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BACK TO FUNDAMENTALS: THE WORSENING RESULTS OF IGNORING THE SOCIAL CONTRACT IN BALTIMORE CITY

JOHN STINSON*

In October 2002, twenty-one year-old Darrell Brooks kicked in the door of the Dawson family home in the Oliver neighborhood of East Baltimore. He poured gasoline on the floor of the house and set it alight, burning the building and killing seven members of the family.¹ The Dawsons, in particular the mother Angela Dawson, had vigorously fought petty drug dealers who worked the street, confronting them directly and reporting them to the police.² Brooks was a low-level dealer who took it upon himself to get rid of what he viewed as a problematic house of do-gooders.³ The murder of the Dawson family received wide national attention. The event was deemed an example of colossal and tragic failures by government officials and law enforcement, as well as a poignant example of the lawlessness and degradation rampant in some poor communities—and the degree to which the larger society ignores them.⁴

The deaths of the Dawsons offered an opportunity for positive change in Baltimore on a number of fronts, but instead, more than five years later, circumstances in poor neighborhoods like Oliver appear worse. Specifically, authorities have opted to implement “tough on crime” policies⁵ that have not resulted in reductions in wrongdoing but have riled community mistrust. Neighborhood residents have not banded together to follow the example of Angela Dawson to fight back

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The author would like to thank Professor Richard Boldt for his support and guidance on this article, as well as Federal Public Defender Jim Wyda for first bringing issues around Project EXILE to his attention. This article is dedicated to the memory of Nancy Schmidt, a neighbor and friend in the Remington section of Baltimore. Nancy was murdered in the early morning on April 21, 2008, while her neighbors phoned for help.

1. Gail Gibson & Laurie Willis, *Tears and Remorse Precede Life Term in Dawson Deaths*, BALT. SUN, Aug. 28, 2003, at 1A.

2. *Id.*

3. *Id.*

4. Editorial, *We All Share Responsibility for Failing the Dawson Family*, BALT. SUN, Feb. 19, 2005, at 1B.

5. These policies include the subject of this article, Maryland EXILE, as well as other state and local practices like Baltimore’s “Blue Light Camera” project. See *infra* Parts I.B, III.C.

and work with authorities.⁶ Instead, a code of silence has increased in strength in poor Baltimore neighborhoods, adopted in large measure voluntarily by residents.⁷ Marylanders living outside of these neighborhoods have been eager consumers of dramatic crime and punishment stories from Baltimore,⁸ but have not galvanized any political will to compel positive changes.

The severe troubles in Baltimore must be addressed immediately, and government must begin the process. While crime is a terrible problem, a more fundamental failing lies in the breakdown of trust between residents and authorities. The tough tactics of law enforcement, combined with the short shrift poor Baltimore neighborhoods receive in other areas of public services, are eroding the faith of city residents in the government and the larger society. This erosion of faith causes residents of particular Baltimore neighborhoods to turn inward, to sever ties of cooperation and identity with other communities, and to consider themselves to be apart from their fellow citizens of Maryland and the rest of the United States—in part because they are viewed as different by their government and the majority society. This action-and-reaction represents a weakening of the “social contract,” an invention of political philosophers that had a particularly important influence on the formation of American governments and upon their reform and evolution. Government authorities generally, and law enforcement specifically, can begin the process of changing these circumstances, and fixing the rent in the social contract, by altering policies and considering the interests of the residents of inner city Baltimore when they craft initiatives to deter and punish crime.

I. THE FRONT LINES OF BALTIMORE: STOP SNITCHING AND MARYLAND EXILE

Two programs are underway in Baltimore, each with a public messaging component and active policies that impact residents and the functioning of criminal law processes. One arises from the community itself and the other from law enforcement. They appear to be in direct conflict, but both may contribute to eroding the covenant between

6. Greg Hanscom, *Raising Oliver*, URBANITE, May 2008, at 58.

7. Gregory Kane, *Fighting the Code of Street Silence*, BALT. SUN, Feb. 6, 2008, at 1B; Julie Bykowicz, *Fighting the Code of Street Silence Justice*, BALT. SUN, Oct. 28, 2007, at 1A.

8. See, e.g., Devin Gordon, *Good Mourning, Baltimore*, NEWSWEEK, Jan. 14, 2008; Raymond A. Schroth, “*The Wire*” Depicts a Community on the Brink, NAT’L CATH. REP., Mar. 7, 2008.

residents of poor communities in Baltimore and the majority society. This section describes the “Stop Snitching mindset” and Maryland EXILE, two engines of the breakdown of the social contract, as well as defining and delimiting them in ways that help with analysis of their impact.

A. Stop Snitching

Stop Snitching is the title of a DVD released by a Baltimore filmmaker named Rodney Bethea in 2004.⁹ Popular for months in poor Baltimore neighborhoods as an “underground” work, the DVD came to broader light when Baltimore Police seized a large cache of the videos and began using them to investigate crime and arrest suspected criminals.¹⁰ The video shows diatribes by various Baltimore residents against police informers, mostly individuals who “cut deals” with police and prosecutors to testify in exchange for lesser punishment for their own crimes.¹¹ The video mentions by name specific individuals accused of “snitching” along with thinly-veiled threats regarding what the speakers believe such “rats” deserve. The video also shows drug use and displays of material wealth by the anti-snitching proclaimants.¹²

Bethea, who is releasing a second snitching video in 2008, asserts that his goal in making the DVD was to reveal the desperation and degradation experienced by people living in urban slums.¹³ He has argued in more recent months that his various productions, through his company Urly Media, serve as a call to action to *all* citizens to address the systemic social problems that lead young people, particularly African American youth, into lives of crime and other dangerous and antisocial conduct.¹⁴ Law enforcement, public officials, and the media

9. DVD: 2004 Stop Snitching (Urly Media 2004).

10. Ryan Davis, *Homemade DVDs about Informing Give Police Clues*, BALT. SUN, Dec. 4, 2004, at 1A.

11. DVD: 2004 Stop Snitching, *supra* note 9. For example, in one segment of the video, young men repeatedly say “do your time” and declare that persons arrested for a crime should accept the full sentence they would receive from a conviction rather than take a lesser term of incarceration for cooperating with police and prosecutors. *Id.*

12. *Id.*

13. Gregory Kane, “*Stop Snitching*” Video Betrays a Muddled Criminal Mentality, BALT. SUN, Dec. 8, 2004, at 1B.

14. Julie Bykowicz, *Producer Says Education, Not Intimidation, Is Sequel’s Focus*, BALT. SUN, Dec. 20, 2007, at 1B.

largely have concluded that the video is a paean to witness intimidation.¹⁵

The larger “Stop Snitching” phenomenon, however, could also consist of a disorganized social movement of resistance to and dissent from current law enforcement practices. Certainly, any “movement” activity that involves actual witness intimidation (and there may be a good deal of this) is nothing but individual and organized criminal conduct.¹⁶ There is strong evidence, however, that the Stop Snitching message has galvanized a general attitude of distrust of government and police into a pervasive and voluntary refusal to participate with law enforcement under any circumstances.¹⁷ In a *60 Minutes* segment in 2007, journalist Anderson Cooper summed up this change by stating that “‘Stop snitching’ once meant ‘don’t tell on others if you are caught committing a crime,’ but it has come to mean something much more dangerous: don’t cooperate with the police no matter who you are.”¹⁸ In this way, the Stop Snitching phenomenon represents a community mindset of separation from, and rejection of, the majority society and a view that government authorities are pitted *against* particular communities, not working for them.

This paper focuses on this manifestation of Stop Snitching as a rejection both of the social contract and of sovereign authority. It will not, except as an ancillary matter, address actual witness intimidation. Instead, for the purposes of examining Stop Snitching’s effect on the legitimacy of current positive law and law enforcement policy, this paper assumes, based on consistent empirical evidence,¹⁹ that an informal anti-majoritarian, anti-government policy is real and widespread in poor communities in Baltimore. In examining Stop Snitching, therefore, this paper focuses on the rejection of the legitimacy of the criminal justice system and law enforcement by individuals who have not actually committed a crime.²⁰

15. See, e.g., Editorial, *Witness Intimidation*, BALT. SUN, Dec. 9, 2004, at 26A; Julie Bykowitz, *Silence Still Stifles Justice*, BALT. SUN, Oct. 28, 2007, at 1A..

16. See Matthew Dolan, *Inquiry Targets Md. Gang*, BALT. SUN, Feb. 26, 2008, at 1A.

17. Kane, *supra* note 7, at 1B; Bykowitz, *supra* note 15.

18. *60 Minutes: Stop Snitching* (CBS television broadcast Apr. 22, 2007).

19. See Kane, *supra* note 7; Brent Jones, *Speakers at Forum Say One Segment of Society Shouldn’t Be Singled Out*, BALT. SUN, Feb. 1, 2008, at 1B.

20. See *infra* Part III.D.

B. Maryland EXILE

Maryland EXILE is a federal-state partnership to aggressively pursue the perpetrators of gun crimes in particular areas of the state, primarily Baltimore.²¹ The program focuses on investigating and prosecuting felons who carry, or commit further crimes with, firearms.²² EXILE includes a high profile media and marketing campaign to “warn felons” that they will be pursued and jailed for any transgressions.²³

U.S. Attorney Rod Rosenstein launched Maryland EXILE in 2005, borrowing a popular and successful project framework from Richmond, Virginia. The original EXILE concept from Richmond has been copied frequently nationwide.²⁴ Through EXILE, federal, state, and local law enforcement combine efforts, funding, and manpower to focus on eradicating gun violence.²⁵ The core policy of EXILE is to shift prosecution of gun crime offenders to federal court where (i) they face tougher penalties; (ii) juries are drawn from a statewide rather than local pool; and (iii) convicted defendants can be incarcerated in a federal prison outside of Maryland.²⁶ Secondarily, state prosecutors use EXILE to compel defendants into pleading guilty in state court, under the threat that the case will transfer to federal court otherwise.²⁷ Through the program, state and federal law enforcement also expressly target both gangs and individuals deemed “violent repeat offenders,” conducting additional investigations and working “proactively . . . to

21. United States Attorney, District of Maryland, *Maryland EXILE: Gun Crime=Jail Time*, <http://www.usdoj.gov/usao/md/Exile/index.html> (last visited Nov. 17, 2008) [hereinafter *Gun Crime=Jail Time*].

