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'When evil deeds have their permissive pass': broken windows in William Shakespeare's *Measure for Measure*

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ABSTRACT

This essay considers some questions of crime, criminal justice and criminology in William Shakespeare's play *Measure for Measure* (1604). In this early-modern English play, Shakespeare dramatized issues of criminology and criminal justice that Americans George Kelling and James Wilson theorized nearly four centuries later in their famous essay 'Broken Windows' (1982). While this observation allows us to consider the possibility that Shakespeare was doing something like criminology centuries before there was an organized academic discipline called 'criminology', a close reading of *Measure for Measure* also allows us to identify some of the faulty thinking in broken windows policing. Specifically, Shakespeare's play shows the abuses of power that can occur when individual law enforcement agents receive both a mandate to crack down on social disorder and the authority to decide for themselves what counts as disorder and how to fight it. Thus, while social scientific research and public opinion have recently called broken windows policing into question, this approach to crime control was already discredited by William Shakespeare more than 400 years ago.

KEYWORDS Shakespeare; crime; justice; criminal justice; policing; criminology; broken windows; social disorder; order maintenance; tragedy

This essay has its origins in the observation that William Shakespeare's play *Measure for Measure* (1604) dramatizes theories of crime and justice that the American criminologists George Kelling and James Wilson recommended nearly four centuries later in their famous essay 'Broken Windows' (1982). Looking at these two texts next to each other, I wanted to know how Kelling and Wilson's theories might help us understand Shakespeare's play and, more importantly, how Shakespeare – a keen observer of individual and social behaviour – might help us understand the problems of crime and justice described by Kelling and Wilson. As I was asking these questions in 2014, the Michael Brown and Eric Garner cases erupted, each involving allegations of police racism and abuse of force, making 'broken windows' a topic of discussion on the nightly

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news. Could Shakespeare's centuries-old play help us understand this emergent social problem? Could a close reading of Shakespeare's play generate a testable social scientific proposition? Could a classic work of literature have policy implications for modern criminology and criminal justice? I ultimately answered yes to each of these questions, and the essay that follows puts *Measure for Measure* and 'Broken Windows' into conversation in an effort to describe the tragedy of a popular but imperfect public policy.

***Measure for Measure* and 'broken windows'**

In Shakespeare's *Measure for Measure*, Vincentio, the Duke of Vienna, has let the laws of his city go unenforced for some 14 years, and the city has slid into a swamp of crime. As he explains:

We have strict statutes and most biting laws,
The needful bits and curbs to headstrong jades,
Which for this fourteen years we have let slip,
Even like an o'ergrown lion in a cave
That goes not out to prey. Now, as fond fathers,
Having bound up the threatening twigs of birch
Only to stick it in their children's sight
For terror, not to use, in time the rod
More mocked than feared becomes; so our decrees,
Dead to infliction, to themselves are dead,
And liberty plucks justice by the nose,
The baby beats the nurse, and quite athwart
Goes all decorum. ...
Sith 'twas my fault to give the people scope,
'Twould be my tyranny to strike and gall them
For what I bid them do. For we bid this be done,
When evil deeds have their permissive pass
And not the punishment.¹

Not punishing crime promotes it, Shakespeare wrote, long before Cesare Beccaria's *On Crimes and Punishments* (1764) declared the modern theory of deterrence:

¹William Shakespeare, *Measure for Measure*, 1.3.19–39. All references to Shakespeare's plays are to *The Norton Shakespeare*, 3rd edn, ed S Greenblatt (WW Norton & Company, 2016) and will be noted parenthetically in the text. Written in or around the year 1604 Vincentio's speech recalls advice given from the new King of England, James I, to his son in *Basilikon Doron* (Robert Walde, 1599): 'For if otherwise ye kyth your clemencie at the first, the offences would soone come to suche heapes, and the contempt of you growe so great, that when ye would fall to punishe, the number of them to be punished would exceed the innocent; and ye would be troubled to resolute whome-at to begin: and against your nature would be compelled then to wracke manie, whome the chastisement of fewe in the beginning might haue preserued' (36–37). James attended a performance of *Measure for Measure* at court on 26 December 1604, and Shakespeare scholars have long thought the role of Vincentio was written with James in mind (see E Pope, 'The Renaissance Background of *Measure for Measure*' (1949) 2 *Shakespeare Studies* 66–82; DL Stevenson, 'The Role of James I in Shakespeare's *Measure for Measure*' (1959) 26 *English Literary History* 188–208; JW Bennett, *Measure for Measure as Royal Entertainment* (Columbia University Press, 1966)), although this reading has also been mocked by R Levin as 'The King James Version of *Measure for Measure*' (1974) 3 *Clio* 129–63.

The purpose of punishment is not that of tormenting or afflicting any sentient creature, nor of undoing a crime already committed. ... The purpose, therefore, is nothing other than to prevent the offender from doing fresh harm to his fellows and to deter others from doing likewise. ... The swifter and closer to the crime a punishment is, the juster and more useful it will be. ... One of the most effective breaks on crime is not the harshness of its punishment, but the unerringness of punishment. This calls for vigilance in the magistrates.²

Beccaria is widely hailed as the father of modern criminology, but these parallel passages suggest that Shakespeare was doing something like criminology more than 150 years before Beccaria.³ In these passages, both Shakespeare and Beccaria emphasized the role of vigilance in justice, but where Beccaria noted that negligence can inhibit justice, Shakespeare went one step further to suggest that it actively promotes crime, 'For', as Vincentio says, 'we bid this be done, / When evil deeds have their permissive pass / And not the punishment.'

With lines like these, Shakespeare's *Measure for Measure* was a central text in the recent collection *Shakespeare and the Law* (2013), but it should be noted that Vincentio's Vienna does not have a problem of law.⁴ It has a problem of law enforcement. We need not only 'law and literature' readings of *Measure for Measure* – of which there are many⁵ – but also 'criminology and literature' readings because Shakespeare's Vienna is having a crisis of crime and criminal justice, not one of law and legislation. Specifically, the effect of criminal justice in Vienna has been the opposite of its intent: lenient law enforcement has contributed to an upsurge in crime. As noted by Victoria Time, the only scholar to bring *Measure for Measure* into conversation with modern criminology, this play is an early-modern example of the idea that city, culture,

²C Beccaria, *On Crimes and Punishments* [1764], trans R Davies and V Cox, ed R Bellamy (Cambridge University Press, 1995) 31, 48, 63.

³See JR Wilson, 'Shakespeare and Criminology' (2014) 10 *Crime, Media, Culture: An International Journal* 97–114.

⁴See *Shakespeare and the Law: A Conversation among Disciplines and Professions*, ed B Cormack, M Nussbaum and R Strier (University of Chicago Press, 2013) esp essays by C Jordan, 'Interpreting Statute in *Measure for Measure*' (101–20), and D Bevington, 'Equity in *Measure for Measure*' (164–73).

⁵See, for example, MJ Wilson, 'A View of Justice in Shakespeare's *The Merchant of Venice* and *Measure for Measure*' (1993) 70 *Notre Dame Law Review* 695–726; J Levin, 'The Measure of Law and Equity: Tolerance in Shakespeare's Vienna' in BL Rockwood (ed), *Law and Literature Perspectives* (Peter Lang, 1996) 193–207; L Halper, 'Measure for Measure: Law, Prerogative, Subversion' (2001) 13 *Cardozo Studies in Law and Literature* 221–64; P Penther, 'Measured Judgments: Histories, Pedagogies, and the Possibility of Equity' (2002) 14 *Law & Literature* 489–543; K Cunningham, 'Opening Doubts upon the Law: *Measure for Measure*' in R Dutton and JE Howard (eds) *A Companion to Shakespeare's Works*, vol 4 (Blackwell, 2003) 316–32; S Magedanz, 'Public Justice and Private Mercy in *Measure for Measure*' (2004) 44 *SEL: Studies in English Literature 1500–1900* 317–32; E Hanson, 'Measure for Measure and the Law of Nature' in K Cunningham and C Jordan (eds), *The Law in Shakespeare* (Palgrave Macmillan, 2007) 249–65; A Majeske, 'Equity's Absence: The Extremity of Claudio's Prosecution and Barnardine's Pardon in Shakespeare's *Measure for Measure*' (2009) 21 *Law & Literature* 169–84; JV Orth, "'The golden metwand': The Measure of Justice in Shakespeare's *Measure for Measure*' (2010) 31 *Adelaide Law Review* 127–41; and P Raffield, 'The Congregation of the Mighty: The Juridical State and the Measure of Justice' in *Shakespeare's Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Hart Publishing, 2010) 182–217.

community and situation – as much as mind and nature – can prompt and explain crime.⁶ It is clearly individuals who commit crimes, but individuals commit crimes in the context of social structures and situations that can encourage and facilitate criminal behaviour.

