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IMMIGRATION LAW—THE \$2 COST OF DEPORTATION
FOR BLACK IMMIGRANTS

AISATOU DIALLO

The United States is a nation with protected borders and in order to protect the immigration laws control who may or may not come into the country. One way this is done is been by excluding individuals who have been convicted of crimes involving moral turpitude. There is no single definition of what a crime involving moral turpitude is, but over time the types of crimes held to involve moral turpitude have expanded. This article describes how this expansion of the types of crimes that are categorized as crimes involving moral turpitude have had a drastic impact on black immigrants living in neighborhoods that are disproportionality policed. Specifically, this article explores the offense of fare evasion and how the disproportional policing of fare evasion in black neighborhoods can result in significant immigration consequences for black immigrants under the crime involving moral turpitude standard.

INTRODUCTION

The United States has a long history of using specific characteristics that “society” deemed “undesirable” to prevent targeted groups of people from entering the country.¹ One such example occurred on March 3, 1891 when Congress held that “persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude” would be excluded from admission into the United States.² Although Congress had enacted prior laws regulating immigration, this was the first time that the term “moral turpitude” was introduced in the immigration context to

1. Immigration Act of 1891, ch. 551, 26 Stat. 1084.

2. *Id.*

exclude individuals.³

In the years that followed, Congress continued to amend statutes governing which persons were excluded from admission into the United States and broadened the scope of exclusion under the crime involving moral turpitude category. In 1907, Congress expanded the groups of people to be excluded from the United States.⁴ The 1907 Act banned “persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude.”⁵ In 1917, Congress again modified the Immigration Act, this time excluding individuals “convicted of a crime involving moral turpitude.”⁶ In 1952, Congress passed the Immigration and Nationality Act, which revised the immigration laws and provided greater guidance on who would be excluded under the standard for crimes involving moral turpitude.⁷ The Act excluded individuals “convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime”⁸ This meant that people were excluded from the United States for merely being convicted of crimes that, in their entirety, were not crimes involving moral turpitude but rather, the crime’s elements often included morally turpitudinous acts.⁹

In 1996, President Bill Clinton enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which made extensive changes to the immigration laws of the United States.¹⁰ The new changes shifted the standard for crimes involving moral turpitude by adding ambiguous language and allowing immigration judges to interpret crime involving moral turpitude in a broader context.¹¹ After the 1996 reforms,

3. See Brian C. Harms, *Redefining Crimes of Moral Turpitude: A Proposal to Congress*, 15 GEO. IMMIGR. L.J. 259, 262 (2001).

4. See Immigration Act of 1907, ch. 1134, 34 Stat. 898.

5. *Id.*

6. Immigration Act of 1917, ch. 29, 39 Stat. 874.

7. Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163.

8. *Id.*

9. See e.g. *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011) (holding that the offense of accessory after the fact is a crime involving moral turpitude, but only if crime); *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996) (holding that where reckless conduct is an element of the statute, a crime of assault can be, but is not per se, a crime involving moral turpitude); *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018) (holding that convictions under New York’s petit larceny statute, NYPL § 155.25, are not for crimes involving moral turpitude).

10. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

11. *Id.*

the practice of excluding “undesirables” through moral turpitude prohibitions created grave consequences for immigrants. Black immigrants living in communities heavily policed under the broken windows theory were especially impacted.

I. BROKEN WINDOWS THEORY IN IMMIGRATION LAW

In the early 1980s, the United States was introduced to the “broken windows theory.”¹² Developed by criminologist George Kelling and his colleague James Wilson, the broken windows theory suggested that “‘untended’ behavior also leads to the breakdown of community controls” which in turn would lead to serious crime or violent attacks on strangers.¹³ The developers believed that by increasing the number of officers on foot patrol to enforce petty offenses would reduce overall crime in neighborhoods. The authors noted that “at the tipping point—where the public order is deteriorating but not unreclaimable, where the streets are used frequently but by apprehensive people, where a window is likely to be broken at any time, and must quickly be fixed if all are not to be shattered.”¹⁴

In the early 1990s, states began to implement the broken window theory into enforcement policies in urban neighborhoods.¹⁵ The local adoption of this theory had lasting implications today resulting in a heavier police presence in low income neighborhoods and higher arrest rates for minor offenses.¹⁶ The broken window theory also impacted Black immigrants living in these communities and continues to do so today.¹⁷ With the high risk of arrest due to over policing in Black neighborhoods, the criminalization of minor offenses has harsh consequences on Black immigrants, who are also deported for criminal convictions at a higher rate.¹⁸ Black immigrants are roughly only 7% of the immigrant population living in the United States, but account for 20%

12. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/?single_page=true [https://perma.cc/8Z84-TMLB].

