

THE DEGRADATION OF CIVIL SOCIETY AND HYPER-AGGRESSIVE POLICING IN COMMUNITIES OF COLOR IN NEW YORK CITY

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“Their ‘safety’ was in schools, portfolios, and skyscrapers. Ours was in men with guns who could only view us with the same contempt as the society that sent them.”¹

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¹ TA-NEHISI COATES, BETWEEN THE WORLD AND ME 85 (2015).

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INTRODUCTION

Societies employ varying approaches to preventing crime in their communities. One approach is to invest in civil infrastructure as a means of deterring crime, on the theory that people who have access to health care, good schools, jobs, and other human resources are unlikely to commit crimes, because their lives are healthy and generally enjoyable, and because they have good causes to feel invested in, such as the preservation and well-being of their communities. Another approach is to instill a culture of fear, on the theory that people who are terrified of the police are unlikely to commit crimes, because they are likely to be unfairly stopped, arrested, jailed, beaten, or even killed.

This Article posits that New York City has employed both approaches, but in a racially disparate manner. We are not making an empirical argument about the effectiveness of any particular tactic or strategy in preventing crime; that ground has been covered extensively in Professor Franklin E. Zimring's book, *The City that Became Safe: New York's Lessons for Urban Crime and Its Control*,² which we rely on to support our claims. Rather, we are making a normative judgment about the relative desirability of the two broad approaches to keeping communities safe—investing in strong social supports versus terrorizing through the use of racially disparate aggressive policing tactics.

Part I of this Article analyzes citywide and precinct-specific crime trends in New York City, and concludes that crime is down across the board. Part II examines two approaches to preventing crime: civil society and martial law. Part III documents the degradation of civil society in majority black and brown (meaning, mainly Latino) neighborhoods and the maintenance of civil society in majority white neighborhoods in New York City, as well as the racially disparate patterns in the stopping, arresting, jailing, beating, and even killing of New Yorkers. Part IV explores some implications of using hyper-aggressive policing tactics to prevent crime in black neighborhoods. Part V contains prescriptions for improving relationships between the New York Police Department (NYPD) and black New Yorkers, by investing in civil society in black neighborhoods and by keeping crime down. The Article concludes by noting again that New York City officials can make

² FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL* (2012).

different choices about the methods they employ to prevent crime in majority black neighborhoods.

I. CRIME TRENDS IN NEW YORK CITY

Crime is down across the board in virtually every category since 2000.³ There were 184,652 instances of the seven major crimes (or “index” crimes) in 2000, and 106,722 in 2014.⁴ Further, major crime is down in every category. For example, incidents of murder and non-negligent homicide decreased from 673 in 2000 to 333 in 2014, and robbery dropped from 32,562 to 16,539 during that period.⁵ In other words, the occurrences of both of these crime categories dropped by approximately half since 2000.

Incidents of the non-seven major felonies declined from 80,861 in 2000 to 56,869 in 2014.⁶ Again, they are down in every category, with the sole exception of one category—forgery or theft and fraud or identify theft—which jumped from 5,714 in 2000 to 9,520 in 2014.⁷ Misdemeanors are also down in most categories (though less dramatically).⁸ Incidents of misdemeanor possession of dangerous weapons did increase from 3,387 in 2000 to 6,166 in 2014, and misdemeanor possession of stolen property increased from 1,072 in 2000 to 2,337 in 2013 (1,469 in 2014),⁹ as did incidents of intoxicated and impaired driving, offenses against the person (reckless

³ *Historical New York City Crime Data*, CITY OF N.Y., http://www.nyc.gov/html/nypd/html/analysis_and_planning/historical_nyc_crime_data.shtml (last visited Oct. 10, 2015).

⁴ N.Y. CITY POLICE DEP’T, CITY OF N.Y., SEVEN MAJOR FELONY OFFENSES (2015) [hereinafter SEVEN MAJOR FELONY OFFENSES IN TOTAL], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/seven_major_felony_offenses_2000_2014.pdf. The seven “major” crimes, as defined by the NYPD, are the same as the so-called “index” crimes tracked by the FBI: murder and non-negligent manslaughter, rape, robbery, felony assault, burglary, grand larceny, and grand larceny of motor vehicle. *See id.*; *see also* Offenses Known to Law Enforcement, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/main> (last visited Dec. 22, 2015).