Since the mid-twentieth century, criminologists have explored this thesis in the name of an ‘environmental criminology’ or an ‘ecological criminology’ or the ‘criminology of place’.⁷ Perhaps the most famous statement from this school of criminology is Kelling and Wilson’s ‘broken windows’ theory, which was based on an experiment conducted by the social psychologist Philip Zimbardo. In 1969, Zimbardo observed that a car parked out on a street would remain undisturbed for a lengthy period but, if one window were broken and left unfixed, the unattended car would then invite vandals and robbers. In their groundbreaking article for *The Atlantic*, ‘Broken Windows: The Police and Neighborhood Safety’ (1982), Kelling and Wilson built Zimbardo’s observations on the psychology of vandalism into the idea that crime flourishes when disorderly behaviour goes unchecked:

Untended property becomes fair game for people out for fun or plunder and even for people who ordinarily would not dream of doing such things and who probably consider themselves law-abiding. ... ‘Untended’ behavior also leads to the breakdown of community controls.⁸

Kelling and Wilson proceeded to argue that visible social disorder leads frightened citizens to withdraw from a community, loosening the mechanisms of informal social control, emboldening criminals and causing an increase in the frequency and severity of crime. From this perspective, there were too many ‘broken windows’ that went unrepaired in Shakespeare’s Vienna, too much ‘untended’ behaviour, causing the community to spiral into chaos.

‘Broken windows’ is a theory of criminology – a theory of crime causation, what is sometimes called *criminogenesis*. It is a theory of criminology that seems perfectly accurate in its aetiology of crime, but Kelling and Wilson did not stop with criminology. They built the broken windows theory of criminology into a theory of policing, into an approach to crime control, an approach that also appears in *Measure for Measure*, but an approach with significant flaws and oversights that can be recognized and critiqued through a

⁶See V Time, ‘Ecological Theory: Pompey, Froth’ in *Shakespeare’s Criminals: Criminology, Fiction, and Drama* (Greenwood Press, 1999) 75–79.

⁷See, for example, RE Park, EW Burgess and RD McKenzie, *The City: Suggestions for Investigation of Human Behavior in the Urban Environment* (University of Chicago Press, 1925); C Shaw and HD McKay, *Juvenile Delinquency in Urban Areas* (University of Chicago Press, 1942); RV Clarke, ‘“Situational” Crime Prevention: Theory and Practice’ (1980) 20 *British Journal of Criminology* 136–47; *Environmental Criminology*, ed PJ Brantingham and PL Brantingham (Waveland Press, 1990); and D Weisburd, E Groff and S-M Yang, *The Criminology of Place: Street Segments and Our Understanding of the Crime Problem* (Oxford University Press, 2012).

⁸George L. Kelling and James Q. Wilson, ‘Broken Windows: Police and Neighborhood Safety,’ *The Atlantic Monthly* 127 (1982), 31–32.

close reading of Shakespeare's play. Specifically, Shakespeare's play shows the abuses of power that can occur when individual law enforcement agents receive both a mandate to crack down on social disorder and the authority to decide for themselves what counts as disorder and how to fight it. As such, a 'criminology and literature' reading of Shakespeare's *Measure for Measure* can both demonstrate and complicate our existing theories of criminology and criminal justice. On the one hand, we can see our theories in action in a memorable example; on the other, the play offers avenues to evaluate and improve those theories. For those who recognize the validity of broken windows as a criminological theory, yet remain uncomfortable with the liabilities of broken windows policing as an approach to crime control and prevention, I hope this essay provides room for reflection.

'Broken windows': from criminology to public policy

On the basis of their 'broken windows' theory of criminology, Kelling and Wilson argued that police departments should allocate resources for foot patrols and for officers to monitor and fix both the actual and the metaphorical 'broken windows' of a neighbourhood. By doing so, they argued, the police will do a markedly greater service for that community than that done by departments focused solely on investigating, arresting and punishing offenders who break the law. In their words, 'maintaining order' as opposed to 'fighting crime' ought to be the principal focus of law enforcement (33). But if the police are supposed to maintain order, how do they go about doing so? There are two answers to this question, the one that exists in Kelling and Wilson's theory, and the one that exists in reality when that theory is implemented as policy.

In their 'Broken Windows' essay, Kelling and Wilson argued that the best way to maintain order is to saturate a community with cops – get officers out of their patrol cars, put boots on the ground, and allow those officers to use their familiarity with a neighbourhood and their own best judgements to determine how to create partnerships in the community that reinforce the informal systems of crime control already in place. They reasoned that if broken windows cause nervous neighbours to shutter themselves inside, effectively opening up the streets for crime, then *Fixing Broken Windows* – which was the title of Kelling and Coles's 1996 book expounding this approach to crime control⁹ – will bring people and their informal mechanisms of social control back out. In this regard, 'broken windows policing' – as this theory of crime control has been dubbed – is highly performative: it is a

⁹See GL Kelling and CM Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in our Communities* (Simon and Schuster, 1996).

dramatic production of social order staged for the public in an effort to influence their attitudes about their communities and bring them out into their neighbourhoods. As an example, Kelling, Wilson and Coles pointed to the 'Safe and Clean Neighborhoods Program' in Newark, NJ, where officers were moved from their patrol cars to foot patrol. It did not reduce the crime rate, but it did make the residents *feel* safer because it was effectively a public performance of social order. Of course, the actors in this performance were improvising: broken windows policing grants individual officers a great deal of discretion in deciding what counts as disorder and how to fight it. Part of that fight involves 'enforcing the law', Kelling and Wilson noted, but another part involves 'taking informal or extralegal steps', some of which might bend if not break the law (30). How might a broken windows officer use his or her discretion to dispel social disorder extralegally? 'We kick ass', according to one particularly animated officer quoted by Kelling and Wilson (35), although the authors expressed some consternation about this enthusiastic aggression. In sum, the shift from 'broken windows criminology' to 'broken windows policing' involves three key components: (1) *vigilance* on the part of a police force that cracks down even on minor crimes in order to prevent major crimes; (2) *discretion* on the part of individual officers who must decide when and how to maintain order based on the circumstances of a situation; and (3) *theatricality* in the exercise of power in an effort to make it publicly visible and effectively deter criminal behaviour. As such, broken windows policing can be seen as a modern manifestation of the classical, Beccarian theory of deterrence in the context of urban American cities.

In the 1990s, broken windows policing took the United States by storm. It received support from empirical studies such as Wesley Skogan's *Disorder and Decline* (1990), and it began influencing policy in major American cities such as New York.¹⁰ In 1994, with violent crime on the rise, New York City's new mayor, Rudy Giuliani, appointed a new police commissioner, William Bratton, who loved the idea of broken windows policing. As Bratton recounted in his book, *The Turnaround: How America's Top Cop Reversed the Crime Epidemic* (1998), he had seen the effects of what Kelling and Wilson called 'broken windows policing' when he was coming up through through the ranks as a cop in Boston and as the chief of the New York City Transit Police.¹¹ When he became commissioner of the NYPD, Bratton consulted with Kelling and became convinced that, by monitoring and eliminating the small disruptions to social order – graffiti, prostitution, squeegee men, turnstile jumping, dope peddling – the police

¹⁰See W Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* (Free Press, 1990).

¹¹See W Bratton with P Knobler, *The Turnaround: How America's Top Cop Reversed the Crime Epidemic* (Random House, 1998).

could have an impact on violent crimes such as murder and rape. Under Giuliani and Bratton, the NYPD flooded the streets with thousands of newly hired foot patrol officers who were told to crack down on social disruptions, an approach critics dubbed 'zero tolerance'.¹² These officers were given great discretion through New York's controversial 'stop and frisk' policy, which permitted cops to stop young men in high-crime neighbourhoods and frisk them for guns and contraband; Giuliani and Bratton assured police officers that city officials would back them up as long as those officers exercised their discretion wisely. It could be argued that Giuliani and Bratton's 'zero tolerance' approach, which emphasized stopping and frisking for suspicious behaviour, and arrests for minor crimes, was actually a perversion of Kelling and Wilson's 'broken windows' theory, which called for maintaining order informally with minimal arrests. Kelling himself has repeatedly made this argument.¹³ But that has not stopped Kelling and other proponents of broken windows policing from repeatedly presenting Giuliani's New York as the best illustration of their ideas.¹⁴ Whether it was 'broken windows policing', 'order maintenance policing', 'problem-oriented policing', 'community policing', 'zero tolerance policing' or – in all likelihood – some combination of all of these approaches, it seemed to work. Crime rates fell in New York, and they fell dramatically.¹⁵ Broken windows policing was hailed as having saved the day, and it was praised in both academic studies and in the court of public opinion in the 1990s.

