Lessons of Disloyalty in the World of Criminal Informants

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Abstract

Without informants, policing would grind to a halt. The majority of drug and organized crime prosecutions hinge on the assistance of confidential informants, and white collar prosecutions and anti-terrorism investigations increasingly depend on them. Yet society by and large hates informants. The epithets used to describe them – “snitch,” “rat,” and “weasel,” among others – suggest the reason: the informant, by assisting the police, is guilty of betrayal. And betrayal is, in the words of George Fletcher, “one of the basic sins of our civilization.” But identifying disloyalty as the reason for society’s disdain raises more questions than it answers. Are all informants disloyal, or are only some? Are there governing principles to distinguish those informants who are disloyal from those who are not? To whom are these informants disloyal? What import does an informant’s disloyalty have beyond the social stigma on the informant? These questions matter because informants are crucial cogs in the law enforcement machine, but they have largely escaped the attention of legal scholars.

This Article seeks to remedy this oversight. First, it explores how disloyalty functions in today’s society by looking to the observations of philosophers and legal scholars who have considered the nature of loyalty and disloyalty as moral constructs. The Article then examines three scenarios that suggest insights into when and why informants are considered disloyal. The first is the case of an accomplice-informant who assists police in apprehending and prosecuting her partners in crime. The second scenario is that of a community with particularized norms against cooperating with the police, with a particular focus on the “Stop Snitching” movement that has become increasingly influential in high-crime communities. The third scenario looks at informants in the rest of society, where particularized norms against assisting the police do not govern. The analysis of these scenarios reveals that issues of disloyalty arising from the use of informants intersect with and inform sociological research on the marginalization of communities and the impact of police legitimacy on civilian cooperation and compliance with the law, as well as scholarly concerns about overcriminalization.

The Article then makes three policy proposals that aim to enhance civilian cooperation with law enforcement without undermining police effectiveness. First, it is proposed that police and prosecutors amend their informant screening guidelines to explicitly and publicly require consideration of loyalty issues arising from the use of a given informant. Public acknowledgement in this manner that law enforcement officials share important community values would encourage voluntary cooperation with police and compliance with the law. Second, law enforcement policymakers should curtail informant recruitment in marginalized communities that are home to anti-cooperation norms in favor of alternative policing strategies, as current policies that encourage the widespread use of informants undermine police-community relations in these communities. Finally, lawmakers should limit the use of initiatives, derogatorily called “snitch lines,” that encourage civilian to report minor crimes and non-criminal suspicious behavior and consider decriminalizing some minor regulatory-type
offenses. Mainstream society’s dissatisfaction with these programs, expressed in the harsh language of disloyalty, suggests discomfort with the “snitch lines” themselves, as well as the criminalization of the relatively minor offenses that they target.
Introduction

If society based its measure of criminal informants – a term used here in its broadest sense to include any person, criminal or not, who assists police in apprehending criminals\(^1\) – solely on their usefulness to law enforcement, they would be lauded as heroes.\(^2\) Their centrality to effective drug enforcement and the infiltration of organized crime syndicates is a truism, acknowledged by the law enforcement community\(^3\) and reflected widely in popular culture.\(^4\) Indeed, informants play a crucial role in all areas of criminal law enforcement,\(^5\) and their importance is increasing in the growing areas of counterterrorism and white-collar prosecutions.\(^6\) Simply put, many areas of law enforcement today would come to a virtual standstill without the cooperation of confidential informants.

But society’s view of informants is at best ambivalent and often hostile.\(^7\) American idiom is replete with epithets for those who assist the police: they are “snitches,” “rats,” “weasels,” “stool pigeons,” and “squealers.”\(^8\) Children learn at an early age that if they report wrongdoing to teachers and parents, they may not be seen as good citizens, but as “tattletales.”\(^9\)

\(^1\) See Malachi L. Harney & John C. Cross, THE INFORMER IN LAW ENFORCEMENT 31 (2d ed. 1968) (“All people who are sources of information, generically, and in the broad sense of the term, could be referred to as informers.”); Steven Greer, Towards a Sociological Model of the Police Informant, 46 BRIT. J. SOC. 509, 510 (1995) (“[P]olice informants include everyone who provides the police information about any matter whatsoever, however useful or useless this may be for crime prevention and detection.”).

\(^2\) Indeed, whistleblowers, in some ways the civil equivalent of criminal informants, are celebrated as heroes by some. See WHISTLE-BLOWING!: LOYALTY AND DISSENT IN THE CORPORATION (Alan F. Westin et al. eds., 1981) (an uncritical telling of the stories of ten whistle blowers who reported “issues of major social importance” and are now “the walking wounded of the conscience”); Steve Maich, What’s a Whistle-blower?, MACLEANS’S, June 27, 2005, at 22 (“Our society has canonized a lot of new saints over the past few years, and we call them whistle-blowers.”). But see Orly Lobel, Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations, 97 CAL. L. REV. 433, 434 (noting that U.S. senators have described government whistleblowers both as “patriotic” and “citizen crime-fighters” and as “snitches” and “rats”).

\(^3\) Former narcotics officers are quick to recognize the necessity of informants. See Harney & Cross, supra note 1, at 12 (“The short summary of the stated value of the informer from the prosecution point of view is that he is almost indispensable in narcotics cases. With this we agree . . . .”); James Q. Wilson, THE INVESTIGATORS: MANAGING FBI AND NARCOTICS AGENTS 76 (1978) (“[W]ithout an informant, few cases can be made at all, and thus the DEA can monitor its agents’ performance by examining case output or undercover buys . . . .”).

\(^4\) See, e.g., The Wire: Sentencing (HBO television broadcast Sept. 8, 2002); The Sopranos: Funhouse (HBO television broadcast Apr. 9, 2000).

\(^5\) Harney & Cross, supra note 1 at 14 (“The fact is that informer is valuable to the police in practically every spectrum of crime.”); Alexandra Natapoff, Snitching: The Institutional and Communal Consequences, 73 U. CIN. L. REV. 645, 654-57 (2004) (providing some rough estimates of informant use).


\(^7\) See Gerald E. Lynch, The Lawyer as Informer, 1986 DUKE L. J. 491, 491 (“From the schoolyard ‘tattletale’ to the police officer’s ‘confidential informant’ to the Pentagon ‘whistle blower,’ our society is deeply ambivalent toward those who report the wrongdoing of others to the authorities.”).

\(^8\) See Roberts v. United States, 445 U.S. 552, 570 (1980) (Marshall, J., dissenting) (noting that terms such as “stool pigeon,” ‘snitch,’ ‘squealer,’ and ‘tattletale’ have come to be the common description of those who assist the police).

T-shirts featuring slogans like, “Stop Snitchin’,” are sold in shops and on-line and banned in courts, and defendants have been convicted of witness tampering for the threat implicit in the phrase, “snitches get stitches.” Most strikingly, where these epithets were once hurled predominately at those who assist the police in exchange for leniency in their own crimes, they are now applied to innocent civilians who help the police.

This apparent contradiction – that some of society’s most valuable and frequently utilized crime-fighting tools are also the subject of frequent disdain – has received scarce examination by legal commentators. The explanation for society’s distaste is that many informants are judged by society, or some portion thereof, to have acted disloyally by assisting police, and the words used to convey society’s scorn for informants – “snitch,” “rat,” “stool pigeon,” – confirm as much. Yet those who recognize that informants engage in treachery rarely explore why this is the case, and a consistent logic to explain how and why an informant commits betrayal is not evident.

Certainly, an informant’s disloyalty is most obvious when she offers to testify against her accomplice in exchange for a more lenient punishment. But even then, things are not as straightforward as they might seem. Rather than being viewed as a breach of loyalty, the accomplice-informant’s decision to cooperate could be conceptualized instead as a change in the object of the informant’s loyalty from a socially undesirable one – the criminal enterprise – to one that is socially appropriate – the state. Viewed from that perspective, it is less clear why the

10 Rick Hampson, Anti-Snitch Campaign Riles Police, Prosecutors, USA TODAY, Mar. 28, 2006, at 1A.
12 See Paul Butler, LET’S GET FREE: A HIP-HOP THEORY OF JUSTICE 95 (2009) (“In some quarters, any cooperation with police is suspect. Indeed, some elements of the Stop Snitching movement seem to be on the verge of a bad turn toward encouragement of witness intimidation and a general prohibition, even for ‘civilians,’ against reporting crime.”)
13 One of the few exceptions is a consideration by Gerard Lynch of the moral standing of informing in the context of lawyers who report misdeeds by their brethren. See Lynch, supra note 7, at 527-32.
14 See also On Lee v. United States, 343 U.S. 747, 757 (1952) (“The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are ‘dirty business’ may raise serious questions of credibility.”).
15 See OXFORD ENGLISH DICTIONARY (defining the verb “snitch” to mean “[t]o inform upon or on a person,” “[t]o informant or give evidence against (a person or accomplice),” or “[t]o take surreptitiously, purloin; to steal or ‘pinch’”).
16 See OXFORD ENGLISH DICTIONARY (defining a “rat” as “[a] dishonest, contemptible, or worthless person; spec. a man who is deceitful or disloyal in a romantic relationship” or, in a political context, “a person who deserts his or her party, side, or cause” or “a person who puts personal considerations before political principles”).
17 See OXFORD ENGLISH DICTIONARY (defining “stool pigeon” as “a police informer” and noting that “rats” would “stool[!]” on inmates) (citing Haywood Patterson & Earl Conrad, SCOTTSBORO BOY 224 (1899)).
18 See, e.g., Natapoff, supra note 5, at 651-52 (noting that “the snitch often represents betrayal,” but never exploring why that might be the case).
19 See Michael A. Simons, Retribution for Rats: Cooperation, Punishment, and Atonement, 56 VAND. L. REV. 1, 27 (2003) (“The cooperators, almost by definition, is disloyal. The cooperators' targets, in many cases, are the very people with whom he is closest. By “signing up” with the prosecution, the cooperators betray those people . . . .”).
accomplice-informant is reviled by anyone other than the informant’s accomplice. And the analysis gets even murkier with respect to informants who have committed no crime yet are deemed disloyal when they assist the police: what duty of loyalty have they breached? To whom have they been disloyal?

This Article seeks to shed some light on these issues by looking, in Part I, to the work of philosophers and other scholars who have discussed in depth the role of loyalty and disloyalty in modern society. This examination reveals that while there is much disagreement about some specific aspects of loyalty and disloyalty, most scholars agree on certain core concepts. Most importantly, philosophers coalesce on a common definition of disloyalty and agree that, although the moral value of loyalty is uncertain, society roundly condemns disloyalty as immoral.

Part II then applies these insights to three situations in which society may condemn an informant’s decision to assist the police with the goal of explaining when, how, and why the informant may be viewed as disloyal. The first situation is the prototypical case, mentioned above, of the criminal who informs on her accomplice in exchange for more lenient treatment by the state. The second is that of a non-criminal informant in a community that holds particularized norms against cooperating with the police. This discussion focuses in significant detail on the “Stop Snitching” movement that has chilled cooperation with the police in high-crime and largely inner-city neighborhoods and draws lessons that can be applied to other communities that are home to particularized anti-cooperation norms. The third situation is that of an informant in society at-large, i.e. the remainder of society that does not hold particularized anti-cooperation norms. The analysis of these situations reveals that the perceived disloyalty of informants intersects with and contributes to scholarship on the marginalization of communities, the importance of the perception of police legitimacy, and overcriminalization.

Finally, Part III draws on the previous insights to make three policy proposals that seek to help increase cooperation between police and civilians without hindering police effectiveness. First, police and prosecutors should amend their informant screening guidelines to explicitly and publicly require the consideration of loyalty issues that might arise in the use of a given informant. Second, law enforcement policymakers should curtail informant recruitment in marginalized communities that are home to anti-cooperation norms in favor of alternative policing strategies. Third, lawmakers should curtail the use of initiatives, often criticized as “snitch lines,” that encourage civilian to report minor crimes and consider decriminalizing some minor regulatory-type offenses. These proposals are crafted with the goal of being as politically feasible as possible given the general reticence to any interference with law enforcement discretion in the handling of informants.

20 See Id. at 28 (“Instead, the cooperator switches his loyalties from a group of criminals to the state. Where, one might ask, is the sin in that?”). Dean Simons’s answer to this question is discussed infra notes 113-116 and accompanying text.
I. The Philosophy of Loyalty and Disloyalty

Loyalty inhabits a unique role in society. On one hand, it is the foundation of many necessary and constructive relationships among community members, from the narrow and personal, like family and friendship, to the broad and universal, such as the relationship between governments and their citizens. In this vein, John Ladd, in the Encyclopedia of Philosophy, observes, “If we could not count on the loyalty of others or give them our loyalty, social life would not only be bleak but also impossible.” And Alan Wolfe lists loyalty among the “important virtues relevant to contemporary Americans,” along with self-discipline, honesty, and forgiveness. Yet for all of its benefits in greasing the wheels of society, loyalty also is a source of moral danger, as blind loyalty can lead to fascism and idolatry.

Despite its importance, only a handful of philosophers have engaged in an in-depth discussion of loyalty as a moral construct. And if the disproportionately small amount of discussion of loyalty in the philosophical literature is surprising, the short shrift given to the concept of disloyalty is astonishing. Nevertheless, the available discussions identify some common understandings of loyalty and disloyalty that are useful in a discussion of society’s view of informants.

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24 See id. at 6 (“In thinking about the nature of loyalty, we cross philosophically untraveled territory. The prior treatments of the subject in the literature skip over foundational matters.”); Michael K. McChrystal, Lawyers and Loyalty, 33 WM. & MARY L. REV. 367, 369 (1992) (noting the “scant treatment of the concept of loyalty by philosophers and legal writers”). Of course, the term loyalty appears frequently in legal scholarship in the context of a lawyer’s professional duty of loyalty to her client. But this professional duty of “loyalty,” grounded in a business relationship, is not the same thing as the moral and social construct of loyalty that is relevant to society’s view of informants. See L. Ray Patterson, Legal Ethics and the Lawyer’s Duty of Loyalty, 29 EMORY L. J. 909, 911-14 (1980) (noting that a lawyer’s duties to her client are separate from her moral obligations and arise instead out of agency concepts). This is not to say that morality plays no role in the lawyer’s duty of loyalty, see Charles Fried, The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation, 85 Yale L. J. 1060 (1976) (arguing that a lawyer’s duty of loyalty can be morally justified if the lawyer is conceived to be her client’s “legal friend”), or that this duty in no way interacts with the attorney’s other non-legal loyalties. See, e.g., David B. Wilkins, Identities and Roles: Race, Recognition, and Professional Responsibility, 57 Md. L. Rev. 1502 (1998) (discussing the relationship between professional identity, race, and group loyalties). Nonetheless, the lawyer-client relationship is sufficiently distinct in its origin and nature from typical loyalty relationships that even scholarship dealing with the moral issues that face attorneys is of little guidance in reaching general observations about the nature of loyalty and disloyalty. But see infra note 252 and accompanying text (noting that attorney-informants face judgments of disloyalty).
25 See Keller, supra note 22, at 201 (“In the recent philosophical literature, the only careful discussion of disloyalty of which I am aware is in the first two pages of a piece about corporate loyalty, written by R. E. Ewin.”).
26 The following discussion of loyalty is meant to be comprehensive, definitive, or exhaustive, but rather to highlight some of the common themes that run through the literature.
A. Basic questions about loyalty

Any attempt to define loyalty’s role in society must address at least four central questions: First, what is loyalty? Second, what is a proper object of loyalty? Third, what are the obligations that it imposes on a loyal subject? And fourth, how should one resolve conflicts between loyalties? Writing more than a century ago in one of the first extensive explorations of loyalty, philosopher Josiah Royce defined it as “the willing and practical and thoroughgoing devotion of a person to cause.”27 According to Royce, this cause must be something “larger than [the individual’s] private self,”28 but it nevertheless must “concern[] other men,” because “[l]oyalty is social.”29 This view of loyalty as a social concept comports with the common and historical usages of the term, which typically refer to a relationship between persons.30 For instance, in his much more recent discourse on loyalty, Simon Keller discusses at length three primary examples of loyalty – friendship, patriotism, and filial duty – all of which involve relationships between people.31