⁵ SEVEN MAJOR FELONY OFFENSES IN TOTAL, *supra* note 4.

⁶ N.Y. CITY POLICE DEP’T, CITY OF N.Y., NON-SEVEN MAJOR FELONY OFFENSES (2015) [hereinafter NON-SEVEN MAJOR FELONY OFFENSES IN TOTAL], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/citywide_historical_non_seven_major_felony_offenses_2000-2014.pdf. These “Non-Seven Major Felony Offenses” include possession of stolen property, forgery or theft, fraud or identity theft, arson, sex crimes, dangerous drugs, dangerous weapons, criminal mischief and related offenses, and other felonies. *Id.*

⁷ *Id.*

⁸ *See* N.Y. CITY POLICE DEP’T, CITY OF N.Y., MISDEMEANOR OFFENSES (2015) [hereinafter MISDEMEANOR OFFENSES IN TOTAL], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/citywide_historical_misdemeanor_offenses_2000-2014.pdf.

⁹ *Id.*

endangerment, custodial interference, and unlawful imprisonment), offenses against public administration (bail jumping, perjury, criminal contempt, resisting arrest, absconding from work release, and obstructing government administration), and other misdemeanors (prostitution, gambling, misdemeanor auto theft, public lewdness, and several others) also increased.¹⁰ But overall, total misdemeanors dropped between 2000 and 2014.¹¹ Violations (offenses that do not carry a criminal penalty) dropped as well.¹²

The crime drop is even more dramatic when compared to data from the 1980s. Between 1985 (when crime was at an all-time high in New York City) and 2009, index crime rates all declined dramatically citywide: homicide by 71%, rape by 82%, robbery by 80%, aggravated assault by 55%, burglary by 87%, auto theft by 88%, and larceny by 63%.¹³

A decline in crime in New York City is perhaps not remarkable, given that crime rates have also declined across the country.¹⁴ But what is more interesting is the fact that crime is down in the vast majority of precincts in New York City. Index crime rates went down everywhere between 2000 and 2014, except in two precincts: in precincts 94 (Greenpoint, Brooklyn) and 100 (Rockaway Beach, Queens), where indexed crime rates went up by a very small margin.¹⁵ Notably, however,

¹⁰ *Id.*

¹¹ The total misdemeanor offenses decreased from 435,405 in 2000 to 348,371 in 2014. *Id.*

¹² Violation offenses decreased from 109,148 in 2000 to 65,097 in 2014. N.Y. CITY POLICE DEP'T, CITY OF N.Y., VIOLATION OFFENSES (2015) [hereinafter VIOLATION OFFENSES IN TOTAL], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/citywide_historical_violation_offenses_2000-2014a.pdf.

¹³ ZIMRING, *supra* note 2, at 5. Professor Zimring notes that “expressing the size of a crime drop from its highest historic level may exaggerate the shift in long-term trends by adding all reductions from unrepresentative peak periods in crime cycles into the equation,” but concludes that “cyclical fluctuations . . . play only a small role in the size of the city’s crime drop.” *Id.* at 4–5. It would be helpful to have data going back further in order to document these trends over a longer period of time, but that data is not readily available. A quick look at the murder rate over time could be helpful, however. During the beginning of the nineteenth century, there was virtually no murder in New York City. It started rising during the Civil War, spiked during Prohibition, dipped in the 1940s, and then began rising steadily again in the 1960s and 70s. It reached an all-time high in 1990, and then literally plummeted. In 2013, the murder rate was about the same as that of the early 1960s. See Ritchie King, *217 Years of Homicide in New York*, QUARTZ (Dec. 31, 2013), <http://qz.com/162289/217-years-of-homicide-in-new-york>.

¹⁴ See Eric Pianin, *Crime Is Down Across the Country—Here Are 50 Reasons Why*, FISCAL TIMES (Sept. 12, 2014), <http://www.thefiscaltimes.com/Articles/2014/09/12/Crime-Down-Across-Country-Here-are-50-Reasons-Why>.