¹²See Bratton, *ibid*; J Maple with C Mitchell, *The Crime Fighter: Putting the Bad Guys Out of Business* (Doubleday, 1999); JA Greene, 'Zero Tolerance: A Case Study of Police Policies and Practices in New York City' (1999) 45 *Crime & Delinquency* 171–87; JR Wynn, 'Can Zero Tolerance Last? Voices from Inside the Precinct' in A Mardle and T Erzen (eds), *Zero Tolerance: Quality of Life and the New Police Brutality in New York City* (New York University Press, 2001) 107–26; and A Karmen, 'Zero Tolerance in New York City: Hard Questions for a Get-Tough Policy' in R Hopkins-Burke (ed), *Hard Cop, Soft Cop: Dilemmas and Debates in Contemporary Policing* (Willan Publishing, 2004) 23–39.

¹³See GL Kelling, 'The Evolution of Broken Windows' in M Weatheritt (ed), *Zero Tolerance: What Does It Mean and Is It Right for Policing in Britain?* (Police Foundation, 1998) 3–12; GL Kelling, 'Policing Under Fire', *Wall Street Journal*, 23 March 1999, <http://www.wsj.com/articles/SB922144376440431605>; GL Kelling, "'Broken Windows" and the Culture Wars: A Response to Selected Critiques' in R Matthews and J Pitts (eds) *Crime, Disorder and Community Safety: A New Agenda?* (Routledge, 2001) 12–25; and GL Kelling and W Souza, *Do Police Matter? An Analysis of the Impact of New York City's Police Reforms* (Center for Civic Education at the Manhattan Institute, 2001).

¹⁴See GL Kelling, 'The Assault on Effective Policing', *Wall Street Journal*, 26 August 1997, <http://www.wsj.com/articles/SB872554453945162000>; Kelling, 'Evolution of Broken Windows' (n 13); Bratton (n 11); GL Kelling and W Bratton, 'Declining Crime Rates: Insiders' Views of the New York City Story' (1998) 88 *Journal of Criminal Law and Criminology* 1217–32; Kelling and Coles (n 9); Kelling, "'Broken Windows" and the Culture Wars' (n 13); Kelling and Souza (n 13); GL Kelling and W Bratton, 'There Are No Cracks in the Broken Windows', *National Review*, 28 February 2006, <http://www.nationalreview.com/article/216913/there-are-no-cracks-broken-windows-william-bratton-george-kelling>; GL Kelling and W Bratton, 'Why We Need Broken Windows Policing' (2015) 25 *City Journal*, Winter, http://www.city-journal.org/2015/25_1_broken-windows-policing.html.

¹⁵See F Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and its Control* (Oxford University Press, 2011).

Broken windows policing in Vienna

Nearly 400 years earlier, Shakespeare dramatized in *Measure for Measure* precisely what Kelling and Wilson recommended in 'Broken Windows'. In Shakespeare's play, Duke Vincentio needs to restore order in Vienna, but he does not want to lose the favour of his people, so he pretends to leave the city, placing in charge his deputy, a man named Angelo, whose name signals his angelic nature. Angelo is celebrated for his strict adherence to the law, and is seen as morally perfect, if a little cold (as one character says of Angelo, 'When he makes water, his urine is congealed ice', 3.1.355). Historically speaking, Angelo would have been understood as a Puritan, and perhaps costumed as one.¹⁶ And the terms of Angelo's enfranchisement – the Duke says he has 'Lent him our terror, dress'd him with our love' (1.1.19) – put the Machiavellian question on the table: 'whether it is better to be loved than feared'.¹⁷ In fact, as the political theorist Zdravko Planinc has argued, Duke Vincentio's plan closely resembles Machiavelli's Cesare Borgia, the overly lenient Duke of Valentino who appointed a deputy known for his strictness, Remirro de Orco, to crack down on crime and enact social reform in the recently conquered Romagna.¹⁸

From a modern criminal justice perspective, however, Vincentio effectively institutes broken windows crime control when he gives Angelo the considerable authority and discretion 'to enforce or qualify the laws / As to [his] soul seems good' (1.1.65–66). Imbued with authority and a clear sense of moral purpose, Angelo immediately cracks down on crime in Vienna by instituting a 'zero tolerance' policy. First, he boards up all the brothels. Then, to send a message to the rest of the city, to let them know that there's a new lawman in town, Angelo decides to make an example of a criminal named Claudio, who has impregnated his fiancée, which in Vienna makes him guilty of fornication, since they had sex outside of marriage.¹⁹ Vincentio probably would have let this crime slide by but, in Angelo's Vienna, Claudio is the first 'broken window', Fornication is a minor crime, to be sure, but when the public sees the law flouted – when they see that nobody cares – minor

¹⁶On Angelo as a Puritan, see DJ McGinn, 'The Precise Angelo' in JG McManaway, GE Dawson and EE Willoughby (eds), *Joseph Quincy Adames: Memorial Studies* (Folger Shakespeare Library, 1948) 129–39; and H Fisch, 'Shakespeare and the Puritan Dynamic' (1974) 27 *Shakespeare Studies* 81–92. At the Hampton Court Conference of summer 1604, extreme Protestant sects (later called 'Puritans') sought to make England a theocracy that would effectively combine English common law with Christian religious law. See A Barnaby and J Wry, 'Authorized Versions: *Measure for Measure* and the Politics of Biblical Translation' (1998) 51 *Renaissance Quarterly* 1225–54.

¹⁷Machiavelli, *The Prince*, trans R Price, ed Q Skinner (Cambridge University Press, 1988) 59.

¹⁸See Z Planinc, 'Shakespeare's Critique of Machiavellian Force, Fraud, and Spectacle in *Measure for Measure*' (2010) 23 *Humanitas* 144–68.

¹⁹Historically speaking, there was an issue of rival jurisdictions in the case of Claudio. He says that 'upon a true contract / [he] got possession of Julietta's bed' (1.2.126–27). In Shakespeare's England, however, a marriage without a church sanction was considered an offence. Thus, Claudio continues, 'She is fast my wife, / Save that we do the denunciation lack / Of outward order' (1.2.128–30). In other words, their contract satisfies the secular requirements of civic law, but not the religious requirements of ecclesiastical law. See Raffield (n 5) 204–17.

crimes can lead to major crimes. Hoping to make a very public spectacle, Angelo sentences Claudio to death.

Upon hearing his sentence, a distraught Claudio asks his sister, Isabella, a morally pristine novice nun preparing to enter the convent, to appeal to Angelo on his behalf. Isabella agrees, but when she goes to Angelo to plead for her brother's life, he rebuffs her on the basis of the criminological theory of deterrence:

Ang. The law hath not been dead, though it hath slept.
Those many had not dared to do that evil
If the first that did th'edict infringe
Had answered for his deed. Now 'tis awake,
Takes note of what is done, and like a prophet
Looks in a glass that shows what future evils
Either new, or by remissness new-conceived
And so in progress to be hatched and born,
Are now to have no successive degrees,
But ere they live to end.
Isa. Yet show some pity.

Ang. I show it most of all when I show justice,
For then I pity those I do not know
Which a dismissed offence would after gall,
And do him right that answering one foul wrong
Lives not to act another. (2.2.91–104)

Isabella begs Angelo to let Claudio go – *He's just a kid! What's the harm? It's a victimless crime. Have some compassion. Have you never made a mistake?* But Angelo refuses to show Claudio mercy, and his reasoning is straight out of the broken windows playbook: if you don't fix the first broken window, windows will keep getting broken.

'To sin in loving virtue': Angelo and the eroticization of virtue

Something strange and troubling happens as Isabella continues to beg Angelo to spare the life of her brother. In the course of that conversation, Angelo – a man who absolutely loves the law, loves justice, loves virtue – starts to become sexually aroused by Isabella. The perfect virtue she embodies awakens an awkward lust in Angelo, which he describes in a shocking soliloquy as he slides from heroic lawman to despicable criminal:

What's this, what's this? Is this her fault or mine?
The tempter or the tempted, who sins most, ha?
Not she, nor doth she tempt. But it is I
That, lying by the violet in the sun,
Do as the carrion does, not as the flower,
Corrupt with virtuous season. Can it be
That modesty may more betray our sense
Than woman's lightness? Having waste ground enough,

Shall we desire to raze the sanctuary
 And pitch our evils there? Oh, fie, fie, fie!
 What dost thou, or what art thou, Angelo?
 Dost thou desire her foully for those things
 That make her good? (2.2.165–77)

The soliloquy was Shakespeare's favourite way to do criminology. This dramatic device allows the author to slow down his plays to unpack the secret and sometimes obscure motives behind his characters' actions. That is, essentially, what criminologists also do: they study and make sense of the hidden logic and structure of crime.

