective means a faith in a lifestyle Dyson refers to as "thug culture." Tupac tattooed the philosophy "Thug Life" across his abdomen. Dyson compares this lifestyle with rebellious black action of the past.

Tupac appeared to forgo the traditional meanings of revolution in favor of the thorny ambivalence of thug culture. . . . In the case of the thug, class reversals are sought as much through individual assertion as by collective enterprise. Thug ambition is unapologetically predatory, circumventing the fellow feeling and group solidarity demanded of revolutionaries.

Tupac lived the tension between revolutionary ambition and thug passion.²⁵

African American culture critic Stanley Crouch condemns the new deviant attitude in black culture as "confused revolutionary gangsterism," telling Dyson that Black Panthers had flirted with a similar romanticization of violence.²⁶ Dyson uses the popularity of the book *The Wretched of the Earth*, written by social scientist Frantz Fanon, to make his point. Fanon argued that, "Anything the oppressor says is right . . . is wrong."²⁷ This mentality links to the previously mentioned dangers of a cultural deviance arising when the separation includes the exorcising of even constructive norms propagated by the establishment. Dyson discusses historian Robert D. G. Kelley's position that Tupac's philosophy of resistance was reflective of an era where black nationalism promotes "good capitalism" in co-existence with radical, revolutionary nationalism.²⁸

However, Tupac and the thug contingent may hold a much more contentious and apocalyptic bent to their politics. The word "thug" originates in India, where it was used to describe a strain of bandits called "brigands" who robbed merchants and stole revenue transactions along

23. DYSON, *supra* note 20, at 57.

24. *Id.* at 58.

25. *Id.* at 64.

26. *Id.* at 65.

27. *Id.* at 65.

28. *Id.* at 66.

the countryside.²⁹ Tupac's acronym for thug life? "The Hate You Gave Little Infants Fucks Everyone."³⁰

The introduction of individualism and narcissism into the movement's calculus indicates a new era of black struggle. Here, by forming a culture that centers around compelling habits, tastes, style, and individual action, the opposition message infects the masses through a silent cultural warfare. The strategic shift from open collective struggle to a *universal individualism* comports with capitalist values and fosters interplay between resistance and narcissism.

III. LONG-TERM RESISTANCE: CONTEXTUALIZING THE RELATIONSHIP BETWEEN LAW AND MORALITY

This is, exactly, *not* to argue that "morality" is some "autonomous region" of a human choice and will, arising independently of the historical process. Such a view of morality has never been materialist enough, and hence it has often reduced that formidable inertia—and sometimes formidable revolutionary force—into a wishful idealist fiction. It is to say, on the contrary, that every contradiction is a conflict of value as well as a conflict of interest; that inside every "need" there is an affect, or "want," on its way to becoming an "ought" (and *vice versa*); that every class struggle is at the same time a struggle over values.³¹

A. *The Alternative Moral Schema*

RT's exploration of minority criminal deviance seeks to provide criminal theory a more culturally astute understanding of deviant criminal behavior. Important to this analysis are the questions of how and why alternative moral schemas arise. What are the internal and external forces shaping such schemas? And how does the popular definition of crime and criminality lose its meaning and stigmatizing function in this alternative paradigm?

In his book *Weapons of the Weak*, James C. Scott presents his in-depth two-year anthropological study of a rural peasant community in Malaysia. Scott's account and analysis of the inter-generational struggle between peasant farmers and relatively wealthy landowners present an alternative to the RT perspective and the modern-day exercise of cultural resistance. Scott argues that open resistance is an option only available to middle- and upper-class citizens. However, if Malaysian peasant farmers are to resist oppressors and foster social change, they must engage in hidden forms of resistance consistent over generations. Attempts at more overt forms of resistance are immediately extinguished given the power imbalance between the oppressed and the oppressor.³²

29. *Id.* at 113.

30. *Id.* at 115.

31. EDWARD PALMER THOMPSON, *THE POVERTY OF THEORY & OTHER ESSAYS* 171 (1978).

32. JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* 29 (1985).

The fact is that, for all their importance when they do occur, peasant rebellions, let alone peasant “revolutions,” are few and far between. Not only are the circumstances that favor large-scale peasant uprisings comparatively rare, but when they do appear the revolts that develop are nearly always crushed unceremoniously³³

Consequently, repressed groups must employ a subtler, elongated struggle spanning generations. Scott’s theory posits a strain of cultural resistance, wherein resistance becomes a cultural attitude or disposition in order to slowly transform hegemonic institutions over long periods of time. Such institutions are too powerful to be immediately compromised by open and organized opposition.

Scott’s understanding of peasant resistance may offer profound interpretations of African American culture. In short, various elements of African American culture can be viewed as the manifestation of resistance gone underground. During the 1960s and 1970s, black resistance was most visible on city streets, storefronts, and the steps of the Capitol Building. Mainstream black thought holds that the hegemonic forces at play in the United States have adjusted to thwart any resurgence similar to the Civil Rights Movement, and that additional progress must be achieved incrementally. From this vantage point, subtle, inconspicuous resistance is now the most realistic chance at social change, and this new resistance is developed into cultural inculcation. *Everyday* attitudes, style, behaviors, and dispositions become the weapons of distinctly abstract cultural warfare.