¹⁵ N.Y. CITY POLICE DEP'T, CITY OF N.Y., SEVEN MAJOR FELONY OFFENSES (2015) [hereinafter SEVEN MAJOR FELONY OFFENSES BY PRECINCT], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/seven_major_felony_offenses_by_precinct_2000_2014.pdf. Note that the 121st Precinct (Staten Island) was not created until July 1, 2013 from

both precincts 94 and 100 consist of a majority white or other (not black or Latino) population.¹⁶ Since 2000, rates for the non-seven major felony offenses are down in a majority of precincts.¹⁷ Where incidents of the non-seven major felony offenses increased, they only went up by a very small margin.¹⁸ Six of the precincts that saw higher rates of the non-seven major felony offenses, such as marijuana-related offenses, are majority white or other; the other seven are majority black and Latino.¹⁹ Misdemeanors are down in all but ten precincts since 2000.²⁰ Five of these ten are majority white or other, and the rest are majority black and Latino.²¹ Violations declined in all but the Central Park precinct in Manhattan (precinct 22), which is majority white or other,²² where violations remained flat.²³

Clearly, New York City is effectively reducing crime in all of its communities. Crime is down citywide, and in virtually all precincts; where crime has increased, it has generally gone up by only a small margin. The question that arises is *how* New York City has brought crime down, and whether it has employed the same methods across the board geographically.

II. WAYS OF KEEPING COMMUNITIES SAFE

One approach to keeping communities safe is by promoting community well-being through social, economic, health, and educational measures, as well as improving neighborhood conditions. These two strategies are positively regarded as a crime prevention mechanism, and are at the top of a list of crime prevention approaches

parts of the 120th and 122th precincts. Therefore, statistics for the 121st Precinct prior to 2013 are unavailable. *Id.* at 19, 20 n.6.

¹⁶ *The 75 Neighborhood-Based New York City Police Precincts by Marijuana Arrest Rates and Race*, MARIJUANA-ARRESTS.COM, <http://marijuana-arrests.com/maps-NYC-pot-arrests-race.html> (last visited Oct. 10, 2015).

¹⁷ N.Y. CITY POLICE DEP'T, CITY OF N.Y., NON-SEVEN MAJOR FELONY OFFENSES (2015) [hereinafter NON-SEVEN MAJOR FELONY OFFENSES BY PRECINCT], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/non_seven_major_felony_offenses_by_precinct_2000_2014.pdf.

¹⁸ Thirteen precincts saw a marginal increase. *See id.*

¹⁹ *See* MARIJUANA-ARRESTS.COM, *supra* note 16.

²⁰ N.Y. CITY POLICE DEP'T, CITY OF N.Y., MISDEMEANOR OFFENSES (2015) [hereinafter MISDEMEANOR OFFENSES BY PRECINCT], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/misdemeanor_offenses_by_precinct_2000_2014.pdf. The exceptions are precincts 5, 7, 25, 28, 40, 49, 78, 90, 94, and 100. *Id.*

²¹ *See* MARIJUANA-ARRESTS.COM, *supra* note 16.

²² *Id.*

²³ N.Y. CITY POLICE DEP'T, CITY OF N.Y., VIOLATION OFFENSES (2015) [hereinafter VIOLATION OFFENSES BY PRECINCT], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/violation-offenses-by-precinct_2000-2014a.pdf.

developed by the United Nations.²⁴ There are a number of ways to promote well-being and improve neighborhood conditions. For example, scholars have examined the impact of education on crime, and have found that schooling significantly reduces criminal activity.²⁵ Some jurisdictions invest in human services not only because such investments make sense, but also because of a belief that they are an important part of a jurisdiction's crime prevention strategy.²⁶ Furthermore, economists have found that unemployment and low wages make less educated men more likely to turn to crime, suggesting that creating opportunities for employment also works as a crime prevention strategy.²⁷

This all makes sense intuitively, and is consistent with most people's observations of the world around them. Crime is lower in places where schools perform well, neighborhood conditions are generally good, and people have jobs; it is higher in places where schools perform poorly, neighborhood conditions are generally bad, and unemployment is high. In other words, a healthy civil society with strong social support in place can be an effective crime control strategy.