Yet this soliloquy from Angelo is the very last thing we in the audience want to see happen in *Measure for Measure*, for it complicates our attitudes toward the character. Angelo the villain is also a victim – not of someone else, but of himself. As the Shakespearean scholar Ewan Fernie has argued, 'He is the victim of a desire which simultaneously discloses him at his best (venerating virtue) and his worst (venturing in that very veneration to defile it).'²⁰ A criminologist reasoning from a psychological perspective might see in Angelo a case of repression and a return of the repressed: the repression of libidinal instincts, specifically sexual gratification, in the name of moral austerity, and a return of those repressed desires in Angelo's lust for Isabella. If we study the specifics of Angelo's soliloquy, however, the case is not so simple, as Fernie noted: 'The most terrifying thing about Angelo's soliloquy is not ... the return of the repressed, nor even its terrible intensification, but rather the revelation of the demonic corruptibility of desire as such *even in its most virtuous forms*' (194). In Angelo's soliloquy, there is a strange and unsettling sexualization of the very idea of virtue. We all like virtue and think it is a good thing, but in Angelo's mind the ethical desire for virtue transforms into an erotic desire for the virtuous. Angelo idealizes Isabella; he then eroticizes that ideal; and this eroticization of the ideal effectively leads Angelo to attack and violate the thing he values most in this world – virtue. Thus, Angelo's soliloquy reveals that it is possible, as he says, 'to sin in loving virtue' (2.2.185).

Consumed with and confused by his desire for Isabella, Angelo offers to release her brother Claudio if she will have sex with him. Isabella can hardly believe what she is hearing: Angelo is putting Claudio to death for having sex outside of marriage, and now this celebrated lawman is asking her to sleep with him. She refuses and threatens to expose his offence but, drunk with the power he has been given, Angelo sets Isabella straight on the power equation between them:

[*Isa.*] I will proclaim thee, Angelo, look for't.
 Sign me a present pardon for my brother,
 Or with an outstretched throat I'll tell the world aloud

²⁰E Fernie, *The Demonic: Literature and Experience* (Routledge, 2013) 194.

What man thou art.

Ang. Who will believe thee, Isabel?

My unsoiled name, th'austereness of my life,

My vouch against you, and my place i'th' state,

Will so your accusation outweigh

That you shall stifle in your own report. ...

Say what you can: my false o'erweighs your true. (2.4.151–70)

In this unsettling exchange between Isabella and Angelo, it is not hard to hear the unspoken words exchanged every day in sideways glances between American citizens living in 'broken windows' cities and the police who have been empowered to maintain order in those cities. In these communities, the authority of the police can trump the rights of the citizens, even when that authority is compromised, as it is with Angelo. Shakespeare's villain is not an evil man – and neither are the tens of thousands of decent, virtuous and heroic police officers in broken windows cities – but Angelo finds himself, against his own will and expectations, loving virtue in the wrong way. What Shakespeare showed is that criminal justice can itself become criminal, not because the agents of criminal justice are villains, nor even simply because they are fallible human beings subject to impulses and desires, but more specifically because they can want order so passionately that their attempts to secure it transform, against their own expectations, into violence and corruption. To be sure, there are limits to how far we can push the analogy between Angelo, a fictional lawman in an early-modern autocracy who is given discretionary powers to enact social reform, and the police in a contemporary democracy who are given some extra latitude to demonstrate the state's commitment to social order, but what *Measure for Measure* shows is that the desire for virtue can manifest as villainy. This happens to be an idea that has also interested sociologists and psychologists in recent years.

'Broken windows' and 'the Lucifer effect': Zimbardo v Zimbardo

There is a certain irony in the fact that Wilson and Kelling based their argument for broken windows policing on the work of Phillip Zimbardo because Zimbardo has spent most of his career critiquing the logic behind such policing. The study with which Zimbardo is usually associated is not the 'broken windows' experiment with the car, but the Stanford Prison Experiment. This famous study sought to see what happens when you give some human beings enormous power and discretion over the fates of others: 'I wanted to know who wins,' Zimbardo wrote, 'Good people or an evil situation.'²¹ In order to answer this question, Zimbardo divided a collection of students into two groups: he made one of the groups guards, and he made the

²¹P Zimbardo, 'Revisiting the Stanford Prison Experiment: A Lesson in the Power of Situation' (2007) 53.30 *The Chronicle Review* B6.

other prisoners. To make things realistic, he had real officers from the Palo Alto Police Department go to the homes of the students who were assigned to be prisoners and actually arrest them. He constructed a makeshift jail on the campus of Stanford University, and he himself served as the prison superintendent. Then he told the guards to do what guards do: make sure the prisoners don't get out of line. Maintain order. Within days, something very strange happened. The students who had been randomly assigned to play the role of guards started behaving like actual guards; the students playing prisoners started behaving like actual prisoners. Those prisoners rebelled, fights broke out, and when they broke out, the guards quickly started doing what guards do to maintain order. They started bullying the prisoners, hammering them into submission, humiliating them, and demonstrating who was in charge and who was powerless through a series of abusive, often sexual games of domination – moments of what Zimbardo called 'creative evil'.

The Stanford Prison Experiment was scheduled to run for two weeks, but Zimbardo terminated it after only six days, not because he realized that what the guards were doing was terrible, but because, as his girlfriend said to him, 'It is terrible what YOU are doing to those boys!' In other words, Zimbardo realized that it was not just the guards tormenting the prisoners who had shown clear moral lapses in judgement, but that he himself had created a system that encouraged this abuse of power. He had told the guards to maintain order at any cost, and he had allowed them to proceed with hostile, even criminal tactics that appalled him. He himself had commissioned these crimes, because as Shakespeare's Duke Vincentio says, 'we bid this be done, / When evil deeds have their permissive pass / And not the punishment.'

Zimbardo went on to develop a theory to explain what had happened during the Stanford Prison Experiment. He dubbed this theory 'the Lucifer effect', named after the best and brightest angel in Christian theology, Lucifer, who fell from grace and became the embodiment of evil, Satan. The guards in the Stanford Prison Experiment were not evil people, Zimbardo argued; they were ordinary, even virtuous people placed in an unfamiliar, stressful situation and given enormous power and discretion. In his book *The Lucifer Effect* (2007), Zimbardo applied his theory to explain how good and decent US military guards at the Abu Ghraib prison in Iraq could have dehumanized and abused Iraqi prisoners, and how ordinary Germans could have been recruited by the Nazis during the Holocaust to carry out horrific acts of abuse against people who were formerly their friends and neighbours.²² In each case, ordinary individuals given great personal discretion committed horrible crimes because, Zimbardo argued, the heightened tension in scenes of criminal justice can lead the agents of justice and order

²²See P Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (Random House, 2007).

to chase power instead of virtue. For Zimbardo, power and discretion without oversight can lead to a dynamic in which an 'evil situation' exerts more of a pull on behaviour more than a 'good disposition' does.

From this perspective, what Kelling and Wilson argued about the public – untended behaviour leads to disorder, and disorder leads to crime – could also be argued about the police in broken windows cities. When individual officers are told to maintain order, given great discretion and encouraged to take – in Kelling and Wilson's remarkable euphemism – 'extralegal steps' in order to do so, they are put in a situation that prompts and facilitates the abuse of power.

In Shakespeare's *Measure for Measure*, when Vincentio grants Angelo the power and discretion to enforce or qualify the law as he sees fit, Vincentio says what Zimbardo said at the start of the Stanford Prison Experiment: 'Hence shall we see, / If power change purpose' (1.3.53–54). Angelo's virtue does not survive his empowerment. Power changes Angelo. Power turns Angelo from an angel into a devil. Indeed, the angelically named Angelo clearly recalls the character of Lucifer, the great and powerful angel who fell from grace. And the example of Angelo in *Measure for Measure* provides us with a chilling opportunity to observe what Zimbardo called 'the Lucifer effect'.

The rape of Angelo

If Shakespeare's treatment of Angelo illustrates some problems that arise in broken windows policing, so does his treatment of Duke Vincentio. For, after Angelo propositions Isabella and becomes a criminal, he himself becomes the target of a 'broken windows' intervention from the Duke. Instead of leaving Vienna, as he said he was going to do, Vincentio actually stays in the city, disguising himself as a friar and observing and interacting with his subjects as they respond to Angelo's reforms. Given this religious symbolism, Shakespeare scholars often read Vincentio as a divine-right magistrate who wields absolute power and is above the law, a theory of sovereignty advanced in Shakespeare's day by the new monarch, James I, in his treatises, *The True Lawe of Free Monarchies* (1598) and *Basilican Doron* (1599).²³ Modern police do not have power 'like power divine' (5.1.371), as Vincentio is said to have, but the central question Shakespeare's play asked its audiences – *What is the relationship between the prerogative of authority and the enforcement of law?* – remains with us in modern culture even as the police have replaced the king as the central symbol of law enforcement.