There are many examples throughout history where, as Scott puts it, “petty acts of insubordination” collapsed hegemonic societies and prospective empires. For example, R. C. Cobb’s description of French laymen’s opposition to conscription in the early 1800s when a wave of anti-war sentiment passed through French society as draftees either returned home from service or never left home at all. Cobb also reported self-mutilation as another common act of resistance, as draftees would sever fingers on their right hand to limit their ability to participate in military initiatives.³⁴

Scott suggests that the fall of the Confederacy can, in part, be attributed to the South’s poor whites questioning the aristocratic institutions that assigned poor whites to military service.

Poor whites, especially those from the nonslaveholding hill country, were deeply resentful of fighting for an institution whose principal beneficiaries were often excluded from service by law As in France, one could claim here too that the Confederacy was undone by a social avalanche of petty acts of insubordination carried out by an unlikely coalition of slaves and yeomen—a coa-

33. *Id.* “To be sure, even a failed revolt may achieve something: a few concessions from the state or landlords, a brief respite from new and painful relations of production and, not least, a memory of resistance and courage that may lie in wait for the future. Such gains, however, are uncertain, while the carnage, the repression, and the demoralization of defeat are all too certain and real.” *Id.*

34. *Id.* at 30.

lition with no name, no organization, no leadership, and certainly no Leninist conspiracy behind it.³⁵

The recognition of a hegemonic force may initiate individual acts of resistance without any apparent evidence of collective action. The unspoken agenda, though decentralized, spreads a sentiment that takes hold of a culture, manifesting similar reactions among individuals. Scott writes under the theory that the truly disenfranchised do not possess the power to overtly challenge oppressive hegemonic regimes. His analysis is skeptical about even the possibility of peasant revolution, but contends that if such events take place, they are generally the result of hidden forms of resistance persisting over generations.

Scott details the “weapons of the weak” in the chapter entitled “Beyond the War of Words: Cautious Resistance and Calculated Conformity.” He describes the peasant struggle in Malaysia as a ubiquitous struggle against the development of state-fostered capitalism.³⁶ The pilfering of wealthy farmers’ crops is so common in Sedaka, the town in Malaysia serving as the subject of Scott’s study, that victimized farmers rarely expect to harvest more than half of their crop. Thus, the practice of theft develops to become part of the social structure and culture of the village.³⁷ Scott emphasizes that the pattern of theft is not in itself proof that members of Sedaka’s peasant community believe their acts to be part of an effort to resist. However, as theft becomes a cultural expectation, and the perpetrators and victims of theft are strictly divided along class lines, the circumstances suggest that theft in Sedaka defines property relations.³⁸

Though acts of pilfering are accepted as community norm, open conflict between the distinct classes of Sedaka is notably absent. “Where resistance is collective, it is carefully circumspect; where it is an individual or small group attack on property, it is anonymous and usually nocturnal. By its calculated prudence and secrecy it preserves, for the most part, the onstage theater of power that dominates public life in Sedaka.”³⁹

Scott describes the deviant actions of peasants as being idiosyncratic, rather than part of a broader ideological or political movement. They do not require organization or open protest.⁴⁰

Providing that we are careful about the use of the term, these activities might appropriately be called *primitive* resistance, or perhaps *ur* resistance. The use of *primitive* does not imply, as Hobsbawm does, that they are somehow backward and destined to give way to more sophisticated ideologies and tactics. It implies only that

35. *Id.* at 31 n.7. A number of confederate states enforced controversial laws excluding from service those wealthy southerners who were able to hire substitutes, and those who were responsible for supervising twenty or more slaves (known as the “Twenty-Nigger Law”). Scott writes that poor whites began to refer to the Confederate cause as, “a rich man’s war, but a poor man’s fight.” *Id.*

36. *Id.* at 241.

37. *Id.* at 266.

38. *Id.* at 267. In Sedaka, the wealthy consider the stealing of crops by peasants more of a nuisance than a serious threat to the community power dynamic. *Id.*

39. *Id.* at 273.

40. *Id.*

such forms of resistance are the nearly permanent, continuous, daily strategies of subordinate rural classes under difficult conditions.⁴¹

Scott's effort to contextualize theft as an outgrowth of the "bedrock of resistance" parallels this Article's discussion of minority cultural deviance, and the possible link to criminal activity. An important difference between the two scenarios is cultural distinction, or lack thereof. Though there is a distinction between the wealthy and peasant contingents in Sedaka, Scott conveys the two sides as belonging to the same village community. Although African Americans, on some level, belong to the same community as other American groups, the cultural distinctions appear to run much deeper due to obvious considerations such as America's racial history, generally, and the evolution of African American culture, specifically.

Perhaps the most difficult challenge of trying to link culture, resistance, and crime is proving how exactly individual criminal acts are interpreted as being grounded in latent political thinking. How can it be assumed that essentially self-serving acts fit neatly into a broader struggle against systematic oppression?