A second approach is to control crime by using hyper-aggressive policing strategies.²⁸ In the 1980s, New York City (as well as some other cities across the country) deployed "broken windows" policing as a deliberate strategy to *control* neighborhoods where social and economic conditions had been degraded.²⁹ Neighborhoods, in other words, from which "[c]ity dwellers with the financial means to do so fled to the suburbs, leaving the poor, the unhoused, and the mentally ill in slums and other areas of economic woe."³⁰ "Broken windows" is about

²⁴ See Economic and Social Council Res. 2002/13, at Annex § III (July 24, 2002), https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution_2002-13.pdf.

²⁵ See, e.g., Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 157–58 (2004).

²⁶ See, e.g., *Prevention & Intervention*, COLO. DEP'T HUM. SERVICES, <https://sites.google.com/a/state.co.us/cdhs-behavioral-health/community-behavioral-health/programs-and-services/prevention--intervention> (last visited Dec. 24, 2015).

²⁷ See, e.g., Jeff Grabmeier, *Higher Crime Rate Linked to Low Wages and Unemployment, Study Finds*, OHIO ST. U. (Apr. 10, 2002), <https://news.osu.edu/news/2002/04/10/crimwage>.

²⁸ We do not mean to suggest that healthy civil societies and effective policing are mutually exclusive; clearly, some combination of healthy social support and law enforcement strategies is appropriate. Our assertion, rather, is that martial law has *replaced* civil society in certain New York City neighborhoods—specifically, those that are majority black. We are suggesting, in other words, that New York City has decided to use more martial law and less civil infrastructure in majority black neighborhoods, and more civil infrastructure but less martial law in majority white neighborhoods; the balance is off.

²⁹ TRAVIS C. PRATT ET AL., *KEY IDEAS IN CRIMINOLOGY AND CRIMINAL JUSTICE* 105–10 (2011).

³⁰ *Id.* at 105.

maintaining order—the police go after people they perceive as being disruptive as a strategy for preventing crime before it starts.³¹ There is no hidden agenda here. Proponents of “broken windows” policing are quite clear about their intent: to control the communities in which they deploy this strategy.³²

We are at a critical moment in our nation’s history in terms of policing, as more and more people are questioning police practices and demanding reform. It is worth asking whether cities and towns have been approaching crime prevention through the development of healthy civil societies or by fostering environments of fear, and whether crime prevention strategies have been utilized consistently across racial lines.

III. THE DEGRADATION OF COMMUNITIES OF COLOR IN NEW YORK CITY AND THE INTRODUCTION OF HYPER-AGGRESSIVE POLICING TACTICS

New York City is one of the most racially segregated cities in the United States.³³ That, in and of itself, presents a whole range of problems. As we have seen time and again, separate is anything but equal. For example:

- New York City school buildings are decaying, and are in the worst physical shape in the poorest neighborhoods, which predominantly affects black and Latino people.³⁴ In addition, comparing black and Latino students to white students citywide and by borough, drop-out or push-out rates are much higher, while graduation rates are much lower.³⁵
- Concentrated poverty remains a problem, particularly in majority black and Latino neighborhoods.³⁶ The poverty rate

³¹ See George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC (March 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465>.

³² See *id.*

³³ Christopher Mathias, *These Maps Show Just How Segregated New York City Really Is*, HUFFINGTON POST (Apr. 15, 2014, 4:59 PM), http://www.huffingtonpost.com/2014/04/15/new-york-city-segregation-map_n_5153739.html.

³⁴ LOCAL 32BJ, SERV. EMPS. INT’L UNION, *FALLING FURTHER APART: DECAYING SCHOOLS IN NEW YORK CITY’S POOREST NEIGHBORHOODS* 3–4 (2013), <http://www.seiu32bj.org/wp-content/uploads/2013/05/falling-further-apart1.pdf>.