In addition to being social, loyalty also is specific: a person is not loyalty to families, communities, or co-workers generally, but to her family, her community, or her co-workers.32 Loyalty arises, then, not from some particular personal characteristics of the individual, but from the relationship between the individual and the object of her loyalty.33 To take a more specific example, if Jane is loyal to her father Frank, it is not because Frank is decent, honest, and compassionate; it is because Frank is her father.34

George Fletcher, in the leading account of loyalty by a legal academic, takes this focus on relationships a step further, arguing that relationships that give rise to feelings of loyalty are “logically prior” to the individual, which is Fletcher’s way of saying that an individual’s “historical self” – her relationships with families, groups, and nations – generates her duties of loyalty.35 Some such relationships come about by choice, while others are thrust upon the individual by birth, history, or experience.36 Obvious examples of the former include marriage,

28 Id. at 10.
29 Id. at 11; see also id. at 25 (“This cause must, in the second place, unite him with other persons by some social tie, such as a personal friendship, or his family, or the state may, in a given case, represent.”).
30 Ladd, supra note 21, at 97.
31 See Keller, supra note 22, at 24-143. Keller’s use of these examples is particularly instructive of what he views to fall within the core concept of loyalty, because he initially defines loyalty more broadly to encompass relationships between individuals and nearly anything, including brands, animals, or concepts. See id. at 22.
32 Ladd, supra note 21, at 97; see also Philip Pettit, The Paradox of Loyalty, 25 AM. PHIL. Q. 163, 168 (1988) (“What [loyalty] demands is rather susceptibility to the fact that the principal is, relatively speaking, one of his own; he is one of the family, one of the gang, one of the network, or whatever.”).
33 Id. at 97.
34 Ladd, supra note 21, at 98. Of course, if asked Jane would likely cite these good characteristics to explain her loyalty, but the point remains that these characteristics are not sufficient to engender Jane’s loyalty. Unless Frank were Jane’s father or had some other special relationship to her, Jane would not be loyal to Frank, regardless of his good character. See Fletcher, supra note 23, at 8.
35 Fletcher, supra note 23, at 15-16.
36 Keller, supra note 22, at 58.
friendships, and membership in political or social organizations.\textsuperscript{37} Citizenship, family relationships, and cultural affiliations fall into the latter category.\textsuperscript{38} Fletcher makes the point, however, that often the absence of choice does not make the pull of loyalty any less strong, as many of the strongest loyalties are those about which the individual has little or no choice.\textsuperscript{39} Likewise, an individual’s unwitting membership in a group may give rise to an expectation of loyalty that the individual has no desire or intention to honor.\textsuperscript{40}

The duties imposed by loyalty on its subject can vary greatly. Royce, as noted earlier, says that loyalty is an all-consuming devotion, as exemplified by the religious martyr, the patriot giving his life to his country, and a ship captain who is the last man off a sinking ship.\textsuperscript{41} Fletcher and Keller present more moderated accounts. Fletcher contends that the duties of loyalty range along a spectrum “between minimal and maximal demands.”\textsuperscript{42} At the lower end, minimal loyalty requires only that an individual not betray the object of loyalty.\textsuperscript{43} The classic example of minimal loyalty is the traditional requirement in a romantic relationship that neither participant will pursue another romantic entanglement.\textsuperscript{44} Maximal loyalty, on the other hand, requires affirmative devotion to the object of loyalty\textsuperscript{45} and is exemplified by the relationship between a patriot and his country.\textsuperscript{46} Keller views loyalty even more broadly to encompass any “attitude of

\textsuperscript{37} See id. at 58 (using as an example of chosen loyalty the decision to support one political party over another). Fletcher notes, however, that even these decisions are not entirely a matter of free choice by the individual, as one’s historical self may well limit the flexibility one has in making these decisions. Fletcher, supra note 23, at 17. There is some merit to Fletcher’s contention as, for example, some cultures place strong pressures on their members to make certain choices about marriage. See Lindsey E. Blenkhorn, Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptial and Their Effect on Muslim Women, 76 S. Cal. L. Rev. 189, 198 (2002) (describing the “permanent ostracism” that may face a Muslim woman who withholds consent to an arranged marriage). Nevertheless, some choices about loyalty certainly are less constrained than others, and the distinction between relationships of choice and those of circumstance is a valuable one.\textsuperscript{38} See Fletcher, supra note 23, at 16 (“We are born into a particular culture, acquire a mother tongue, receive exposure to certain political and religious ideas, learn a national history—all without significant choices on our part.”). Of course, one may change one’s circumstances and loyalties by, for instance, emigrating to another country, but the difficulty of such a change provides some proof of the power of these loyalties of circumstance. Id. at 17. \textit{But see} Thomas M. Franck, \textit{Clan and Superclan: Loyalty, Identity and Community in Law and Practice}, 90 Am. J. Int’l. L. 359 (1996) (arguing that individuals are increasingly empowered to choose their own personal identity through loyalty to different groups).\textsuperscript{39} See Fletcher, supra note 23, at 16-17; Keller, supra note 22, at 61 (describing the relative “seriousness” of unchosen loyalties, such as patriotism and loyalty to one’s parents).\textsuperscript{40} See Fletcher, supra note 23, at 159 (“Membership in a subgroup called African-Americans or gays may be [] arbitrary . . . . Yet one’s arbitrary membership in a group has never stood in the way of others in the group tendering loyalty and demanding it in return.”).\textsuperscript{41} Royce, supra note 27, at 9-10. The absolutism of Royce’s account must be taken with a grain of salt, however, as his goal is to proselytize on behalf of loyalty, and even his examples of ideal loyalty reveal an appreciation that the duties of loyalty vary with the relationship at issue. \textit{Compare} id. at 20-21 (discussing a loyal soldier giving his life for his county) \textit{with} id. at 49-51 (discussing anecdote of the Speaker of the House acting loyally to the House of Commons by refusing the King’s request to reveal the members of an opposition party).\textsuperscript{42} Fletcher, supra note 23, at 40.\textsuperscript{43} Id. at 40.\textsuperscript{44} See id. at 43.\textsuperscript{45} Id. at 40.\textsuperscript{46} See id. at 62-65. Fletcher distinguishes “patriots,” who “put their country above established legal authority” from those who are merely “loyal” in that they do not commit treason. Id. at 62-63.
positive regard” toward the object of loyalty, including prioritizing its interests over those of competitors, advocating on its behalf, honoring it through ritual, or holding beliefs favorable to it.\(^{47}\) Despite their differences, Fletcher and Keller agree that the particular demands of a loyalty relationship on its subject depend on the nature of that relationship.\(^{48}\)

Of course, at any given time an individual is loyal to a number of different individuals and groups. For instance, a typical person may be loyal to, \textit{inter alia}, her spouse, her parents, her political party, her ethnic group, her country, her church, her school, her favorite college football team, and her neighborhood.\(^{49}\) Fletcher conceives of these loyalties as “a set of intersecting circles of loyal commitment.”\(^{50}\) And as this metaphor of intersection suggests, an individual’s loyalties inevitably clash, which raises the question of how to resolve such a conflict between loyalties.\(^{51}\)

Fletcher has no firm answer to this question, noting instead that being forced to choose between conflicting loyalties is a “tragic” part of human existence.\(^{52}\) Ultimately, the most satisfying, if inconclusive, answer to the question of how to resolve conflicting loyalties is found in the \textit{Encyclopedia of Philosophy}:

There are, to be sure, conflicts of loyalties, but this fact does not entail that any of the loyalties involved are improper or invalid. . . . Sometimes there are clear ways of resolving these conflicts and sometimes there are not, but we cannot eliminate the problem of conflicting loyalties either by a metaphysical trick or by the mechanical application of a value calculus.\(^{53}\)

Put another way, loyalties inevitably conflict and that conflict must be resolved, but the choice of one loyalty over another, standing alone, does not render the unchosen one any less important.

To summarize, certain common threads run through these accounts. First, loyalty is a social concept arising from relationships between and among people, some chosen and others thrust upon us. Second, loyalty at a minimum requires that the loyal subject not betray the object of loyalty. Third, the existence and nature of any specific demands of loyalty beyond non-betrayal depend on the nature of the specific relationship between the loyal subject and the object of her loyalty. And fourth, an individual’s loyalties will sometimes conflict and those conflicts must be resolved, but there is no metric for the resolution of such a conflict.

\(^{47}\) Keller, \textit{supra} note 22, at 3-7, 21.
\(^{48}\) \textit{Id.} at 23; Fletcher, \textit{supra} note 23, at 61-62.
\(^{49}\) See Fletcher, \textit{supra} note 23, at 155.
\(^{50}\) \textit{Id.}
\(^{51}\) See \textit{id.} at 152-53 (arguing that conflicts between loyalties are inevitable because not all loyalties are freely-chosen).
\(^{52}\) \textit{Id.} at 153.
\(^{53}\) Ladd, \textit{supra} note 21, at 98; \textit{see also} Keller, \textit{supra} note 22, at 40 (“When different norms conflict, it can be difficult to find a plausible theoretical perspective from which to weight the competing claims against each other.”).
B. What is the value of loyalty?

These observations leave open one fundamental area of inquiry about loyalty: whether it has moral value and whether that value is qualified by the situation in which it arises. At one extreme is Josiah Royce, who argues that loyalty to loyalty is the supreme moral good. Royce’s exultation of loyalty is an extreme version of the more widely-held defense of loyalty, which is that it inspires people to hold a great number of other moral virtues, such as courage and generosity. Many philosophers, however, suggest that at least in some situations loyalty is not a virtue and may even be a vice. One concern is that loyalty toward an immoral and undesirable person, group, or cause leads the loyal subject to take questionable actions on behalf of the object of loyalty. Another is that loyalty undermines rationality and fairness, because it encourages one to make decisions based on insufficient or irrelevant bases. Though resolving this overarching debate is well beyond the scope of this Article, one point of contention relevant to the case of criminal informants is whether there is some moral good to loyalty that can be divorced from loyalty’s object. Put another way: is there any value to loyalty toward an unworthy object?

A question paralleling that of whether loyalty is a virtue, a vice, or something else entirely is whether loyalty is useful to society. Indeed, much of the discussion by philosophers about the value of loyalty is itself consequentialist. On this point, the seminal discussion by

54 See Ladd, supra note 21, at 98 (summarizing the conflicting positions on the moral value of loyalty).
55 Royce, supra note 27, at 56.
56 See id. at 61 (“My thesis is that all the commonplace virtues, in so far as they are indeed defensible and effective, are special forms of loyalty to loyalty . . . .”) (emphasis omitted); R. E. Ewin, Loyalty and Virtues, 42 PHIL. Q. 403, 415-17 (1992) (arguing that loyalty creates the environment necessary for the exhibition of virtues such as courage and gratitude).
57 See Ladd, supra note 21, at 98 (discussing the social atomist’s view that the moral value of loyalty is simply “a function of its benign or mischievous consequences”); Ewin, supra note 56, at 411 (“Perhaps whether a group earns the loyalty of its members does vary with their judgements [sic] of what is worthwhile and what is valuable. In that case we should have to be content to say that loyalty itself was not a virtue, but was sometimes a good thing and sometimes a bad thing depending on the object of loyalty.”).
58 Keller, supra note 22, at 156-58; Marcia Baron, The Moral Status of Loyalty 5-9 (1984). For instance, an employer may make a hiring decision based on qualifications that are irrelevant to exemplary job performance, such as whether an applicant is a member of a particular racial, social, or religious group to which the employer is loyal. Baron, supra, at 6.
59 Ladd attempts to avoid this conundrum by defining loyalty as being limited to “what is morally due the object of loyalty.” Ladd, supra note 21, at 98. Thus, he claims, something without moral value is not entitled to what is properly defined as loyalty, and thus, for instance, “[a] loyal Nazi is a contradiction in terms.” Id. In response, Ewin points out that this definition of loyalty too easily dodges the problem of excessive loyalty, because, as the term “loyalty” is commonly understood, it is entirely possible for there to be both disloyal and loyal Nazis. Ewin, supra note 56, at 404. The former are convinced of the truth of the Nazi doctrines and still sell them out, while the latter hold the same beliefs and continue to advance them. Id. Thus, the issue remains of whether loyalty has any independent moral value beyond the value of its object.
60 See, e.g., Baron, supra note 58, at 8 (using as an example the business disaster of the Corvair to argue that loyalty can lead to negative consequences for businesses); R. E. Ewin, Corporate Loyalty: Its Objects and Grounds, 12 J. BUS. ETHICS 387, 391-92 (1993) (distinguishing between desirable loyalties that would give rise to whistle blowing in the proper circumstances and undesirable loyalties that might involve covering up fraud or sexual discrimination).
economist Albert O. Hirschman on the value of loyalty to groups is instructive.\textsuperscript{61} Hirschman explains that when members of a group\textsuperscript{62} become dissatisfied with the group, they have two alternative choices: they can leave, which he terms “exit,” or they can attempt to change the group’s practices and policies, which he calls “voice.”\textsuperscript{63} In a world without loyalty, a dissatisfied group member with alternative options of better quality than the group and the resources to exit will do so.\textsuperscript{64} Loyalty, however, explains why such a dissatisfied group member might choose voice over exit even when the group’s quality has deteriorated well below that of other options.\textsuperscript{65} As a result, loyalty is of particular use to deteriorating or low-quality groups because it counterbalances the tendency of the most influential members, \textit{i.e.}, those with the most resources to effect change within the group, to be the first to leave.\textsuperscript{66} By activating the voice of high-resource members, loyalty gives these groups an opportunity to stop their deterioration or to regain the quality that they have lost.\textsuperscript{67} Moreover, the importance of loyalty to a group has an inverse correlation to the group’s quality, and consequently, loyalty is most important to the least desirable groups.\textsuperscript{68}

C. What is disloyalty?

Within the limited realm of literature on disloyalty, Keller provides the most thorough and convincing account. He rejects the notion that disloyalty is the “opposite” of loyalty and instead describes it as a related “moral, social, public or institutional phenomenon” in which an individual fails to meet normative expectations arising out of a special relationship between the individual and the object of loyalty.\textsuperscript{69} For instance, a normative expectation in most friendships is that one friend will not share the secret of the other friend with a third party. Thus, if one friend reveals a secret told to her in confidence by the other, she acts disloyally, because she fails to meet that normative expectation.\textsuperscript{70} But Keller says that disloyalty is more than the disloyal act alone; it also requires the proper \textit{mens rea}. An individual will not be considered disloyal unless she exhibits either a sufficient awareness of, or a sufficient deliberate indifference towards, her normative obligations to be held morally responsible for the failure to meet them.\textsuperscript{71} Thus, one

\textsuperscript{62} Hirschman’s description applies to the actions both of members of organizations and of customers of products. \textit{Id.} at 3. Because it is more relevant in the instant context, this Article will focus on the application of his analysis to the former.
\textsuperscript{63} Id. at 4, 30.
\textsuperscript{64} Id. at 37-38.
\textsuperscript{65} Id. at 38, 78 ("As a rule, then, loyalty holds exit at bay and activates voice.").
\textsuperscript{66} Id. at 79.
\textsuperscript{67} Id.
\textsuperscript{68} See id. at 82 ("If organizations can be ranked along a single scale in order of quality, prestige, or some other desirable characteristic, then those at the densely occupied lower end of the scale will need loyalty and cohesive ideology to a greater extent than those at the top.").
\textsuperscript{69} Keller, supra note 22, at 211, 213; see also Ewin, supra note 60, at 387 ("Not all failures to act out of a loyalty when it would have been possible to do so constitute disloyalty.").
\textsuperscript{70} Keller, supra note 22, at 212.
\textsuperscript{71} Id. at 205.
who values friendship but truly does not know that the keeping of a friend’s confidences is a normative expectation of friendship would not be disloyal for revealing her friend’s secret.