Scott convincingly answers this challenge by challenging the limitations and biases of popular definitions of resistance. "The insistence that acts of resistance must be *shown* to be intended, however, creates enormous difficulties for a whole realm of peasant activity which, in Sedaka and elsewhere, has often been considered resistance."⁴² Scott recognizes two main problems in the traditional resistance determination. The first is his inability to get into the mind of the actor to determine the intention behind the act. It is impossible to provide decisive evidence that the act of pilfering is inscribed with political motives. Other than circumstantial evidence, and the uncovering of class beliefs legitimizing illegal activity, evidence proving political motivation will likely be sparse.⁴³

The next problem is one of definition. The ostensibly selfish act of pilfering appears as the antithesis to a broader, community-conscious resistance movement. However, Scott poses that the narrowness of the definition is itself political—why has resistance traditionally been defined in a way that implies immediate loss or sacrifice in the interest of a long-range and/or collective goal? The definition's exclusion of acts bringing immediate individual gain, from Scott's perspective, overlooks a range of actions pertinent to everyday class relations, and thus minimizes the impact of peasant agency.⁴⁴ Theorizing fused motives of self-gain and establishment-loss as one type of resistance act opens the door for more sophisticated analysis of the deviant behavior of marginalized citizens, criminal or otherwise.

41. *Id.* Scott continues, "At times of crisis or momentous political change, they may be complemented by other forms of struggle that are more opportune. They are unlikely, however, to disappear altogether so long as the rural social structure remains exploitative and inequitable. They are the stubborn bedrock upon which other forms of resistance may grow, and they are likely to persist after such other forms have failed or produced, in turn, a new pattern of inequity." *Id.*

42. *Id.* at 290.

43. *Id.* at 291.

44. *Id.*

Scott later cites historian Gerald Mullin's analysis of slave "rebelliousness" in America.⁴⁵ Mullin's study of enslaved African Americans conveys slave boondoggling and pilferage "as representing a *limited*, perhaps *self-indulgent* type of rebelliousness."⁴⁶ To Mullin, these acts were token acts against slavery, to be contrasted with organized, systematic, and persistent initiatives such as cooperative nighttime robberies, which incrementally destroyed crops and stores.⁴⁷ Scott isolates the definition question to two schools of thought: token resistance, which is opportunistic, individualistic, and self-indulgent, and "*real* resistance," which is organized, principled, selfless, and effective.⁴⁸ Scott concludes that his objection is not the delineation of various forms of resistance, but to the theoretical position claiming that "token" forms of resistance are trivial and inconsequential.

This position, in my view, fundamentally misconstrues the very basis of the economic and political struggle conducted daily by subordinate classes—not only slaves, but peasants and workers as well—in repressive settings. It is based on an ironic combination of both Leninist and bourgeois assumptions of what constitutes political action.⁴⁹

The subtlety of RT and other unheralded avenues of resistance removes oppositional action from detection. The poor and disenfranchised find power by asserting their collective strength in a way that is immune to the systems' ability to immediately detect and crush organized efforts for change.

B. *Resistance and Human Necessity*

In Iran, an amalgam of crime, necessity, and frustration provided the catalyst for the illegal "squatters'" movement of the 1970s and 1980s. "Squatting" in Iran, generally practiced by the nation's poor, entailed peasants moving to seemingly unoccupied lands, either publicly or privately owned, claiming a plot on that land, and building shelter on the claimed area. The squatters' movement was an important component of the Iranian Revolution as the underclass's criminal acquisitions changed the complexion of law, legal compliance, and the legitimacy of the government authority.

Asef Bayet, of the American University in Cairo, documents the movement in *Street Politics: Poor People's Movements in Iran*.⁵⁰ "As the revolutionaries were marching in the streets of big cities, the very poor were busy extending their hold over their communities by bringing more urban land under (mal-)development."⁵¹ Bayet's observation comports with James Scott's assessment of the class dynamics inherent within revolutionary

45. *Id.*

46. *Id.*

47. *Id.* at 292.

48. *Id.*

49. *Id.*

50. ASEF BAYET, *STREET POLITICS: POOR PEOPLE'S MOVEMENTS IN IRAN* (1997).

51. *Id.* at 2.

periods where middle- and upper-class citizens can afford open political protest, while the underclass must maintain the struggle to satisfy basic needs. Bayet's account of the Iranian Revolution adds layers to Scott's theory. Bayet suggests that the squatters' challenge of government authority—a challenge essentially made out of necessity—fueled the movement of the middle class.

The act of squatting, committed by thousands of families, reframed Iran's political landscape by ostensibly putting basic human need ahead of formal law. However, the author insists that illegal Iranian peasant action was not undertaken with any type of political consciousness. To Bayet, necessity drove the squatter's movement, as well as a desire to live a more dignified life. There was no discernable intent to undermine the ruling political authority.⁵² Here, illegal acts develop into the fabric of class culture to satisfy human need. Squatters acted, not in the form of a political process, but for "redress" and immediate outcomes.⁵³ The poor seemed silent, but they were not passive. The social change sought by the underclass seemed to parallel the mainstream of the Iranian Revolution, but Bayet points out that their practical, incremental yet immediate actions seemed both meaningful and manageable, unlike the prospect of open revolution.⁵⁴

Bayet views the squatters' movement as largely distinct from the notion of collective political action. The author supports his position with the observation that poor people of Iran did not associate the Shah, the ruling monarch, as in any way responsible for their daily troubles. Bayet analogizes the poor people's relationship with the Shah to the eighteenth-century mobs of pre-industrial cities in southern Europe. "Like them, migrant poor seemed to regard the ruler, in their case the Shah, as the great patron, the provider of livelihood, and the source of justice: they both admired him and feared his power."⁵⁵ The brutal exploitation of the underclass—conducted by municipal agents, bureaucrats, and local officials—was often perceived by the poor as taking place outside of the Shah's purview.⁵⁶

Regardless of underclass perception of the ultimate ruling authority, Bayet's work captures a street calculation of moral authority important to the thesis of this Article. The underclass understood its actions as moral responses to a survival instinct.