²³For the 'King James Version' of *Measure for Measure*, see esp Stevenson (n 1); Bennett (n 1); Halper (n 5); DJ Gless, *Measure for Measure: The Law and the Convent* (Princeton University Press, 1979); S Cohen, 'From Mistress to Master: Political Transition and Formal Conflict in *Measure for Measure*' (1999) 41 *Criticism* 431–64; and D Shuger, *Political Theologies in Shakespeare's England: The Sacred and the State in Measure for Measure* (Palgrave Macmillan, 2001).

When Vincentio hears about Angelo's solicitation of Isabella, he intervenes with an elaborate 'bed trick'.²⁴ Apparently, Angelo had once been engaged to a woman named Mariana, but had called off the marriage after her dowry was lost in a shipwreck at sea, falsely accusing her of infidelity to justify his actions. Using this information, Vincentio concocts a ruse in which Isabella agrees to have sex with Angelo on the condition that he leaves the lights off and they do not speak when he comes to her room. It is, of course, Mariana instead of Isabella in the room, meaning that Angelo is guilty of the exact same crime as Claudio: fornication. Doubling Angelo's crime on top of Claudio's, this bed trick is the central event in *Measure for Measure*, and it gives the play its title, which alludes to a biblical verse in the Gospel of Matthew: 'For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again.'²⁵ Angelo gave Claudio no mercy, so Angelo should expect none from Vincentio – *Measure for Measure* – yet there is another meaning in the play's title, one that is a little less apparent.

Due to his treatment of Isabella, Angelo is often wrongly thought of as a rapist; he is properly guilty only of sexual solicitation and bribery. In fact, Angelo is the one who gets raped, as the Shakespearean scholar Jeff Carr has discussed.²⁶ The notion that Angelo is raped is easily missed, and sometimes even resisted when recognized, because we want to maintain our quick and easy hatred of Angelo. We want to think of him as a villain, not a victim, and we want these categories to be absolute and mutually exclusive, but rape is sex without consent and – from a modern criminal justice perspective – the bed trick in *Measure for Measure* is rape because consent procured through deception is not consent at all. As the legal scholar Jed Rubenfeld has discussed, 'rape by deception' is an under-acknowledged and contentious issue in criminal law, both in the scholarship and in the courthouse.²⁷ The suggestion that Angelo is raped opens up a slew of questions about rape law in Shakespeare's time and our own. Is it possible for a woman to rape a man? Is it rape if there is no physical force? Is it rape if two people are already in a

²⁴See AD Nuttall, 'Measure for Measure: The Bed-Trick' (1975) 28 *Shakespeare Survey* 51–56; J Briggs, 'Shakespeare's Bed-Tricks' (1994) 44 *Essays in Criticism* 293–314.

²⁵*The Holy Bible*, ie the King James's Version (Robert Barker, 1611) Matt. 7.2.

²⁶See J Carr, 'Harassment, Exploitation, and Rape: Sexual Offences in *Measure for Measure* and *All's Well That Ends Well*' (2012) 3.5 *MP: An Online Feminist Journal* 69–81.

²⁷See J Rubenfeld, 'The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy' (2013) 122 *Yale Law Journal* 1372–1443. Consider the 'bed trick' in one Massachusetts case, *Suliveres v Commonwealth* (449 Mass 112 [2007]), where a man impersonating his brother slipped into the brother's bed to have sex with the brother's girlfriend, who thought it was her actual boyfriend. The sex here was consensual, but it was only consensual because the woman believed the man to be her boyfriend. Had she known it was not her boyfriend but her boyfriend's brother, the woman would never have consented. The court concluded, however, that 'it is not rape when consent to sexual intercourse is obtained through fraud or deceit' because the law defined 'rape' as sexual intercourse compelled 'by force and against [the] will' of the victim. In this case, a poorly written rape law forced the court to dismiss a modern 'bed trick' because the intercourse was not compelled 'by force'.

relationship? Modern rape law has answered ‘yes’ to each of these questions, though they would not have been laws on the books in Shakespeare’s England or in his imagined Vienna. Looking forward, the rape of Angelo in *Measure for Measure* could be a productive place for law and criminology students and scholars alike to think through some of the unknown, intricate and debatable aspects of rape law as it evolves in coming years.²⁸

But the rape of Angelo is also an unsettling instance of perfect retributive justice in which the would-be rapist is himself raped: *Measure for Measure*. And Angelo’s rape is a troubling example of what Zimbardo called ‘creative evil’ in the pursuit of social order. And ultimately the rape of Angelo gestures toward the central problem with broken windows policing: this approach to crime control empowers and relies upon the personal discretion of individuals whose judgements cannot be guaranteed. Vincentio might be the model of a broken windows police officer, using his power and discretion to maintain order in Vienna even if his actions wouldn’t totally stand up to a legal challenge – ‘Craft against vice I must apply’, says Vincentio (3.1.504) – but he can only prevent crime by committing his own crime. Vincentio tries to excuse his actions, saying to Mariana, ‘He is your husband on a precontract. / To bring you thus together ‘tis no sin’ (4.1.71–72), but citing the logic given by Claudio at the start of the play (1.2.133–34) only emphasizes that Vincentio, like Claudio, is a criminal – or, rather, that he would be were he not the imbued with the authority to enforce the law. As Zdravko Planinc argued, Vincentio is a Machiavellian schemer who uses force and fraud to achieve his ends, the ‘Duke of dark corners’ (4.3.150).²⁹ This connection between Vincentio and Machiavelli is especially telling in the context of our concern with modern criminal justice because it allows us to observe that broken windows policing is fundamentally Machiavellian: it is a public policy in which the ends justify the means. The end result of broken windows policing – social order – is used (when that order is achieved) to justify the means employed to obtain that order, namely the bending and breaking of the law by police officers, even when those means contain within them actions that society would normally define as unethical.

‘Broken windows’ from a Shakespearean perspective

Shakespeare’s *Measure for Measure* brims with questions of criminal justice and criminology. Who is at fault here? Who are the guilty parties? Is it

²⁸The tendency for victims to rationalise rape or blame themselves makes Isabella’s later refusal to press charges against Angelo – ‘His act did not o’ertake his bad intent / And must be buried but as an intent / That perished by the way’ (5.1.453–55) – all the more unsettling, not to mention ‘illogical because it wrongfully implies that evil actions, when carried out under mistaken circumstances, are harmless’ (as argued by M Riefer, ‘“Instruments of Some More Mightier Member”: The Constriction of Female Power in *Measure for Measure*’ (1984) 35 *Shakespeare Quarterly* 166).

²⁹See Planinc (n 18).

Claudio, who violated the Viennese law against fornication? Is it Angelo, who did as well, and who also sexually harassed and solicited Isabella? Is it Vincentio, Isabella and Mariana, who together conceived of and conducted the rape of Angelo? Clearly, there is plenty of guilt to go around, but who set this tragic affair in motion? Angelo sought to make an example of Claudio, enforcing a dead-letter statute against fornication that had been dormant for years. Angelo only needed to make this example, however, because Vincentio had been negligent in his enforcement of the law all that time. The characters in the play each bear their own criminal guilt, but the moral responsibility for the unhappy events that unfold in the play falls squarely on the shoulders of Vincentio, whose negligence is the origin of the entire affair. Moreover, Vincentio's negligence returns in a major way at the end of the play, where he pardons almost all of the offenders. Angelo's punishment, for example, is not death but marriage to Mariana. The problem of lax law enforcement is not resolved. If anything, it is exacerbated through a public display of across-the-board mercy, an exercise of whim and discretion that puts Vienna at the end of the play back in the same position it was in at the start. This ending renders quizzical the common reading of *Measure for Measure* as a quasi-allegorical contest between mercy (Isabella) and justice (Angelo) that is resolved in equity (Vincentio).³⁰ As Andrew Majeske has argued, 'The emphasis on equity insisted on by many critics acts to conceal the significance of the extreme actions Duke Vincentio takes to restore Vienna to the rule of law.'³¹ That extremity is what sticks out in a 'broken windows' reading of the play. Vienna remains disordered even after its 'broken windows' reforms, but the disorder in question has now come to engulf the criminal justice system.³²

On the one hand, therefore, Shakespeare's *Measure for Measure* shows that negligent law enforcement can effectively establish a culture of crime, as Kelling and Wilson argued. On the other hand, however, Shakespeare also suggested that 'order maintenance' is not the simple solution that Kelling and Wilson would like it to be. Shakespeare's treatment of broken windows policing was more considered, more sceptical, and more humane than Kelling and Wilson's. Shakespeare encouraged a critique of this approach to crime control by having his law enforcement officers, Angelo and Vincentio, commit their own crimes in the name of order maintenance. Note that, from a modern criminal justice perspective, both Angelo and Vincentio are sex offenders, and *Measure for Measure* is filled with sexual violence because the play is all about the corruptibility of desire. Angelo wants to institute a 'zero tolerance' policy on crime; he ends up propositioning a nun.