22. *Id.*

23. UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF MARYLAND, BALTIMORE EXILE: A COMPREHENSIVE STRATEGY TO REDUCE GUN VIOLENCE 14 (2006), <http://www.usdoj.gov/usao/md/Exile/files/Baltimore%20EXILE%20strategy%20final.2006.02.15.pdf> [hereinafter BALTIMORE EXILE: A COMPREHENSIVE STRATEGY].

24. Doug Donovan & Matthew Dolan, *Baltimore to Help Fund Federal Prosecution of Gun Crimes*, BALT. SUN, Sept. 4, 2004, at 3A; see also Department of Criminal Justice Services, Virginia Exile, <http://www.dcsj.virginia.gov/exile/> (last visited Nov. 17, 2008).

25. See *Gun Crime=Jail Time*, *supra* note 21.

26. See BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 1–2; Matthew Dolan, *Rise in Gun Prosecutions Projected*, BALT. SUN, June 1, 2006, at 5B.

27. UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF MARYLAND, VIOLENT CRIME PROGRAM: 2006 ANNUAL REPORT 29 (2007) [hereinafter 2006 VIOLENT CRIME PROGRAM] (describing the use of “FLIP” letters that inform state defendants that the USAO intends to prosecute); Matthew Dolan, *City Gun-Crime Prosecutions Rose in ’06*, BALT. SUN, Jan. 25, 2007, at 2B.

devise strategies for getting them off the streets as quickly and effectively as possible.”²⁸

EXILE also includes a well-funded media and “public awareness” component.²⁹ The United States Attorney’s Office (USAO) for the District of Maryland described these efforts in a strategy whitepaper for the entire EXILE program in Baltimore:

A key component of Baltimore EXILE will be an aggressive media/public relations campaign to send a message to criminals and to the broader community that any felon who carries a gun in Baltimore is going to jail—that criminals will do *hard time for gun crime*. The campaign will be designed to alert offenders to the crackdown on gun crime and to energize the community to support law enforcement efforts and, in particular, their local police.³⁰

To date, the USAO has funded about thirty billboard advertisements, most of which appear in and around poor neighborhoods in Baltimore.³¹ These giant advertisements single out and name specific criminals caught and prosecuted under EXILE. The boards have garnered a lot of attention because the campaign appears to mock and humiliate the convicted individuals alongside the more general message that felons who carry guns will face tough penalties.³² In addition to billboards, the USAO has funded similar advertisements on radio, TV, and MTA buses.³³

28. BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 8.

29. *Id.* at 14.

30. *Id.* (emphasis in original).

31. Paul Mark Sandler, *Commentary: Raising the Bar*, DAILY REC. (Baltimore, Md.), June 15, 2007; Luke Broadwater, *Billboards Take Aim at High-Profile Criminals*, THE EXAMINER (Baltimore, Md.), March 7, 2007.

32. Laura Vozzella, *Come See the Seahorses, but Check Your Guns*, BALT. SUN, May 30, 2007, at 2B. Some examples of current billboard slogans include the following: “Solothal ‘Itchy Man’ Thomas got life in prison for carrying a gun. Wonder what his new nickname is?;” “Wallace Allen got [nineteen] years in federal prison for carrying a gun. We hear Indiana is nice this time of year;” and “Raeshio ‘Goodie’ Rice got [twenty-seven] years in federal prison for carrying a gun. Anyone need a used Bentley?” *Id.*

33. Press Release, United States Attorney Office, District of Maryland, *Dramatic Maryland EXILE Television Commercial Targets Criminals Who Carry Guns* (Jan. 10, 2007), available at <http://www.usdoj.gov/usao/md/index.html> (follow “Press Releases” hyperlink; then follow “2007 Press Releases” hyperlink; then follow “Dramatic Maryland Exile Television Commercial Targets Criminals Who Carry Guns” hyperlink) (last visited Nov. 17, 2008). The USAO described one television ad as follows:

Maryland EXILE began in Baltimore and expanded to just two other regions of Maryland—Prince George’s and Wicomico counties.³⁴ In 2007, nearly two hundred Baltimore residents were prosecuted federally under EXILE and approximately another thirty pleaded guilty to state charges rather than face a federal criminal indictment.³⁵ To date, the majority of funds for marketing and public outreach efforts have been spent in Baltimore.³⁶

Despite its popularity with law enforcement, many critics have assailed Project EXILE, in Maryland and elsewhere.³⁷ Among other things, they aver that the programs unfairly target poor communities of color and further isolate such communities from the mainstream.³⁸ Some legal critics assert that on their face, Project EXILE programs violate equal protection.³⁹

II. ANGLO-SAXON SOCIAL CONTRACT THEORY: HOBBS & LOCKE

American democracy developed, in large measure, under the political philosophy of the social contract.⁴⁰ The theory guided the drafters of our federal Constitution and continues to shape our legal understandings of sovereignty and the limits of the law.⁴¹ The two primary Anglo-Saxon sources for the theory are Thomas Hobbes’

The commercial opens with a young man watching television when his cell phone rings. After answering the telephone, he reaches for a gun. As he touches the gun, the man suddenly finds himself in a prison cell, with the door slamming shut. The voice-over then recites the names and sentences of three Baltimore criminals who were sentenced to lengthy federal sentences over the past year.

Id.

34. See *Gun Crime=Jail Time*, *supra* note 21.

35. Brent Jones, *Increase in Gun Charges, Pleas Under Baltimore EXILE Lauded*, BALT. SUN, Feb. 21, 2008, at 6B.

36. Luke Broadwater, *Billboards Take Aim at High-Profile Criminals*, THE EXAMINER (Baltimore, Md.), Mar. 7, 2007.

37. See, e.g., Tom Campbell, *Bull's Eye or Wasted Shots? Federal Judges Not Among Gun Program's Supporters*, RICH. TIMES-DISPATCH, Jan. 22, 1999, at A1; Daniel C. Richman, "Project Exile" and the Allocation of Federal Law Enforcement Authority, 43 ARIZ. L. REV. 369, 373, 382, 397 (2001); Chris Osher, *Federal Agents, Prosecutors Targeting Guns*, PITT. TRIB. REV., Apr. 25, 2005.

38. Campbell *supra* note 37, at A1; Osher, *supra* note 37.

39. Bonita R. Gardner, *Separate and Unequal: Federal Tough-on-Guns Program Targets Minority Communities for Selective Enforcement*, 12 MICH. J. RACE & L. 305, 317–339 (2007).

40. See, e.g., BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 58–59 (Harv. Univ. Press 1968) (1967).

41. See, e.g., Henry J. Friendly, *The Fifth Amendment Tomorrow: The Case for Constitutional Change*, 37 U. CIN. L. REV. 671, 692–93 (1968) (arguing with Abe Fortas’ assertions on the Fifth Amendment through the lens of John Locke’s social contract).

Leviathan (1651) and John Locke's *Two Treatises of Government* (1689).⁴² Locke's work played the larger role in the conception and advancement of the United States Constitution and individual state constitutions.⁴³

While the two works (and writers) share many core ideas, they depart from one another in significant ways. Social contract theory generally provides a useful framework for evaluating the legitimacy of both individual and state action. It has significant shortcomings, however, particularly in an area cogent to this examination: the notion of individual consent to a social contract.⁴⁴ This section begins by outlining the basics of social contract theory. It then presents core differences between Locke and Hobbes important to the specific conflict in Baltimore and examines problems raised by notions of consent to a social contract. Finally, this section presents a practical illustration of social contract theory at work in the legal system, as well as the rejection of covenant obligations, in the form of jury service and jury nullification. All these considerations will frame later analysis of the impact of Stop Snitching and EXILE on communities in Baltimore.

A. *The Foundations of Social Contract Theory*

Hobbes and Locke shared a similar core idea for why humans band together into societies and create political bodies. In a state of nature, where no political entities exist, persons have the utmost liberty.⁴⁵ Threats abound, however, and life lacks consistency of justice between humans because each individual is an equal judge and equal enforcer of her view of right and wrong.⁴⁶ Natural laws exist, universal truths about what conduct is acceptable and what is not, but determination of violations and discretion to punish remain vested in each individual.⁴⁷ In order to maximize peace and prosperity, and to

42. See generally THOMAS HOBBS, *LEVIATHAN* (Richard Flathman & David Johnston eds., W. W. Norton & Company, Inc. 1997) (1651); JOHN LOCKE, *TWO TREATISES OF GOVERNMENT AND A LETTER CONCERNING TOLERATION* (Ian Shapiro ed., Yale Univ. Press 2003) (1690).

43. BAILYN *supra*, note 40, at 27–29, 55–59 (noting the pervasive influence of Locke on the colonists and “founding fathers” as well as the equally widespread criticism of Hobbes’ stance).

44. See, e.g., Edward A. Harris, *From Social Contract to Hypothetical Agreement: Consent and the Obligation to Obey the Law*, 92 COLUM. L. REV. 651, 673 (1992).

45. HOBBS *supra* note 42, at 68–69; LOCKE, *supra* note 42, at § 4.

46. HOBBS *supra* note 42, at 68–69; LOCKE *supra* note 42, at § 13.

47. HOBBS *supra* note 42, at 72; LOCKE *supra* note 42, at § 7.

stave off the inevitable misjudgments arising from each person sitting as judge and executioner, persons “covenant” to join together in society and sacrifice some of their natural liberty to a commonwealth or other sovereign government.⁴⁸ Most importantly, parties to this social contract cede individual rights (to stand as judge and punisher) to an acknowledged authority that can establish positive law and enforce it.⁴⁹ Parties to the covenant also agree to abide by the laws created by the sovereign authority, or face sanction.⁵⁰ The theory seeks to explain both (i) why persons would sacrifice complete liberty and (ii) the legitimate bases for sovereign authority over individuals.

B. Important Divergences Between Hobbes and Locke

The ideas of the great British contractarians, however, do not align fully. There are two closely-related areas of difference between Hobbes and Locke cogent to the analysis in this paper. First, the two philosophers envision life outside of the social contract in ways that reveal subtle, but important differences in their overall conceptions of liberty and sovereign power. Secondly, their address of the breakdown of an existing social contract diverges quite clearly and suggests a sharp contrast in how to value individual liberty and the integrity of the state. The differences illustrate limitations and dangers in the remedy sought through EXILE and suggest that a more Lockean view might generate more effective solutions to the problem of community rejection of criminal law and responsibility.

