

Small Sanities

A Look at the New York Miracle

by Greg Berman

The Centre for Justice Innovation seeks to promote criminal justice reform in the United Kingdom by helping to improve the implementation, evaluation, and dissemination of demonstration projects.

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The Centre for Justice Innovation is a project of the Center for Court Innovation, a New York-based non-profit organisation that has helped to create dozens of demonstration projects, including the award-winning Red Hook Community Justice Center.

For more information, contact:
cjenquiries@justiceinnovation.org.

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This essay is an effort to bring a different perspective to the conversation about crime and justice in New York. It is not meant to replace the usual narrative about the public safety improvements of the past generation, which justifiably foregrounds the role of the New York Police Department. Nor is it meant to be a rigorous analysis of crime statistics. Instead, it is an attempt to offer an addendum to the standard history, shining a light on some under-reported facets of the criminal justice landscape in New York, including the fact that New York's remarkable crime reductions have been accompanied by declining jail and prison enrollments.

The New York Story

In the years leading up to 1990, New York was a state with a reputation for crime, drugs, and disorder. Much of this was driven – both in reality and in public perception – by New York City, historically the source of six out of 10 criminal cases in a state of 20 million residents. No one seemed to know how to stop the open air drug markets, street prostitution, and random muggings, to say nothing of the violence: in 1990, there were 2,245 murders in New York City. Popular films of the day such as “Escape From New York,” “Taxi Driver,” and “Warriors” depicted a city out of control, where the law of the jungle prevailed. Nathan Glazer in *Commentary* magazine spoke for many when

he posed a fundamental question: “Is New York City ungovernable?”

What has taken place since 1990 is nothing short of remarkable. The murder total for New York City in 2009 was 461, a reduction of 79 percent since 1990. Indeed, since 1990, crime is down across the board in New York City: rape is down 62 percent; robbery down 82 percent; burglary down 84 percent; car theft down 93 percent.¹ Reviewing the statistics, Frank Zimring, author of *The City That Became Safe*, called it “the largest and longest sustained drop in street crime ever experienced by a big city in the developed world.”²

These changes have been lost on no one who lives or works in New York. “Escape from New York” wasn’t just a film: it was a fact of life. According to census data, from 1970 to 1990, the population of New York City fell by more than 572,000 as many residents with the resources to do so relocated to the suburbs and other safer locations. As New York wrestled its public safety problems under control, however, the population flight reversed itself. From 1990 to 2010, the number of New York residents rose by more than 852,000. Public safety alone cannot account for these gains, but it has been a big part of the New York renaissance.

This story, and the role of the New York Police Department in making it happen, is fairly well known, if not well understood. Less well known is a crucial piece of the New York narrative: in addition to reducing crime, New York has also managed to reduce the use of incarceration.

From 1999 to 2009, the incidence of violent crime declined by 30 percent in New York State. (It went down by only five percent in the rest of the country.) At the same time, the prison population decreased by 18 percent in New York. In the rest of the U.S., the prison population increased by 18 percent during the same period.³ In 1992, the average daily population in New York City’s jail system was 21,000 inmates. By

2009, that number had dwindled to a little more than 13,000.⁴

As Frank Zimring has argued, what has happened in New York defies conventional thinking on both the right and left. After all, conservatives in the United States have traditionally argued that the key to crime control is stiffer penalties and increased incarceration. But New York has managed to get safer while locking up fewer people.

On the left, advocates have tended to argue that the key to crime reduction is addressing underlying social problems like economic inequality, discrimination, and family dysfunction. But there is little indication that any of these factors has fundamentally changed in New York City since 1990. With a few exceptions, the demographics of the city have remained basically static: New York City’s economic indicators—unemployment, school drop-out, and poverty rates—have been and remain worse than the national average.

If the conventional answers don’t explain what happened in New York, what does?

The first thing to admit is that there is no definitive answer to how and why New York has been able to reduce both crime and incarceration. The truth of the matter is that cities are imperfect laboratories for social scientists. There are simply too many variables at work in a large urban setting like New York to be able to discern with any degree of precision what the active ingredients are.

This essay is not an effort to offer a definitive account of what is known in some quarters as “The New York Miracle.” The innovative strategies pursued by the New York Police Department under Ray Kelly and other commissioners have been well-documented in other places—as has the controversy over the police department’s stop-and-frisk tactics. Instead, this essay highlights work outside of the police department, focusing on three areas in particular: people, places, and process.