Though Fletcher calls it “betrayal,” his take on disloyalty is similar.\(^72\) Fletcher suggests that “[b]etrayal occurs only when one breaches an obligation of loyalty.”\(^73\) At a minimum, breaching such an obligation requires that the loyal individual must reject alternatives to the object of loyalty.\(^74\) Thus, a loyal spouse must not commit adultery, and a loyal Republican must not support a Democratic candidate. Things get more complicated once more than this “minimal” loyalty is at stake, however. Then, as in Keller’s conception, whether disloyalty has occurred depends on the nature of the obligations created by the loyalty at issue.\(^75\) Likewise, Fletcher agrees that there is a \textit{mens rea} requirement for disloyalty, by which one cannot be disloyal unless one at least has the ability to understand one’s obligations.\(^76\)

To summarize, disloyalty is the knowing breach of normative expectations created within the specific context of the relationship between an individual and the object of her loyalty.\(^77\) One question remains, however: whose expectations matter? Put another way, who judges whether an individual has been disloyal? Obviously, those within the relationship at issue can judge whether another party to the relationship has been disloyal.\(^78\) But the capacity to judge the compliance of an individual with normative expectations extends to anyone with knowledge of the relationship at issue and the individual’s actions. Indeed, this fact seems to be what Keller means when he describes loyalty as “a moral, social, public or institutional phenomenon.”\(^79\)

Thus, in the example of the indiscreet friend, not only might the individual whose secret has been revealed consider his friend disloyal, so too might others within their circle of acquaintances who know about their friendship and the friend’s disclosure of the secret.

A final point bears mentioning: because many of the special relationships that give rise to duties of loyalty are thrust upon the individual,\(^80\) so too is the risk of being perceived as disloyal for failing to meet normative expectations arising from those relationships, regardless of whether individual accepts those expectations as valid. To make that point, Keller cites an example of a son who fails to give his jacket to his mother when they are walking together in cold weather.\(^81\) Typically, a son is under a normative expectation to show a special concern for his mother’s

\(^{72}\) Fletcher, \textit{supra} note 23, at 8-11.

\(^{73}\) \textit{Id.} at 10.

\(^{74}\) \textit{Id.} at 8.

\(^{75}\) For instance, a thief who pretends to be another’s friend in order to steal from him does not breach the minimal obligation of loyalty because he has not forsaken the victim’s friendship for another, but nevertheless is disloyal by breaching the normative expectation that one does not steal from one’s friends. \textit{See id.} at 10.

\(^{76}\) \textit{Id.} at 10-11.

\(^{77}\) \textit{See also} Ewin, \textit{supra} note 60, at 388 (noting that disloyalty occurs when an individual fails to act in a loyal manner in a situation where loyalty would be expected to arise).

\(^{78}\) \textit{See} Keller, \textit{supra} note 22, at 206-07; Fletcher, \textit{supra} note 23, at 159.

\(^{79}\) Keller, \textit{supra} note 22, at 213.

\(^{80}\) \textit{See supra} notes 36-40 and accompanying text.

\(^{81}\) Keller, \textit{supra} note 22, at 212-13.
well-being, even though one does not choose one’s mother and may in fact have no particular interest in her well-being. Nevertheless, so long as the son is aware that the woman in question is his mother and knows of or is capable of comprehending the existence of the normative expectation, he is subject to it. Thus, even if the son is justified in his apathy towards his mother, anyone who knows that he is her son and sees him fail to offer her his jacket may judge him to be disloyal.

D. What is the moral status of disloyalty?

Though the moral status of loyalty is open to debate, most scholars agree that disloyalty is always a vice. As Ewin explains, “Disloyalty is always regarded as a grave failing in anybody who displays it.” Fletcher adds, “Some of the strongest moral epithets in the English language are reserved for the weak who cannot meet the threshold of loyalty: They commit adultery, betrayal, treason.” Indeed, according to Ewin, betrayal is despised even in those who are disloyal towards odious objects. He points to the example of a Nazi who firmly believes in the extermination of Jews and nonetheless betrays the Nazi cause. The disloyal Nazi is hated on at least two grounds. First, we detest and distrust him because of his abhorrent beliefs. Second, the Nazi’s disloyalty to his own firmly-held beliefs provides an additional basis for our distrust even if he were later to genuinely disavow Nazism.

Keller’s take on disloyalty is less absolute and provides an opportunity to hone the discussion more finely. Though he concedes that “disloyalty appears to be a distinctive and profound kind of wrong,” Keller argues, in disagreement with Ewin, that “[i]t is a mistake to say that disloyalty is always wrong.” To prove his point, he cites the case of the “ethical whistle-blower,” who reveals that her employer has been secretly releasing hazardous chemicals into the water supply. The whistle-blower is disloyal: she has a special relationship with her employer that gives rise to the normative expectation that she will keep the employer’s secret, she understands that obligation, and she breaches it. Indeed, her employer will no doubt view the whistleblower’s action as disloyal and feel personally hurt by the disloyalty. Nonetheless,

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82 Id. at 212.
83 Id.
84 Ewin, supra note 60, at 387
85 Fletcher, supra note 23, at 8.
86 See Ewin, supra note 56, at 404 (“[H]is disloyalty] may be only one of his failings on top of many others, and only one reason amongst many for not trusting him, but his disloyalty is a failing that we can recognize.”).
87 Keller, supra note 22, at 200, 201.
88 Id. at 202.
89 Id. Some business ethicists also have argued that blowing the whistle, at least in the proper circumstances, is not disloyal at all. See David Lewis, Whistleblowing in a changing legal climate: is it time to revisit our approach to trust and loyalty at the workplace?, 20 BUS. ETHICS: A EUR. REV. 71 (2011); Wim Vandekerckhove & M.S. Ronald Commers, Whistle Blowing and Rational Loyalty, 53 J. BUS. ETHICS 225 (2004); Robert A. Larmer, Whistleblowing and Employee Loyalty, 11 J. BUS. ETHICS 125 (1992). Though interesting, these pieces are prescriptive in suggesting how loyalty and disloyalty to a corporation should be defined and thus of little assistance in the present task of understanding how society in fact conceives of disloyalty.
90 See Keller, supra note 22, at 206-07.
according to Keller, “given the circumstances [of her employer’s actions], her disloyalty is justified.”

Interestingly, however, Keller also admits that there is generally some negative moral weight to disloyalty, that it is not, as he puts it, “morally inert.” Thus, when he views acting disloyally to be the right thing to do, it is generally because there are some countervailing justifications for the disloyalty. In the case of the ethical whistle-blower, her decision to breach her employer’s trust is justified by the employer’s odious actions. In another example, a soldier is justified in deserting an army that is killing innocent civilians.

Keller’s and Ewin’s accounts therefore can be reconciled by recognizing that there is some fundamental moral wrongness to disloyalty, but that some may view acting disloyally to be the right thing to do depending on the circumstances. Keller’s examples provide some of the circumstances that might counterbalance the negative moral weight of disloyalty, including the motive of the disloyal subject, the actions of the object of disloyalty, and how the disloyal subject goes about her disloyalty. This contextual approach provides a fuller account of disloyalty because it explains why different observers of an act of disloyalty may come to different conclusions about its propriety. Thus, for instance, in the example of the whistle-blower reporting her employer’s illegal dumping of chemicals, Keller views the disloyalty as justified, but the employer almost certainly would not. And other members of society will likely come to different conclusions as they look at the context of the whistle-blower’s disloyalty through the lens of their own norms. For instance, environmental advocates would likely applaud her decision, while others in the industry who engage in questionable environmental practices likely would refuse to hire the whistle-blower because of her history of disloyalty.

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91 Id. Keller also notes that in order for the whistleblower to be wholly in the right, she must also not take any actions attendant to the whistle blowing that are themselves wrong, such as lying or putting colleagues at risk. Id. at 202-03.
92 Id. at 203.
93 Id. at 215.
94 Id. at 203. Keller also cites as examples of justified disloyalty the cases of a bank employee who quits rather than “squeeze[] higher interest rates out of vulnerable borrowers” and a wife who informs on her criminal husband. Id. at 203. Keller appears to argue at times that in some situations disloyalty is simply not wrong, but most of these examples are framed to provide circumstances that justify the underlying moral wrongness of disloyalty. See id. at 215 (discussing examples of “a person and her manipulative friend, a citizen and her totalitarian government, or a student and his abusive fraternity”); see also id. at 216-17 (explaining why “disloyalty has, and deserves, a bad reputation” and generally should be discouraged). Keller’s most “difficult” example from this perspective is that of a doctoral student who changes dissertation projects and advisors midstream. Id. at 203. Unlike other examples, the student’s disloyalty is not justified by some bad act of his advisor or the disagreeable nature of his original project. Instead, the student’s disloyalty is made understandable by the fact that he has made his decision for a proper reason, i.e., to do what is best for him. Id. This alternative mode of justifying disloyalty does not undermine the observation that disloyalty is by nature wrong, but provides another circumstance that may justify it.
96 See, e.g., Whistle-Blowing!, supra note 2, at 39-54 (the account of a whistle-blower who reports that subsequent to reporting wrongdoing in the nuclear energy industry he was “blackballed from technical employment”).
will be explored below, it is precisely this both contextualized and moralized view of disloyalty that is so important to understanding society’s treatment of informants.

II. Specific Informant Scenarios

This Part applies the preceding observations about loyalty and disloyalty to three informant scenarios.98 The first is the common case of a criminal who provides information about an accomplice to the police. The second scenario involves specific communities that discourage their members from assisting the police, with a particular focus on the “Stop Snitching” movement in high-crime neighborhoods. The third scenario looks at informing in parts of society where specific community pressures against informing do not exist.

A. The accomplice-informant

Though an informant may assist the police for a variety of reasons, the most common motivation is the hope of gaining leniency of some kind for her own criminal activity.99 Many of these criminal informants specifically seek leniency by offering to incriminate their accomplices.100 From the standpoint of such an informant’s accomplice, the informant’s disloyalty is clear. By agreeing to perpetrate a crime together, the informant and her accomplice entered into a special relationship that gave rise to certain normative expectations.101 One such expectation is that participants in a crime will not reveal information about it to the police.102 In breaching that expectation and incriminating her accomplice, the informant thus commits an act of disloyalty.103 For instance, if Steve and Alex agree to steal televisions, Steve will have a

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98 These specific scenarios have been selected with the goal of investigating the role of loyalty in society’s handling of informants, particularly in the context of street crime. There are of course additional “typical” informant scenarios, such as that of the whistleblower who reports her employer’s wrongdoing, that are excluded from the instant discussion because they are tangential to this Article’s focus. Likewise, other more specific informant scenarios in the criminal context, such as informants used in terrorism investigations, are left out because the specific issues they might raise do not easily translate into broader observations about society’s treatment of informants. Discussion of the role of loyalty and disloyalty in these scenarios, though no doubt worthwhile, must thus wait for future treatment.


101 This is not to say criminals are surprised that, once caught, their accomplices might betray them. See Richard Rosenfeld et al., Snitching and the Code of the Street, 43 BRIT. J. CRIMINOLOGY 291, 298 (2003) (reporting that street criminals believe “snitching is rampant”).

102 Id. The expectation that accomplices will not turn each other in to the police is most strikingly exemplified by the Mafia oath of omertà, by which a Mafia member promises under penalty of death not to betray the family, to reveal the family’s criminal activities to the outside world, or to provide any information to the police that might incriminate a member of the family. See United States v. Gigante, 925 F. Supp. 967, 970 (E.D.N.Y. 1996); see also Rosenfeld et al., supra note 101 at 298-99 (“The code [of the street] dictates that no one should ever snitch on anyone else.”).

103 See Rosenfeld et al., supra note 101 at 306 (recognizing that criminals view the possibility that an accomplice will inform to the police as a “threat of betrayal”).
normative expectation that Alex will not disclose Steve’s criminal activities, and vice versa. Of course, Steve’s normative expectation that Alex will not inform on him to the police may be based on circumstances of their relationship beyond their joint criminal venture. They may be long-time friends or members of the same family, or they may share ethnic or community ties, all of which can create overlapping duties of loyalty. See Daniel C. Richman, Cooperating Clients, 56 OHIO ST. L.J. 69, 78-79 (1995). At a bare minimum, however, the mere act of conspiring to commit a crime gives rise to the normative expectation that the police will not be informed about the criminal plans.

Consequently, if Alex is apprehended by the police and provides them with incriminating information about Steve, Steve’s normative expectations would be breached, and Steve would conclude that Alex is a disloyal “snitch.”

Interestingly, though, the accomplice-informant is viewed as disloyal not only by those whom she incriminates, but by society in general. In 1951, Professor Donnelly explained that accomplice-informants “have generally been regarded with aversion and nauseous disdain.” More recently, Richard Lippke concurred that “betrayal is usually considered ignoble, and the term ‘snitch’ used to characterize those who turn against their accomplices is an epithet of nearly universal scorn.” And Michael Simons has recognized that “[t]he social meaning of cooperation is best captured by the words used to describe cooperators, with ‘rat’ perhaps being the most evocative.” Indeed, distaste for the accomplice-informant is so pervasive that she is viewed with “aversion and nauseous disdain” even by those who most benefit from her assistance, the law enforcement officials with whom she cooperates.

Though deeply engrained in society’s collective psyche, the widespread disdain for accomplice-informants is somewhat counterintuitive. At its core, the criminal law reflects the collective moral judgment of society and punishes those acts that are deemed to be morally wrong. Accomplice-informants play a crucial role in the enforcement of these moral judgments by helping the police bring to justice criminals whom the state may not otherwise be able to prosecute. Indeed, accomplice-informants often reveal to the police wrongdoing of which they otherwise never would have been aware. Thus, accomplice-informants are critical

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105 Richard C. Donnelly, Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs, 60 YALE L.J. 1091, 1093 (1951).

106 Lippke, supra note 100, at 93.

107 Simons, supra note 19, at 26; see also Touré, A Snitch Like Me, NEW YORK TIMES, March 23, 2008 (“[t]he term [snitch] truly refers to criminals ratting on other criminals”).

108 See Richman, supra note 104, at 79-80 (quoting Richard C. Donnelly, Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs, 60 YALE L. J. 1091, 1093 (1951)).

109 See Paul H. Robinson, CRIMINAL LAW §1.1, at 9 (1997) (“[i]t is the criminal law's moral condemnation that distinguishes criminal liability from civil.”); see also Bernard E. Harcourt, Joel Feinburg on Crime and Punishment: Exploring the Relationship between the Moral Limits of the Criminal Law and the Expressive Function of Punishment, 5 BUFF. CRIM. L. REV. 145, 149-52 (discussing the moral underpinnings of the criminal law).