1. Man in the State of Nature: Two Views

Locke described the state of nature in neutral, if not affirmative terms.⁵¹ He lauded the liberty individuals experience in such a condition.⁵² He expressly described the state of war between persons as different and separate from the state of nature.⁵³ Locke asserted that humans form political bodies through a social contract to combat the three “inconveniences” that arise among them in the state of nature.⁵⁴

48. HOBBS *supra* note 42, at 95; LOCKE *supra* note 42, at § 87.

49. HOBBS *supra* note 42, at 96–98; LOCKE *supra* note 42, at § 134.

50. HOBBS *supra* note 42, at 96–98; LOCKE *supra* note 42, at § 129–30.

51. LOCKE *supra* note 42, at § 4.

52. *Id.*

53. *Id.* at § 19.

54. *Id.* at §§ 124–26. Clearly, the word “inconvenience” in Locke’s work is not wholly synonymous with the same word in contemporary usage. It still, however, strikes the reader as a deliberate and curious choice, particularly when compared to Hobbes’ view of the state of nature. Locke’s “inconveniences” are (i) the unpredictable effects of personal bias in a world

He indicated that these inconveniences tend to lead persons toward a state of war—but he did so through the equivocating reverse-suggestion that formation of a commonwealth staves off war because it remedies the inconveniences.⁵⁵

Hobbes' view of the state of nature was wholly negative, bordering on apocalyptic.⁵⁶ He asserted that the natural state is *equivalent* to a state of continual war, with every person the enemy of every other person.⁵⁷ In the state of nature, individuals experience ever present fear and threat of violence. Hobbes summed up his view of pre-contract existence with this famous quote: "And the life of man, solitary, poore, nasty, brutish, and short."⁵⁸ Hobbes attributed this endemic proclivity for violence and strife to three factors inherent to the makeup of humans: competitiveness, diffidence, and lust for glory.⁵⁹

Both writers urged that a social contract is necessary for the safety and productivity of human beings.⁶⁰ Locke, however, appeared to view the state of nature as noble and excellent for the degree to which it afforded individuals the utmost liberty; his description of the need for social bonds, while far from making them sound like a "necessary evil," evokes in the reader a hint of wistful loss and concession to efficiency and safety.⁶¹ Hobbes, on the other hand, viewed the social contract as a saving grace, an absolute necessity to stave off unbridled striving, violence, and terror.⁶² He did not laud individual liberty so much as he viewed the individual as unable to muster and sustain the power to repel challenges.⁶³ In his conception, the grant of authority to a sovereign through covenant provides humans something more fundamental than a greater chance at happiness; in most cases, it ensures persons their very lives.⁶⁴

where all individuals stand as equal judge of others; (ii) the lack of a known and neutral decision maker; and (iii) the lack of reliable power to enforce even a just sentence for wrongdoing. *Id.*

55. *Id.* at § 21.

56. HOBBS *supra* note 42, at 68–71.

57. *Id.* at 70.

58. *Id.*

59. *Id.*

60. HOBBS *supra* note 42, at 95; LOCKE *supra* note 42, at § 87.

61. LOCKE, *supra* note 42, at §§ 4, 19, 124–26.

62. HOBBS *supra* note 42, at 68–72.

63. *Id.*

64. HOBBS *supra* note 42, at 70.

2. *Breakdown in the Social Contract: Two Views*

In the chapter on “Dissolution of Government,”⁶⁵ Locke focused first and foremost on the uses and boundaries of government authority.⁶⁶ He asserted that a government is different from the society persons create through a social contract.⁶⁷ Government, to remain legitimate, must act according to the trust vested in it by society.⁶⁸ It cannot harm property or overly infringe liberties properly retained by individuals.⁶⁹ Breach by state actors of the trust placed in government threatens the social contract because it can represent a state of war *against* the people—one that might compel them to reclaim their full liberty.⁷⁰ Locke certainly decried rebellion by persons who merely seek power or who undermine government authority without just proof of a serious and continual breach of trust with society.⁷¹ His primary concern, however, rested on whether the authority that arises out of the social contract properly has honored and preserved the liberty and property of the covenantors.⁷² When disputes arise, he suggested that the will of the people should prevail over the power they have placed in a sovereign.⁷³ These conclusions appear consonant with Locke’s reverence for individual liberty revealed in his description of the state of nature.⁷⁴ They also should sound familiar to any student of American history.⁷⁵

Hobbes’ view of the dissolving social contract developed from his assertions that individual liberty is subject to the unlimited authority of the sovereign.⁷⁶ Obligation to the sovereign continues so long as that power offers persons protection.⁷⁷ In Hobbes’ conception, commonwealths weaken and the bonds of the social contract dissolve

65. LOCKE *supra* note 42, §§ 221–243.

66. *Id.* at §§ 221–28.

67. *Id.* at § 211.

68. *Id.* at §§ 131, 221–22.

69. *Id.*

70. *Id.* at § 222.

71. *Id.* at §§ 227–28.

72. *Id.* at § 221–22.

73. *Id.* at § 242.

74. *Id.* at § 4.

75. *See, e.g.,* THE DECLARATION OF INDEPENDENCE paras. 1, 2 (U.S. 1776); THE FEDERALIST NO. 10 (James Madison).

76. HOBBS *supra* note 24, at 117 (“The Liberty of a Subject, lyeth therefore only in those things, which in regulating their actions, the Sovereign hath prætermitted . . . nothing the Sovereign Representative can doe to a Subject, on what pretence soever, can properly be called Injustice, or Injury; because every Subject is Author of every act the Sovereign doth . . .”).

77. *Id.* at 121.

from the promulgation of “seditious doctrines”;⁷⁸ over-reliance on the individual conscience;⁷⁹ subjection of the sovereign to civil laws and other forms of dividing or divesting sovereign power;⁸⁰ and aggrandizement or over-enrichment of certain individuals.⁸¹ Lastly, and perhaps most distinctly from Locke, Hobbes spotted danger in “the Liberty of Disputing against absolute Power” or the ability of individuals to protest for greater liberty against the appointed sovereign in ways that would divest its authority.⁸² In this way, Hobbes directed his reverence toward the sovereign authority created by the social contract, justified by the protection it creates for covenantors. He viewed challenges to that sovereignty as threats to restore a state of nature and plunge humans back into continual war.⁸³ Only when the sovereign orders a subject to harm himself, or unjustifiably to submit to physical harm by others, can an individual take liberty to disobey in self-preservation.⁸⁴ Under Hobbes’ view, the most important goal of the social contract is to create and maintain safety, thus staving off the instability and violence guaranteed outside of the commonwealth.⁸⁵

Once again, both philosophers conceive of a social contract as a way to promote stability between people and consistency in individual affairs.⁸⁶ The most important components and values of the social contract, however, differ significantly in each conception. Locke always appeared to have his eye on maximizing personal liberty within the necessary boundaries of the social contract and the political authority it creates.⁸⁷ He obliquely urged a kind of tension between government authority and individual liberty to ensure a proper balance.

78. *Id.* at 163.

79. *Id.* at 163–64.

80. *Id.* at 164–68.

81. *Id.* at 168.

82. *Id.* at 169. Hobbes appeared to qualify this assertion by stating that the problematical disputes were those led by “pretenders to Politicall [sic] Prudence,” whom he described in various insulting terms. There is no suggestion, however, that any non-loathsome, non-pretender could raise a legitimate challenge to the exercise of sovereign power. *Id.*

83. *Id.* at 163–68.

84. *Id.* at 119.

85. Richard Flathman, a preeminent Hobbes scholar (and resident of Baltimore, ironically), dismisses this kind of reading of *Leviathan* as overly-simplistic. RICHARD E. FLATHMAN, *Of Making and Unmaking*, THOMAS HOBBS: SKEPTICISM, INDIVIDUALITY, AND CHASTENED POLITICS 1–9 (1993). He asserted that a deeper reading reveals that Hobbes never expected that any sovereign *could* exercise total control or expect full fealty from his subjects, thus ensuring the kind of positive tension that ensures more individual liberty. *Id.*

86. HOBBS *supra* note 42, at 95; LOCKE, *supra* note 42, at § 87.

87. LOCKE *supra* note 42, at §§ 221–22.

Hobbes focused instead on maximizing safety and stability by ensuring the strength and integrity of the sovereign power.⁸⁸ He suggested that the decision to contract was of utmost consequence and finality because creation of a sovereign authority vested that person or entity with substantial and almost unassailable power.⁸⁹ The acts of Hobbes' sovereign *are* the acts of the parties to the contract so long as those parties are protected from violence within and without society, so little "tension" can exist between individual subjects and agents of the commonwealth.⁹⁰

C. Creation of the Social Contract and Adherence to Its Consequences: Consent

One final aspect of social contract theory important to contemporary issues in Baltimore is the question of how individual persons "join" such a covenant. A young woman born in the poor west-side neighborhood of Sandtown-Winchester had little choice of whether or not she "joined" the municipality of Baltimore, and her status as a citizen of Maryland and the United States was automatically granted to her. How is she subject to the laws of these sovereigns if she did not elect to participate in the social contract? Can it merely be thrust upon her? Individual consent poses a problem for contractarians, one that neither Hobbes nor Locke answered sufficiently. Contemporary scholars similarly have struggled with these questions.

Locke and Hobbes agreed that consent to a social contract can be express or implied.⁹¹ Implied consent is most common, since very few people take a formal, express oath to forego a portion of their natural liberty and to comport with civil laws.⁹² Though they differ in some details, both philosophers suggested that a person impliedly consents to the social contract underlying a commonwealth by residing there and receiving the benefits of such residence.⁹³

88. HOBBS *supra* note 42, at 117–21.

89. *Id.*

90. *Id.* at 117.

91. HOBBS *supra* note 42, at 73–75; LOCKE *supra* note 42, at §§ 119–20.

92. In the United States, most forms of elected or appointed government office *do* require a formal oath to uphold the law. Legal aliens who apply for and receive citizenship likewise must take an oath.

93. *See, e.g.,* LOCKE *supra* note 42, at 119 (“[E]very man, that hath possession, or enjoyment of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it . . .”).