1. People

New York may have sent fewer people to custody over the past 20 years, but this is not an indicator of decreased police activity. Indeed, there have been more police on the streets than ever before (peaking with 40,000 officers in 2000; there are now 34,500) and officers have been more aggressive than ever, particularly with regard to minor offending. For example, from 2001 to 2010, offences punishable by less than 12 months in custody in New York City increased by 29 percent, from 194,496 to 251,169.

So more cases are coming into the system, but fewer people are ending up incarcerated. Which raises an obvious question: what's happening to all of these people?

For many, the process of being arrested and brought before the court – which typically takes 24 hours and includes time in a holding cell – is the sole punishment for committing a minor offence. This is an unpleasant enough experience to deter some from further offending.

But this is only part of the answer. Each year, thousands of New Yorkers are linked to alternatives to incarceration, from short-term community service to long-term residential drug treatment. New York has long been blessed with an infrastructure of non-profit groups like the Vera Institute of Justice, Center for Community Alternatives, CASES, Osborne Association, Women's Prison Association, Fortune Society, and others that are devoted to providing meaningful alternatives to incarceration and documenting their effectiveness. In recent years, this has been augmented by a network of specialised court-based programmes, including drug courts, mental health courts and community courts, that offer judges meaningful community-based sanctions. (The Center for Court Innovation has helped to pilot each of these models

and to encourage their replication.) Importantly, many of these alternative-to-incarceration programmes rely on judicial monitoring and the threat of jail time to promote accountability and ensure compliance.

As is typical of New York City, this patchwork of alternative programmes has emerged organically without centralised planning. Some are funded by the city. Some are funded by the state. And some rely on federal funding or private donations. The field is constantly evolving as new problems emerge and new gaps in services are identified.

A particular area of focus at the moment is using risk and needs assessments to allocate scarce resources where they are most needed. The latest research suggests that there needs to be a continuum of non-incarcerative interventions for offenders, with the most intensive options reserved for populations that are both high-risk and high-need.

“Risk” in this context refers to the personal traits that predict re-offending, including prior criminal history, anti-social personality disorder, and anti-social peers. “Need” refers to problems like substance abuse, mental illness, and a lack of job/life skills.⁵

In general, the higher an offender's risk level is, the more intensive his supervision should be. And the higher his need level, the more intensive the treatment. Indeed, there is evidence that linking low-risk/low-need individuals to intensive interventions such as residential drug treatment is not only a waste of resources but can actually be counter-productive, encouraging more criminal behaviour.

Given the prevalence of drug-related arrests, there is a natural temptation for those who are interested in reducing the use of incarceration to focus on the use of drug treatment as a criminal justice sanction. And while many addicted offenders do indeed need drug treatment, the truth is that there are many who do not meet the clinical diagnosis for addiction. For these

offenders, drug treatment is not the right response.

Recognizing this, many frontline practitioners have begun to investigate the use of evidence-based interventions that target criminal thinking. For example, Thinking for a Change is a cognitive behavioural programme that has been employed for many years in correctional settings. The idea behind the programme is that by changing the way offenders think and respond/react to certain kinds of events, it is possible to change their behaviour as well. Looking for opportunities to adapt the Thinking for a Change model to non-incarcerated populations – and to develop similar short-term interventions that would offer legally proportionate punishment for minor offenders – is a growing area of focus for many alternative-to-incarceration programmes in New York.

2. Places

By and large, the criminal justice system tends to focus (however imperfectly) on people: police arrest suspects, prosecutors charge defendants, judges mete out sentences to offenders, etc. As necessary as this focus on individuals is, a big part of the New York success story has been about widening the lens of the criminal justice system to incorporate place as well as people.

This process began with the police and the embrace of COMPSTAT in the early 1990s. Much has been written about the rise of COMPSTAT, which is now used by dozens of police departments across the U.S. Starting under Commissioner Bill Bratton, the New York Police Department made a substantial investment in technology and data analysis as a management tool to increase the accountability of local precinct commanders. One of the benefits of the COMPSTAT approach was that it helped break down the city's crime problems into smaller, more manageable units of analysis; instead of a citywide phenomenon, police could focus on discrete precincts and individual neighbourhoods with specific problems.