In the Middle Eastern culture, the notion of necessity—the necessity of maintaining a dignified life—underlies poor peoples' sense of justice. The Persian phrase *chare-ii neest* (there is no other way) and its Arabic equivalent *na'mal eih?* (what else can we do?) ar-

52. *Id.* at 8.

53. *Id.* at 10.

54. Bayet writes that university students and "leftist" young people noted the squatters' movement and initiated highly organized occupations targeting luxury hotels, homes, and apartments. The survival instinct of the underclass essentially served as a foundation and partial catalyst for students and middle- and upper-class engaged in the movement for social change in Iran. *Id.* at 61, 62.

55. *Id.* at 39.

56. *Id.* at 40.

ticulate a *moral language of urban politics*, responses through which the poor often justify their acts of transgression.⁵⁷

Bayet describes the game plan of Iranian poor as quiet, direct action. The underclass essentially stole water, electricity, and public space from the dominion of the government. The community's income came largely from an unauthorized and underground economy.⁵⁸ One could parallel this circumstance to the drug economy in American inner cities. Bayet seems intent on distinguishing the survival instinct from the political instinct. I submit that in the context of a substantial power imbalance between groups reified by a calculated legal framework, the survival instinct cannot be assumed distinct from the political one.

The survival instinct of poor Iranian squatters should not immediately be placed on the same moral plane as the criminal impetus in the United States, or elsewhere. Crime is regularly brutal, selfish, and cruel. An underlying socio-political instinct cannot distill dangerous and destructive behavior. But here, the objective is not to slide criminal action or a criminal community along a linear scale of right and wrong, but instead to reveal a more complex and layered picture of morality as it relates to crime.

C. *Cultural History and Contemporary Deviance*

Rather than viewing minority youth deviance in a vacuum, criminal theorists could examine the development of minority deviance through a historical lens. Similar to the development of the defiant peasant culture in Malaysia, American racial minorities, particularly African Americans, have maintained a dynamic relationship with the mainstream American community for hundreds of years. An alternative set of cultural norms, moral schemas, and distinctive theories of American society's structural makeup have grown out of this dynamic interaction. In the book *Black Male Deviance*, Anthony J. Lemelle, Jr., wrestles with the history of the black community, specifically that of the black man vis-à-vis American social and economic institutions.⁵⁹ Lemelle posits a significant norm and value disconnect between the black and mainstream American communities firmly based in America's racial history.

African American history began under the American system of slavery where the basic necessities of life were often withheld from the enslaved. From the beginning of the African American experience, a salient power imbalance distanced the black experience from that of whites, creating communities distinct from one another. Lemelle quotes a slave description of the physical oppression.

I suffered much from hunger, but much more from cold. In hottest summer and coldest winter, I was kept almost naked—no shoes, no stockings, no jacket, no trousers, nothing on but a coarse tow linen shirt, reaching only to my knees. I had no bed. I must have perished with cold, but that, the coldest nights, I used to steal a bag which was used for carrying corn meal. I would crawl into

57. *Id.* at 12–13 (emphasis added).

58. *Id.* at 45.

59. ANTHONY J. LEMELLE, JR., *BLACK MALE DEVIANCE* (1995).

this bag, and there sleep on the cold, damp, clay floor, with my head in and feet out. My feet have been so cracked with the frost, that the pen with which I am writing might be laid in the gashes.⁶⁰

Lemelle suggests that the criminal history of the African American community is inextricable from a history of resistance.

Those narratives are criminal literature, revealing the cultural conditions necessitating the path of criminality. If the slave Frederick Douglass had not become a thief, he might have perished There was nothing natural in the organization of plantation slavery. It was an orgy of human degradation, indecency, and debauchery. Consequently, the master class lost all claims to moral authority, either publicly or privately. Corrupted in the very foundation were American religions, politics, the military, education, medicine, and family life. Systemic plantation slavery attempted to reduce the slaves to mere animals, which eliminated any moral claim the master class or their agents might ultimately make for their institutions. . . .

Forced to steal food and clothing to survive, forced to lie in order to cultivate reading and writing skills, forced to deceive in order to associate with the master class—all this represents the foundation of U.S. society. Out of those conditions developed American culture and black culture.⁶¹

The master-servant relationship no longer exists, but racial inequalities persist along with grossly disproportionate arrest and incarceration rates. Under these inequitable conditions, who now holds the moral authority? Who can credibly define crime and criminality in a moral, rather than technical sense?

If these questions remain provocative they must be incorporated into criminal theory, and their answers incorporated as a partial explanation for crime in America. In extracting the morality component from their explanation of crime, liberal thinkers attempt to distance themselves from the cherished moral judgment of the conservative community. However, ignoring moral challenges rather than confronting them directly not only concedes the argument, but also shades the possibility of a historically immoral establishment as it related to the African American community. Insufficient inquiry into both the historic and contemporary power of the establishment to define crime, as well as the black community's collective understanding of legitimate authority, narrows the theoretical explanation of crime to a glimpse of poverty and frustration in a vacuum. A new and more culturally astute brand of criminal theory promotes exploration into the political sociology of dominance as it relates to crime.