13. *Id.*

14. *Id.*

15. Charlotte Ruhl, *The Broken Windows Theory*, SIMPLY PSYCHOL. (July 26, 2021), <https://www.simplypsychology.org/broken-windows-theory.html>.

16. Juliana Morgan-Trostle & Kexin Zheng, *The State of Black Immigrants*, BLACK ALL FOR JUST IMMIGR., <https://www.immigrationresearch.org/system/files/sobi-fullreport-jan22.pdf> [https://perma.cc/ZJV5-S5PU] (last visited Jan. 5, 2021).

17. *Id.* at 29.

18. *Id.*

of deportations.¹⁹

Black immigrant communities are impacted by both the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the adoption of the broken window theory in law enforcement policy. A recent example of the impact that states have been grappling with is convictions for fare evasion.²⁰ Enforcement for fare evasion has been increased over the years to reduce the high number of evaders.²¹ With the majority of the enforcement in Black low-income neighborhoods, Black immigrants who are penalized for the minor offense of fare evasion end up being deported from the United States because of the crime involving moral turpitude standard.

II. FARE EVASION

Throughout the United States public transit is not only a necessity for some, but also a financial hardship. In 2019, Los Angeles, New York, Miami- Fort Lauderdale, and Chicago were ranked as the cities with the most expensive monthly public transit passes ranging from \$100 to \$120.²² Some individuals cannot afford to pay for a monthly pass, let alone a single ride. However, cities where monthly passes ranged from \$55 to \$100 were also found to be unaffordable for some riders.²³

As a result, individuals may evade the fare and not pay for rides in order to get to their destinations out of necessity. Some states have responded to fare evaders by placing enforcement officials on trains buses in particular neighborhoods.²⁴ Others have issued summons or arrested those who do not pay for the fare.²⁵

A. *New York City*

In New York City, fare evasion constitutes a theft offense under New York Penal Law (NYPL) 165.15(3).²⁶ Section 165.15(3) provides that a

19. *Black Immigrant Lives Are Under Attack*, RAICES, <https://www.raicestexas.org/2020/07/22/black-immigrant-lives-are-under-attack/> [https://perma.cc/C4D8-7KVX] (last visited Jan. 5, 2021).

20. Alon Levy, *Op-Ed: What America Gets Wrong About Fare Evasion*, STREETS BLOG U.S.A. (Nov. 29, 2019), <https://usa.streetsblog.org/2019/11/26/op-ed-what-america-gets-wrong-about-fare-evasion/> [https://perma.cc/W9QP-EPPP].

21. *Id.*

22. Paul Reynolds, *The Most and Least Affordable Cities for Public Transit*, VALUE PENGUIN, <https://www.valuepenguin.com/most-and-least-affordable-cities-commuting> [https://perma.cc/X6WR-FD5K] (Dec. 11, 2019).

23. *Id.*

24. Morgan-Trostle & Zhang, *supra* note 16.

25. *Id.*

26. N.Y..PENAL LAW. § 165.15(3). (McKinney.2020).

person is guilty of theft of services when

[w]ith intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefore, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefore by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay . . .²⁷

The New York Police Department (NYPD) is tasked with enforcing fare evasion in subway stations and on the buses.²⁸ When an individual is stopped for suspicion of fare evasion, the NYPD can either give an informal warning, issue a summons with a fine up to \$100, or arrest an individual.²⁹ In 2017, a report, published by the Community Service Society based on 2016 Section 165.15(3) arrest data, found that in New York City arrest for fare evasion occurred more at subway stations near high-poverty Black neighborhoods.³⁰ Additionally, this report suggested that the policing in high-poverty Black neighborhoods for fare evasion is a result of local law enforcement's application of the broken window theory in the early 1990s.³¹