Modern scholars have wrestled with this notion of consent, mostly failing to reach satisfactory conclusions. Some suggest that mere residence represents consent and urge a positive formalization of the fact in legal doctrine.⁹⁴ Others aver that residence alone should comprise no more than *evidence* of consent and then only when the individual has a genuine choice to continue her residence and is free to leave at will.⁹⁵ Another group rejects residence altogether as constituting an act of consent.⁹⁶

Another consent theory posits, similarly, that the acceptance of benefits provided by the state creates consent to the social contract and agreement to comport with the positive law of the commonwealth.⁹⁷ A host of circumstances can comprise acceptance of benefits, including exploiting economic opportunities afforded by general peace and making use of public infrastructure like highways up to more affirmative acceptance of services like public education or food stamps. As with residence, however, some writers have questioned whether consent arises from benefits that an individual receives regardless of choice.⁹⁸ Similarly, these critics question whether it is appropriate or legally sound to argue that acceptance of a single sought-after benefit obligates a person to comply with each and every law asserted by a sovereign government.⁹⁹

Lastly, some scholars abandon the effort of pointing to affirmative individual actions or conditions (like residence or the acceptance of benefits) that create concrete consent and look instead to a kind of hypothetical consent to political authority.¹⁰⁰ Hanna Pitkin's view on this may be the most pragmatic and straightforward. She asserted that obligation to participate in the social contract and to obey positive law arises based on the "character of the government."¹⁰¹ If a government is good and just in the main—as opposed to tyrannical—the individual must submit (or consent) because it is the kind of

94. Harry Beran, *In Defense of the Consent Theory of Political Obligation and Authority*, 87 ETHICS 260, 270 (1977).

95. MICHAEL WALZER, *OBLIGATIONS: ESSAYS ON DISOBEDIENCE, WAR, AND CITIZENSHIP* 28 (Harv. Univ. Press 1970).

96. Harris, *supra* note 44, at 662–63.

97. WALZER, *supra* note 95, at 28. Though separate from consent through mere residence, this theory in fact more directly resembles Locke's assertion that "enjoyment" of the fruits of the commonwealth stands as consent. *Id.*

98. Harris, *supra* note 44, at 664–65.

99. *Id.*

100. JOHN RAWLS, *A THEORY OF JUSTICE* 11–17 (Harv. Univ. Press 1971) (1958).

101. Hanna Pitkin, *Obligation and Consent: Part II*, 60 AM. POL. SCI. REV. 39, 39 (1966).

government to which a person *ought* to submit.¹⁰² This conception, though broad, is objective. It shifts analysis from the conduct of the individual to the justness (and thereby legitimacy) of the sovereign body. Pitkin acknowledged that the decision of the individual or group to reject consent raised problems and contradictions.¹⁰³ She suggested that proper resistance (or refusal of consent) could not be based on thoughtless whimsy, but rather must rely on thoughtful and principled consideration of the justness of the government and all the relevant social circumstances that might, or might not, urge dissent.¹⁰⁴

The notion of consent is important to this paper because it raises questions about whether a citizen has a moral or legal right to dissent. Can individuals legitimately resist the legal mandates of a sovereign power or the moral expectations of the sovereign and the vast majority of citizens? Can individuals “revoke consent” under any circumstances and effectively undermine the actions and positive law of a sovereign power? These are frightening questions because they introduce the idea generally that a person or a community could refuse to participate in the larger society and declare themselves free of legal obligations—a fact that would have unpredictable results for those who do conform.

D. Illustration of the Social Contract and Rejection of Covenant Obligations: Jury Nullification

The “average citizen” plays a direct role in formal legal process in the United States through the institution of the jury. Individuals have both legal and moral obligations to participate on a jury,¹⁰⁵ to decide the fate of an accused criminal or outcome of a civil dispute. In criminal trials, juries (and by extension, average citizens) hold a special place, guaranteed by the Sixth Amendment of the Constitution: unless the defendant waives his right, a jury is the only authority that can determine guilt.¹⁰⁶ Jury service may represent one of the most important and most direct exercises of social contract obligations. A long and controversial history of jury nullification exists in America,

102. *Id.*

103. *Id.* at 51–52 (“What needs to be said seems to be this: the decision both is and is not up to each individual.”).

104. *Id.* at 44, 52.

105. *See, e.g.*, MD. CODE ANN., CTS. & JUD. PROC., §§ 8-102, 8-503, 8-504 (West 2007) (outlining legal duties to serve on juries and specific prohibitions regarding avoidance of service).

106. U.S. CONST., amend VI.

however.¹⁰⁷ Nullification is a practice where juries acquit defendants who by all accounts should have been found guilty. This presents an intriguing example of persons rejecting their obligations to a commonwealth and acting from individual conscience in contravention of positive law.

Criminal juries are charged with the duty of applying the law, as defined by the judge, to the facts.¹⁰⁸ There is no sanction, however, for failing to do so, absent proof of bribery or other fraud. And regardless of whether they “got it right,” if a jury acquits a criminal defendant, that decision cannot be overturned—not by the trial judge or on appeal.¹⁰⁹ In other words, a jury can find a defendant not guilty even when the facts and law clearly suggest that he is guilty, and this determination cannot be challenged. Accordingly, in the United States, there is a legal and moral obligation to serve on juries, but only a moral duty to apply the law “correctly” to the facts in a criminal case. Some individuals or entire juries take it upon themselves to make a different moral choice at times and to acquit even when the command of their sovereign would suggest otherwise. They can do so for a variety of reasons—some that could be read as a higher form of justice and some not.¹¹⁰

The practice of nullification appears to represent a rift in jury members’ individual surrender to the social contract and agreement to comport with the law. Even though a juror is not required by law to render a “legal” verdict, she is expected, under a Hobbesian or Lockean view, to follow and support positive law.¹¹¹ It is possible to argue that, because juries act as officials of the court, they receive a measure of direct sovereign power, permitting them to make a decision in the interests of justice rather than merely as an application of

107. See *Trial of John Peter Zenger*, 17 St. Tr. 675 (1735); *People v. Crosswell*, 3 Johns. Cas. 336 (N.Y. 1804).

108. MORTIMER KADISH & SANFORD KADISH, *DISCRETION TO DISOBEY* 50 (Stan. Univ. Press 1973) (quoting *United States v. Moylan*, 417 F.2d 1002, 1007 (4th Cir. 1969) (“We must hold firmly to the doctrine that in the courts of the United States it is the duty of juries in criminal cases to take the law from the court, and apply that law to the facts as they find them to be from the evidence.”)).

109. *Id.*

110. Classic conditions for jury nullification might occur when a woman kills her partner after suffering years of physical abuse from him. If the jurisdiction does not permit a “battered woman syndrome” defense and the circumstances do not suggest a viable self-defense argument because the woman killed well-after a beating and at a time when she could have fled, the defendant may face an open-and-shut homicide charge. A jury, however, might acquit her if members found that she was justified in the killing regardless of what the judge outlined as the applicable legal doctrine. See, e.g., NORMAN FINKLE, *COMMONSENSE JUSTICE: JURORS’ NOTIONS OF THE LAW* 228–34 (1995).

111. HOBBS, *supra* note 42, at 96–98; LOCKE, *supra* note 42, at §§ 129–30.

positive law.¹¹² This view, however, may not comport with Anglo-Saxon social contract theory. Under Hobbes' and Locke's shared view, persons surrender their natural role as individual "deciders" and must defer to the positive law enacted by the sovereign they have empowered.¹¹³ A president or legislator may not act outside the law merely because she is an officer of the sovereign, though she may define, interpret, or change the law. Jurors can apply—perhaps even interpret—the law; but they are not empowered to define or change it, and they certainly cannot act outside of it.

Not surprisingly, views on the legitimacy of nullification fall along a spectrum. Some commentators, like Robert Bork, assert that jury nullification is a wholly illegitimate practice.¹¹⁴ Others, like Mortimer and Sanford Kadish, suggest that jury nullification is legal, moral, and necessary when—but only when—justice clearly requires it.¹¹⁵ Still others, like Paul Butler, urge that large scale social injustices, like racism and racially-based over-prosecution and incarceration, demand a radical response through systematic jury nullification for some criminal defendants until the law and law enforcement are reformed.¹¹⁶

Jury nullification is useful to the examination of EXILE and Stop Snitching because it stands as an example of the judgment of a group of individuals, working within the legal process, who act contrary to general legal and moral expectations and whose actions may have moral legitimacy above the positive law. In short, a jury that acquits a "technically guilty" defendant likely has broken or disregarded the social contract, but may be justified in so doing.

III. THE SOCIAL CONTRACT IN BALTIMORE: WHO IS IN BREACH?

Many of the commonplace obligations and expectations of a social contract appear terribly broken in certain Baltimore communities. This section attempts to discover what that means, but not in terms of distilling and weighing a list of specific causes like

112. KADISH, *supra* note 108, at 46, 56–58.

113. *See supra* Part II.A.

114. Robert Bork, *Thomas More for Our Season*, 94 *FIRST THINGS* 17, 17–21 (1999).

115. KADISH, *supra* note 108, at 56–66. *See also* Kent Greenawalt, *Conflicts of Law and Morality—Institutions of Amelioration*, 67 *VA. L. REV.* 177, 229–30 (1981).

116. *See generally* Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 *YALE L.J.* 677, 677–725, 679 (1995) (asserting that black juries have a moral responsibility to nullify prosecutions of some black offenders because arrest and prosecution practices reflect endemic racial bias and because black communities are "better off when some nonviolent lawbreakers remain in the community rather than go to prison.").

addiction, racism, or poverty (though these will appear in the inquiry). Instead, the analysis will focus on who is most responsible for the breakdown of the covenant and why certain approaches to covenant obligations in these communities result in its overall weakening. There are three entities or groups to examine: persons in Baltimore who commit acts deemed criminal under state or federal law; government authorities that develop and implement aggressive crime fighting and messaging programs like EXILE; and community members who freely participate in the Stop Snitching “policy” (or similar rejections of law enforcement) and spread its message. In most respects, the last group is the most important. The community can enhance or undermine the authority of law enforcement and can condemn or condone the actions of individual community members even if they violate positive law.¹¹⁷

Different, but related, questions attach to each group. For the criminal actors, this article will examine whether they bear criminal or moral responsibility for their illegal conduct in light of possible community rejection of criminal laws and their enforcement. For law enforcement and the executive, legislative, and judicial officers who guide and support them, the inquiry focuses on whether they are making proper use of their authority under the social contract, or whether EXILE and like approaches represent a breach of trust under a Hobbesian or Lockean viewpoint. Further, even if legitimate, can EXILE stand as an effective law enforcement mechanism? For community members who are not criminal actors, the questions are whether they have breached the social contract and whether they are morally blameworthy for refusing to cooperate with authorities and for rejecting government power either overtly or internally. Again, the differences between Hobbes’ and Locke’s views of the social contract will impact the analysis.