A natural companion to COMPSTAT was the NYPD's commitment to "broken windows" policing (taking quality-of-life offending seriously as a way of promoting law and order and deterring more serious offenses) and "hot-spot" policing (increasing police presence on individual blocks, parks and other places with high crime rates). In *The City That Became Safe*, Frank Zimring credits hot-spot policing in particular with producing much of New York's public safety improvements.

Numerous studies have documented that crime is highly concentrated in certain locations. For example, Lawrence Sherman examined crime calls to the police in Minneapolis, Minnesota and found that about 3.5 percent of the addresses produced about 50 percent of the crime calls. And criminologist David Weisburd

has shown that, contrary to conventional wisdom, rooting out crime in a given location does not result in wholesale displacement; addressing an open-air drug market on one block does not mean that the criminal activity just moves around the corner. According to Weisburd, crime is a matter of the “convergence of suitable targets (e.g., victims), an absence of ‘capable guardians’ (e.g., police), and the presence of motivated or potential offenders.”⁶ Very few places have all three ingredients. Indeed, instead of displacement, Weisburd has found that areas adjacent to the sites that are the focus of intense police activity tend to experience crime prevention gains even though they were not the explicit target.

New York’s focus on place is not confined to the operations of the NYPD. Since the early 1990s, this idea has spread to prosecutors (Brooklyn District Attorney Charles J. Hynes was an early advocate of community prosecution), defenders (Bronx Defenders has been a pioneer in community-based indigent defense), and courts (New York has a network of community courts that includes the Red Hook Community Justice Center in Brooklyn, which served as the inspiration for the North Liverpool Community Justice Centre).

New York’s community courts in particular seek to bring many of the lessons from broken-windows and hot-spot policing to the judicial branch. Among other things, community courts have increased judicial attention to quality-of-life crime, helped criminal justice practitioners (not just judges, but attorneys and probation officers as well) gain a better understanding of the neighbourhood context of crime, and targeted community restitution projects to clean up eye sores and hot spots identified by local residents.

Finally, it is important to note that the place-based work of criminal justice agencies in New York has been augmented by dozens of civic groups and business associations and community-based organisations that

have devoted themselves to order maintenance and neighbourhood beautification over the past generation. Taken together, these efforts sent a strong signal that disorder and lawlessness would not be tolerated on city streets. This in turn encouraged investment by both businesses and homeowners, creating a virtuous cycle with the appearance of order fueling improved public safety.⁷

3. Process

There is an increasing body of literature that documents the importance of informal social controls to reducing crime. While the criminal justice system tends to focus on formal mechanisms like the threat of apprehension and punishment, the reality is that most people obey the law because of their own internal moral compass and because of implicit and explicit pressure from their families, peers, and community.

David Kennedy, author of *Don't Shoot: One Man, A Street Fellowship and the End of Violence in Inner-City America*, neatly illustrates this point by asking audiences to raise their hands if they were afraid of the police as teens. Some people raise their hands, but most do not. He then asks listeners to raise their hands if they were scared of their mothers. Invariably, almost all hands are raised.

In places where informal social controls have been weakened, young people tend to see delinquent behaviour as a sign of strength, incarceration as a rite of passage, and law enforcement as illegitimate. Adults tolerate disorder and are afraid to engage in public supervision of either the streets or local teens.

In recent years, various projects in New York City have sought to alter these kinds of conditions by revitalizing informal social controls and promoting voluntary adherence to the law. Tom Tyler, author of *Why People Obey the Law*, has suggested that if individuals feel that public authorities (police, judges, etc.) are legitimate, they are more likely to comply with the law. In a similar vein, if individuals feel that they have been dealt with respectfully – and are given an opportunity to voice their concerns – they are more likely to have faith in public institutions.

These ideas have been perhaps most powerfully embodied by New York's drug courts and community courts, which go to great lengths to involve local

residents in the work of the courts and to communicate respect to litigants.

A recent study compared defendants in drug courts with those in six traditional courts.⁸ Drug court participants were one-third less likely to report drug use 18 months after admission to the programme. And they were responsible for less than half as many criminal acts as the comparison group after 18 months.

The study showed that the strongest predictor of reduced future criminality was a defendant's attitude towards the judge. Having positive perceptions of the judge was also the greatest predictor of reduced drug use and reduced violations of supervision. This impact was seen across all demographics, regardless of race, gender, or criminal history. Even defendants with extensive prior involvement in the system or those who had received unfavourable sentences reported reduced criminality when they perceived the judge to have treated them fairly and respectfully.