110 Natapoff, supra note 6, at 29-30.

111 Id. Crimes involving drugs, vice, and corruption, in which there is no victim to complain to the police, are notoriously difficult for the state to detect without the assistance of informants. See Rich, supra note 99, at 688-89.
to enforcing society’s moral code, and from that standpoint at least it seems that they should be celebrated rather than pilloried.\textsuperscript{112}

Why then is the accomplice-informant so despised? Dean Simons answers this question by pointing to the informant’s motives, noting that “[t]he typical cooperator does not betray associates out of an altruistic desire to fight crime,” but rather “by a desire to help himself.”\textsuperscript{113} According to Simons, society disapproves of this selfishness, regardless of the ultimate benefit from the act of disloyalty.\textsuperscript{114} To illustrate the importance of motive, he contrasts the typical informant’s self-interest with the actions of David Kaczynski, who provided information that led police to identify his brother Theodore as the Unabomber.\textsuperscript{115} According to Simons, those like David Kaczynski who turn in a family member out of an apparent sense of civic obligation are seen as “heroic (or tragic), but not evil.”\textsuperscript{116}

But society’s condemnation of accomplice-informants appears to be more complex than an attack on their selfish motive.\textsuperscript{117} For instance, even though David Kaczynski’s motives for informing on his brother were likely pure, his decision to assist the police was nevertheless criticized in some circles and he too was called a “snitch.”\textsuperscript{118} Yet, if the accomplice-informant’s selfish motive were the sole reason for society’s disapprobation, then praise of David Kaczynski should have been universal because he appeared to lack that motive.\textsuperscript{119}

\textsuperscript{112} See Richman, supra note 104, at 80-81 (“A utilitarian calculus would applaud, or at least encourage, the snitch, regardless of his motivations or personal allegiances.”).
\textsuperscript{113} Simons, supra note 19, at 28; See also Yuval Feldman & Orly Lobel, The Incentives Matrix: The Comparative Effectiveness of Rewards, Liabilities, Duties, and Protections for Reporting Illegality, 88 Tex. L. Rev. 1151, 1200 (2010) (finding “a certain stigma against those who blow the whistle in response to” rewards); Brent Schrotenboer, Landis case raises question: Whistle-blower or snitch?, The San Diego Union-Tribune, May 24, 2010, at D1 (“If you’re telling on somebody else for selfish reasons, you’re a snitch, according to the popular definition. Those selfish reasons could include avoiding criminal punishment, selling a book or deflecting blame.”).
\textsuperscript{114} Simons, supra note 19, at 28-29; see also Richman, supra note 104, at 82 (“The assumption that defendants’ reasons for cooperating are exclusively selfish seems reasonable enough and alone can explain the public’s disdain.”).
\textsuperscript{115} Id. at 28.
\textsuperscript{116} Id. at 28, n.126. Similarly and more recently, some hailed Alhaji Umaru Mutallab, the father of attempted “Christmas Day bomber” Umar Farouk Abdulmutallab, as courageous in his attempts to warn the United States government of his son’s increasing anti-American extremism. See Andrew Cohen, Why Heads Should Roll, The Atlantic (Jan 8, 2010), available at http://www.theatlantic.com/politics/archive/2010/01/why-heads-should-roll/33175.
\textsuperscript{117} See Richman, supra note 104, at 83.
\textsuperscript{118} See Don Oldenburg, What If He Were Your Brother? When David Kaczynski Fingered the Unabomber Suspect, He Became the Star in a Morality Play, Wash. Post, Apr. 11, 1996, at C1 (discussing the conflicting reactions to David Kaczynski’s decision, including G. Gordon Liddy’s labeling of Kaczynski as a “snitch”). See also Dan Markel et al., Criminal Justice and the Challenge of Family Ties, 2007 U. Ill. L. Rev. 1147, 1156 n.38 (discussing the lack of rigorous empirical data on how Americans would respond if forced to decide whether to turn in a family member who committed a crime).
\textsuperscript{119} Of course, it is impossible to ascertain any person’s motives for taking an action, particularly one as fraught with moral complications as informing on one’s own family member, and it is plausible that one in David Kaczynski’s position might have acted at least in part for reasons other than out of pure civic goodwill. For instance, he may have sought to mitigate the shame that he would have felt had it been discovered by someone else that his brother was the infamous Unabomber or he might have sought the attention that would come with helping the police to
This is not to say that motive is irrelevant to society’s dim view of accomplice-informants; rather, the example of David Kaczynski suggests that the breach of loyalty is the source of society’s distaste for the accomplice-informant, and that the informant’s motive is only one of a number of surrounding circumstances that is considered when deciding whether that breach is justified. Compare then the cases of Alex, who informed on his accomplice Steve, and David Kaczynski. In both, the informant has a special relationship with the person whom he incriminated: David is the Unabomber’s brother, and Alex is Steve’s accomplice. Each breached a normative expectation arising out of that special relationship that required that he not incriminate the other person. Consequently, both David and Alex are subject to a judgment of disloyalty for the breach of these normative expectations, regardless of their motive for assisting the police.

Against this background of society’s fundamental disapproval of disloyalty, the specific circumstances of each informant’s assistance determine whether the informant’s disloyalty will be considered to have been justified or not. In Alex’s case, he is both selfish and hypocritical by pointing the finger at Steve, calling down moral approbation on one who has committed the same wrongs as he has and receiving a more lenient punishment as a result. Thus, he is universally condemned, because his selfish motive and hypocrisy only compound his moral failings. But in David Kaczynski’s case, his presumably pure motive and the severity of the Unabomber’s crimes – three people had died before David Kaczynski came forward –

apprehend a notorious criminal. See Rich, supra note 99, at 690 (discussing the various motives that spur informing). Nonetheless, given the absence of obvious benefits to him from turning in his brother, it is easy for society to assume that David Kaczynski’s motives were pure, particularly in light of the widespread cultural understanding that it would be difficult to inform on one’s own family. See Ewin, supra note 56, at 410 (“[I]f the wrong done is not too dramatic and wrongdoer is, say, the son of the person appealed to for help in covering up, one would think the person appealed to a remarkably cold fish and lacking in quite proper feelings of loyalty if he or she did not at least feel torn before turning the son over to the processes of the law.”) (emphasis omitted).

The precise outlines of the normative expectations at issue certainly differ between the fraternal and accomplice relationships. In particular, while the accomplice relationship gives rise to a normative expectation that neither accomplice will cooperate with the police, see supra note 102 and accompanying text, the expectation arising from the fraternal relationship is likely to be based in a familial regard for the other’s well-being. As such, David Kaczynski may be judged disloyal because helping the police arrest his brother may be seen as injurious to his brother’s well-being, not because of a specific norm that brothers should never turn each other in to the police. But see Markel et al., supra note 118, at 1156 (suggesting the existence of a “taboo against turning on one’s family”) (internal quotation omitted). Recognizing these differences in normative expectations allows for the situation where one would not be disloyal for causing the arrest of a family member if, for instance, she were a threat to herself.

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121 See Richman, supra note 104, at 83-84 (recognizing the “valuation of loyalty for its own sake”).

122 See supra notes 95-97 and accompanying text.

123 See Davey D, Stop snitching campaign runs deeper than most think, SAN JOSE MERCURY-NEWS, July 5, 2007 (quoting rapper Ice-T, who defined a snitch as one who does not “keep[] his mouth shut and tak[e] responsibility for his criminal activity”).

124 Even if an accomplice-informant had a true change of heart and made the purely civic-minded decision to testify against her accomplice with no promise of any benefit to her, the profusion of deals for leniency made with informants makes it nearly inevitable that society will ascribe to the accomplice-informant selfish motives anyway and condemn her as a snitch. See Richman, supra note 104, at 82 & n.51 (observing that it is reasonable to assume that an accomplice-informant acts out of pure selfishness in helping the police).
counterbalance his disloyalty and lead most, but not all, to view his disloyalty as justified.\textsuperscript{125} Other factors, such as whether the informant tried to prevent the criminal activity through less severe means than turning to the police or whether the informant was under some independent legal or ethical obligation to assist the police, could also come into play.\textsuperscript{126} In summary, by recognizing that society weighs the individual circumstances of an informant’s decision to assist the police against the moral wrong of a breach of loyalty that such assistance entails, we reach a more robust understanding of how society assesses informants generally.

B. Disapproval of informing in specific communities

While the accomplice-informant finds few friends anywhere in society, some communities strongly discourage even their law-abiding members from cooperating with the police. To examine this phenomenon in some depth, this section focuses largely on one example of such particularized distaste for informants: the “Stop Snitching” movement, in which residents of high-crime communities discourage community members, law-abiding and law-breaking alike, from assisting the police. But high-crime communities are not the only ones that discourage their members from becoming informants. Orthodox Jews are religiously proscribed from informing against each other.\textsuperscript{127} The Irish also have long harbored a hatred for informants in their midst.\textsuperscript{128} As discussed at the end of this section, there are certain commonalities between these communities and the high-crime communities where the “Stop Snitching” movement has found purchase that make sense when considered in light of the loyalty issues that inevitably arise when a civilian assists the police.

1. The “Stop Snitching” movement and anti-cooperation norms

In 2004, Rodney Bethea, a Baltimore barber and filmmaker, produced a DVD called \textit{Stop Fucking Snitching} that followed a rapper named “Skinny Suge” through the streets of West Baltimore as he talked with residents, some of whom admitted to being involved in the drug trade, about police and informants.\textsuperscript{129} Many of the interviewees complained that police were corrupt and that dealers who get caught by the police should not trade information for leniency, with some even suggesting that these “snitches” should be shot.\textsuperscript{130} Bethea originally intended the DVD for local consumption, but it gained nationwide notoriety because of a brief appearance by basketball star Carmelo Anthony.\textsuperscript{131} The attention grew as T-shirts emblazoned with “Stop

\textsuperscript{125} See \textit{Markel et al.}, supra note 118, at 1156 n.38 (contending that the severity of the crime at issue would influence an individual’s decision of whether to report a family member’s crimes to the police); \textit{Richman}, supra note 104, at 83 (describing the unique situation surrounding the McCarthy hearings, in which society glorified informants who were seen to have acted in the face of a perceived national emergency).

\textsuperscript{126} See \textit{John Kleinig}, supra note 96, at § 6.1 (discussing factors for a potential whistleblower to consider before turning to the authorities).

\textsuperscript{127} \textit{Simons}, supra note 19, at 30 & n.140; \textit{Richman}, supra note 104, at 83-84.

\textsuperscript{128} \textit{Richman}, supra note 104, at 84.

\textsuperscript{129} \textit{Butler}, supra note 12, 85-96; \textit{Natapoff}, supra note 6, 122.

\textsuperscript{130} \textit{Natapoff}, supra note 6, at 122.

\textsuperscript{131} \textit{Jeremy Kahn}, \textit{The Story of a Snitch}, \textit{THE ATLANTIC}, Apr. 2007, at 86.
Snitching,” as well as related slogans like “Don’t Be a Snitch” and “Snitches Get Stitches,” proliferated in high-crime communities in Baltimore and other large cities.132

One of the main questions surrounding the “Stop Snitching” movement is exactly what behavior it condemns. According to critics of the movement, including police, prosecutors, and much of the media, “Stop Snitching” not only tells criminals to stop trading information for leniency but also discourages civilian witnesses from assisting the police.133 Thus, these critics argue, the rise of the “Stop Snitching” movement correlates to an increase in witness intimidation in high-crime neighborhoods and a concomitant decrease in the clearance rate of major violent crimes.134 In an attempt to reverse the “Stop Snitching” movement’s negative impact, mainstream commentators celebrate as heroes those who are derided as “snitches” in their own communities135 and express frustration when witnesses to inner-city crime are unwilling to come forward.136

Yet those who believe that the movement exposes some fundamental problems with policing, including Bethea himself, the ACLU, academics, and hip-hop figures, argue that “snitching” refers only to criminals who attempt to trade information about other criminals for leniency and that innocent civilians who provide information to the police are not “snitches.”137 With the term “snitching” so limited, these proponents argue that the “Stop Snitching” movement is a criticism of law enforcement policies that disproportionately impact minority communities and a plea-bargaining institution that unjustly allows criminals to avoid proper punishment for their crimes in exchange for the incarceration of others.138 So conceived, the “Stop Snitching” movement is grounded in a broader discontent with the police and the criminal justice system in high-crime neighborhoods.139

132 Butler, supra note 12, 87; Natapoff, supra note 6, 122.
133 See, e.g., Butler, supra note 12, at 85 (“Unfortunately, the “Stop Snitching” campaign has been reviled in the media. Its adherents are portrayed as violent thugs, deficient in their basic civic responsibilities.’’); Jill King Greenwood, “Snitching” stigma may hinder police, PITTSBURGH TRIBUNE REVIEW, Dec. 26, 2007 (reporting police concerns that both witnesses and crime victims are refusing to cooperate with police for fear of being labeled a “snitch”); Mary Mitchell, “No Snitch” campaign is no good: It shields criminals from justice, CHICAGO SUN-TIMES, Dec. 5, 2006, at 14 (connecting the “no snitch” doctrine to witnesses generally).
134 See Natapoff, supra note 6, 122-24, 133-35 (cataloguing critiques of “Stop Snitching”); Mark Konkol & Frank Main, This is the story of why they won’t stop shooting in Chicago, CHICAGO SUN-TIMES, July 25, 2010, at A1 (reporting that no one has been charged in more than 90 percent of non-fatal shootings in Chicago in 2009 and connecting the low clearance rate to the refusal of witnesses to testify).
135 See Commentary, Snitches are Heroes, LAS VEGAS REVIEW-JOURNAL, Feb. 28, 2008, at 6B.
136 See Editorial, Victims must step out of the shadows when snitching is the right thing to do, PHILADELPHIA DAILY NEWS, Jan. 31, 2006, at 13.
137 See Natapoff, supra note 6, at 125, 136-38; Butler, supra note 12, at 86 (“[n]o responsible citizen would discourage people from reporting dangerous crimes”).
138 See Kahn, supra note 131, at 88 (quoting Bethea’s argument that the term “snitch” in the context of “Stop Snitching” refers only “to people that are engaged in illegal activities, making a profit from it, and then when it comes time for the curtains to close . . . now no one wants to go to jail’’).
139 See Natapoff, supra note 6, at 136-37; Butler, supra note 12, at 98-100.
The distinction between criminal “snitches” and civilian “witnesses” is not borne out in the high-crime neighborhoods where the “Stop Snitching” movement has taken root, however. 

Civilians in these communities suffer violent retaliation, and even victims of crimes in these neighborhoods decry “snitches” who might help police solve those crimes. And even when witness intimidation is not thought to be a factor, the “Stop Snitching” mantra explains why civilians in high-crime neighborhoods refuse to help the police. Among some hip-hop artists, the term “snitch” is used to describe anyone, criminal or not, who assists the police. Likewise, Carmelo Anthony, who is not believed to have been involved in criminal activity while growing up in Baltimore, explained that he would never “snitch” because doing so would violate “street code.” Finally, what little quantitative research that exists on societal attitudes toward informing reveals that the term “snitch,” and its accompanying moral freight, has migrated from the accomplice-informant context to situations where non-criminal civilians assist the police.

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140 See Butler, supra note 12, at 95 (“In some quarters, any cooperation with police is suspect. Indeed, some elements of the Stop Snitching movement seem to be on the verge of a bad turn – toward encouragement of witness intimidation and a general prohibition, even for ‘civilians,’ against reporting crime.”); Natapoff, supra note 6, at 125-26 (“The fact that the ‘stop snitching’ idea originated as a criminal code of conduct has not prevented it from taking on a complex life of its own; it now has a wider variety of meanings in the law-abiding world.”); Stop Snitchin’, 60 MINUTES (August 12, 2007) (transcript available at http://www.cbsnews.com/stories/2007/04/19/60minutes/main2704565.shtml) (“‘Stop snitching’ once meant, ‘Don’t tell on others if you’re caught committing a crime.’ It has come to mean something much more dangerous: ‘Don’t cooperate with the police, no matter who you are.’”).

141 See Kahn, supra note 131, at 88 (cataloguing instances of retaliation against civilian witnesses in Baltimore).

142 See Konkol & Main, supra note 134, at A1.

143 See Natapoff, supra note 6, at 126; Kahn, supra note 131, at 82 (“The reasons for witnesses’ reluctance [to speak to the police] appear to be changing and becoming more complex, with the police confronting a new cultural phenomenon: the spread of the gangland code of silence, or omertà, from organized crime to the population at large.”).