B. *California*

In California, fare evasion laws are enforced under Section 640 of the California Penal Code.³² Section 640(a)(1) provides that an infraction for fare evasion is “punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment.”³³ In 2017, the Los Angeles Metro adopted a new “multi-agency policing program.”³⁴ This program implemented system security enhancements designed to “enforce Metro’s Code of Conduct, reduce fare evasion and deter criminal behavior, such as vandalism and graffiti.”³⁵

27. *Id.*

28. HAROLD STOLPER & JEFF JONES, THE CRIME OF BEING SHORT \$2.75, 2 (2017), <https://www.cssny.org/publications/entry/the-crime-of-being-short-2.75> [<https://perma.cc/R5FU-ZTDJ>].

29. *Id.* at 4.

30. *Id.* at 2.

31. *Id.* at 18.

32. CAL PENAL CODE § 640 (2020).

33. *Id.* at § 640(a)(1).

34. METRO, METRO SYSTEM SECURITY & LAW ENFORCEMENT 2018 REPORT 10 (2019).

35. *Id.*

Under the new policing program, law enforcement officers from the Los Angeles Police Department, Los Angeles County Sheriff's Department, and the Long Beach Police Department would ride on metro buses and trains and patrol in Los Angeles County's eighty-eight cities.³⁶ The major aim of this new police program was to reduce the number of fare evaders. The reports, however, showed a big racial disparity among riders stopped for suspicion of fare evasion.

In 2018, the Labor Community Strategy Center found that Black riders in Los Angeles were ticketed for fare evasion at higher rates.³⁷ In Long Beach, California, 2019 data also found that Blacks were disproportionately stopped on suspicion for fare evasion.³⁸ Officials in California, however, were quick to suggest that these high numbers were not a result of racial profiling.³⁹

C. *Seattle*

In Seattle, a person is criminally charged for fare evasion if they have been stopped by fare enforcement officers for fare evasion four times within a 12 month period.⁴⁰ If a person is stopped once for fare evasion, they are given a warning and their information is recorded into a database.⁴¹ For people who come into contact with enforcement officers two or three times, a civil infraction and a \$124 ticket is given.⁴²

In 2010, Seattle adopted a new policy to enforce fare evasion and to ensure "equal treatment of all passengers. . . ."⁴³ Under this policy, fare enforcement officers enter the train from both ends and announce that they will be checking fares and check each passenger's ride ticket.⁴⁴ When creating this policy, the City of Seattle Transit Advisory Board noted their

36. *Id.*

37. Matt Tinoco, *After civil rights violation claim, Metro is pressed for more data on fare enforcement*, CURBED LOS ANGELES (Jan. 18, 2018, 10:29 AM), <https://la.curbed.com/2018/1/18/16899210/metro-discrimination-fare-evasion-lawsuit>.

38. Kelly Puente, *Black riders disproportionately stopped for fare evasion on Long Beach public transit, data shows*, LONG BEACH POST NEWS (July 8, 2020, 4:13 PM), <https://lbpost.com/news/black-riders-metro-bus-racial-profiling-long-beach> [<https://perma.cc/3D2K-NWL7>].

39. *Id.*

40. *Fare Enforcement Overview*, SOUNDTRANSIT (July 2019), http://www.seattle.gov/documents/Departments/Transit/TAB_ST-FareEnforcement_July2019.pdf [<https://perma.cc/VT2P-QNZV>].

41. *Id.*

42. *Id.*

43. *Id.* at 8.