In critiquing the history of American law as it related to African Americans, Lemelle recalls the post-slavery Black Codes, which were the popular means by which Southern states regulated black activity. The Black Codes, among other things, attached contingency requirements to black

60. *Id.* at 26.

61. *Id.* at 26–27.

employment. Black laborers were required to agree to remain on plantations for specific periods of time in order to be employed. Working contracts also forbade blacks from assembling in ways that white landowners did not condone. The Black Codes outlawed missing work, failing to support family members, and using obscene language. African Americans in violation of the laws were arrested and put to work by local law officials who contracted out prison labor and kept the profits.⁶² Ostensibly, the Codes were intended to protect African Americans from their own “devices,” and ensure that they were educated and reformed.⁶³ The Black Codes obviously applied to freed African Americans and included amorphous activities such as “mischief,” “insulting gestures,” and the cruel treatment of animals. The harshest punishment was levied for intermarriage, which mandated confinement in the state penitentiary for life.⁶⁴

Although the concept of the Prison Industrial Complex sparked criticism of the criminal justice system in recent years, the idea that state prison systems should provide profit for public and private entities held broad popular support in the late 1800s. The system was formally called “convict leasing.”⁶⁵ Mississippi passed the “Leasing Act” circa 1877. Prison contracts were considered prized political contracts sought by private businessmen, speculators, and planters.⁶⁶ Almost simultaneously, the black prison population skyrocketed.⁶⁷

American history shows a plain link between racial inequality and exploitation, occasionally shaped through the manipulation of the criminal justice system, as well as definitions of criminality. It would be easy to dismiss this century-old story as irrelevant to the contemporary American legal system. However, important parallels exist. Racial inequality is still the accepted norm. Blacks are disproportionately represented in the criminal justice system, and moral bankruptcy is often fingered as the proper explanation for perceived black criminality. However, the profound skepticism of the black community, deeply rooted in American legal history, is rarely if ever viewed as an essential element of a rigorous analysis of crime and minority deviance.

In his preface, Lemelle immediately lays the groundwork for an objective critique of black male deviance. He begins by criticizing previous studies on black male consciousness as shortsighted and intimately tied to the middle-class belief in the idea of universal human values.⁶⁸ Lemelle discusses the process of defining crime, deviance, and criminality. “Black culture has become inextricably linked to resistance and protest, redefined over time by professionals/managers as criminality. Today’s so-called underclass black family culture, education, employment, crime, and life itself are a composite of resistance.”⁶⁹ He describes the social system of America as based on distortion, appropriation, fraud, and militarism. “How

62. *Id.* at 27.

63. DAVID M. OSHINSKY, *WORSE THAN SLAVERY* 20 (1996).

64. *Id.* at 21.

65. *Id.* at 41.

66. *Id.*

67. *Id.* at 40.

68. LEMELLE, *supra* note 59, at i.

69. *Id.* at 22.

can we ask children, particularly children of color, to make a commitment to such an invidious system? Yet we confuse the moral universe with just such a hypocritical request."⁷⁰

Deviating values and norms resulting from systemic power imbalance may manifest in areas somewhat tangential to criminality and the criminal justice system. Lemelle sees the revolt as encompassing any number of societal institutions including marriage and family, schooling, working, and dying. He cites that in 1990, women headed 52% of black households. At the same time, 53% of black men and 59% of black women were not married.⁷¹ These observations quickly lead to the author's Marxist analysis of the American system and black male response to the surrounding institutions. Lemelle posits that the ideology of the nuclear family is "central to economic organization. . . . It is likely that the rejection of the nuclear family is in fact a deeper rejection of capitalist economic organization."⁷² Here, Lemelle suggests oppositional culture's outright rejection of inferior work roles and the rejection of mainstream cultural orientations generally.⁷³ The establishment of mainstream moral ideology does not improve black life chances or the quality of black life. Moral ideology and cultural orientations structure a lifestyle that greases the capitalist system, and, put more plainly, gives Americans of higher socioeconomic status more money.⁷⁴ To Lemelle, black male self-imposed estrangement from this financial arrangement is most evident in the increasing homicide and suicide rates among black males.⁷⁵

Black Male Deviance parallels the thesis of this Article in the section entitled "Repercussions of Forced Criminality." Here, Lemelle addresses the inadequacy of the present body of academic literature on the deviance within the American underclass. The prevailing definitions of "underclass" are heavily steeped in economic measurements, while the sociological assessment is neglected.⁷⁶

A sociological assessment of the underclass must consider relative poverty and relative deprivation, which will assist in explaining . . . the perpetuation of the resistance aspect of black culture across class strata. A conscious fraction of each class feels excluded from society and views commonly accepted values with a jaundiced eye. As James Baldwin often stated, "To be conscious and black likely means to be in a constant state of rage."⁷⁷

In *The Fire Next Time*, Baldwin comments on the racial relevance of the American moral landscape.⁷⁸

In any case, white people, who had robbed black people of their liberty and who profited by this theft every hour that they lived,

70. *Id.* at 23.

71. *Id.*

72. *Id.* at 24.

73. *Id.*

74. *Id.* at 25.