144 See Andrew Jacobs, When Rappers Keep Their Mouths Shut Tight, N.Y. TIMES, Feb. 19, 2006, § 1, at 35 (discussing, inter alia, the cases of hip-hop artists Busta Rhymes and Lil’ Kim, who were both celebrated and criticized for their refusal to assist the police).

145 Natapoff, supra note 6, at 127.

146 See Rick Frei et al., The Snitching Study, http://lawandsocietyweek.pbworks.com/w/page/15386289/The-Snitching-Study. This study involved a survey of nearly 1,500 students at a community college in the Philadelphia area that asked participants, among other things, to identify from a list of seven situations those that would constitute “snitching.” Id. Unsurprisingly, the situation most likely to be defined as snitching “[r]atting on someone else to get out of a crime,” which was identified as snitching by more than four-fifths of the respondents. Id. At the other end of the spectrum, the two situations involving innocent civilians assisting the police in solving crimes were identified by the fewest respondents as snitching: just fewer than one-sixth of the respondents defined “snitching” to include answering police questions at the scene of a crime, and more than one-quarter included reporting a crime to the police after witnessing it as part of their definition of “snitching.” Id. On one hand, these data suggest a correlation between the initiative exhibited by the informant and the likelihood that an individual may conceive of her actions as “snitching.” Id.; Liel Leibovitz, Stop Snitchin’, TABLET MAGAZINE, Dec. 24, 2010, http://www.tabletmag.com/life-and-religion/54544/stop-snitchin/. But the fact that a substantial percentage of respondents defined providing any assistance to the police as snitching also reveals that the norms of the “Stop Snitching” movement have migrated beyond the prototypical example of one criminal turning on another.
But why would residents of high-crime communities discourage their members from cooperating with police?\textsuperscript{147} After all, assisting those whose job it is to fight crime would seem to be more beneficial to residents of these communities than it would be to residents of neighborhoods where crime is less common. Unlike in other communities where non-police institutions are effective in reducing crime,\textsuperscript{148} such institutions would seem to have failed in high-crime communities, thus leaving the police as the best option for fighting crime.\textsuperscript{149} Yet the “Stop Snitching” movement discourages members of those communities from availing themselves of that option.

The prevailing explanation for the “Stop Snitching” movement is that it is the result of long-standing distrust of the police in the poor and minority communities that suffer high crime rates.\textsuperscript{150} This distrust stems in part from the lengthy history of racism in policing, which includes incidents of police brutality against minorities, the use of informants to undermine civil rights movements, and pervasive racial profiling.\textsuperscript{151} Moreover, residents of high-crime communities distrust the police because of personal negative experiences with law enforcement, the disproportionate impact of the war on drugs on their communities, and a prevailing belief that police are ultimately ineffective, both in preventing crime and in protecting those civilians who do assist them.\textsuperscript{152} That distrust of police cause lead members of high-crime communities to be reluctant to become informants makes a good deal of sense. If police are hostile to the community they are paid to serve and are unwilling or unable to stop crime or to protect witnesses in high-crime neighborhoods, then residents of those neighborhoods understandably view helping the police as pointless, dangerous, and unwise.\textsuperscript{153} Moreover, the “Stop Snitching”

\textsuperscript{147} Of course, high-crime communities are not all the same, and no community is homogenous in terms of the norms held by its residents. Thus, the popularity of the “Stop Snitching” movement does not instruct that all residents of all high-crime communities look down on helping the police. The stories of those who suffer retaliation for helping the police tell us as much. See supra note 142. Instead, it reveals that anti-cooperation norms are now held by enough members of many of these communities to pressure those who hold opposing norms or who are “on the fence” about cooperation to conform. See generally Cass R. Sunstein, Social Norms and Social Roles, 96 COLUM. L. REV. 903, 914-21 (1996) (discussing the function of social norms within communities).

\textsuperscript{148} See Tracey L. Meares, Place and Crime, 73 CHI.-KENT L. REV. 669, 672-77 (1998) (discussing the importance of social connections and community-level organizations to social control in neighborhoods).

\textsuperscript{149} This is not to say that police are the most effective means of crime prevention in high-crime neighborhoods, see id. at 694-704 (arguing for changes in law enforcement that are “conducive to social organization improvement”); rather, police would seem to be the most obvious avenue for crime-fighting. See Butler, supra note 12, at 99 (noting that police are “the most visible civilian agents of the power of the state”).


\textsuperscript{152} See Natapoff, supra note 6, at 126-30; Tyler, supra note 151, at 217.

\textsuperscript{153} The inability of police to protect informants is frequently cited by community members to explain their reluctance to cooperate. For instance, Baltimore residents tell the story of Angela Dawson, a wife and mother of five, who frequently called the police to complain about drug dealers near her home. When the dealers tired of her calling the police, they firebombed Dawson’s house, killing her entire family. Kahn, supra note 131, at 6-7. See
movement echoes longstanding cultural norms that discourage cooperation with authorities, ranging from schoolyard instructions not to tattle to the “blue wall of silence” within police squads. But this explanation is incomplete, as both anecdotal evidence from high-crime communities and a national study of witness intimidation suggest that something more fundamental than distrust of police underlies the reluctance of residents of high-crime communities to cooperate. The case of Rayco Saunders, a Pittsburgh drug-dealer-turned-professional-boxer living, is instructive. Saunders made headlines when he appeared at a court hearing in an attempted murder case in which he was the alleged victim wearing a “Stop Snitching” T-shirt and hat. The case was dismissed when Saunders refused to remove the shirt and hat. Later asked to explain his understanding of “stop snitching,” Saunders provided a somewhat confused but illuminating account: First, he said that “stop snitching” means that criminals should not trade information for leniency. Second, it means that innocent witnesses have no obligation to help the police, because the police are unable to protect witnesses. Third, people who have been wronged by the criminal justice system should not be expected to assist the police. And finally, people should not look to the police to right every wrong, but should handle some problems on their own.

Though part of his conception of “Stop Snitching” reflects a deep-seated distrust of police, Saunders’s final point suggests that something more drives reluctance to cooperate with police: specifically, a belief that many incidents that the law views as crimes are best handled by individuals and do not require police intervention. A similar lesson is taught by the story of Willie Brown, who was shot in the leg in 2008 and fingered Darnell Robinson as the culprit. The case against Robinson was dismissed, however, because Brown repeatedly changed his story. According to Brown, he stopped cooperating with police because he is “no stool pigeon.” Instead, Brown and Robinson made peace when Robinson apologized to Brown and Brown forgave him. For Brown and Robinson, residents of a high-crime Chicago neighborhood, this “street justice” resolved the issue without the involvement of police.

A report on witness intimidation by Peter Finn and Kerry Murphy Healey for the National Institute of Justice further bolsters the conclusions that the reticence of residents of high-crime communities to assist the police stems in part from their belief that crime is problem

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also Dan M. Kahan, Social Influence, Social Meaning, and Deterrence, 83 Va. L. Rev. 349, 381 (2007) (noting that when the probability of punishment is low and the severity of punishment is high, as is the case in high-crime communities, there is little benefit to individual acts of cooperation and a significant incentive for offenders to retaliate against cooperators).

See Butler, supra note 12, at 88-92; The Stop Snitching Phenomenon, supra note 150, at 12.

Hampson, supra note 10, at 1A.

Id.

Id.

Id.

Id.

Id.

Konkol & Main, supra note 134, at A1.

Id.
internal to the community. Finn and Healey found that high-crime communities “operate as worlds unto themselves—places where people live, attend school, and work all within a radius of only a few blocks beyond which they rarely venture.” Thus, victims, perpetrators, and witnesses of a crime are likely also to be connected within a web of social and familial relationships. Moreover,

community residents may regard many of the crimes for which witnesses are sought as private “business matters” among gang members or drug dealers, rather than as offenses against the community which should inspire willing civic participation in the process of law enforcement. To many, the police are “outsiders” who do not understand or care about their problems.

Taken together, these anecdotes and the Finn and Healey study suggest that both community-wide distrust of police and anti-cooperation norms, like those heralded by the “Stop Snitching” movement, are the result of the marginalization of high-crime communities that results in residents falling into an adversarial relationship with the police. Community members see the police as untrustworthy outsiders who cannot and have no genuine interest in solving the community’s problems, and police in turn see residents of those communities as potential criminals rather than citizens worthy of protection. Given this intense insularity, it thus comes as no surprise that when a member of a marginalized community turns to police to resolve what is perceived to be an internal problem, that resort to the “other” is viewed as a betrayal of the community.

2. A loyalty analysis

By referring to one who assists the police by terms like “snitch” and “rat,” members of high-crime communities make the moral judgment that the informant is guilty of disloyalty. But to whom has the informant been disloyal? And what normative expectation did the informant violate? To the extent that epithets like “snitch” are reserved for criminals who trade information about other criminals for leniency, the answers to these questions are straightforward.

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162 Id. at 4
163 Id.
164 Id.
167 See Kahan, supra note 153, at 381 (“Even more importantly, severe punishments have expressive consequences that can changes law-abiders’ moral assessment of cooperating. . . . Against this background, cooperating with the police can become imbued with connotations of collaboration and betrayal.”).
168 Rodney Bethea explained the fundamental disloyalty implied by the term “snitch”: “When you think about it, I mean, who likes a snitch? . . . The government don’t like a snitch. Their word for it is treason. What is the penalty for treason?” Kahn, supra note 131, at 88.
and mirror the earlier analysis of an accomplice-informant. By engaging in criminal activity, the criminal-informant becomes part of a community of criminals, and there is a normative expectation that members of that community will not reveal incriminating information about other members to the police, particularly when motivated purely by self-interest. In breaching that expectation, the criminal-informant thus commits an act of disloyalty to the community of criminals.

Yet the “Stop Snitching” movement is not limited to discouraging criminals from informing on other criminals, and in the case of the non-criminal informant, the mechanics of a judgment of disloyalty are less clear. The marginalization of high-crime communities and the “us versus them” dynamic between police and residents of those communities suggest an explanation, however. Separated from the rest of society, members of high-crime communities inevitably become extremely loyal to their community and its norms. Thus, a special relationship exists between the individual and the community in which both the informant and criminal dwell. And the popularity of the “Stop Snitching” movement teaches that this relationship gives rise to a normative expectation that members of the community with not incriminate each other. When a member does so by becoming an informant, she breaches that expectation, is guilty of disloyalty, and is branded a “snitch.”

While this hypothesis explains why members of high-crime communities would shun non-criminal informants in their midst, it sheds little light on why mainstream society views the “Stop Snitching” movement as harmful. After all, disloyalty is spurned throughout society, regardless of the community in which one lives, and a judgment of disloyalty may be made by any observer of a special relationship who is aware of the normative expectations inherent to it. Thus, if acting as an informant in a high-crime community is disloyal to that community, that disloyalty should be seen, understood, and condemned by the rest of society as well. Yet unsolved crimes in high-crime communities consistently inspire editorials in the mainstream press bemoaning the failure of witnesses within that community to come forward.

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169 See supra notes 101-104 and accompanying text.
170 This analysis comports with Rodney Bethea’s definition of “snitches” as people engaged in illegal activities who “when they get arrested, to save themselves, they tell on everyone else they know.” Julie Bykowicz, Producer says education, not intimidation, is sequel’s focus, BALTIMORE SUN, Dec. 20, 2007.
171 See Finn & Healey, supra note 161, at 4; infra notes 180-185 and accompanying text.
172 The relationship between the individual and her community is reinforced by the numerous social connections between law-abiding and law-breaking civilians, including familial bonds or membership in the same church. See Kahan, supra note 153, at 380; Finn & Healey, supra note 161, at 4.
173 The phrase “mainstream society” is used herein only as shorthand for that portion of society that does not adhere to the specific anti-cooperation norms exemplified by the “Stop Snitching” movement. The phrase “society at-large” is also used for variety to refer to that same subset of society.
174 See Fletcher, supra note 23, at 10.
175 See supra notes 80-83 and accompanying text.
176 See, e.g., Editorial, Victims must step out of the shadows when snitching is the right thing to do, PHILADELPHIA DAILY NEWS, Jan. 31, 2006, at 13.
To understand why the rest of society would denounce a judgment of disloyalty in a high-crime community, recall that disloyalty is a social phenomenon based on normative expectations imposed on an individual by others, that each person is inevitably part of numerous relationships that give rise to these normative expectations, and that these expectations often conflict. In this instance, the informant is involved in two relationships that impose competing norms on her relating to assisting the police. On one hand, her high-crime, inner-city community expects that she will not help the police incriminate other members of the community, and on the other, society at-large imposes on her the normative expectation that she will assist the police in solving crimes. Thus, when the informant assists the police she breaches those norms imposed by her own community and thus is disloyal to that a community and labeled a “snitch.” And when a witness to a crime in a high-crime community refuses to come forward and assist the police, her refusal is met with head-scratching and frustration by mainstream society, which sees her inaction as disloyal to its interests in the enforcement of its criminal laws. Seen in this light, the potential informant in a high-crime community has a choice: speak up and be ostracized by her community, or keep quiet and be criticized by society at-large. The decline in clearance rates for crimes in high-crime communities suggests that residents are increasingly choosing their specific community norms over those held by the rest of society.

The suggestion that residents of high-crime neighborhoods elevate their particularized community norms over those of society at-large comports with the well-documented economic, political, and social marginalization of those neighborhoods. Residents of high-crime, inner-city communities, largely members of racial or ethnic minorities, are isolated from the economic and political opportunities of mainstream society and in response adopt oppositional cultural norms that reinforce that isolation. These norms may include a belief that the legal system, rather than existing to maintain public order, is in place to reinforce oppressive racial and class-based hierarchies, or they may legitimate illegal means of making money over legal employment. Regardless of their specific content, these norms frequently either replace or are prioritized above competing norms perpetuated by society at-large. In the informant context,

177 See supra notes 27-53 and accompanying text.
178 See Butler, supra note 12, at 91-92 (noting that cultural codes against snitching present potential informants with “competing rules—outside versus inside, state versus community, external versus claim”); Markel et al., supra note 118, at 1156 (recognizing that the decision of whether to help the police apprehend a family member who has committed a crime is a “conflict of loyalty,” presumably between loyalty to the family and loyalty to society).
179 See The Stop Snitching Phenomenon, supra note 150, at 10 (citing FBI statistics that show “national clearance rates for violent crime, especially homicide, … declining steadily during the last decade”).
182 I. Bennett Capers, Policing, Race, and Place, 44 HARV. C.R.-C.L. L. REV. 43, 56 (2009).
184 See id. at 189-90 (citing Elijah Anderson, STREETWISE: RACE, CLASS, AND CHANGE IN AN URBAN COMMUNITY 56-76 (1990)) (describing the competition between “streetwise” and “decent” values in inner-city communities).
then, the displacement of broader societal norms encouraging cooperation in favor of localized norms discouraging “snitching” is a further symptom of the marginalization of these inner-city, high-crime neighborhoods.\textsuperscript{185}

Moreover, this loyalty analysis of the “Stop Snitching” movement comports with social science research on the importance of the perceived legitimacy of the law and law enforcement to compliance with the law and civilian cooperation with the police. Based in large part on the work of social scientist Tom Tyler, this research has shown that normative bases are more effective than instrumental ones in encouraging people to voluntarily comply with the law.\textsuperscript{186} Put another way, people are more likely to obey the law because they believe that it is the right thing to do than they are out of fear of punishment should their lawbreaking be detected.\textsuperscript{187} More specifically, Tyler’s research has shown that people are more likely to obey laws that they view as legitimate, where legitimacy is defined as an “entitle[ment] to be deferred to and obeyed.”\textsuperscript{188}

Similarly, perceptions of police legitimacy strongly influence the level of civilian cooperation with law enforcement.\textsuperscript{189} People evaluate the legitimacy of the police largely by judging how fair they are in the exercise of their authority,\textsuperscript{190} and they base these judgments on both personal experiences with police and their assessment of how police deal with other members of their community.\textsuperscript{191} In addition, perceptions of the legitimacy of the criminal law and the police depend substantially on the extent to which the law “expresses moral and social norms that are widely held by both dominant and subordinate social groups”\textsuperscript{192} and the police are believed to be “acting in solidarity with the community and are supporting and defending community norms in their social regulatory actions.”\textsuperscript{193} Put another way, members of a

\textsuperscript{185} An analogous situation arises internationally when governments attempt to rule disparate ethnic groups. See Miodrag A. Jovanović, Can Constitutions Be of Use in the Resolution of Secessionist Conflicts?, 5 J. INT’L L. & INT’L REL. 59, 78 (2009) (discussing the problem of “ungovernability,” by which “loyalty towards a certain group . . . outweighs the loyalty towards the state as a whole, in such a way that the decision not to obey laws and law-like demands made by the larger state is primarily driven by the emotional stance that the issuing authority is no longer ‘our’ state”).