44. *Id.*

plan to eliminate the possibility of unfair profiling in fare enforcement.⁴⁵ When the fare enforcement data for the Seattle Transit system, Sound Transit, was published in August 2019, it showed that Black riders were given the most citations compared to other racial groups.⁴⁶ The data also showed that Black riders ranked the highest race with theft cases for fare evasion, totaling 57% of the total cases between 2015 and 2019.⁴⁷

D. *Washington D.C.*

In Washington D.C., fare evasion is a criminal offense governed by the D.C. Official Code Section 35-254 and enforced by the Metro Transit Police Department.⁴⁸ If a person is stopped by the Metro Transit Police Department for fare evasion, the evader faces a civil fine of not more than \$50.⁴⁹ In 2017, after concern for increased fare evasion, the Washington Metropolitan Area Transit Authority increased enforcement in hopes of solving the increased number of fare evaders.⁵⁰ Reports, however, indicate that the increased enforcement had the opposite effect for Black riders.⁵¹

In 2018, the Washington Lawyers' Committee for Civil Rights and Urban Affairs published a report that found ninety-one percent of all citations or summons for fare evasion were issued to Black riders and forty-six percent of those citations or summons were issued to Black riders under the age of twenty-five.⁵² The report also found that enforcement efforts were mainly in a major crossing point for two of the metro lines where there are large numbers of young Black riders and young white riders.⁵³ This finding supported the previous data showing that Black riders in Washington D.C. are unfairly cited more frequently which is

45. *Id.*

46. Matthew Brenton, Sound Transit Public Safety, Fare Enforcement Data (August 6, 2019), <https://www.documentcloud.org/documents/6434966-Sound-Transit-Fare-Enforcement-Demographics.html> [<https://perma.cc/BTH5-W7F8>].

47. *Id.*

48. See D.C. CODE, § 35-254 (2019).

49. *Id.* at (a)(1).

50. Martin Di Caro, *Metro Defends Fare Evasion Crackdown Across Rail And Bus Systems*, WAMU 88.5 (Sept. 29, 2017), <https://wamu.org/story/17/09/29/metro-defends-fare-evasion-crackdown-across-rail-bus-systems/> [<https://perma.cc/42ES-UXQ3>].

51. Kathryn Zickuhr, *What is the Impact of Fare Evasion in D.C.?*, D.C. POL'Y CTR. (Feb. 20, 2020), <https://www.dcpolicycenter.org/publications/fare-evasion-data/> [<https://perma.cc/L43M-3PYX>].

52. WASHINGTON LAWYERS COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, *Unfair: Disparities in Fare Evasion Enforcement by Metro Police* (2018), <https://www.documentcloud.org/documents/6426593-Washington-DC-lawyers-committee-fare-evasion.html> [<https://perma.cc/Z8V9-P36P>].

53. *Id.* at 8.

likely to lead to graver consequences on their livelihoods.⁵⁴ As a result of the disparities in fare evasion enforcement, the D.C. Council created a new law in 2019 that eliminated the \$300 fine, 10 days in jail and a criminal record penalty and made fare evasion a civil penalty with a \$50 fine.⁵⁵ Other states including Minnesota, Oregon, and Ohio have also struggled with racial and economic disparities in fare evasion enforcement.⁵⁶

III. CRIME INVOLVING MORAL TURPITUDE

Since 1891, Congress has not provided a definition for the term moral turpitude.⁵⁷ Instead, through case law, moral turpitude has been accepted to include “conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”⁵⁸ A crime involving moral turpitude must also involve some degree of scienter, whether specific intent, deliberateness, recklessness, or willfulness.⁵⁹ Under this definition fare evasion, a theft of service offense, has been held to be a moral turpitudinous act and thus a removable offense.⁶⁰

To determine whether a crime involves moral turpitude, courts must use the categorical and modified categorical approach.⁶¹ Under these approaches, the court does not look to the specific facts of an individual’s case, but rather to the minimum conduct that is required for a conviction under the statute.⁶² The court then decides whether the minimum conduct required necessarily involves facts that connect to the generic definition.⁶³

The first step in analyzing whether a crime involves moral turpitude is to look to the language of the statute of conviction to “determine whether the inherent nature of the crime involves moral turpitude.”⁶⁴ If the statute of the crime entails elements that match or are narrower than the generic

54. *Id.*

55. Jordan Pascale, Council Overrides Mayoral Veto; Fare Evasion Soon A \$50 Civil Fine, WAMU 88.5 (Jan. 28, 2019), <https://wamu.org/story/19/01/22/council-overrides-mayoral-veto-fare-evasion-soon-a-50-civil-fine/>.