³⁵ N.Y. CITY DEP’T OF EDUC., *NEW YORK CITY GRADUATION RATES: CLASS OF 2014 (2010 COHORT)*, at 6 (2014), <http://schools.nyc.gov/NR/rdonlyres/04A151BF-F9E4-4960-8881-E1B07AA57DF8/179863/2014GraduationRatesPublicWebsite.pdf>.

³⁶ CITIZENS’ COMM. FOR CHILDREN OF N.Y., INC., *CONCENTRATED POVERTY IN NEW YORK CITY: AN ANALYSIS OF THE CHANGING GEOGRAPHIC PATTERNS OF POVERTY* 3–4 (2012), <http://www.ccnewyork.org/wp-content/publications/CCCReport.ConcentratedPoverty.April-2012.pdf>.

in New York City's majority white neighborhoods is 10.4%; in majority black neighborhoods, it is 17%; in majority Latino neighborhoods, it is 24.4%; in majority Asian neighborhoods, it is 20.5%; in mixed "minority" neighborhoods, it is 28.8%.³⁷

- Although it has dropped in recent years, unemployment remained high as of 2009, with the highest concentrations of unemployment again being in black and Latino neighborhoods.³⁸
- Neighborhood degradation is closely connected to incarceration. Criminologists have coined the phrase "million-dollar blocks," ironically, to describe neighborhood blocks whose residents comprise the majority of a state's prison population and on whom the state spends at least a million dollars to incarcerate. After serving their prison terms, these people return to their neighborhoods, often without money or jobs. In New York City, these blocks are heavily concentrated in the poorest pockets of the poorest neighborhoods, including East New York, Bedford-Stuyvesant, and Brownsville.³⁹

In other words, predominantly black and Latino neighborhoods in New York City do not, for the most part, have strong and healthy civil infrastructures in place. Therefore, civil society cannot be credited for the crime drops that we saw above.⁴⁰ Instead, something else must be responsible.

The degradation of civil society in communities of color in New York City has been accompanied by the relentless implementation of hyper-aggressive, racially disparate policing strategies. Starting in the early 1990s, the NYPD began to implement a series of new policing tactics. During this time period, crime was a growing concern for many Americans, including New Yorkers. Crime was on the rise nationally and in New York City, and a series of high-profile homicides focused

³⁷ VICKI BEEN ET AL., FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, STATE OF NEW YORK CITY'S HOUSING & NEIGHBORHOODS 2011, at 32, http://furmancenter.org/files/sotc/SOC_2011.pdf.

³⁸ Patrick McGeehan, *A Localized Breakdown of Joblessness in New York*, N.Y. TIMES: CITY ROOM (Dec. 29, 2009, 10:34 AM), http://cityroom.blogs.nytimes.com/2009/12/29/a-localized-breakdown-of-joblessness-in-new-york/?_r=0.

³⁹ Jennifer Gonnerman, *Million-Dollar Blocks*, VILLAGE VOICE (Nov. 9, 2004), <http://www.villagevoice.com/news/million-dollar-blocks-6398537>.

⁴⁰ See *supra* Part I.

the public's attention on the problem.⁴¹ Furthermore, ever since President Nixon called for a "War on Drugs" in 1973 (after waging an entire presidential campaign focused on "law and order" directed to what he called a "silent majority"), many public officials have been trumpeting policies that promised to be "tough on crime."⁴² Finally, during this time period, local media outlets seemed to be obsessed with showing images of black men being arrested and parroting public officials who decried the so-called "crack epidemic."⁴³ It was in this context that the NYPD (and police departments across the country) started to blanket black and Latino neighborhoods.