The drug court study evaluated judicial interaction in two ways. First, researchers surveyed defendants about their perceptions of the judge. Defendants rated the judge on indicators such as approachability, respectful treatment, knowledge of the defendant's case, efforts to help the defendant succeed, and allowing the defendant to tell his/her side of the story. Second, researchers used structured court observations to document each judge's use of certain interactive behaviours, such as making regular eye contact, addressing the defendant directly and allowing him/her to ask questions, and providing explanations of court orders.

These same behaviours have also made a difference in New York's community courts. At the Red Hook Community Justice Center, nine out of 10 criminal defendants reported that their case was handled fairly – a result that was consistent regardless of defendant background, charge, or case disposition. A

door-to-door survey revealed that 94 percent of local residents rated the Justice Center favorably – a stark contrast to the 12 percent who rated local courts favourably before the Justice Center opened.⁹

In recent months, several New York City neighbourhoods have sought to replicate some of these results by creating teen-led youth courts that train young people to hear actual low-level cases (truancy, graffiti, fare evasion, etc.) involving their peers. Youth courts rely on the idea of positive peer pressure. The young people who serve as attorneys, judges and jurors are essentially communicating to their peers that delinquent behaviour is not acceptable. The youth courts recruit members based on their willingness to perform this role rather than their grade point average or their track record. (Indeed, those who have engaged in delinquent behaviour in the past are encouraged to join as members.) Youth court participants receive intensive training and must pass a “bar exam” before joining the programme.

Youth court sanctions are designed to be restorative rather than punitive: community service, letters of apology, and links to services. As valuable as they are in terms of training leaders and providing an early intervention for troubled teens, youth courts’ most valuable contribution is probably symbolic: they are a potent symbol of the justice system being willing to cede a measure of authority to local voices and to engage in the co-production of justice.

Conclusion

In the end, it may or may not be possible to replicate the New York results in other places. As the singer Billy Bragg has written, “You can borrow ideas, but you can’t borrow situations.”

This paper has attempted to describe briefly the dozens of different initiatives that were at work simultaneously in New York over the past 20 or so years. Some of these initiatives were driven by policymakers at City Hall, including the New York Police Department and the Mayor’s Office of the Criminal Justice Coordinator. Others emerged organically as individual agencies wrestled with the immediate problems in front of them.

The causes of crime are complex and there are no silver bullets when it comes to improving public safety. This point was made most eloquently by Adam Gopnik in a recent issue of *The New Yorker*:

Epidemics seldom end with miracle cures. Most of the time in the history of medicine, the best way to end disease was to build a better sewer and get people to wash their hands. ‘Merely chipping away at the problem around the edges’ is usually the very best thing to do with a problem; keep chipping away patiently and, eventually, you get to its heart. To read the literature on crime before it dropped is to see a kind of dystopian despair: we’d have to end poverty, or eradicate the ghettos, or declare war on the broken family, or the like, in order to end the crime wave. The truth is, a series of small actions and events ended up eliminating a problem that seemed to hang over everything. There was no miracle cure, just the intercession of a thousand small sanities.¹⁰

The American system of government is notoriously labyrinthine, with local, state, and federal agencies of overlapping jurisdictions and cross-cutting responsibilities. At its worst, this structure results

in confusion, waste, and duplication of effort. At its best, it can create opportunities for innovation: there are multiple pathways for new ideas to bubble to the surface and find support.

Very few, if any, of the programmes described in this paper originated among federal officials in Washington, D.C. This is not to say that policymakers in Washington played no role in the New York story. Among other things, Congress authorised funding to add police officers to the streets and to support the expansion of drug courts in New York and other states. And officials at the U.S. Department of Justice have supported intermediary organisations to provide training and technical assistance to would-be reformers on the ground level. Crucially, the federal government's investment in ideas like community court, community prosecution, and community policing has remained consistent no matter which party is in power.

This may be the ultimate lesson of the New York experience: the ability of local reformers to generate a thousand small sanities and the consistent willingness of national government to encourage and sustain them over the long haul.

Endnotes

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About the Author

Greg Berman is the director of the Center for Court Innovation and the co-author of *Trial & Error in Criminal Justice Reform: Learning from Failure* (Urban Institute Press) and *Good Courts: The Case for Problem-Solving Justice* (The New Press).

Centre for Justice Innovation

Kean House, 6 Kean Street

London, WC2B 4AS

P. +44 2076.329.060

justiceinnovation.org