A. An Introduction: The Communities at Issue Are Geographically Discrete and That Matters

The fact that these programs focus on physically discrete and distinct areas—on particular neighborhoods within Baltimore—holds great significance for the social contract calculus. Jane Jacobs noted insightfully in *The Death and Life of Great American Cities* that an effective law enforcement function begins at the neighborhood level with informal, but consistent and strong, checks on behavior and

117. Cf. *Muscarello v. United States*, 524 U.S. 125, 150 (1998) (Ginsburg, J., dissenting); HENRY FRIENDLY, *BENCHMARKS* 196, 209 (1967) (asserting that criminal law and its penalties reflect the moral condemnation of the community).

policing of property by neighbors rather than officers.¹¹⁸ In this conception, formal law enforcement processes grow out of these community efforts and partner with them.¹¹⁹ Cops and courts “finish the job” of apprehending, processing, and punishing more serious wrongdoers; they take over when the conduct at issue is beyond the safe scope of a neighbor’s or shopkeeper’s social enforcement power.¹²⁰ The more common, day-to-day law enforcement and keeping of the peace, however, rest in the hands of community members who know and respect the law and who work together to maintain it.¹²¹

Jacobs’ empirical view of law-in-neighborhoods¹²² comports with the concept of the social contract where each individual compacts with her fellows to participate in a safe and productive commonwealth, pledges fealty to the sovereign, and agrees to follow the law.¹²³ Watching out for one’s neighbor is simply the most basic and efficient way of living up to these obligations. Thus, the neighborhood can be a clear manifestation of, and even enhancement to, an existing social contract.¹²⁴ This tended to be the case in my former Baltimore neighborhood of Remington.¹²⁵ During the five years I resided there, people surveilled strangers and informed their neighbors of odd activity around their properties or on the streets. Individual residents reported crime, and in some cases, foiled crime themselves before calling the police.¹²⁶ Though racially and socio-economically diverse

118. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 40, 45–47 (Modern Library Ed. 1993).

119. *Cf. id.* at 48–49, 147–49. *See also* Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1524–25 (2002).

120. *Id.*

121. *Id.*

122. *Id.*

123. *See supra* Part II.A.

124. I would suggest that municipal regulations are a larger, more formalized, and more artificial version of the “neighborhood enhancement” of the larger social contract. A municipal body is not a sovereign power, so it cannot demand that residents submit any of their personal authority or autonomy to it under a Hobbesian or Lockean political framework. Yet, municipal bodies do incorporate, do pass and enforce laws (so long as they align with the laws of the sovereign power) that reflect the needs and values of that community. While it is true that an individual in a neighborhood has free choice to participate or not participate in informal, even unspoken, rules and regulations established by others on the street, while that individual is legally compelled to follow “legal” rules set by his municipality, that person still is not a “subject” of either his neighborhood or his town the way he is a legal subject to his sovereign or sovereigns.

125. Remington is a neighborhood in the north central section of Baltimore, just to the southwest of Johns Hopkins University.

126. The first winter I lived in Remington, a neighbor a block from my house spotted some kids stealing packages left on porches by delivery companies and the postal service. This

(and from my perspective, not notably friendly or cohesive), my corner of Remington appeared to function as an informal unit within the sovereign commonwealth of Maryland. While some residents grumbled about municipal inefficiency or the noise created by police helicopters late at night, everyone worked with law enforcement and city officials to address problems and keep individuals within the reasonable bounds of the law. Likewise, city, state, and federal law enforcement did not appear to make any special efforts in Remington, aside from the kinds of youth-oriented programming they offer citywide. The two halves of the equation, residents and law enforcement, worked together in this neighborhood with minimal friction because everyone operated from the same set of rules.

Unfortunately, this may not be how the equation operates in other parts of Baltimore. Despite its pop-cultural currency elsewhere,¹²⁷ Stop Snitching is a phenomenon of demographically and geographically discrete communities: neighborhoods within Baltimore populated predominately by poor, African-American residents.¹²⁸ These are the same communities where violent crime rates are the highest in the state.¹²⁹ If the message of Stop Snitching in fact causes residents voluntarily to reject recourse to the police, these communities are deliberately, if not always consciously, severing the kind of informal cooperative ties that exist in other areas of the city between residents and law enforcement. They are refusing to “locally ratify” the larger social contract with their own enhanced version of it. This suggests either that no social contract exists or that residents of these neighborhoods operate under their own contract, wholly apart from that shared by fellow Maryland residents.¹³⁰ At the same time, these areas are plagued by chronic crime of a magnitude that individual citizens could never deter themselves,¹³¹ even if that was their intent.

man yelled at the perpetrators, chased them, and recovered an armful of packages they dropped as they ran.

127. See, e.g., David S. Bernstein, *It's Gotta' Be the Shirts*, BOSTON PHOENIX, Dec. 9, 2005

(http://www.bostonphoenix.com/boston/news_features/top/features/documents/05133928.asp) ; DVD: 2006 *The Game: Stop Snitchin' Stop Lyin'* (Bungalo Records, Inc. 2006).

128. Julie Bykowicz, *supra* note 14, at 2B.

129. See BALTIMORE NEIGHBORHOOD INDICATORS ALLIANCE, VITAL SIGNS IV 35 (2006) [hereinafter VITAL SIGNS IV].

130. Cf. Mat Edelson, *Murder, Interrupted*, URBANITE, May 2008, at 65, 65–69, available at <http://www.urbanitebaltimore.com/sub.cfm?issueID=60§ionID=4&articleID=933> (describing community rejection of established law enforcement practices and application by citizens of ad hoc rules to “right” perceived wrongs).

131. VITAL SIGNS IV, *supra* note 129, at 35 (2006).

These conclusions are actually quite chilling. If I were to walk from my neighborhood to the north for a few minutes, I would enter a new neighborhood (Roland Park), quite distinct from my own; and if I were to walk from my neighborhood to the west for a few minutes, I would again enter a third neighborhood (Greater Mondawmin), distinct from mine and from the first neighborhood I visited. My neighborhood and Roland Park, however, likely share a tendency among residents to self-police and to work with law enforcement in the “equation” of keeping the peace. Residents of Greater Mondawmin, however, might manage their community quite differently, conducting what local enforcement they could on their own while avoiding interactions with police. Given that the violent crime rate in Greater Mondawmin is more than twice that in Remington and more than eight times that in Roland Park,¹³² such a state of affairs is clearly failing to meet the basic needs of community safety, but it may exist and persist nonetheless.

On the law enforcement side, EXILE operates in a fashion that is similarly out-of-synch with Jacobs’ notion of community bonds and official action. The program expressly targets discrete geographic areas in Maryland, primarily Baltimore.¹³³ Within Baltimore, the overwhelming majority of EXILE investigations and prosecutions, meaning the overwhelming expenditures of financial resources and manpower, take place in these same poor, black communities where Stop Snitching prevails.¹³⁴ While crime statistics certainly suggest that these are the areas of highest need for law enforcement intervention, this program appears to operate without the cooperation or sanction of local residents.¹³⁵ It is a special action, applied to the community rather than requested by it.

In this way, both (i) the implementation of EXILE-style policing; and (ii) the fact of community disengagement from the official channels of law enforcement serve to physically define and “balkanize” particular neighborhoods within Baltimore and Maryland. The communities that reject the resident-police participation common

132. *Id.* at 34–37 (2006).

133. *See Gun Crime=Jail Time*, *supra* note 21. *See also* BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 1–3.

134. Jones, *supra* note 35.

135. *Compare* 2006 VIOLENT CRIME PROGRAM, *supra* note 27, at 1–6 (describing investigations and prosecutions in Baltimore that occurred almost exclusively in poor communities of color); Jeremy Kahn, *Story of a Snitch*, THE ATLANTIC, Apr. 2007, available at <http://www.theatlantic.com/doc/print/200704/stop-snitching> (describing mostly poor, minority neighborhoods in Baltimore where the Stop Snitching culture, along with witness intimidation, have taken hold).

to Remington are the same communities subject to the kind of law enforcement action Remington rarely sees.

B. Blameworthiness of Criminal Actors in Baltimore

Do the battling messages of EXILE and Stop Snitching—and the concomitant mistrust of law enforcement and the “get tough” tactics of police—in any way reduce the culpability of persons in these specific communities who commit crimes? I limit this inquiry to violent and property crimes (such as murder, rape, assault, robbery, and theft) and will not include drug crimes, which tend to raise a whole additional set of inquiries and controversies.¹³⁶ It appears that regardless of any weakening of the social contract, those who commit serious crimes still bear full culpability because the core moral wrongness of their actions is not reduced or eliminated.

If a person commits a violent crime in Maryland, he has broken the statutory law¹³⁷ or established common law¹³⁸ of the state. This law and the punishments that accompany it represent, to a large degree, the moral values of the majority in the state¹³⁹ and carry the authority of a sovereign power. To contractarians, a breach of the established law represents an offense against the sovereign and a breach of the covenant between the criminal actor and his fellow citizens.¹⁴⁰ In addition, Hobbes and Locke probably would argue that serious crimes violate natural law, the universal directives and prohibitions that exist between humans both outside and within a commonwealth.¹⁴¹

136. I elected to limit the inquiry to these terms for a number of reasons. First, by focusing on violent crimes or more serious property crimes, I keep the analysis within the general realm of interest for EXILE enforcement. Secondly, if residents are deliberately refusing to report violent crimes, this demonstrates the magnitude of their distrust for sovereign powers. Lastly, the criminality of minor drug offenses and petty crimes may fundamentally be in question in target communities.

It is true that prosecution of minor drug crimes and the inexplicably harsh punishments for some of them likely contributes to community rejection of law enforcement methods. This topic, however, involves its own complexities and has a rich body of scholarship around it. See, e.g., Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 OHIO ST. J. CRIM. L. 19 (2007).

137. See, e.g., MD. CODE ANN., CRIM. LAW § 3-203 (West 2007) (enumerating crime of assault in the second degree).

138. See, e.g., *Thomas v. State*, 737 A.2d 622, 635 (Md. 1999) (defining common law crime of robbery).

139. Joshua Dressler, *Justifications and Excuses: A Brief Review of the Concepts and the Literature*, 33 WAYNE L. REV. 1155, 1169 (1987).