56. *Why Decriminalize Fare Evasion?*, TRANSITCENTER (January 9, 2019), <https://transitcenter.org/why-decriminalize-fare-evasion/> [<https://perma.cc/WY69-XJJ9>]

57. Craig S. Lerner, “Crimes Involving Moral Turpitude”: *The Constitutional and Persistent Immigration Law Doctrine*, 44 HARV. J.L. & PUB. POL’Y 71 (2021).

58. *Rodriguez v. Gonzalez*, 451 F.3d 60, 63 (2d Cir. 2006) (citing *Hamden v. I.N.S.*, 98 F.3d 183, 186 (5th Cir. 1996)).

59. *Matter of Louissaint*, 24 I&N Dec. 754, 756-57 (BIA 2009).

60. *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849-50 (BIA 2016).

61. *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831 (BIA 2016).

62. *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013).

63. *Id.*

64. *Chanmouny v. Ashcroft*, 376 F.3d 810, 812 (8th Cir. 2004).

crime involving moral turpitude definition, the conviction is a crime involving moral turpitude and the analysis ends.⁶⁵ However, if the statute of conviction is broader than the crime involving moral turpitude definition, an individual can be convicted for both turpitudinous and non-turpitudinous acts.⁶⁶ In those circumstances, the court must examine the divisibility to determine which divisible part of the statute the conviction fits into.⁶⁷ If the statute is divisible, the court must apply the modified categorical approach to determine the offense's elements.⁶⁸ An element is "what the jury must find beyond a reasonable doubt to convict the defendant [or] what the defendant necessarily admits when pleading guilty."⁶⁹ If the court cannot determine what the elements of the offense are, it can look to the record of conviction "for 'the sole and limited purpose of determining whether the listed items are element[s] of the offense.'"⁷⁰

There are two ways under the Immigration and Nationality Act that a non-citizen may be removed from the United States for having been convicted of a crime involving moral turpitude. First, a non-citizen who

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and (II) is convicted of a crime for which a sentence of one year or longer may be imposed is deportable.⁷¹

Second, a non-citizen who, "after admission[,] is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable."⁷²

IV. FARE EVASION AS A CRIME INVOLVING MORAL TURPITUDE

For states like New York where the term of imprisonment is one year, one arrest and subsequent conviction would result in deportation for a non-citizen.⁷³ For Black immigrants, this can have devastating impacts,

65. *Descamps v. United States*, 570 U.S. 254, 257 (2013).

66. *Id.* at 258.

67. *Id.* at 258.

68. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016).

69. *Id.* at 2248.

70. *Id.* at 2256–57 (quoting *Redon v. Holder*, 782 F.3d 466, 473-474 (C.A.9 2015)).

71. INA § 237(a)(2)(A)(i); 8 USC § 1227(a)(2)(A)(i) (2008).

72. INA § 237(a)(2)(A)(ii), 8 USC § 1227(a)(2)(A)(ii) (2008).

73. INA § 237(a)(2)(A)(i)(II).

especially if they encounter enforcement officials for fare evasion more than once. For other states, where a summons is issued and no criminal proceedings occur, a person is not likely to fear removal, which highlights the importance of the decriminalization of such minor offenses. In response to fare evasion data, some states have in fact moved to decriminalize fare evasion and are now recognizing that consequences for fare evasion conviction is considerably different for immigrants.

For example, in 2017, Manhattan District Attorney Cyrus Vance and Brooklyn District Attorney Eric Gonzales announced changes to the prosecution of fare evasion arrests.⁷⁴ The District Attorney Offices stated that first time evaders would be charged with a civil summons and a fine.⁷⁵ Repeat fare evasion offenders would receive a desk-appearance ticket and a chance to finish a diversion program before going to court.⁷⁶ The Bronx District Attorney Darcel D. Clark published new policies the office would implement in 2020.⁷⁷ In these policies, Clark announced that Bronx prosecutors would decline to prosecute fare evasion charges and would request that NYPD issue a summons instead.⁷⁸