75. *Id.*

76. *Id.* at 34.

77. *Id.*

78. JAMES BALDWIN, *THE FIRE NEXT TIME* 22 (Modern Library 1995) (1962).

had no moral ground on which to stand. They had the judges, the juries, the shotguns, the law—in a word, power. But it was a criminal power, to be feared but not respected, and to be outwitted in any way whatever. And those virtues preached but not practiced by the white world were merely another means of holding Negroes in subjection.⁷⁹

D. *Black Male Deviance and Liberal Theory*

Lemelle's work admonishes crime scholars to bridge the gap between micro action studied on the plane of the individual, and macro action implicating the economic relations within social formations and between classes.⁸⁰ The prevailing academic work on deviance tacitly assumes mainstream society as holding the moral high ground, relegating deviance to an individualistic psychological disconnect. A more rigorous and critical analysis of deviance (and I submit, crime, generally) would find it necessary to incorporate the *political* sociology of deviance.⁸¹ Substantively, such an analysis would include group political history—material particularly relevant when racial elements are at play. Social science literature on deviance is generally constructed around concepts like low self-esteem, maladjustment, and school phobia.⁸² Lemelle instead conceives of black male deviance and black deviance generally, as a rare cultural force in American society seeking “real democracy,” a state of affairs the author believes America has yet to witness.⁸³

The final two sentences of *Black Male Deviance* imagine the true circumstance manifesting contemporary notions of black male deviance. “My analysis is specifically an analysis of the African-American male place and voice in society. I have rejected the viewpoint of a black male subculture while attempting to elaborate the contracultural and passive revolutionary functions of the African American male role.”⁸⁴ The subculture distinction should be viewed as Lemelle's attempt to distinguish black deviance from notions of pathology or reactionary attempts at social distancing. Rather, black deviance is the natural outgrowth of socio-historical factors collecting to form a powerful cultural non-conformity along with the ideal of an emancipatory democracy.

In a superficial reading of the criminal context, one might ask how murder, rape, and kidnapping could possibly connect with Lemelle's abstract theories of deviance. A better understanding of the national distribution of criminal infractions reveals these violent crimes to be in the severe minority. The latest Justice Department statistics show that approximately seventy-five percent of felony prosecutions are for non-violent crimes (i.e., drug trafficking, drug offenses, theft, or burglary).⁸⁵ The point

79. *Id.* at 22.

80. LEMELLE, *supra* note 59, at 99.

81. *Id.*

82. *Id.* at 101.

83. *Id.* at 136.

84. *Id.* at 142.

85. Bureau of Justice Statistics, U.S. Dep't of Justice, Criminal Case Processing Statistics, available at <http://www.ojp.usdoj.gov/bjs/cases.htm> (last revised Jan. 14, 2004).

here is that most American crime can reasonably be tied to an oppositional position vis-à-vis American's system of institutions. Again, tracing these embedded cultural sentiments of resistance is a difficult task, yet the subsequent question that must be asked is whether hidden forms of resistance such as that of the Malaysian peasant culture, are consequently, exempt from a macro reading. And if so, how significant a portion of deviant behavior are we theoretically unable to grasp. The contemporary voice of minority youth culture, most often cited in the genre of hip-hop, calls for a more rigorous critique of morality and its relationship to rule breaking. Without conceding a shred of moral ground, the hip-hop community and contemporary allies function under an alternative moral schema which mainstream culture labels "deviance."

IV. RECONCEPTUALIZING CRIME AND CRIMINALITY

A. *Cultural Resistance as a Partial Explanation for Crime*

Theoretical explanations for crime that comment on culture are most often the domain of conservative critique and evaluation. Conceding the culture-crime discussion to conservative voices allows these voices to dictate the meaning given culture with respect to crime and criminality. One of the more popular theoretical explanations for crime attributes minority criminality to *moral poverty*, a term used to describe the disconnect between the mainstream moral schema and that of the underclass. Often, liberals avoid mention of culture in fear that their analysis will suggest a pathology or stereotype minority viewpoints. These concerns are valid and must be considered in any assessment of minority culture. However, assessing black culture using socio-historical experience as a backdrop provides useful insights into the concept of community deviance, both from the standpoint of deviance as a label and as a tool for resistance.

Cultural Resistance Theory is no more than a single part of a more robust explanation of crime. RT presents key insights regarding the incorporation of morality into ideas about crime and criminality in America. A recognition of the historical power imbalance facilitating law making and law breaking can link with structural explanations in a way that complicates the meaning of criminality, adding depth and insight to the concept. In the black community, the issue of crime in America is intimately linked to a social memory. A static examination of crime in America fails to appreciate history, and presumes traditional "American" values to legitimate the law.

Though its mainstream controversies often detract from its didactic power, hip-hop music continues to reflect and inform the alternative moral compass of minority youth culture. A legitimate voice constantly questioning the legitimacy of the law, hip-hop often captures the moral complexities surrounding legal compliance, which are too often mired in binary thinking. To be clear, the genre rarely, if ever, openly advocates rule breaking, as an end. Most often its messages about the law present another dimension to the moral landscape and couch the phenomenon of crime in recognition of deep and historical power inequalities. It would be a bit short-sighted to rely on hip-hop music as a chief epistemological tool. The genre, like any other in American music, remains a capitalist enterprise heavily reliant on the ebbs, flows, and dollars of the mainstream.