140. HOBBS, *supra* note 42, at 96–98; LOCKE, *supra* note 42, at §§ 129–30.

141. HOBBS, *supra* note 42, at 72–73; LOCKE, *supra* note 42, at § 6.

Person Y who commits an assault in Sandtown-Winchester has broken the statutory law of Maryland.¹⁴² He likewise has breached his covenant with his fellow Maryland residents, to the degree that such a covenant exists.¹⁴³ If we assume that the social contract providing for the sovereignty of the State of Maryland has eroded in Sandtown-Winchester, that it no longer exists between the residents of that neighborhood and the rest of the state, then Y is not subject to contract obligations and thus cannot breach them.¹⁴⁴ We could argue then that Y is subject to Maryland law and its coercive power only as a kind of unwilling captive or detainee. He is not actually, legally responsible for breaking the positive law if the social contract does not extend to residents of his neighborhood.

Y is, however, responsible for breaching tenets of natural law whether the social contract exists or not.¹⁴⁵ Y is morally blameworthy for upsetting the peace and committing an act of violence against another person.¹⁴⁶ In short, Y committed a clear wrong. The difference lies in how the wrong is defined and who can punish Y for it. If the social contract in Sandtown-Winchester is dissolved, state officials have no more authority than anyone else to define the crime of assault and to punish Y for it.¹⁴⁷ The victim of the crime or a neighbor or family member has just as much authority, outside of a valid social contract, to declare Y a wrongdoer and to punish him.¹⁴⁸

Accordingly, even if law enforcement programs like EXILE and community refusal to work with officers of the sovereign power signaled a complete dissolution of the social contract, and poor neighborhoods in Baltimore could be considered “positive law free zones,” the wrongfulness of serious criminal conduct is not lessened or eliminated. The refusal of community members to report criminal conduct does not reduce the blameworthiness of wrongdoers in Sandtown-Winchester in a contractarian sense.¹⁴⁹ Practically speaking,

142. MD. CODE ANN., CRIM. LAW § 3-203 (West 2007).

143. See *supra* Part II.A (describing the duties shouldered by each individual living under a functioning social contract).

144. See *supra* Part II.A (outlining the core theories of Hobbes and Locke regarding the creation of a social contract and the relations between humans when no such contract exists).

145. HOBBS, *supra* note 42, at 72–73; LOCKE, *supra* note 42, at § 6.

146. HOBBS, *supra* note 42, at 72–73 (outlining the first “Fundamentall Law of Nature”); LOCKE, *supra* note 42, at § 6 (enumerating natural laws that govern in the states of nature and of social contract).

147. HOBBS, *supra* note 42, at 68–69; LOCKE, *supra* note 42, at § 7.

148. *Id.*

149. HOBBS, *supra* note 42, at 68–69, 72; LOCKE, *supra* note 42, at §§ 7, 13 (establishing that moral wrongs and crimes exist and that each individual has authority to judge and punish conduct when no social contract exists).

though, it does mean that persons like Y can commit criminal acts with greater impunity.

As simplistic as this conclusion may seem, it is important to establish. The erosion of the social contract does not eliminate concepts of wrongdoing. Instead, it throws into question what authority may define and punish wrongdoing and likely fuels further disorder and crime.

C. The Exercise of Sovereign Authority in Baltimore: Proper or Improper?

EXILE likely represents a threat to the social contract, as opposed to an effective and appropriate law enforcement program. State and federal authorities must implement programs and policies in accordance with legislative, common, and constitutional law. Whether authorities can enforce the law without the support of citizens is a far more difficult question.¹⁵⁰ It raises an issue of social contract theory where Hobbes and Locke likely disagree.¹⁵¹ While the program represents an appropriate exercise of power under a Hobbesian view, Maryland EXILE appears to violate Lockean notions of the proper balance between government authority and individual interests. As a result, sovereign powers should evaluate whether these policies and practices are appropriate, fair, and effective.

Maryland EXILE concentrates its human capital, money, and coercive power on investigating and prosecuting wrongdoers who primarily live in the poorest neighborhoods with the highest concentrations of people of color in Baltimore.¹⁵² Though Project EXILE has not been challenged successfully on constitutional grounds anywhere in the country, courts and scholars have expressed serious concerns about how EXILE programs primarily target low-income men of color from particular communities.¹⁵³ In addition to selective federal prosecution, the program expressly seeks to identify, investigate, and, whenever possible, remove individuals that officers determine represent a high criminal threat—whether police have

150. See, e.g., Harris, *supra* note 44, at 656.

151. See *supra* Part II.B.

152. See BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 1–12; Jones, *supra* note 35, at 6B. See also *supra* note 134 and accompanying text.

153. See United States v. Jones, 36 F. Supp. 2d 304, 311–312 (E.D. Va. 1999) (three judge panel taking express notice that EXILE looks like it suffers from selective prosecution); Gardner, *supra* note 39, at 305–07.

evidence of immediate illegal conduct or not.¹⁵⁴ This type of approach raises fundamental due process concerns.¹⁵⁵

These aggressive tactics join with an equally aggressive messaging component. The EXILE marketing campaign suggests that state and federal authorities are watching these neighborhoods very closely.¹⁵⁶ There is a “wanted poster” mentality to the general messaging and advertisements. The official decrees suggest that those bearing felony convictions, whether ex- or current-offenders, are on the list; meanwhile, the target neighborhoods are home to the highest percentage of ex-offenders in the state.¹⁵⁷ More strikingly, the Maryland EXILE billboard campaign deliberately ridicules named community members to their neighbors and friends—a provocative choice even given the moral blameworthiness of individuals like Solothal “Itchy Man” Thomas.¹⁵⁸

All this effort, coercive power, and negative messaging targeted at very distinct communities can be viewed like a declaration of war (in the contractarian sense)¹⁵⁹ by the majority society against the poorest minority neighborhoods. Law enforcement persuasively argues that they are declaring war on crime and focusing their efforts

154. BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 8.

155. *Cf.* City of Chicago v. Morales, 527 U.S. 41, 60 (1999) (plurality opinion) (asserting that the Constitution will not allow criminal law and processes to detain all possible offenders, leaving the courts to sort out later who was correctly arrested).

156. *See* 2006 VIOLENT CRIME PROGRAM, *supra* note 27, at 34–35 (describing the public relations component of Maryland EXILE).

157. *See, e.g.*, Abell Foundation, Re-Entry Center, <http://www.abell.org/programareas/highlights/reentry.html> (last visited Sept. 27, 2008); Lionel Foster, *Man of Conviction*, URBANITE, May 2008, at 52, 55, available at <http://www.urbanitebaltimore.com/sub.cfm?issueID=60§ionID=4&articleID=931> (stating that in 2001, fifty-nine percent of inmates released from Maryland prisons came to Baltimore and that sixty percent of those settled in just five zip codes within the city).

158. Solothal Thomas was a notorious Baltimore gangster, convicted in federal court in 2006 for murder and conspiracy. Press Release, United States Attorney Office, District of Maryland, Solothal Thomas and Edward Countess Convicted in Murder-For-Hire Scheme (Jul. 6, 2006), available at http://www.usdoj.gov/usao/md/Public-Affairs/press_releases/press06a.htm (last visited Aug. 10, 2008). His name appears prominently on an EXILE billboard. 2006 VIOLENT CRIME PROGRAM, *supra* note 27, at 34–35.

159. The state of war plays a role in social contract theory in a number of contexts. Hobbes and Locke each discussed the state of war outside the social contract where no sovereign or positive law prevails. HOBBS, *supra* note 42, at 70; LOCKE, *supra* note 42, at § 19. Again, Hobbes saw the state of nature as equivalent to a state of war while Locke separated the two states. *See supra* Part II.B. In addition, Locke specifically discussed the idea of a sovereign or government waging war against particular citizens or groups. LOCKE, *supra* note 42, at § 220–24. As discussed in *supra* Part II.A and just below, Locke asserted that any fundamental breach of the trust placed in the sovereign could comprise an act of war against the aggrieved citizens (who, in part, empowered the sovereign in the first place) if it were a serious enough threat to liberty or property. *Id.*

where crime deterrence and criminal prosecution are most needed.¹⁶⁰ The difficulty resides in the fact that the law enforcement efforts are extensive and highly coercive but woefully unmatched by other services or by remediation of other chronic problems. Through EXILE, federal authorities prosecuted and removed nearly two hundred persons from poor Baltimore neighborhoods last year,¹⁶¹ but the schools in these areas are still by far the worst in the state,¹⁶² the housing stock is dangerous,¹⁶³ and economic opportunity is close to non-existent.¹⁶⁴ Lastly, the crime rate does not appear to be abating despite the partnership.¹⁶⁵

Under a Hobbesian view, EXILE likely represents a wholly appropriate exercise of authority. Sovereign power is absolute and effectively unchallengeable.¹⁶⁶ The primary goal and singular promise of a sovereign is to provide protection for all members of a commonwealth.¹⁶⁷ EXILE seeks to protect residents of inner city Baltimore and the greater society through tough enforcement in areas where the concentration of felons is high and lawbreaking is common. Whether the tactics (i) ignore other crime-rich areas of the state; (ii) create an oppressive atmosphere for all residents of the target areas; or (iii) far outpace affirmative services afforded other state residents is not of consequence to their legitimacy under Hobbes' view. At best, target area residents could argue that law enforcement is failing to live up to its duty to protect them properly, but that would not throw into question the legitimacy of EXILE as an exercise of power.

The Lockean calculus is far less clear, but EXILE may represent a breach of the trust placed in the sovereign because such enforcement looks like an "act of war" against residents of poor Baltimore neighborhoods. Locke asserted that sovereign power remains legitimate only so long as it protects the people and respects

160. *Midday with Dan Rodricks: Interview with United States Attorney Rod Rosenstein and Baltimore State's Attorney Patricia Jessamy* (WYPR radio broadcast Feb. 27, 2008).

161. Jones, *supra* note 35, at 6B.

162. See generally Maryland Report Card, Maryland State Department of Education (2007) (providing public school assessment data for all districts statewide), available at <http://www.mdreportcard.org/> (last visited Apr. 10, 2008).

163. SANDRA J. NEWMAN, *LOW END RENTAL HOUSING: THE FORGOTTEN STORY IN BALTIMORE'S HOUSING BOOM*, 14–19 (Urban Institute 2005); Hanscom, *supra* note 6, at 58, 61.