³⁰See esp Magedanz (n 5); Bevington (n 4).

³¹Majeske (n 5) 178.

³²For a full consideration of this problematic ending, see Wilson (n 3) 104–07.

Vincenzio wants to punish Angelo for his misdeed; he ends up orchestrating rape with a satisfied smile. In *Measure for Measure*, the desire for law, virtue and justice surfaces as crime, villainy and sexual abuse. As such, Shakespeare's *Measure for Measure* can shine some light on the abuses of power that can result from putting an ethically compromised officer who desperately wants to maintain order on the ground in a crime-ridden community and relying upon the individual discretion and judgement of that officer. In Shakespeare's play – and in our own cities as well – 'order maintenance' can be another name for the transmission of disorderly conduct from the public to the police.

Clearly, this is a theoretical proposition that demands empirical investigation, but it is a proposition that, for me, would not have emerged without the help of Shakespeare. His art can provide us with new concepts and theories of crime and justice (1) that need to be empirically tested, but (2) that we wouldn't recognize without the Shakespearean intervention. In the past, proponents of broken windows policing have complained, understandably, that academic critics of their theory have not spent any time on the ground seeing how it works in practice.³³ I imagine those proponents would scoff at a critique citing Shakespeare. As argued in the pages that follow, however, broken windows policing has problems of conceptualization in theory in addition to its problems of implementation in practice. Undeniably rich in concepts, and unflinchingly sceptical in tone, Shakespeare's drama can help us think through complexities and wrinkles in our theories of criminology.³⁴

Broken windows policing: from theory to reality

In the late 1990s, broken windows policing started coming under scrutiny from social scientists such as Robert Sampson, Stephen Raudenbush and

³³See, for example, Kelling and Bratton, 'There Are No Cracks in the Broken Windows' (n 14).

³⁴A number of other modern crimes could be unpacked using the ideas Shakespeare explored in *Measure for Measure*: first the notion that years of negligent law enforcement can create a vibrant culture of crime, and second the sense that someone might love innocence so much as to develop an erotic relationship with it. For example, a reading of Angelo's desire for Isabella might offer some insight on the case of Michel Fourniret, 'the virgin killer', whose murders were the perverse manifestation of his devotion to the Virgin Mary (see S Leistedt, P Linkowski and X Bongaerts, 'The Myth of Virginity: The Case of a Franco-Belgian Serial Killer' (2011) 56 *Journal of Forensic Sciences* 1064–71). Or, the Angelo–Isabella affair could also be brought to bear on the problem of sexual abuse by Catholic priests, which has been linked to their vows of celibacy (see AW Richard Sipe, *Celibacy in Crisis: A Secret World Revisited* (Psychology Press, 2003)). Or, Shakespeare's play might help us deepen and complicate our understanding of a modern tragedy such as that of the Penn State paedophile, Jerry Sandusky (see JL Klein and D Tolson, 'Wrangling Rumors of Corruption: Institutional Neutralization of the Jerry Sandusky Scandal at Penn State University' (2015) 25 *Journal of Human Behavior in the Social Environment* 477–86). The sex abuse scandals in the Catholic Church and at Penn State are particularly relevant in the context of *Measure for Measure* because, in all of these cases, individual criminal acts are coupled with an institutional culture of negligence, corruption and hypocrisy. Shakespeare's play can help us discuss the ways that, to quote Vincenzio, 'evil deeds [had] their permissive pass / And not the punishment' at Penn State and in the Catholic Church, intensifying criminal trends and elevating crime into tragedy by placing the reputation of an institution before the safety of its subjects.

Bernard Harcourt, who insisted that there was little empirical support for the theory.³⁵ Proponents of broken windows disputed these studies;³⁶ they pointed to the mounting evidence that disorder leads to crime³⁷ and that maintaining order reduces crime.³⁸ At the same time, broken windows proponents have repeatedly had to defend their ideas in the face of public outcry in the wake of scandals involving aggressive order maintenance policing and wrongful deaths – Anthony Baez and Nicholas Heyward Jr in 1994; Abner Louima in 1997; Amadou Diallo, Gidane Busch and Patrick Dorismond in 1999; Timothy Stansbury Jr in 2004; Sean Bell in 2006; Ramarley Graham in 2012; and Michael Brown, Akai Gurley, Eric Garner and Tamir Rice in 2014. Many of these deaths were condemned by broken windows theorists,³⁹ some were excused,⁴⁰ but none was treated as evidence that there might be a problem in broken windows policing. ‘There are no cracks in the broken windows’, said Bratton and Kelling in 2006.⁴¹ ‘Don’t blame my “broken windows” theory for poor policing’, said Kelling in 2015.⁴²

Thanks in part to this vigorous defence, broken windows policing has continued to thrive and evolve in major US cities. In New York City, even though a 1999 report from the state’s attorney general, Eliot Spitzer, found that ‘stopping and frisking’ was being conducted in a racially biased way, the frequency and intensity of this practice sky-rocketed under Giuliani’s successor, Mayor Michael Bloomberg, and his police commissioner, Raymond Kelly.⁴³ In the

³⁵See R Sampson and S Raudenbush, ‘Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods’ (1999) 105 *American Journal of Sociology* 603–651; and B Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Harvard University Press, 2001).

³⁶See Kelling, ‘“Broken Windows” and the Culture Wars’ (n 13); GL Kelling, ‘“Broken Windows” Works’, *Forbes*, 16 July 2009, <http://www.forbes.com/2009/07/16/crime-disorder-punishment-opinions-contributors-george-kelling.html>; GL Kelling and J Wilson, ‘A Quarter Century of Broken Windows’ (2006) 2 *The American Interest* 29–38; and Kelling and Bratton, ‘There Are No Cracks in the Broken Windows’ (n 14).

³⁷See, for example, K Keizer, S Lindenberg and L Steg, ‘The Spreading of Disorder’ (2008) 322 *Science* 1681–85; and W Skogan, ‘Disorder and Decline: The State of Research’ (2015) 52 *Journal of Research in Crime and Delinquency* 464–85.

³⁸See AA Braga and BJ Bond, ‘Policing Crime and Disorder Hotspots: A Randomized Controlled Trial’ (2008) 46 *Criminology* 577–607; and B Brandon, C Welsh and C Schnell, ‘Can Policing Disorder Reduce Crime? A Systematic Review and Meta-Analysis’ (2015) 52 *Journal of Research in Crime and Delinquency* 567–88.

³⁹See, for example, Kelling, ‘The Assault on Effective Policing’ (n 14).

⁴⁰See, for example, Kelling, ‘Policing Under Fire’ (n 13).

⁴¹See Kelling and Bratton, ‘There Are No Cracks in the Broken Windows’ (n 14).

⁴²See G Kelling, ‘Don’t Blame My “Broken Windows” Theory for Poor Policing’, *Politico Magazine*, 11 August 2015, <http://www.politico.com/magazine/story/2015/08/broken-windows-theory-poor-policing-ferguson-kelling-121268>.

⁴³See E Spitzer, *The New York City Police Department’s ‘Stop and Frisk’ Practices: A Report to the People of the State of New York* (Civil Rights Bureau, 1999). For example, according to research from the Center on Race, Crime, and Justice at the John Jay College of Criminal Justice (D Jones-Brown *et al*, *Stop, Question, and Frisk Policing Practices in New York City: A Primer* (The Center of Race, Crime, and Justice at the John Jay College of Criminal Justice, 2013), the number of stops documented by police officers in New York City more than tripled between 2003 and 2008 (3). During this period, there was one year in which police made nearly 250,000 stops in New York City for what they called ‘furtive movements’ (8). More than half of all people stopped were frisked (10). Broken windows theorists claimed that these stops would produce vast amounts of guns and other contraband but, in this study, only 1/15th of 1

face of criticism, the NYPD said it was ‘maintaining order’, but to maintain order, to prevent disorder, you must be able to define what ‘social disorder’ is. Is it graffiti? Is it littering? Is it loitering? To figure out what makes people perceive disorder, Robert Sampson and Stephen Raudenbush analysed some 500 blocks in Chicago, where broken windows policing had also been implemented.⁴⁴ They found that litter and graffiti and loitering did matter, but there was one factor that mattered more than anything else: race. To put it bluntly, the number of black people in a neighbourhood determined whether or not people saw signs of social disorder. If two neighbourhoods had the same amount of graffiti and litter and loitering, people saw more ‘broken windows’ in the neighbourhood that featured more African Americans. In fact, 80 percent of the 4.4 million stops in New York City between January 2004 and June 2012 were of African Americans and Hispanics. In 2013, for reasons such as this, US District Court Judge Shira Scheindlin ruled that the NYPD’s ‘stop and frisk’ policy was discriminatory and unconstitutional.⁴⁵

There is room to debate whether or not New York’s ‘stop and frisk’ practice was really broken windows policing – for his part, Kelling has embraced ‘stop and frisk’⁴⁶ and said that Bloomberg and Kelly ‘adopted, refined, and strengthened’ the policies of Giuliani and Bratton⁴⁷ – but the real question is: *Are there elements of ‘broken windows’ theory that prompt and excuse undesirable and unconstitutional police practices such as the NYPD’s abuse of ‘stop and frisk’?* One issue facing broken windows policing is that it is vulnerable to a form of unconscious bias which Kelling and Wilson’s 1982 essay identified yet seemed to sanction with a shrug of the shoulders:

How do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry? We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority.⁴⁸

Broken windows policing may not intend to profile anyone according to race – actually it explicitly cautions against discrimination – but because it

percent – ie about 1 in 1,000 stops – turned up a gun (10). There were nearly 500,000 stops in 2008 that produced absolutely nothing.