In Portland, the TriMet transit system Board of Directors approved a change in the penalties for fare evasion.⁷⁹ One of the changes involves providing individuals with ninety days to resolve citations, by either paying the fine, completing community service, or enrolling in an honored citizen program if they meet the income criteria, before going to court.⁸⁰ The changes also include new fine amounts ranging from \$75 for a first offense, \$100 for a second offense, \$150 for a third offense, and up to \$175 for subsequent offenders.⁸¹

In Washington D.C., the city council, despite objections from the Washington Metropolitan Area Transit Authority, voted to decriminalize

74. Sarah Gabrielli & Reuven Blau, *Brooklyn Officials Seek to Decriminalize Subway Turnstile Jumping*, NY DAILY NEWS (June 25, 2017, 9:48 PM), <https://www.nydailynews.com/new-york/brooklyn-officials-seek-decriminalize-subway-turnstile-jumping-article-1.3355948>.

75. *Id.*

76. *Id.*

77. DARCEL D. CLARK, A SAFER BRONX THROUGH FAIR JUSTICE (2020), <https://www.bronxda.nyc.gov/downloads/pdf/safer-bronx-through%20fair-justice.pdf> [<https://perma.cc/SH5D-XW7F>].

78. *Id.*

79. Roberta Altstadt, *TriMet Board of Directors Approves Fare Evasion Penalty Changes*, TRIMET NEWS (Feb. 28, 2018), <https://news.trimet.org/2018/02/trimet-board-of-directors-approves-fare-evasion-penalty-changes/> [<https://perma.cc/9Y7A-ZLFK>].

80. *Id.*

81. *Id.*

fare evasion.⁸² Under the Metro Fare Evasion Decriminalization Amendment Act of 2018, fare evasion is now a civil offense and the fine amount has decreased from \$300 to \$50.⁸³ In California and Seattle, legislators moved to decriminalize fare evasion for youths in 2017 and 2015 respectively.⁸⁴ Both jurisdictions agree that decriminalizing fare evasion for the youth would help alleviate the number of youths that come in contact with the criminal justice system.⁸⁵

The efforts taken by states to decriminalize fare evasion as an attempt to reduce the racial disparities are great first steps. But these efforts do not solve the problem for Black immigrants who are policed and removed at higher rates than any other group. The truth is that until we recognize the systematic issues rooted in the overall structure of picking and choosing whom we deem undesirable and unworthy of benefit, we will continue to hit a roadblock searching for solutions. This is especially true in the realm of immigration where a minor offense can have such harsh consequences.

CONCLUSION

In their article introducing the broken window theory, Kelling and Wilson stated that:

[o]nce we begin to think of all aspects of police work as involving the application of universal rules under special procedures, we inevitably ask what constitutes an “undesirable person” and why we should “criminalize” vagrancy or drunkenness. A strong and commendable desire to see that people are treated fairly makes us worry about allowing the police to rout persons who are undesirable by some vague or parochial standard. A growing and not-so-commendable utilitarianism leads us to doubt that any behavior that does not “hurt” another person should be made illegal. And thus many of us who watch over the police are reluctant to allow them to perform, in the only way they can, a function that every neighborhood desperately wants them to perform.⁸⁶

82. Faiz Siddiqui, *D.C. Council Votes to Decriminalize Metro Fare Evasion*, WASH. POST (Nov. 14, 2018, 12:33 PM), <https://www.washingtonpost.com/transportation/2018/11/14/dc-council-votes-decriminalize-metro-fare-evasion/> [<https://perma.cc/H3NZ-JKVC>].

83. *Id.*

84. Bryan Cohen, *King County Decriminalized Evading Youth Bus Fares*, CAPITOL HILL SEATTLE BLOG (Oct. 30, 2015, 7:00 AM), <https://www.capitolhillseattle.com/2015/10/king-county-decriminalizes-evading-youth-bus-fares-moves-towards-repealing-the-shoreline-rule/> [<https://perma.cc/ZWV6-RT5F>].

85. *Id.*

86. Kelling & Wilson, *supra* note 12.

Perhaps the solution to solving these issues for communities facing higher consequences for minor offenses is to remove the idea of categorizing people as undesirables. But until we, as a nation, recognize the adverse influence vague language, like crimes involving moral turpitude, can have on our policies, under-privileged groups will continue to face harsher consequences.