164. *The Market Is Failing Low Wage Baltimoreans*, THE ABELL REPORT, Aug. 2007, at 1.

165. Andy Rosen, *GBC Report: Baltimore Region's Progress Is Threatened by Crime, Traffic*, DAILY REC. (Baltimore, Md.), Dec. 21, 2007.

166. HOBBS, *supra* note 42, at 97, 117.

167. *Id.*

their rights to liberty and property.¹⁶⁸ He stated that the government puts itself into a state of war with the people if it seizes or destroys their property or arbitrarily commits acts of oppression against them.¹⁶⁹ At such times, persons are “absolved from any further obedience” and may seek refuge amongst themselves.¹⁷⁰ EXILE and other similar forms of law enforcement, like Baltimore’s “blue light cameras,”¹⁷¹ suggest that poor Baltimore neighborhoods exist in a kind of police state where individual liberty and dignity are reduced and government can exercise greater-than-normal powers. EXILE could be viewed as a threat to, and a continuing punishment of, the large population of ex-offenders in Baltimore, regardless of whether they commit illegal acts after returning to the community from prison. As stated above, economic opportunity and basic social services like functional schools do not exist in these neighborhoods on the same scale that they do in the wealthier parts of the state and nationwide. By concentrating resources on police work while failing to do other jobs effectively, government could be charged with the destruction of property in the form of economic agency and opportunity. This conception might be foreign to Locke, but it would comport with contemporary notions of property rights.¹⁷² And, sovereign powers could be faulted for failing even to create safe streets despite all their efforts. Combined, these actions and inactions, concentrated against

168. LOCKE, *supra* note 42, at §§ 220–24.

169. *Id.* § 222.

170. *Id.*

171. *See, e.g.*, Luke Broadwater, *Prosecutors: Stats Show Blue Light Cameras Not Getting Results*, THE EXAMINER (Baltimore, Md.), Jan. 22, 2007. In 2005, the City State’s Attorney Office in Baltimore began installing almost 300 cameras on poles above Baltimore’s streets. *Id.* Law enforcement placed most of the cameras in poor neighborhoods and equipped them with flashing blue lights to draw attention to the surveillance. *Id.* The City State’s Attorney funded the camera project with a combination of state funds, federal homeland security funds, and money seized from drug busts. *Id.* *See also* Stephen Janis, *Blue Light Special*, BALT. CITY PAPER, Aug. 17, 2005.

172. *See, e.g.*, Charles A. Reich, *Beyond the New Property: An Ecological View of Due Process*, 56 BROOK. L. REV. 731 (1990). Reich, a much-lauded modern theorist on property rights, asserted in this article that persons in America should have a due process right to minimum subsistence and housing as well as to the tools necessary to improve economic agency and standing, such as education, health care, and other necessities in a modern “centrally managed economy.” *Id.* at 733. Reich saw these tangibles and intangibles as property rights. *Id.* at 735–37. Reich’s earlier assertions (in his article *The New Property*, 73 YALE L.J. 733 (1964)), that services and compensation promised by the government create a property right in those slated to receive them, have been widely accepted among scholars and courts. *See, e.g.*, Fred R. Shapiro, *The Most-Cited Articles from the Yale Law Journal*, 100 YALE L.J. 1449, 1462 (1991) (revealing that Reich’s *New Property* is the most-cited article ever published by the journal).

specific communities in Baltimore, could be viewed as acts of war by a government against its people.

On the other hand, Locke looked to the majority of society for ratification of controversial government actions.¹⁷³ Most Marylanders likely would support EXILE and greater law enforcement focus in these neighborhoods. The majority culture, and government officials, might argue that EXILE and similar programs are not intended to oppress law-abiding individuals, but instead seek to protect them and free them from the harms of chronic lawbreaking in their communities. By the same token, however, any rejection of government authority as expressed through Stop Snitching and other forms of non-participation would represent legitimate dissent to Locke.¹⁷⁴ And the fact that these communities are physically and demographically distinct, and that they lack significant political power, suggests that they could act (or silently dissent) against arbitrary exercises of power despite support for EXILE by the majority culture.¹⁷⁵

The legitimacy of EXILE under a contractarian view, therefore, is difficult to confirm. Hobbes very likely would ratify it so long as the sovereign intended to protect residents. Under Locke's lens, EXILE looks like an over-application of sovereign power and infringement on liberty and dignity, no matter how needed it may be. In terms of effectiveness, these Lockean concerns undermine the statistical successes of approximately two hundred prosecutions in a single year.¹⁷⁶ EXILE looks far less effective if it serves to balkanize poor neighborhoods and to erode further the confidence of their residents in the work of their government. If Jane Jacobs presented a pragmatic view of how the social contract works on the street,¹⁷⁷ EXILE stands as an example of its opposite, where law enforcement acts unilaterally and hopes only secondarily that neighbors will join the fight.

D. Refusing to Participate: Are Residents of Baltimore Breaching the Social Contract?

Residents of poor Baltimore neighborhoods likely do not improperly breach the social contract if they refuse to aid law enforcement and instead reject the sovereign powers supported by the

173. LOCKE, *supra* note 42, at § 242.

174. *Id.* § 233.

175. LOCKE, *supra* note 42, at §§ 199–201, 208–10 (outlining “tyrannical” acts by officers of sovereign powers).

176. *See supra* note 160 and accompanying text.

177. *See supra* Part III.A.

majority society. The silence bred by an effort like Stop Snitching probably represents legitimate protest against what residents view as ineffective and authoritarian government conduct. I deliberately limit the examination here to community members who are (i) not coerced into silence; and (ii) not currently engaged in criminal conduct. Witness intimidation is a serious crime, and if a person avoids reporting illegal activity to police under that kind of coercion, she is in no way rejecting the social contract. Furthermore, wrongdoers who elect to avoid reporting crime, whether their own or that of others, have reasons apart from the health of a social contract or their neighborhood for staying mum.

As a general matter, there is no positive legal obligation in the United States for ordinary citizens to report crime.¹⁷⁸ Maryland has no specific requirement to report criminal conduct, save for persons in certain positions of responsibility.¹⁷⁹ The obligation that each individual shoulders under a social contract is to submit to sovereign authority and the laws it effectuates and enforces.¹⁸⁰ Likely, though, there also exists a more general obligation, a moral obligation rather than a positive legal duty, to assist in promoting law and order.¹⁸¹

For the voluntary adopter of the silence urged by Stop Snitching, refusal to support and engage with police probably represents a form of resistance toward, and rejection of, sovereign authority. Rodney Bethea claims that his video *Stop Snitching* is just such a cry against over-application of coercive power and under-implementation of social services.¹⁸² A good deal of empirical evidence supports the assertion that silence equals rejection of sovereign authority and the will of the majority society.¹⁸³ For example, in January 2008, African American leaders in Baltimore publicly refused to condemn the “Stop Snitching mindset” and called

178. There is a federal offense of “misprision of felony” which resembles failure to report crime. 18 U.S.C. § 4 (2006). Courts generally require proof that the defendant to a misprision charge actively sought to obscure or hide criminal conduct by another. *See, e.g., United States v. Adams*, 961 F.2d 505, 509–10 (5th Cir. 1992).

179. *See, e.g., MD. CODE ANN., FAM. LAW*, § 5-704 (West 2007) (requiring health practitioners, police, educators, and human service workers to report child abuse). Though adopted by the state with the rest of English common law, misprision of felony is no longer a crime in Maryland. *Pope v. State*, 396 A.2d 1054, 1078–79 (Md. 1979).

180. HOBBS, *supra* note 42, at 96–98; LOCKE, *supra* note 42, at §§ 129–30.

181. HOBBS, *supra* note 42, at 145 (discussing “fundamentall” obligations of subjects); LOCKE, *supra* note 42, at §§ 95–99.

182. Julie Bykowicz, *supra* note 14, at 1B.

183. Kane, *supra* note 7, at 1B; Jones, *supra* note 19, at 1B. *See also* Edelson, *supra* note 130, at 65, 69 (describing a program to prevent and mediate disputes that acknowledges residents’ rejection of law enforcement).

instead for equal enforcement of criminal and civil laws in realms other than the inner city and wider demands by society and government for all individuals to serve as “whistleblowers” to wrongdoing.¹⁸⁴ Recent studies of Baltimore neighborhoods demonstrate a lack of investment in the larger society, high incidences of depression, and pervasive safety concerns.¹⁸⁵ If residents of neighborhoods like Sandtown-Winchester and Greater Mondawmin are refusing to help police, even at the potential cost of greater crime on their streets, they likely are signaling that: (i) they disagree with law enforcement tactics (reflecting a liberty interest); (ii) they do not trust that programs like EXILE make their communities safer (reflecting an interest in safety and security); or (iii) they have more pressing needs that authorities are failing to meet (reflecting an interest in property and general welfare).

Breaking the “unwritten law” or moral expectation that citizens must work with police and alert them of serious wrongdoing resembles jury nullification.¹⁸⁶ Jurors do not have a positive legal obligation to apply the law correctly to the facts in determining a verdict; instead, there is a strong moral expectation that they will do so.¹⁸⁷ When jurors believe that correct application of the law will lead to an unjust result, they sometimes violate the expectation.¹⁸⁸ In a real sense, this is a breach of the social contract because such jurors have taken back their “natural” right to determine wrongdoing.¹⁸⁹ Even though they act within a society and under the watch of sovereign powers, nullifying jurors effectively take the law into their own hands and determine what is just for the particular circumstances.¹⁹⁰ Non-participation with law enforcement may amount to a similar practice. If residents of Baltimore determine that the acts of the sovereign chronically infringe

184. Jones, *supra* note 19, at 1B (describing a community meeting where black leaders from political, legal, religious, and other community spheres refused to condemn a new *Stop Snitching* video, filmmaker Rodney Bethea, or the attitude of silence that pervades poor Baltimore neighborhoods).

185. Cf. BALTIMORE CITY DEPT. OF PLANNING, SMALL AREA PLAN: BARCLAY-MIDWAY-OLD GOUCHER 48 (2005), available at <http://www.baltimorecity.gov/government/planning/images/SAPBarclay-Midway-OldGoucher.pdf>; Kimberly Haven, *Who's Not Voting in Maryland?*, THE EXAMINER (Baltimore, Md.), Sept. 13, 2006; *High Incidence of Depression Among the City's Poor*, THE ABELL REPORT, Aug. 2004, at 1.