⁴⁴See R Sampson and S Raudenbush, ‘Seeing Disorder: Neighborhood Stigma and the Social Construction of Broken Windows’ (2004) 67 *Social Psychology Quarterly* 319–42.

⁴⁵See *Floyd, et al v City of New York*, 959 F Supp 2d 540 (2013).

⁴⁶See Kelling, ‘“Broken Windows” and the Culture Wars’ (n 13) and Kelling (n 42).

⁴⁷See G Kelling, ‘How New York Became Safe: The Full Story’, *City Journal*, 2009, http://www.city-journal.org/2009/nytom_ny-crime-decline.html.

⁴⁸Kelling and Wilson (n 8) 35.

relies upon human perceptions of disorder, and those perceptions are compromised by biases, broken windows policing has ended up profiling large numbers of young black and brown men. Kelling and Wilson's 'hope' was that officers imbued with power and prerogative would be 'inculcated' with virtue. Broken windows theorists have always been clear-eyed about the problems of discrimination and discretion in order maintenance policing, and they have responded with sensible ideas for training and oversight.⁴⁹ Those theorists have been less willing to acknowledge, however, that training and oversight have repeatedly failed to prevent errors of discretion in broken windows policing.⁵⁰ The proponents of broken windows have not grappled with the possibility that these policies might fall short not just in terms of implementation, but as an idea. Broken windows policing has written into it – at the level of theoretical formulation – a call for aggressive, law-bending, ass-kicking, hopefully-not-discriminating-but-who-knows order maintenance.

Despite its shortcomings and liabilities, broken windows policing remains popular to this day. In 2014, not long after William Bratton was reappointed police commissioner of New York City, insisting that he still subscribed to broken windows policing, cops on Staten Island apprehended an African-American man named Eric Garner for selling untaxed cigarettes.⁵¹ It was a

⁴⁹See especially Kelling and Coles (n 9) and Kelling, 'Policing Under Fire' (n 13).

⁵⁰For example, in an especially good 1994 editorial for New York's *City Journal* ('Taking Back the Streets', <http://www.city-journal.org/story.php?id=1428>), Bratton and Kelling acknowledged that 'enough situations of preemptive force develop, especially in minority communities, and especially when police deal with male youths, to justify concern', and yet the authors responded to this concern with a reiteration of what should happen – 'police training must teach officers how to use force skillfully and effectively' – rather than a shift in policy to account for the discrimination and abuse of force that (as they acknowledge) does happen in broken windows policing. In 1997, during the Abner Louima scandal, Kelling responded in 'The Assault on Effective Policing' to concerns about police brutality by reminding the public that 'depraved individuals can lead any human endeavor astray', which may be true but which does not seriously attend to the concern that broken windows policing is susceptible to discrimination and abuse of force. In 1999, during the Amadou Diallo scandal, Kelling's 'Policing Under Fire' described excessive force as an occupational hazard of order maintenance. In a 2001 article, "Broken Windows" and the Culture Wars' (n 13), Kelling again acknowledged that critics are 'rightly concerned about this' but responded by saying that 'oppressive policies and regimes... are not inevitable' (135) without accounting for the tendency for broken windows policing to involve unconscious bias and abuse of force. In 2014, during the Eric Garner and Akai Gurley scandals, Kelling and Bratton ('The Assault on "Broken Windows"', *Wall Street Journal*, 18 December 2014, <http://www.wsj.com/articles/william-bratton-and-george-kelling-the-assault-on-broken-windows-policing-1418946183>) responded to the objection that broken windows policing is discriminatory by citing statistics in which minority groups approved of broken windows policing, as if the question 'Does racial bias factor into the ways police officers exercise discretion?' were the same as the question 'Do minorities approve of broken windows policing?' In 2015, Kelling's 'Don't Blame My "Broken Windows" Theory for Poor Policing' (n 42) again raised the objections of racial discrimination and abuse of force, but balked: 'It is not my purpose here to go into issues currently being fought out.' Why not? As I suggest in the conclusion to this essay, the proponents of 'broken windows', having spent their careers identifying and reforming disorder, are uniquely positioned to bring order to the disordered policing practices done in the name of 'broken windows'. In all of the above instances, the proponents of broken windows policing have said that training and oversight is the answer to errors of discretion, but they have yet to explain why that training and oversight seem to fail time after time.

⁵¹See J Goldstein and N Schweber, 'Man's Death after Chokehold Raises Old Issue for the Police', *New York Times*, 18 July 2014, <http://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

minor infraction, but Garner was a broken window. In a video shot by an onlooker, Garner pleads with the police to leave him alone. 'Every time you see me you mess with me', he complains. An officer, Daniel Panteleo, tries to handcuff Garner, but Garner pulls free. Panteleo takes him to the ground and puts him in a chokehold, four other officers assisting. Garner repeatedly tells them he can't breathe. The video then shows Garner going limp. The city's medical examiner later ruled the death a homicide.

Five days after Garner's death, the CNN columnist Errol Lewis suggested that broken windows policing was to blame.⁵² Several months later, when a grand jury decided not to indict Panteleo, and thousands of outraged New Yorkers flooded the streets, one protester told the *New York Times*, 'This is a clear-cut case of death by broken windows policing.'⁵³ Note that protests in New York did not erupt when Eric Garner was killed. They erupted when the oversight and accountability mechanisms of the New York criminal justice system came to be viewed as a sham. From a Shakespearean perspective, a broken (windows) criminal justice system bears responsibility for these continued scandals involving discrimination, abuse of force and errors of discretion: '[F]or', as Shakespeare's Duke Vincentio says, 'we bid this be done, / When evil deeds have their permissive pass / And not the punishment.'

But the wrongful death of Eric Garner was only an 'evil deed' in the context of what Zimbardo called an 'evil situation'. No one thinks that the police officers involved in Garner's death are evil men, but it is clear that they were led by the circumstances of their situation to abuse the power entrusted to them by broken windows policing. Thus, during the protests, a distraught Officer Panteleo released a statement of condolence to the Garner family: 'I became a police officer to help people and to protect those who can't protect themselves. It is never my intention to harm anyone and I feel very bad about the death of Mr Garner.'⁵⁴ Violence in the name of order is certainly not the intent of broken windows policing, but it has been the effect.

After Garner's death, New York Governor Andrew Cuomo said in a statement, 'The circumstances surrounding [Garner's] death were nothing short of tragic.'⁵⁵ In news coverage of the protests, 'tragic' was the single most common description of the event. The word 'tragic' is largely emptied of its meaning in our colloquial use of the term, but I want to conclude with the

⁵²See E Lewis, 'What Led to Chokehold Death?', *CNN*, 8 December 2014, <http://www.cnn.com/2014/07/22/opinion/louis-garner-broken-windows/>.

⁵³See A Newman, 'Reaction to Eric Garner Grand Jury Decision', *New York Times*, 3 December 2014, <http://cityroom.blogs.nytimes.com/2014/12/03/the-death-of-eric-garner-the-grand-jury-decision/>. Interestingly, when NYPD unions felt that Mayor De Blasio was not doing enough to support the police in the wake of the Eric Garner controversy, they engaged in a dramatic 'work slowdown' which some protesters celebrated as a reform of broken windows vigilance (see C Mathias, 'The Reason Some New Yorkers Actually Like the NYPD Slowdown', *Huffington Post*, 8 January 2015, http://www.huffingtonpost.com/2015/01/08/broken-windows-nypd-slowdown_n_6437766.html).

⁵⁴See Newman (n 53).