\textsuperscript{187} Id. at 399.


\textsuperscript{189} Id. at 534; see also Tom R. Tyler & Jeffrey Fagan, Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?, 6 OHIO ST. J. CRIM. L. 231, 240 (2008) (“To the degree that people are motivated by legitimacy, people cooperate [with the police] because they feel it is the right thing to do . . . .

\textsuperscript{190} Tyler & Fagan, supra note 189, at 264.

\textsuperscript{191} Id. at 265; see also National Research Council, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 303 (Welsey Skogan & Kathleen Frydl eds., 2004).

\textsuperscript{192} Tyler & Fagan, supra note 189, at 234-35; see also National Research Council, supra note 191, at 303 (noting that in the workplace context, the legitimacy of rules is dependent upon “their fidelity to agreed-upon institutional purposes”).

community view the law and police as legitimate when, through personal experience, they come to believe that both entities share, defend, and enforce the community’s norms.

When people believe that the law and law enforcement are legitimate, they are more willing to actively cooperate with police by, for instance, reporting crimes in their neighborhoods.\textsuperscript{194} Minorities, who make up a disproportionate percentage of the population in high-crime communities, are the least likely to trust the police, however, and thus are the least likely to view them as legitimate.\textsuperscript{195} This lack of perceived police legitimacy has resulted in poor police-community relations in these communities, despite improvements in the quality of policing over the last several decades.\textsuperscript{196} These observations have led Tyler and Jeffrey Fagan to recommend that in order to increase civilian cooperation, police should aim to be “procedurally fair” when dealing with civilians and that additional research should investigate what kinds of police procedures the public views as fair or unfair.\textsuperscript{197}

The above analysis of the “Stop Snitching” movement, when viewed in the light of this research on police legitimacy, suggests that the widespread use of informants in high-crime communities is part of a cycle that undermines cooperation with police in those communities. By encouraging members of high-crime communities to become informants, police ask them to violate community norms.\textsuperscript{198} This, in turn, tells these communities that the police, and by extension the criminal justice system and society at-large,\textsuperscript{199} do not share the community’s norms.\textsuperscript{200} As a result, perceptions of the legitimacy of the law and law enforcement in these communities decline, and this decline in legitimacy further discourages cooperation with the


\textsuperscript{194} See Tyler & Fagan, supra note 189, at 263 (“If people view the police as more legitimate, they are more likely to report crimes in their neighborhood.”).

\textsuperscript{195} Id. at 238-39 (citing Lawrence D. Bobo & Devon Johnson, \textit{A Taste for Punishment: Black and White Americans’ Views on the Death Penalty and the War on Drugs}, 1 DU BOIS REV. 151, 156-57 (2004); Jeffrey Fagan, \textit{Crime and Neighborhood Change}, in \textbf{UNDERSTANDING CRIME TRENDS} 81 (Arthur S. Goldberger & Richard Rosenfeld eds., 2008)).

\textsuperscript{196} See id. at 264-65 ("Despite these increases in the quality of policing, the police continue to have difficulty securing public cooperation, especially among minority group members, and in some cities police-community relations continue to be characterized by hostility and antagonism.").

\textsuperscript{197} Id.

\textsuperscript{198} See supra notes 171-73 and accompanying text.

\textsuperscript{199} See Jonathan Jackson et al., \textit{Compliance with the Law and Policing by Consent: Notes on Legal Legitimacy and Cynicism, in LEGITIMACY AND COMPLIANCE IN CRIMINAL JUSTICE}, at 8-9 (Adam Crawford & Anthea Huxlesby eds.) (forthcoming 2011), available at \url{http://ssrn.com/abstract=1717812} (arguing that because police “are the most visible agent of social control” and are “powerfully linked to the law,” perceived police unfairness undermines the law’s general moral right to dictate behavior).

\textsuperscript{200} Indeed, supporters of the movement often argue that police are hypocrites: on one hand, they encourage informing in high-crime communities, while on the other they conform to their own code of silence with respect to police misconduct. \textit{See} Kahn, supra note 131, at 88 (“Bethea believes there is a double standard—and perhaps a tinge of racism—in law enforcement’s criticism of the “Stop snitching” culture. . . . He pointed out that the police have their own code of silence, and that officers who break it by reporting police misconduct are stigmatized in much the same was as those who break the code of silence on the street.”).
Declining cooperation then forces police to exert renewed pressure on community members to become informants, thus perpetuating the cycle anew.

3. Anti-cooperation norms in other communities

Though the observation that community loyalties and distrust of the police impact the decision to cooperate with police is not a new one, the preceding discussion suggests that the perception that police encourage disloyalty is a central reason why civilians refuse to cooperate with law enforcement in high-crime and other marginalized communities. Moreover, by casting a spotlight on loyalty and disloyalty, this discussion suggests a moral dimension to the dilemma that police face of obtaining civilian assistance in high-crime communities that has largely been ignored. In the context of the “Stop Snitching” movement, then, not only must a police request for assistance overcome civilian concerns about police methods and potential harm that may befall the informant, it also must overcome the perception that cooperation is disloyal and, hence, immoral.

And the moral issue raised by the perception of disloyalty is not limited to high-crime neighborhoods: other communities also impose cultural norms against informing, including orthodox Jews, the Irish, and immigrants fleeing totalitarian regimes. These communities share some of the traits of high-crime neighborhoods: they tend also to be marginalized and to have a history of state persecution that impacts their perception of police legitimacy. For instance, the Orthodox Jewish law against mesira, or informing, arose from the historical persecution of Jews by secular authorities. Similarly, Finn and Healey reported that “recent

201 Other commentators have identified the importance of loyalty in specific situations where an individual must decide whether to inform against another with whom they have a defined relationship. For instance, Fletcher discusses the difficult choice faced by a daughter who must decide whether to turn over evidence that her father is a war criminal. Fletcher, supra note 23, at 152-53. And more generally, Markel, Collins, and Leib address situations where “family members have the opportunity to facilitate or obstruct enforcement of the criminal law.” Markel et al., supra note 118, at 1151. Additionally, Dan Kahan has recognized that the “competing loyalties” experienced by residents of high-crime communities impact their willingness to cooperate with the police. Kahan, supra note 153, at 380-81.

202 In puzzling out explanations for the unwillingness of members of high-crime communities to assist the police, other commentators tend instead to focus on either police misconduct or on a utilitarian balancing of potential benefits and harms of informing from the civilian’s perspective. See, e.g., Rachel A. Harmon, When Is Police Violence Justified?, 102 NW. U.L. REV. 1119, 1157 (2008) (“Excessive uses of force have a deleterious effect on public confidence in the police, and may also undermine public adherence to criminal laws and cooperation with police activities related to law and order.”); Kahan, supra note 153, at 380-82 (arguing that long sentences and infrequent convictions make cooperation an irrational choice for many residents of high-crime neighborhoods). This is not to say that these factors do not contribute to the difficulties that police face in obtaining cooperation, but rather that they paint an incomplete picture.

203 See Simons, supra note 19, at 30; Finn & Healey, supra note 161, at 4 (“Prosecutors and police investigators interviewed for this study also report that many members of some minority and ethnic groups avoid cooperating with the criminal justice system for cultural reasons, including a sense of group loyalty that makes them reluctant to testify against members of their own culture.”); Rebecca Spence, Case of Informant Reverberates through L.A.’s Orthodox Community, FORWARD, Jan. 25, 2008, http://www.forward.com/articles/12542/.

204 Because Jews frequently did not emerge alive once turned over to secular authorities, according to the Talmud mesira was punishable by death. See Spence, supra note 203. For a more nuanced discussion of the Jewish law
Asian immigrants who have experienced repression at the hands of the law enforcement systems in their countries of origin may be apprehensive that the American criminal justice system will be similarly unresponsive.\footnote{Finn & Healey, \textit{supra} note 161, at 4.} The implications of introducing this moral component to the analysis are addressed in more detail in Part III.

C. Informing in the rest of society

Unlike the previous sections, which have discussed discrete and documented informant phenomena, this section undertakes a slightly different task by looking at informing in society at-large. It first proposes and defends a model for how informants are treated by society at-large. Then, accepting that model as true, this section applies the previously-developed concepts of loyalty in order to distill some insights about how society views police, the government, and the criminal justice system.

1. When does an informant become a “snitch” in society at-large?

Scholarship on informants typically focuses on their use in high-crime communities, as police understandably focus their efforts in the communities where crime is most prevalent.\footnote{See Natapoff, \textit{supra} note 6, at 101-03.} Consequently, police use of informants is most widespread in high-crime neighborhoods, these neighborhoods bear the brunt of the ill effects of informant use, and these neighborhoods are thus of the greatest interest to scholars.\footnote{See \textit{id.} at 101-20 (discussing the impact of “[s]nitchin’ in the ‘[h]ood’”).} Obviously, though, informants are useful to police in apprehending criminals wherever crime occurs, and crime occurs in every neighborhood. But are people outside of high-crime neighborhoods ever subjected to normative expectations that they will not assist the police in apprehending a criminal? In other words, can a non-criminal resident of mainstream society be a “snitch”? And, if she can, under what circumstances is that judgment of disloyalty rendered?

a. Are there “snitches” in mainstream society?

The question of the existence of “snitches” in mainstream society can be answered rather easily in the affirmative. The most common examples of members of mainstream society being accused of snitching involve government programs that encourage civilians to turn in those who commit minor regulatory-type violations. For instance, municipalities with dwindling water supplies frequently encourage residents to report those who violate water use regulations, leading to criticisms that they are promoting “snitching.”\footnote{See, e.g., Jim Osterman, \textit{Not worth it to tattle on water wrongdoers, ATLANTA JOURNAL-CONSTITUTION,} Oct. 14, 2007, at 6ZH (“I can understand calling the police if you think you have an active meth lab in the neighborhood, or if you suspect someone is being abused. But I don't think a call to the city of Atlanta is needed for an outlaw sprinkler.”); Aliza Appelbaum, \textit{Dry spell stimulates a big crop of snitches; As enforcement of the water regulations}} And accusations of snitching also have

arisen with respect to Chicago’s ban on foie gras, a request in Des Moines that residents keep their water off while the municipal water system was refilled after floods, and a phone line in Portland dedicated to citizen questions and complaints about city workers. Similarly, government initiatives asking civilians to report suspicious, but non-criminal, activity have been criticized for encouraging “snitching.” Most famously, the Justice Department’s Operation TIPS, which aimed to solicit workers, such as meter readers and cable installers, to report suspicious activity that might be connected to terrorism, was cancelled after commentators analogized the program to the Stasi’s use of informants in East Germany. Put simply, there are “snitches” in mainstream society.

b. When is an informant a “snitch” in mainstream society?

The second question – when is an informant in mainstream society a “snitch”? – is much more challenging to answer with specificity. That government programs seeking civilian assistance in reporting minor offenses are criticized for encouraging “snitching” tells us that, at least in some situations, society at-large deems it improper to assist the police in apprehending the perpetrators. These accusations of snitching co-exist, however, with mainstream society’s condemnation of the “Stop Snitching” movement, which suggests the existence of an opposing normative expectation that civilians should help the police. At what point, then, does the pro-cooperation norm give way to a norm discouraging cooperation?

The contextual view of disloyalty set forth previously suggests that any number of competing norms could impact the location of this inflection point. These could include

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213 As part of recent regulatory reform, Congress authorized the Securities and Exchange Commission to pay bounties to whistleblowers who report securities violations. See Melissa Klein Aguilar, *SEC Bounty Program May Complicate Whistleblowing*, COMPLIANCE WEEK, July 7, 2010, http://www.complianceweek.com/article/6018/sec-bounty-program-may-complicate-whistleblowing. These provisions have been criticized in some circles for encouraging “snitching.” David R. Sands, *SEC considers cash bounties to whistleblowers*, THE WASH. TIMES, Mar. 12, 2009, at A01. Though it is not yet clear how widespread this criticism is, see David S. Hilzenrath, *SEC tries to decide how to set the rewards of whistleblowing*, THE WASH. POST, Nov. 22, 2010, at A17 (discussing arguments made by proponents and critics of the provisions), a mainstream outcry against the SEC provisions would provide an interesting additional data point in this analysis.
214 See supra notes 95-97 and accompanying text.
norms against informing on members of one’s own family,\(^{215}\) norms arising from a confidential professional relationship,\(^ {216}\) or anti-cooperation community norms like those discussed in the prior section.\(^ {217}\) That the examples of situations when mainstream society levels the accusation of snitching tend to involve minor, regulatory-type offenses suggests, however, that the seriousness of the offense\(^ {218}\) plays a particularly important role.\(^ {219}\)

Though empirical data are scant, they confirm that offense seriousness plays a significant role in the assessment of whether it is proper to assist the police in apprehending the perpetrator. For instance, a survey conducted in 2000 of respondent attitudes towards civilian obligations to report crime found that most participants believed that while a penalty should attach for failing to report many crimes, the severity of the penalty should correlate to the seriousness of the offense not reported, and no penalty should attach for failing to report three of the least serious offenses listed in the survey (prostitution, speeding, and “harassment”).\(^ {220}\) Similarly, a survey conducted nearly a decade earlier found that the perceived seriousness of a crime factored into the victim’s decision whether to report it to the police.\(^ {221}\) A recent survey of community college students also suggests that people are more likely to cooperate with the police when the crime at issue involves violence.\(^ {222}\) Finally, a study of whistle-blowing attitudes found that respondents were most likely to report illegality that they perceived to be most severe and immoral.\(^ {223}\) Though none do so directly, these data at least suggest that the seriousness of the crime at issue factors into the question of whether it is proper to help the police solve it.

If the seriousness of a crime matters, then the question still remains of how it matters. One possibility is that in mainstream society there is some definable line between those crimes that, depending on the circumstances, one may assist the police in solving and those crimes that,

\(^ {215}\) See Markel et al., supra note 118, at 1156 n.38 (suggesting that an individual’s willingness to inform against a family member would depend in part on “the degree of closeness of the relative (whether closeness is measured in emotional closeness or bloodline closeness”).


\(^ {217}\) See supra notes 171-73, 203-05 and accompanying text.

\(^ {218}\) The term “seriousness” refers to the perception of the community at issue of the severity of a criminal offense. There is substantial literature discussing how best to measure the “seriousness” of criminal offenses with recent research suggesting that seriousness is not a “unidimensional phenomenon.” See Jeremy A. Blumenthal, Perceptions of Crime: A Multidimensional Analysis with Implications for Law and Psychology, 38 McGeorge L. Rev. 629, 631 (2007) (discussing social science research on the seriousness of crimes). There also is some debate about whether there is consensus across communities on the relative severity of various crimes. See Pamela S. Karlan, “Pricking the Lines”: The Due Process Clause, Punitive Damages, and Criminal Punishment, 99 Minn. L. Rev. 880, 894 (2004). Resolving of these debates, however, is both unnecessary at this juncture and outside of the scope of this Article.

\(^ {219}\) See Markel et al., supra note 118, at 1156 n.38 (suggesting that the decision whether to inform on a family member “would vary on two vectors: the severity of the crime and the degree of closeness of the relative”).