However, unlike other genres, the thrust of hip-hop historically and in the contemporary context derives from the dynamic of a voice rising from the disenfranchised. There is an authenticity mandate in hip-hop that polices intentions, themes, and cultural congruence like no other music genre. Essentially, hip-hop can serve as an entrée into the sentiment of the underclass, and provide an important voice informing theoretical explanations of crime.

B. Consequences

A better question than the one asking whether rule breaking is immoral or justified, is one asking whether the minority conceptualization of crime and criminal justice necessarily translates into effective resistance or added community strain. Over the course of this Article, I have attempted to assert that resistance for resistance sake is often petty, selfish, and ultimately destructive. However, for Malaysian peasant farmers and Iranian squatters, cultural resistance was not easily distinguishable from acts of survival, both of the individual and the community. If one allows for the possibility that a cultural sense of resistance that illegitimizes the law and its enforcers is in even a small part attributable to the haunting incarceration rates of African Americans and Latinos, it is critically important to evaluate the net value of such a position.

As the African American and Latino communities are gutted economically, as bodies are casually snatched from fragile family and community structures, the stakes are high. It is difficult, perhaps foolhardy, to attempt to isolate this sentiment I call "cultural resistance" from more traditional and established explanations for crime such as poverty, disparate law enforcement, disparate sentencing, and plain racism. However, I would posit that Lemelle's work in particular suggests a historical relationship between the minority and mainstream American communities that transcends the oppressive structural circumstances at any one point. Dismissing this possibility seems at least as reckless as considering cultural resistance as the sole explanation for minority crime.

C. Solutions

The theorized chasm between the crime perspectives of the mainstream and minority communities must be eliminated both in form and in substance. Such a daunting task seems untenable at the national level, but could be implemented on the municipal level where local officials could make a stronger push to include a wider range of sociopolitical viewpoints in positions of authority. Far from suggesting that cities promote drug lords to important municipal positions, the proposal merely advises authorities serious about eliminating the chasm to include "oppositional individuals" into the power structure of the system. However, without *substantive* change a change in form is merely assimilation. The perspective of the oppositional culture, which discredits much of the criminal system, must itself be legitimated. Meaningful discussions about crime, criminality, and incarceration must be conducted and intertwined with the themes of power imbalance and order.

A recent hip-hop summit in Detroit demonstrated the potential to bind the hip hop or oppositional consciousness with mainstream city politics.

On April 27, 2003, the Detroit News printed a picture of Detroit Mayor Kwame Kilpatrick standing between the hip-hop icons Nas and Eminem.⁸⁶ The weekend's main event was held in downtown Detroit at Cobo Center. Kilpatrick presented Eminem with an Outstanding Achievement Award for charitable work in Detroit that included buying winter coats for young Detroiters and support for youth empowerment in Detroit. Nas received a Heroes Award for his inspiring song for young people titled "I Can Be What I Want to Be."⁸⁷ It is important to note that neither Nas nor Eminem came to the venue with "clean reputations." Eminem's homophobic and sexist lyrics are well documented, and he has been erected as the target for the mainstream political attack on degenerate youth entertainment. Nas arrived with the baggage of the typical hip hop artist, whose body of work, though complex and diverse, speaks of guns, murder, and drugs, often with a distinctly amoral sentiment.

As politicians like Kilpatrick view events like the Detroit summit as less an expenditure of political capital, but more so the spawning of a movement to integrate minority youth into the political process, it becomes obvious that there is substantial political capital to be had and important marginalized political voices to be heard. Kilpatrick is the youngest mayor in the history of Detroit.⁸⁸ His audacious attempt to reach out to the traditionally marginalized portion of the minority youth community could be indicative of a fresh brand of minority politics. The summit occurred in conjunction with the NAACP's Freedom Weekend and music mogul Russell Simmons' Hip Hop Action Network, an organization dedicated to linking hip-hop with political action.

For such links to be fortified the conceived oppositional minority culture cannot dismiss political integration as inherently hypocritical or contrary to the revolutionary underpinnings of the culture's lifestyle. I posit this statement as merely a logical insight and not an attempt to dictate the borders of minority resistance culture. Here, the pertinent question asks what exactly each side will have to give to foster a tenable integration of this oppositional culture into the American political machinery.

Although Eleanor Brown's article *Black Like Me* takes an oppositional approach to oppositional culture, its answers reflect the white norm-deconstruction of that same deviant culture. Brown proposes a more Afrocentric education, meeting the needs of black youth during the most critical stage in their development.⁸⁹ "The utility of this curriculum in countering oppositional norms lies in its emphasis on protest and struggle as defining features of the black political experience. An Afrocentric curriculum's foundation in black political history provides a positive notion of blackness in the face of countervailing norms."⁹⁰ Brown seems oblivious to the fact that her revamped curriculum for African American youth is itself intended to create an oppositional culture, perhaps of a strain more effective and organized than the one she terms "Gangsta Culture." How-

86. Kimberly H. Taylor, *Hip-hop Drives Summit*, DET. NEWS, Apr. 27, 2003, at 1D.

87. *Id.*

88. City of Detroit, The Official Web Site of the City, About the Mayor, at <http://www.ci.detroit.mi.us/mayor/default.htm> (last visited Apr. 4, 2004).