186. See *supra* Part III.D.

187. *Id.*

188. See *supra* Part II.D.

189. HOBBS, *supra* note 42, at 68–69; LOCKE, *supra* note 42, at § 13 (both discussing how, in the state of nature, humans each have equal power to judge the conduct of others for wrongdoing).

190. Cf. Butler, *supra* note 116, at 700–03.

on their interests, they may choose to breach moral expectations of society as a way of acting for justice and of announcing that current policies are wrong. The “trust” placed in the hands of a juror is much weightier than that carried by the ordinary citizen, and a juror’s decision in a criminal case (particularly a decision to acquit) has a significant impact and finality. The lesser weight of the individual Stop Snitching decision, however, should not obscure the overall impact and significance of the silent objection of large segments of an entire community.

Under a Hobbesian view, participation by citizens in Stop Snitching directly violates the social contract unless comporting with the expectations of the sovereign places the individuals at risk of immediate harm. Hobbes likely would consider Stop Snitching wholly unacceptable because it represents “seditious doctrine,” promotion of individual judgment over sovereign authority, and aggrandizement of certain individuals or ideas over stability and safety.¹⁹¹ In Hobbes’ view, the sovereign determines how best to protect subjects.¹⁹² So long as the sovereign is safeguarding subjects and not forcing them to place themselves in harm’s way, they must obey.¹⁹³ Here, law enforcement is trying to protect law-abiding residents by aggressively pursuing and removing wrongdoers.¹⁹⁴ To any claim that the streets are still filled with danger, Hobbes would respond that without positive law and sovereign power, absolute chaos and continual violence would reign.¹⁹⁵ In other words, life would be much worse in these areas without law enforcement. Accordingly, “getting tough on crime” is the fundamental duty of sovereign powers, leaving residents little valid recourse to protest or act against over-application or under-resourcing.

Because he was equally concerned with preserving liberty and property as with the rule of law, Locke might view the situation in Baltimore differently. EXILE and similar enforcement practices may well infringe liberties; they certainly erode the dignity of the residents of target neighborhoods without solving the problem of chronic crime. Locke was very concerned with property and insisted that one of the main goals of forming a social contract was to protect property and

191. HOBBS, *supra* note 42, at 163–64.

192. HOBBS, *supra* note 42, at 133.

193. *Id.*

194. *See supra* Part I.B; BALTIMORE EXILE: A COMPREHENSIVE STRATEGY, *supra* note 23, at 8.

195. HOBBS, *supra* note 42, at 102 (“Sovereign Power not so hurtfull as the want of it”).

allow persons to thrive economically.¹⁹⁶ Residents of target neighborhoods are the poorest in Maryland.¹⁹⁷ In addition, if acquisition and possession of property in the contemporary age requires education and economic opportunities¹⁹⁸—both factors that implicate government policies and programs¹⁹⁹—residents of poor neighborhoods in Baltimore have far less chance to thrive economically than the rest of society.²⁰⁰ So again, the over-application of coercive power combined with the under-implementation of government services commonly provided to others within the social contract suggest grounds for legitimate protest under a Lockean view. Baltimoreans who willingly espouse Stop Snitching may be getting far less than their fair share of liberty, property, and protection because of who they are and where they live. Protesting against sovereign power and repudiating social contract responsibilities are understandable, and likely proper, reactions.

Lastly, it is necessary to ask whether residents of target neighborhoods in Baltimore properly consent to the social contract that would require them to comport with positive law and moral expectation. Hobbes would say yes; they reside in the commonwealth and benefit from the protections of the sovereign.²⁰¹ Locke, however, stated that possession and enjoyment of property in a commonwealth represents a form of consent to be governed by the appointed sovereign.²⁰² As stated above,²⁰³ if enjoyment of property in the modern age requires certain services and largesse furnished by the sovereign, and if residents of target neighborhoods are chronically excluded from these baseline fruits of the social contract, there is an argument that they have not consented to the covenant or subjected themselves to governance. Some contemporary commentators might say that residents voluntarily live in Maryland, that they benefit from infrastructure, that many of them affirmatively seek government benefits, so there is no way to conclude a lack of consent.²⁰⁴ Others,

196. LOCKE, *supra* note 42, at §§ 25–51, 124.

197. *See* notes 134, 155 and accompanying text.

198. *See, e.g.*, Ben S. Bernanke, Chairman, President's Council of Economic Advisors, Address at the National Economists Club 1, 4–9 (Oct. 11, 2005) (transcript available on the White House website at <http://www.whitehouse.gov/cea/econ-oppty20051011.html> (last visited June 20, 2008)).

199. *Id.*

200. *See supra* notes 161, 163.

201. HOBBS, *supra* note 42, at 74–75.

202. LOCKE, *supra* note 42, at §§ 117–120.

203. *See supra* notes 171, 197 and accompanying text.

204. Harry Beran, *supra* note 94, at 271.

like Hanna Pitkin, might be sympathetic to non-consent arguments.²⁰⁵ While the federal and Maryland governments act justly in the main, there is substance to claims that they act unjustly toward these discrete communities, as discussed above.²⁰⁶ This chronic injustice provides legitimate grounds for denying consent.

Pitkin's consent theory²⁰⁷ offers a useful counterpoint to Locke's deference to majority rule when conflicts arise. She asserts that the duty to obey or consent rests with what *ought* to be obeyed, and she goes on to state that individuals should resist and reject what is clearly unjust, whether acceptable to the majority or not.²⁰⁸ Resistance (or refusal to consent) must be "appropriate" and based on rational, principled decision making.²⁰⁹ It follows that in circumstances where the sovereign acts justly most of the time, but regularly applies coercive power and distributes services to one group in a different and unjust fashion, that group has good grounds to protest despite the majority view. The group also would have grounds to withdraw or renounce consent to the social contract if they chronically could not remedy the injustice.

As with the primary analysis of the Lockean view above, the issue of consent does not conclusively show that Baltimore residents are correct in their choices. It still suggests, however, that something is very wrong, and that residents of targets neighborhoods may be justified in breaching the moral expectations of the majority society by not talking.

E. Summary: The Erosion of the Covenant in Baltimore

In a contractarian sense, something is very wrong in poor neighborhoods in Baltimore. To the proponent of Thomas Hobbes, the trouble likely amounts to rebellious notions by residents and an improper, if not illegal, disrespect for sovereign authority. Accordingly, such an advocate would view EXILE and like law enforcement practices as appropriate policies to keep the peace and promote stability; she would view the attitudes of Stop Snitching adherents as potentially seditious. From a Lockean perspective, the situation is far more complex and less clear. EXILE threatens the liberty and dignity of residents in target neighborhoods while failing to

205. Pitkin, *supra* note 101, at 39.

206. *See supra* Part III.C.

207. Pitkin, *supra* note 101, at 39.

208. *Id.* at 42.

209. *Id.* at 44, 52.

end chronic crime. Other government policies, or the shortcomings thereof, appear to provide less than the common baseline standard for social services and economic opportunity expected by residents of Maryland and the United States.²¹⁰ As a result, residents of neighborhoods targeted by EXILE may be sending a message of protest to authorities and the majority society by refusing to act as other citizens do. This protest likely is justified, despite majority support for “tough on crime” practices, because the balance between sovereign power and individual interests is clearly upset in Baltimore and because chronic injustice suggests that residents of targeted neighborhoods are less obligated to submit.

IV. AN AMERICAN SOLUTION: REPAIRING THE SOCIAL CONTRACT IN BALTIMORE

Since the tragic murder of the Dawson family in 2002, the problem of crime in Baltimore has not abated, but instead may have worsened.²¹¹ As disturbing, low-income African American communities appear less trusting of law enforcement and other authorities in recent years despite growing government expenditures to combat and harshly punish criminal activity. Why is the EXILE “tough on crime” approach leading to the erosion of the social contract that undergirds government authority?

State and federal authorities need to consider the social contract, and the participation of community residents, when forging law enforcement policy and programs. Lockean sociopolitical ideas, not the doctrines of Hobbes, provided the foundation for Maryland and the United States. Government authority to ensure safety and stability must be circumscribed by concerns for individual interests, for the rights to liberty and property. The coercive powers of government should be responsive to citizens, particularly to legitimate acts of dissent against state action. The current situation in Baltimore demonstrates that a policy does not have to be unconstitutional to weaken the social contract. When policies appear to fail or to result in more problems than positive outcomes, authorities should look to the interests of citizens to reconsider and redraw the policies. That is exactly what needs to be done with EXILE and other aggressive law enforcement programs in Baltimore.

210. See *supra* Part III.C.

211. Melody Simmons, *Home Where Family Died Is Now Safe Haven*, N.Y. TIMES, April 8, 2007.

EXILE does not address any lack of moral outrage at criminality in these particular communities or the concurrent rejection of government authority implied by residents' silence. It does not support citizens like Angela Dawson, nor does it encourage the kind of unwritten partnerships, described by Jane Jacobs,²¹² that grow out of a functioning social contract. Instead, EXILE, blue light cameras, and the like create an adversarial stance between the majority society and particular communities in Baltimore. Aggressive messaging and policy create a sense of occupation rather than conveying that government exists to protect residents of Baltimore and to help them succeed in acquiring and developing property.

Approaches instead should seek to link the majority society and these "balkanized" communities, as well as to encourage productive partnerships between law enforcement and residents.²¹³ Instead of trying to cut the cancer out of neighborhoods, government should seek ways to attract and gain substantive consent for exercises of government authority.²¹⁴ This may require bringing government services in Baltimore up to state or national averages by providing effective public education and genuine economic opportunity. The Hobbesian view of protection as the paramount value is insufficient. Sovereign powers must also support—if not promote—individual liberty, dignity, and acquisition of property.²¹⁵

The irony is that EXILE and Stop Snitching, two "programs" arising from very opposite places both practically and philosophically, have combined in Baltimore to create a single negative outcome. Government leaders and policymakers have the most leverage to address this problem. They should do so in a fashion that honors the philosophical foundations of our social contract and sovereign powers by considering the interests and concerns of the residents of the target neighborhoods in Baltimore.

212. See *supra* Part III.A.

213. *Id.*

214. See *supra* Part II.C (examining theories of consent to the social contract).

215. See *supra* Part II.B (outlining Locke's concern for maintaining the maximum measure of individual liberty permitted under social contract).