⁵⁵See *ibid.*

suggestion that those who call broken windows policing a ‘tragedy’ are more correct than they might know.

‘Some by virtue fall’: the tragedy of broken windows

If broken windows policing has been called into question by empirical studies since the 1990s, theoretical reflections such as Zimbardo’s *The Lucifer Effect* and anecdotal evidence such as the death of Eric Garner, it was also discredited by William Shakespeare more than 400 years ago in *Measure for Measure*. As one of Shakespeare’s characters says, summarizing the central conceit of *Measure for Measure*, ‘Some rise by sin, and some by virtue fall’ (2.1.38). The first clause of this conceit, ‘some rise by sin’, is a fairly conventional way of thinking about crime, but the second clause, ‘some by virtue fall’, can give us a new way of thinking about police misconduct in broken windows cities. Indeed, there is no better way to think about the predicament of broken windows policing, no better way to think about the fact that decent, well-intentioned police officers imbued with power, discretion and a mandate to maintain order can make slight miscalculations and errors that result in catastrophe for themselves and others: ‘some by virtue fall’. In literary studies, there is a name for this phenomenon. It is called *tragedy*. Properly understood, tragedy does not simply mean that bad things happen. Nor does it occur (as is often said) because someone has a ‘fatal flaw’. As the philologist Jan Maarten Bremer has illustrated, that term, ‘fatal flaw’, is a mistranslation of the Greek word *hamartia*, ‘error’ or ‘mistake’.⁵⁶ Tragedy is not about the personality flaws that people have. It is, instead, about the mistakes that people make, especially when those people are powerful, good and heroic. Tragedy occurs when great, virtuous, well-intentioned men and women who hold positions of power make small yet costly mistakes in judgement that bring about extreme pain, suffering and death for themselves, other citizens and society at large.⁵⁷

Shakespeare’s *Measure for Measure* gives us a way of thinking about cops who are, to quote Angelo, ‘corrupt with virtuous season’, those who ‘sin in loving virtue’, those who display a mixture of virtue and vice, those whose virtue does not excuse their vice but can be used to explain it: ‘some by virtue fall’. Tragedy does not involve ‘good guys’ and ‘bad guys’ any more than modern police work does. The criminals in *Measure for Measure*, as represented by

⁵⁶See J Bremer, *Hamartia: Tragic Error in the Poetics of Aristotle and in Greek Tragedy* (Adolf M Hakkert, 1969).

⁵⁷Traditionally, tragedy is about the high-born – demigods, nobles, heads of state – not about ordinary people carrying out ordinary actions. In this regard, tragedy is a uniquely unfit term for the broken windows policing that emphasizes the role of beat cops out on the street. It is also true, however, that the pattern of tragic action can extend from high-born heroes and heads of state to the low-born work-a-day men and women of modern society, as the American playwright Arthur Miller argued in ‘Tragedy and the Common Man’, *New York Times*, 27 February 1949, s 2, pp 1 and 3, and illustrated in *The Death of a Salesman* (1949). In broken windows cities, tragedy trickles down from the commissioner who institutes a compromised policy to the cop on the street who tries to enforce it.

Claudio and Angelo, are not completely depraved, just as the law enforcement officers, as represented by Angelo and Vincentio, are not wholly good. Both Angelo and Vincentio are 'corrupt with virtuous season'. Both 'sin in loving virtue'. Both are complex mixtures of virtue and vice, of virtuous impulses and vicious behaviour, of crime and justice. *Measure for Measure* invites us into a criminology that can attend to the cop who might be a criminal, the 'good guy' who might make a mistake, allowing us to see past the identities we often use to categorize others, helping us focus instead on actions, especially when those actions belie the trite binary opposition of virtue and vice.

But if broken windows policing is tragic in practice – filled with costly mistakes – it is tragic in theory as well. The formulation and defence of broken windows policing has been done by decent men and women who are not only well intentioned but also extremely smart, and who deserve our thanks for their decades of work to establish a better, more effective style of policing, but who have also made small miscalculations in logic and tone that have resulted in catastrophe. Like the broken windows officers on the ground, the theorists are caught in a bind – the desire for a reduced crime rate via broken windows policing on the one hand, and the desire to avoid the abusive practices created by broken windows policing on the other. The great literary critic A.C. Bradley characterized a specifically Shakespearean kind of tragedy as one in which the tragic hero is 'torn by an inner struggle', by an attempt to reconcile two mutually exclusive yet mutually compelling desires, 'generating disturbance and even conflict in the soul of the hero'.⁵⁸ This seems to be the current condition of the broken windows theorist. He admits that 'a lot of sins have been committed in the name of "broken windows"',⁵⁹ yet he also insists, as Kelling and Wilson did in the final paragraph of their final joint statement about 'broken windows', which was then quoted by Kelling at the end of his recent intellectual history of the theory: 'The broken windows idea does two things, one indisputably good and the other probably effective: It encourages the police to take public order seriously ... and it raises the possibility that more order will mean less crime.'⁶⁰ Actually, it does at least three more things, none of them much good: it targets minorities, it fosters escalation in officer–citizen confrontations and it excuses the abuse of force. Kelling and Wilson's attempt to get police officers to act and be seen as community partners rather than authoritarian antagonists is clearly a noble cause, but perhaps they failed to appreciate what would happen when broken windows policing is introduced to an unreformed police culture. Perhaps they underestimated the corruptibility of desire even in its most virtuous forms.

⁵⁸AC Bradley, *Shakespearean Tragedy: Lectures on Hamlet, Othello, King Lear, Macbeth* (Macmillan, 1904) 18–19.

⁵⁹Kelling (n 42).

⁶⁰Kelling and Wilson, 'A Quarter Century of Broken Windows' (n 36) 38; G Kelling, 'An Author's Brief History of an Idea' (2015) 52 *Journal of Research in Crime and Delinquency* 629.

From a Shakespearean perspective, the virtuous desires of broken windows theorists and cops alike manifest in tragedy when the practitioners and proponents of broken windows, against their own wills and against their own hopes, find themselves chasing power instead of virtue. By failing to account for its own shortcomings, the broken windows argument has itself led to disorder. The recent scandals involving an aggressive order maintenance approach – Michael Brown, Eric Garner, Tamir Rice – are only the most recent ‘broken windows’ in the theory of broken windows. If not fixed, this could escalate into more violent crime, a tragic dynamic captured in the brutal murder of two New York police officers, Wenjian Liu and Rafael Ramos, during the Black Lives Matter protests.⁶¹ During these protests, when Kelling and Bratton trenchantly defended broken windows policing, they missed an opportunity to start fixing some broken windows of their own.⁶²

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⁶¹See B Mueller and A Baker, ‘2 NYPD Officers Killed in Brooklyn Ambush; Suspect Commits Suicide’ *New York Times*, 20 December 2014, <http://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html>.

⁶²See Kelling and Bratton, ‘Why We Need Broken Windows Policing’ (n 14), although in 2016 Kelling did say he thought the ‘broken windows’ metaphor had run its course: ‘It’s to the point now where I wonder if we should back away from the metaphor of broken windows. We didn’t know how powerful it was going to be. It simplified, it was easy to communicate, a lot of people got it as a result of the metaphor. It was attractive for a long time. But as you know, metaphors can wear out and become stale’ (quoted from an interview with National Public Radio social science correspondent S Vedantem, ‘How a Theory of Crime and Policing Was Born, and Went Terribly Wrong’, *Hidden Brain*, 1 November 2016, <http://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong>). The notion that broken windows policing itself has some broken windows that need fixing is one that has been floated, though not fully argued, in both public essays (see ‘Broken Windows and Broken Lives’, *New York Times*, 25 July 2014, <http://www.nytimes.com/2014/07/26/opinion/broken-windows-broken-lives.html>); C Friedersdorf, ‘Applying “Broken Windows” to the Police’, *The Atlantic*, 8 December 2014, <http://www.theatlantic.com/national/archive/2014/12/applying-broken-windows-to-the-police/383490/>) and academic articles (see L Miller, ‘Why Cops Kill: The Psychology of Police Deadly Force Encounters’ (2015) 22 *Aggression and Violent Behavior* 106). Can broken windows theorists, instead of defending their original theory, help us understand where a disordered practice of broken windows policing came from and how we can establish order? Can they help us answer some questions about the gap between intent and reality in the broken windows phenomenon: *What do police officers understand ‘broken windows’ to mean? What do police officers do in the name of ‘broken windows’? Do these actions match up with what Kelling, Wilson and Bratton have asked them to do? Do ‘broken windows’ cities exhibit more disorderly behaviour in their policing than non-broken windows cities? Most importantly, what do the proponents of broken windows policing think about Shakespeare? Have they seen Measure for Measure? Would they like to?*