89. Brown, *supra* note 1, at 352.

90. *Id.* at 343.

ever, the architecture of Brown's argument, which essentially hinges on the existence and perceived threat of oppositional youth culture, speaks to the efficacy of the resistance culture of minority youth. Without resistance culture serving as a foil, Brown's Afrocentrism agenda would not carry the same weight. Resistance culture is thus not an answer, but a desperate and emphatic question. *What now? Given that embedded societal norms work to our community's detriment, and we refuse to submit to such a norm structure, what now?*

TeamChild, a Seattle youth advocacy organization, is attempting to reshape juvenile justice by removing the adversarial elements of intervention with delinquent youth. The group recognizes the myriad of obstacles faced by juvenile offenders such as mental illness, learning disabilities, unsafe living environments, and addiction.⁹¹ The organization developed an Education Training Manual to educate parents, judges, probation officers, and public defenders on the problems facing today's youth.⁹² The TeamChild website provides a 201-page comprehensive manual on advocacy, placing emphasis on the tremendous socioeconomic challenges facing at-risk youth.⁹³ Like Brown's Afrocentrism project, TeamChild targets education as the primary mechanism through which youth can gain empowerment over adverse life circumstances.⁹⁴ This educational disposition provides youth with critical educational benefits, while allowing youth to use those same benefits to enhance and sophisticate their critical perspective on the system that has produced their social circumstance. Here, oppositional culture is not an entity to be defeated, but a sentiment to embrace and refine.

Robert Yazzie, a judge in the Navajo Nation courts, also endorses a justice framework absent the adversarial norms of the American courts.⁹⁵ Yazzie writes that the fundamental objective of the Navajo system of justice is problem solving.⁹⁶ The criminal justice process is designed to dissect a problem and find a solution that draws from numerous community resources. In contrast, the Anglo-European system, which Yazzie describes as a "vertical" system, relies on hierarchy and power.⁹⁷ The adjudicating parties are so focused on the win/loss element of the outcome that little is

91. TeamChild, Advocacy for Youth, TeamChild Overview, at <http://www.teamchild.org/overview.html> (last updated July 1, 2003). It is my view that these causes of crime in no way contradict the thesis of this Article, which holds that resistance culture is merely a partial explanation for minority youth criminal activity. In fact, it is the lack of basic needs that to some extent fuels resistance culture and confirms the belief in the illegitimacy of the system and its laws.

92. *Id.*

93. TEAMCHILD, MAKE A DIFFERENCE IN A CHILD'S LIFE: A MANUAL FOR HELPING CHILDREN AND YOUTH GET WHAT THEY NEED IN SCHOOL (2003), available at <http://www.teamchild.org/manual.html> (last updated July 11, 2003).

94. TeamChild, Advocacy for Youth, Steps to Start Your Own TeamChild, at <http://www.teamchild.org/start.html> (last updated July 1, 2003). The organization encourages others to start similar alternative juvenile justice programs in the area and offers to help in facilitating the process.

95. Robert Yazzie, "Life Comes From It": Navajo Justice Concepts, 24 N.M. L. REV. 175, 176 (1994).

96. *Id.*

97. *Id.* at 177.

done to solve the underlying social problems causing the dispute.⁹⁸ English and American criminal law are centered around state punishment. Yazzie describes the outcome scenario as “all or nothing.”⁹⁹ Money exacerbates this dichotomy, turning justice into a commodity to be bought and sold, and litigants into consumers of justice.¹⁰⁰

The problem solving paradigm can be analogized to the thesis of this Article, which urges criminal theorists to incorporate the phenomenon of minority youth resistance into a comprehensive explanation of crime. Both initiatives require the critical consideration of context. Yazzie sees the Anglo system as preoccupied with the “truth.”¹⁰¹ The problem solving objective embraces the situational. It can more aptly resolve the conflicts arising between oppositional and mainstream culture, simultaneously furthering a community and system-wide understanding of minority youth circumstances and challenges. This recognition holds promise in its ability to build a progressive culture of equality by giving a voice to the “criminal,” the deviant. “The circle is the symbol of Navajo justice because it is perfect, unbroken, and a simile of unity and oneness. It conveys the image of people gathering together for a discussion.”¹⁰²

The Navajo justice system does not give the same resonance to the term “deviant” since it is premised on the notion of community solidarity. Yazzie writes that the Navajo conception of solidarity is not easily translated into English, but in the criminal context can most accurately be described as helping the “defendant” reconcile himself or herself with family, community, and nature. Moreover, in the Navajo system the word “guilt” does not have moral weight since the process focuses on healing, integration, and the mending of relationships.¹⁰³

V. CONCLUSION

As a social force in the fabric of American society, minority cultural resistance has been purposefully ignored. Its pervasive yet unspoken tenets press the legitimacy of the system, reject the pressures prompting minorities to conform, and concede nothing. The recognition of Cultural Resistance Theory by legal scholars and social scientists mandates the concession that criminal law is not necessarily moral or legitimate, and is at the very least compromised as the consequence of power inequality. Without these realizations, any attempt at a general theory of crime will prove deficient.

98. *Id.* at 178.

99. *Id.*

100. *Id.* at 178, 179.

101. *Id.* at 179.

102. *Id.* at 180.

103. *Id.* at 181.