\(^ {222}\) See The Snitching Study, supra note 146.

\(^ {223}\) Feldman & Lobel, supra note 113, at 1192-93.
regardless of the circumstances, one should never help the police to solve. In particular, the examples cited previously, in which the government is criticized for encouraging “snitching” with respect to minor regulatory-type offenses, suggest that this line may run between mala in se crimes and mala prohibita offenses. In other words, it might be that mainstream society will often encourage cooperation to help police solve inherently immoral offenses, like robbery, rape, or murder, but always discourage cooperation in cases of purely regulatory offenses, like hunting deer out of season.

Cultural codes against informing that in some sense precede the judgment of disloyalty that attaches to the informant in mainstream society do not adhere to the malum in se versus malum prohibitum distinction, however. For instance, police famously enforce a “blue wall of silence” that forbids officers from providing information that might implicate one of their own in misconduct. This anti-cooperation norm applies to clearly malum in se offenses such as police brutality, a crime that is famously difficult to prosecute because of the unwillingness of police to be witnesses against their fellow officers. Those who breach the norm are subject to retaliation including ostracism, harassment, and physical violence. Children also learn at an early age that society frowns upon “tattling” on the misconduct of their peers. Though tattling is okay in some circumstances, particularly if the offense at issue is sufficiently severe, the admonition not to tattle applies to some malum in se offenses: one of the prime examples of

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224 A malum in se crime is one that “is inherently immoral, such as murder, arson, or rape.” BLACK’S LAW DICTIONARY (8th ed. 2004).

225 A malum prohibitum offense is “[a]n act that is a crime merely because it is prohibited by statute, although the act itself is not necessarily immoral,” such as jaywalking or many regulatory offenses. BLACK’S LAW DICTIONARY (8th ed. 2004). Some argue that the distinction between malum prohibitum and malum in se crimes is largely illusory and unhelpful. See Stuart P. Green, Why It’s a Crime to Tear the Tag Off a Mattress: Overcriminalization and the Moral Content of Regulatory Offenses, 46 EMORY L.J. 1533 (1997); Jerome Hall, GENERAL PRINCIPLES OF CRIMINAL LAW 38-42 (2d ed. 1947). Without wading into that debate, this Article uses the distinction to highlight a difference that would have some meaning to lay people between offenses that are criminal “because they are wrong” and those that are criminal “because the government says so.” The precise contours of the distinction are not crucial for this purpose.

226 Drawing the line here certainly would be comforting in that it would reaffirm people’s natural tendencies to overestimate their own moral character. See Feldman & Loyal, supra note 113, at 1186. Consider a circumstance in which a witness, who has no special relationship with either the perpetrator or the victim, observes the commission of a crime. It would reaffirm the witness’s assessment of her own morality for her to believe that if the crime were inherently immoral, then society would encourage her to cooperate and she would do so.

227 See Gabriel J. Chin & Scott C. Wells, The “Blue Wall of Silence” As Evidence of Bias and Motive to Lie: A New Approach to Police Perjury, 59 U. PITT. L. REV. 233, 237 (1998) (defining the “blue wall of silence” as “an unwritten code in many departments which prohibits disclosing perjury or other misconduct by fellow officers, or even testifying truthfully if the facts would implicate the conduct of a fellow officer”).

228 See, e.g., Susan Bandes, Patterns of Injustice: Police Brutality in the Courts, 47 BUFF. L. REV. 1275, 1284-85 (1999) (discussing assault of Abner Louima in New York City and noting that even though two officers were found guilty, a number of police witnesses failed to come forward with information about the incident).

229 See Chin & Wells, supra note 227, at 256-61.


231 See Butler, supra note 12, at 88 (noting that tattling is likely okay when a child is playing with a gun even if it is not when a child steals a cookie from a cookie jar).
when a child is traditionally told not to tattle is when she has been subject to taunts or minor physical violence at the hands of a schoolyard bully.\textsuperscript{232}

The anti-cooperation norms within these two communities no doubt strongly influence those found in mainstream society. Every adult, after all, was once a child and thus exposed to the norm against tattling. And though imperfect, the police act as role models for the rest of society.\textsuperscript{233} Consequently, the irrelevance of the distinction between \textit{malum prohibitum} and \textit{malum in se} offenses in these influential communities suggests that the distinction is unlikely to be the basis for distinguishing when mainstream society views cooperating with the police to be disloyal. This conclusion finds additional support in the survey cited above, in which two of the three offenses that survey-takers most strongly believed witnesses should not be punished for failing to report – prostitution and harassment – are at least arguably \textit{malum in se}.\textsuperscript{234} Rather, it appears that mainstream society’s assessment of the seriousness of a crime depends on more than its immoral content, and when the seriousness of an offense falls below a certain level, cooperation with the police generally will be viewed as an act of disloyalty. The precise location of that level does not avail itself to easy definition, however.

2. A loyalty analysis

The recognition that even in mainstream society civilians can be deemed disloyal for assisting the police raises a now-familiar question: to whom has the informant been disloyal? In the context of the “Stop Snitching” movement, the answer to this question was relatively straightforward. Because the high-crime communities in which the movement has taken root are marginalized from mainstream society, assisting the police, the most visible representatives of mainstream society, is viewed as a betrayal of the marginalized community.\textsuperscript{235} But this understanding of the informant’s disloyalty does not fit easily with the recognition that members of mainstream society can be viewed as snitches. After all, mainstream society is by definition not marginalized, and the police are considered prototypical representatives of mainstream norms.\textsuperscript{236} Thus, there is no obvious oppositional “other” for the snitch to be said to have chosen over her community. This apparent disconnect in the conception of snitching as an act of disloyalty can be resolved if in certain situations the police are not perceived by mainstream society to represent its norms. In those situations, then, the “other” would be the police and the

\textsuperscript{232} See, e.g., Sterling Taylor, \textit{Officer urges students to snitch on bullies}, \textit{The Toronto Star}, Dec. 9, 1993, at SD2 (recounting story where school principal told eight year-old girl not to “tattle” after being assaulted by two bullies after school).

\textsuperscript{233} See Boy Scouts of America v. Dale, 530 U.S. 640, 698 (2000) (Stevens, J., dissenting) (listing police officers, along with schoolteachers, librarians, and athletic coaches, as those “who serve as role models for children and adults alike”). Also, recall that police anti-cooperation norms are often cited to justify the “Stop Snitching” movement. See \textit{The Stop Snitching Phenomenon}, supra note 150, at 20; Kahn, \textit{supra} note 131, at 87.

\textsuperscript{234} Veneziano & Veneziano, \textit{supra} note 220, at 427-28.

\textsuperscript{235} See \textit{supra} notes 171-73 and accompanying text.

\textsuperscript{236} See Sunshine & Tyler, \textit{supra} note 193, at 162-63
State, and the informant’s choice of the police over mainstream society would be deemed disloyal.

The notion that the actions of the State in the criminal justice arena sometimes do not align with society’s interests is not new. For instance, police and prosecutors are frequently criticized for discriminating on invalid bases, such as race, socioeconomic status, and religion, in where they focus their policing efforts, including their use of informants. Many scholars also condemn the phenomenon of “overcriminalization,” by which legislators pass too many criminal laws and, at least at times, improperly criminalize behavior that is not subject morally condemned by society. Additionally, police are sometimes criticized for placing bureaucratic interests above society’s interests in their allocation of resources. The recognition that the accusation of disloyalty in mainstream society stems from a disconnect between state action and societal interests contributes to this discussion by highlighting when a policing strategy so troubles mainstream society that it justifies the harsh judgment of disloyalty on a member who cooperates in that strategy.

In particular, the judgment of disloyalty made against those who cooperating with the police in the enforcement of certain minor offenses informs scholarship on overcriminalization. Erik Luna has identified six categories of overcriminalization: “(1) untenable offenses; (2) superfluous statutes; (3) doctrines that overextend culpability; (4) crimes without jurisdictional authority; (5) grossly disproportionate punishments; and (6) excessive or pretextual enforcement of petty violations.” If accusations of snitching are most likely when civilians assist police in apprehending those who commit offenses that are deemed the least “serious,” widespread societal concern about overcriminalization would seem to focus on either or both of the first and last categories.

In particular, critics of overcriminalization in the areas of untenable offenses and excessive enforcement are concerned about cases where the use of the criminal sanction does not

238 See Said, supra note 6, at 737 (calling for an end to the use of informants in terrorism investigations); Natapoff, supra note 6, at 184-86 (recommending restrictions on the use of vulnerable informants).
240 See Richard H. McAdams, The Political Economy of Entrapment, 96 J. CRIM. L. & CRIMINOLOGY 107, 132-33 (2005) (“Police bureaucracies respond generally to intense political pressure for crime control by trying to create incentives for individual officers to control crime. An incentive requires some measure of job performance and, for the detective, a common criterion is her “clearance rate,” the rate at which she solves a case by making an arrest of the suspected perpetrator. The value placed on clearance rates carries over to motivate officers to value arrests even when—as in most proactive undercover operations—there is no previously reported crime to “clear.” In short, bureaucratic incentives motivate arrests.”).
241 Recall that betrayal is viewed as one of the fundamental sins in American society. See Fletcher, supra note 23, at 10. As such, it stands to reason that an accusation of disloyalty would only be made when societal discomfort with a course of action is substantial.
242 Luna, supra note 239, at 717.
fit the moral desert of the wrongdoer. 243 The first category implicates those crimes that punish conduct that causes little or no harm to others, either because the offense involves minor wrongdoing or it targets no violation of another’s individual rights. 244 This category meshes with the examples of “snitching” in mainstream society where the government encourages civilians to inform on those who commit merely suspicious, non-criminal activities or minor, regulatory-type violations. 245 Those concerned about excessive enforcement, on the other hand, raise the specter of “an overbearing and overreaching style of law enforcement worthy of the term ‘despotism.’” 246 Put another way, the concern is that if too much conduct is criminalized, the State will have an excuse to impinge in all areas of private life. 247 Interestingly, these concerns echo those raised in the context of the “Stop Snitching” movement, where marginalized communities resist police involvement in activities they consider internal, community business, even though it fits the commonly-accepted definition of a crime. 248 Both categories of overcriminalization suggest the existence of discord between community and police norms. And, as explained above, when communities do not believe that police share their norms, their members are less likely to cooperate with the police and obey the law. 249

Finally, accusations of snitching in mainstream society are not limited to crimes that are not deemed sufficiently serious; they also arise when police use informants who violate other broadly-recognized loyalties in assisting the police. 250 For instance, as discussed above, some commentators criticized David Kaczynski for assisting the police in apprehending his brother Theodore, commonly known as the Unabomber, because David was perceived to have betrayed his brother. 251 Similarly, in rare cases lawyers and other professionals have become informants against their clients, giving rise to accusations of “snitching” based on their breach of common normative expectations about their duties to their clients. 252 To the extent that police encourage informing in these situations, they communicate to society at-large that they do not share society’s norms that value these loyalties, thus undermining perceptions of their legitimacy and discouraging cooperation and compliance with the law.

243 See id. at 716-17.
244 Id. at 716.
245 See supra notes 208-12 and accompanying text.
246 Luna, supra note 239, at 717.
247 See William J. Stuntz, The Pathological Politics of Criminal Law, 100 MICH. L. REV. 505, 539 (2001) (noting that if “laws [] criminalize street behavior that no one wishes actually to punish,” then “police can stop or arrest whomever they wish”).
248 See supra notes 158-60 and accompanying text.
249 See supra notes 192-93 and accompanying text.
250 See Markel et al., supra note 118, at 1155-56.
251 See supra note 118 and accompanying text.
III. Policy Recommendations

The most substantial contribution made to prior scholarship by this discussion of loyalty and disloyalty in the context of informants is that it recognizes the moral dimension of society’s condemnation of snitches and its impact on civilian cooperation with police and compliance with the law. Most previous scholarship on informant use argues for changes to law enforcement policies by pointing out by recognizing the unjust results of those policies, which are usually born by the targets of informant-driven investigations and occasionally befall the informants themselves. When scholars do discuss the moral underpinnings of societal disdain for informants, the implications of that moral dimension on police policies relating to informant use are generally underdeveloped. Similarly, explorations from the perspective of the civilian deciding whether to cooperate with police also ignore the moral implications of that cooperation, either working under the apparent assumption that such cooperation is an unalloyed good or critiquing cooperation on broader social and political grounds.

As developed above, the moral condemnation of informing has important policy implications. Depending on the circumstances, cooperating with the police may subject the informant to a judgment in her community that she has acted disloaly and thus immorally. Being seen to encourage this disloyalty undermines police efforts to obtain cooperation, particularly within those communities that harbor anti-cooperation norms. Finally, the fact that some informants are viewed even by mainstream society to act immorally suggests that society at-large harbors concerns about policing and the criminal justice system generally.

Based on these observations, police and prosecutors should recognize the impact that the perception of informant disloyalty can have on civilian cooperation and craft their informant use policies accordingly. Formulating effective policy proposals in this area is a challenge, however, because the use of informants is steeped in police and prosecutorial discretion and governed by


254 See Rich, supra note 99 (arguing that some informant use violates the Thirteenth Amendment); Andrea L. Dennis, Collateral Damage? Juvenile Snitches in America’s “Wars” on Drugs, Crime, and Gangs, 46 AM. CRIM. L. REV. 1145 (2009).

255 See Lynch, supra note 7, at 527-32 (limiting discussion of the moral disdain for informants to the context of the lawyer’s duty to inform on other lawyers under codes of professional conduct).

256 See Tyler & Fagan, supra note 189, at 233.

257 See Butler, supra note 12, at 99-100.

258 See supra notes 95-97 and accompanying text.

259 See supra notes 198-200 and accompanying text.

260 See supra notes 243-52 and accompanying text.
few hard and fast legal prohibitions.\textsuperscript{261} Against this backdrop, bright-line limitations on that discretion, though they are the easiest to police, are politically unfeasible.\textsuperscript{262} Instead, this Section proposes three ways to inject loyalty considerations into policymaking by police departments, prosecutor’s offices, and legislative bodies while maintaining necessary, and politically expedient, flexibility for law enforcement actors.

A. Explicit consideration of loyalty issues in informant screening

First, police and prosecutorial guidelines governing informant use should specifically require consideration of issues of loyalty and disloyalty that might arise from the recruitment of a given person as an informant.\textsuperscript{263} Such a change would reap two main benefits. First, cooperation with police should improve as police are seen to take into account loyalty considerations that are of central importance to the moral life of American society. As explored above, the perception that police wield legitimate authority inspires public cooperation with them.\textsuperscript{264} This perception in turn is driven by the extent to which the police are thought to share the relevant community’s norms.\textsuperscript{265} By openly considering the core moral concern of loyalty in their interactions with potential informants, police would demonstrate their normative solidarity with the communities they serve, thus enhancing perceptions of police legitimacy and encouraging cooperation with the police and compliance with the law.\textsuperscript{266}

In addition, consideration by the police of potential loyalty issues will help some informants avoid unnecessary ostracism, moral judgments, and potential physical harm, particularly when the informant has a special relationship with the target of an investigation. Though these concerns are unlikely to move law enforcement officials and policymakers in light

\textsuperscript{261} See Natapoff, \textit{supra} note 6, at 46-50, 60-63 (exploring the extent of police and prosecutorial discretion and surveying the relevant legal rules).

\textsuperscript{262} Recent attempts in Florida to impose legislative limits on the use of informants are an excellent example of the political futility of bright-line rules. Responding to the national outcry over the shooting death of Rachel Hoffman, a low-level marijuana dealer, during a drug deal she arranged at the behest of the Tallahassee Police Department, the Florida legislature considered imposing substantial limitations on informant use. Mike Salinero, \textit{“Rachel’s Law” loses major provisions}, TAMPA TRIBUNE, Mar. 19, 2009, at 6. These included a requirement that police advise informants that they can see a lawyer before agreeing to be involved in an undercover operation, a prohibition on the use of individuals in court-approved substance abuse programs as informants, and a ban on using non-violent offenders to target violent felons. \textit{Id.} A version of the bill became law without these clear-cut standards, but less determinate standards that merely shaped law enforcement discretion, such as a requirement that police consider a potential informant’s age, maturity, and emotional state during recruitment, survived. See Alex Leary, \textit{House approves bill to protect informers}, THE MIAMI HERALD, Apr. 28, 2009, at B6.

\textsuperscript{263} The notion that law enforcement should consider issues of loyalty in recruiting informants is not a new one. See Gordon Mehler, \textit{Informants, rats, and tattletales: Loyalty, fear, and the Constitution}, 16 CRIM. JUST. ETHICS 2, 6 (1997) (contending that prosecutors should recognize “the impact of subverting personal loyalties” when assessing potential informants). As argued \textit{infra}, however, significant additional benefits would inhere to making this suggestion an explicit requirement.

\textsuperscript{264} See \textit{supra} note 189 and accompanying text.

\textsuperscript{265} See \textit{supra} notes 192-93 and accompanying text.

\textsuperscript{266} See Sunshine & Tyler, \textit{supra} note 193, at 162 (“People comply more fully with the police, cooperate with them more strongly, and empower them more highly when they think the police share their moral values.”).
of the low esteem in which informants are held, police have a duty to avoid engaging in actions that might harm civilians unless there is sufficient benefit to outweigh the potential harm.\textsuperscript{268}

Despite its potential benefits, this proposal faces two practical hurdles. First, law enforcement agencies are loath to reveal, much less discuss in detail, their policies on informant use.\textsuperscript{269} Second, existing law enforcement policies regarding the use and recruitment of informants often require little or no screening of potential informants.\textsuperscript{270} Thus, the relatively modest suggestion that loyalty issues be part of the calculus during the recruitment of a potential informant may require both a substantial change in the level of detail in informant handling guidelines and a newfound willingness by law enforcement to publicize their content.

The United States Attorney General’s Guidelines Regarding the Use of Confidential Informants provide a good starting point.\textsuperscript{271} With respect to the issue of secrecy, the DOJ guidelines are publicly available, and thus open to criticism and comment.\textsuperscript{272} Moreover, the fact that the DOJ guidelines have been public for a number of years without any apparent negative impact on federal law enforcement effectiveness undermines arguments against law enforcement transparency.\textsuperscript{273} Other law enforcement agencies should follow the federal government’s lead and make their informant policies public, so that citizens can see that their norms are reflected in the guidelines.\textsuperscript{274}

\textsuperscript{267} See Richman, supra note 104, at 79-80.


\textsuperscript{269} See, e.g., Omer Gillham, TPD releases drug-case policies, TULSA WORLD, Aug. 8, 2010, at A1 (discussing release of informant policies by Tulsa, Oklahoma police department despite the department’s contention that the policies do not fall within Oklahoma’s Open Records Act).

\textsuperscript{270} For instance, the Tulsa Police Department policies on informants do not require any assessment of the suitability of an informant prior to her use by officers. See id. Similarly, prior to recent reforms, see supra note 262, the Tallahassee Police Department’s procedure on the use of informants also did not require any suitability assessment. See General Order 62: Use and Control of Informants, TALLAHASSEE POLICE DEPARTMENT GENERAL ORDERS MANUAL, http://www.tallahassee.com/assets/pdf/CD10811059.PDF; see also Natapoff, supra note 6, at 187-88.


\textsuperscript{273} See Gillham, supra note 269, at A1.

\textsuperscript{274} In addition to keeping their policies on informant use secret, police departments also have a history of failing to comply with those policies when they get in the way of making arrests. See Office of the Att’y Gen., Report on Assignment No. 08-16: Tallahassee Police Department Review of Selected General Orders and Standard Operating Procedures Pertaining to Confidential Informants and Drug Buy/Bust 1-2, Sept. 11, 2008, available at http://www.tallahassee.com/assets/pdf/CD1117720912.PDF (recommending numerous changes to enhance compliance with current procedures, including making supervisor evaluations contingent on compliance and audit procedures); Dan Eggen, FBI Agents Often Break Informant Rules: Study Finds Confidentiality Breaches, WASH. POST, Sept. 13, 2005, at A15 (reporting on internal investigation of compliance with DOJ rules for handling
The DOJ guidelines also set out a solid foundation of law enforcement considerations in recruitment of informants. They list seventeen factors that a case agent must address in her Initial Suitability Report and Recommendation before using a person as a confidential informant. These include both basic biographical data, such as the person’s age, and information obviously related to the person’s credibility, such as the extent to which the data provided by the person can be corroborated. Three of the listed factors relate, though not explicitly, to loyalty concerns: the relationship between the person and the target of the investigation, whether the person might obtain privileged information, and the potential physical harm to which the person may be subject for cooperating with the police. For example, an officer considering the relationship between the potential informant and the target of the investigation may recognize, as in the case of an accomplice-informant or an informant who is related to the target, that cooperating with police is likely to be viewed as an act of disloyalty by the informant due to the particular nature of that relationship.

Of course, these factors appear in the DOJ guidelines because they impact the informant’s credibility and reliability. And to be most useful, law enforcement consideration of loyalty must be explicit and publicly acknowledged. Therefore, the factors that law enforcement must consider when recruiting an informant should also include language highlighting the necessity of balancing the potential benefit of the person’s information to a given case against: (a) the impact that recruiting the informant will have on the relationship between the informant and the target of the investigation; (b) the impact of recruiting the informant on the community as a whole; and (c) the likelihood that the informant will deemed to have acted disloyally in assisting the police, and the potential harm, both physical and social, that might result from that judgment of disloyalty.

Unfortunately, the DOJ guidelines set forth no guidance on how law enforcement agents should weigh the various informant suitability factors. Obviously, the fact-sensitive nature of the suitability question precludes a mathematical application of the factors, but some guidance certainly would be advisable. For instance, a model policy promulgated by the International Association of Chiefs of Police requires that the initial assessment of the suitability of a potential informant contain “sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made.” Int’l Ass’n of Chiefs of Police, Model Policy on Confidential Informants § IV.A.1 (2008) (copy on file with author). This standard, though vague, is the basis for the weighing test suggested infra.
In addition to practical hurdles, this proposal is likely to elicit concern that by privileging anti-cooperation norms like “Stop Snitching,” police will only encourage them to become more entrenched.\textsuperscript{281} This concern, however, fails to recognize that explicitly opposing community norms, even those that make policing more difficult, only exacerbates the reticence of marginalized communities to cooperate with police. Moreover, police already are viewed as hypocritical for valuing loyalty within law enforcement while dismissing it among civilians.\textsuperscript{282} By communicating their understanding that civilian and community loyalties also matter, police would enhance the perception that they share community norms. This, in turn, would encourage cooperation with the police. Put another way, by explicitly recognizing that there are reasons why some civilians may not wish to cooperate with the police and some situations where they should not, police will, perhaps counter-intuitively, encourage more civilians to cooperate voluntarily.

Finally, it is important to recognize that these proposed changes do not require that police to decline to recruit a potential informant in all, or even most, situations where cooperation with the police will involve a potential judgment of disloyalty, a result that would no doubt appear to be a “victory” for “Stop Snitching.” Rather, they require only what they say: consideration of potential harm to the informant, the relationship with the informant and target of the investigation, the community at large, and law enforcement efforts in that community. Certainly, this will lead police to decide not to recruit an informant in some circumstances. For instance, the police may decide that pressuring a mother to inform on her son, who is suspected of having committed an assault, may be viewed so negatively in the community that they should first try other police tactics, such as searching for eyewitnesses to the offense.\textsuperscript{283} Or, the police may decide to reject the offer of one low-level drug dealer to inform on other relatively minor drug offenders, because the informant would be subject to violent retaliation, or because the police determine that continuing to recruit informants in the relevant community will discourage law-abiding citizens who witness a crime from coming forward. But, pursuant to the guidelines, the decision not to recruit an informant should occur only when it would work a net benefit to police and societal interests.

**B. Consideration of community-specific norms in the use of informants**

While requiring consideration of individual loyalty issues on a case-by-case basis is an important part of the puzzle, individual officers and prosecutors are subject to institutional pressures to close cases that may make it difficult for them to decline opportunities to recruit informants, even if doing so is in the best interests of the community or their agency in

\textsuperscript{281} Indeed, some law enforcement agencies have taken the opposite tack of arguing directly against the “Stop Snitching” movement. \textit{See The Stop Snitching Phenomenon, supra note 150, at 30-31 (describing \textit{Keep Talking}, a video produced by Baltimore police that thanked the makers of \textit{Stop Fucking Snitching} because the video allowed them to arrest some individuals featured in it for probation violations).}

\textsuperscript{282} \textit{See id. at 20-21.}

\textsuperscript{283} Of course, depending on the community, these eyewitnesses also may be considered disloyal if they assist the police, a concern that police also would need to consider.
For that reason, law enforcement policymakers, who are in a better position to appreciate the middle- and long-term impact of changing in policing methods, should reconsider the extent to which their agencies depend on the recruitment of informants in communities with strong anti-cooperation moral codes. Specifically, policymakers should appreciate that the continued widespread use of informants in these communities is likely to reinforce anti-cooperation norms by undermining perceptions of police legitimacy. Instead, informant use should be limited to cases involving crimes that are sufficiently serious to justify the use of informants in light of the norms prevalent in the given community. Moreover, when dealing with less serious offenses, policymakers should consider alternative policing methods that take into account community priorities. Finally, law enforcement policymakers must realize that loyalty to a marginalized community, even when it discourages cooperation with police, can play a beneficial role in that community and is not merely an obstacle to effective law enforcement. Particularly within high-crime communities that are most in need of improvement, loyalty to those communities is the most likely motivation for those community members with resources to effect change to take an active role in rebuilding their neighborhoods. Thus, policymakers should be cognizant that while the indiscriminate use informants may lead to positive law enforcement outcomes in the short-term, it will undermine the potential for long-term improvement in high-crime communities. Rather, law enforcement should work with loyal community members to improve communities, while keeping in mind that the rehabilitation of a

285 It is noteworthy that not all marginalized communities are home to anti-cooperation norms. For instance, a recent study of attitudes toward policing in Muslim American communities found that in those communities, as in American society generally, the willingness to cooperate with police correlates to perceptions of police legitimacy and procedural justice. Tom R. Tyler et al., Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans, 44 LAW & SOC’Y REV. 365, 385 (2010). Interestingly, however, the use of clandestine policing methods such as informants within those communities did not affect perceptions of procedural justice. Id. at 381-82. This finding is curious in light of vocal complaints from the Muslim American community about the use of informants to infiltrate mosques in an attempt to ferret out potential terrorists. See David A. Harris, Law Enforcement and Intelligence Gathering in Muslim and Immigrant Communities after 9/11, 34 N.Y.U. REV. L. & SOC. CHANGE 123, 139-41 (2010). One potential explanation for this inconsistency is that the targeting of Muslim American communities is a relatively recent phenomenon and thus, unlike in high-crime communities where informant use has been prevalent for decades, the perceptions of discrimination and marginalization have not yet solidified into an anti-cooperation ethos. Cf. supra note 204 (discussing the history of discrimination and persecution that frequently accompanies an anti-cooperation moral code in certain communities). But see Harris, supra, at 136 (noting that many Muslim immigrants to the United States come from oppressive regimes that made substantial use of informants, thus instilling in them a distrust of police). Regardless, the results of the study reinforce that in deciding what policing methods are most appropriate, policymakers must engage in a careful and individualized consideration of the communities in which a given police organization operates.
286 See supra notes 198-200 and accompanying text.
287 While a detailed discussion of alternative policing methods is beyond the scope of this Article, the suggestion that police should attempt to align their methods with citizen priorities fits within the scope of what is commonly called “community policing.” See Jayne Seagrave, Defining Community Policing, 15 AM. J. POLICE 1, 8-9 (1996) (discussing the “philosophical” definition of community policing).
288 See supra notes 60-68 and accompanying text (discussing the importance of loyalty to the potential for improvement in deteriorating communities).
high-crime community will help reduce crime in the long-term and that by showing solidarity with the community, law enforcement will encourage future cooperation.

C. Restriction on the creation and enforcement of minor offenses

Finally, the preceding discussion suggests that mainstream society disapproves of the use of informants to report violations of less serious criminal offenses. Once again, by encouraging what society deems disloyal, law enforcement runs the risk of diminishing the law’s perceived legitimacy and, in turn, reducing cooperation with the police and compliance with the law. These problems are less likely to be as severe as those caused by the use of informants in high-crime neighborhoods, because there are less prevalent and thus less central to the experience of interactions between community members and the State. Nevertheless, any diminished respect for the law is cause for some concern.

With this in mind, two steps should be taken to address societal discontent. First, legislators and police should curtail programs, like “snitch lines” for water use offenses, that encourage civilians to inform on those who commit minor violations. Second, legislators should minimize the use of criminal laws to punish undesirable, but non-serious, conduct. These policy changes would help align law enforcement policies with mainstream societal norms, thus increasing both cooperation with police and compliance with the law. Significant obstacles stand in the way of these proposals, however. First, “snitch lines” often see significant traffic, and are thus effective mechanisms for the enforcement of minor offenses. Second, informants are a relatively inexpensive way to ferret out wrongdoers, particularly those who engage in relatively minor wrongful conduct. Thus, limiting informant use leaves two politically unattractive options: increasing allocation of scarce resources to identifying violators or conceding that minor offenses will go unprosecuted. Third, political considerations discourage legislators from decriminalizing undesirable activity and encourage increased criminalization. Nevertheless, lawmakers should recognize that complaints about “snitch” lines signal widespread discontent with the State that, if unaddressed, may have a long-term negative impact on policing.

289 See supra notes 219-23 and accompanying text.
290 See supra notes 198-200 and accompanying text.
291 See supra notes 192-93 and accompanying text.
292 See Appelbaum, supra note 208.
293 Cf. William J. Stuntz, Race, Class, and Drugs, 98 COLUM. L. REV. 1795, 1821 (1998) (noting that the use of informants in the investigation of upscale drug markets is cheaper than using undercover police officers).
294 See Sara Sun Beale, The Many Faces of Overcriminalization: From Morals and Mattress Tags to Overfederalization, 54 AM. U. L. REV. 747, 773 (2005) (“Legislators are concerned (and rightly so) that the public may conflate their support of decriminalization with support for the conduct in question.”). While Professor Beale was speaking specifically about morals legislation, such as criminal fornication statutes, the same argument concern may apply to conduct, such as the misuse of public water, the possession of small quantities of marijuana, or the violation of traffic laws, that may be viewed as undesirable, even if not immoral.
295 See Stuntz, supra note 247, at 507-09; see also David A. Sklansky, Cocaine, Race, and Equal Protection, 47 STAN. L. REV. 1283, 1296-97 (1995) (describing the political “bidding war” that resulted in the wide disparities in sentences for possession of crack and powder cocaine).
Conclusion

Society’s distaste for many informants stems from the judgment that by assisting the police the informant is guilty of disloyalty. Disloyalty, in turn, is considered by society to be immoral. Meanwhile, the willingness of people to comply with the law and cooperate with police officers depends on their belief that police share their values. Thus, by encouraging people to engage in disloyalty by becoming informants, police reveal that they do not share the norms of the communities that they serve, thereby discouraging cooperation and compliance with the law. Consequently, this Article recommends policy changes that encourage police, criminal justice policymakers, and lawmakers, when creating and implementing policies on informant recruitment and use, to consider both the negative impact that judgments of disloyalty have on informants and communities and the extent to which the use of informants may discourage people from cooperation with police and obeying the law.