Some of the new policing tactics that have been developed over the years include: "hot spots policing" (a strategy that focuses on "small geographic areas or places, usually in urban settings, where crime is concentrated");⁴⁴ the suppression of public, open air drug markets (shifting drug trade from public to private spaces in order to reduce the risk of violent conflict);⁴⁵ Compstat ("a management process within a performance management framework that synthesizes analysis of crime and disorder data, strategic problem solving, and a clear accountability structure");⁴⁶ "stop and frisk" (a program that encourages the police to stop and frisk individuals, ostensibly because the officers deem individuals to be armed and dangerous, but which almost never—less than 1% of the time—results in the recovery of a weapon);⁴⁷ and

⁴¹ Joshua Rothman, *New York City Crime in the Nineties*, NEW YORKER (Dec. 5, 2012), <http://www.newyorker.com/books/double-take/new-york-city-crime-in-the-nineties>. One example of a high-profile homicide that occurred during this time period is the "Green River Killings," to which Gary Ridgeway pleaded guilty in 2003. See *Green River Killer Avoids Death in Plea Deal*, CNN (Nov. 6, 2003, 2:26 AM), <http://www.cnn.com/2003/LAW/11/05/green.river.killings/index.html?iref=newssearch>. Another famous example is the homicides that Ted Bundy committed in the 1970s. See *Serial Killers, Part 3: Ted Bundy's Campaign of Terror*, FED. BUREAU OF INVESTIGATION (Nov. 15, 2013), <https://www.fbi.gov/news/stories/2013/november/serial-killers-part-3-ted-bundys-campaign-of-terror>.

⁴² Paul Waldman, *When Everyone Wanted to Be "Tough on Crime,"* AM. PROSPECT (Aug. 13, 2013), <http://prospect.org/article/when-everyone-wanted-be-tough-crime>.

⁴³ Crack was perceived to be a so-called "epidemic," but studies have shown that children born to women who smoked crack during their pregnancies have no poorer health outcomes than babies whose mothers did not smoke crack. See Nick Chiles, *Generation of So-Called 'Crack Babies' Are Now Grown Up and Demonstrating the Hysteria of the 1990s Was a Racist Myth*, ATLANTA BLACKSTAR (Mar. 14, 2015), <http://atlantablackstar.com/2015/03/14/generation-called-crack-babies-now-grown-showing-hysteria-1990s-racist-myth/>; see also James D. Orcutt & J. Blake Turner, *Shocking Numbers and Graphic Accounts: Quantified Images of Drug Problems in the Print Media*, 40 SOC. PROBS. 190 (1993).

⁴⁴ *Hot Spots Policing*, CRIMESOLUTIONS.GOV, <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=8> (last visited Oct. 5, 2015).

⁴⁵ ZIMRING, *supra* note 2, at 99.

⁴⁶ *What Is CompStat?*, U. MD., http://www.compstat.umd.edu/what_is_cs.php (last visited Oct. 5, 2015).

⁴⁷ N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2011: NYCLU BRIEFING 2 (2012) [hereinafter STOP-AND-FRISK 2011: NYCLU BRIEFING], <http://www.nyclu.org/files/>

“broken windows” or “quality of life” policing (a model that “focuses on the importance of disorder . . . in generating and sustaining more serious crime”).⁴⁸ During this time, the NYPD also dramatically expanded the sheer number of police officers on the beat.⁴⁹

We will explore the relative success of these efforts in the section on prescriptions.⁵⁰ For now, it is sufficient to note that the combination of all of these tactics meant that racial disparities in policing were *inevitable*. As Professor Zimring states:

The problem with using a predicate offense—alcohol, loud radio noise in a car, marijuana—as a justification for selective enforcement of non-serious crimes is that it really does become the moral equivalent of racial profiling. A much larger percentage of the African American and Hispanic kids picked up for truancy and curfew will be in the parole, probation, or “criminal record” group that the . . . New York City strategy singles out for punitive treatment. African American and non-African American respondents report similar rates of marijuana use, but . . . the African American percentage of New York City marijuana arrests is much higher than the white rate. And the obvious reason is that young men of color live in poor neighborhoods and also more often look to police like potential street criminals. If that is the motive for differential treatment by the police, it has very substantial racial and ethnic impact. If “the units enforcing quality of life laws must be sent where the maps show concentrations of crime and criminals, and the rules governing stops have to be designed to catch the [“bad guys,”] . . . the differential punitive impact of the policy on dark-skinned persons on the streets in low-income areas is inescapable.⁵¹

Perhaps not surprisingly, data bear this out. While crime is down in virtually all New York City neighborhoods, and although most neighborhoods in which crime is up are predominantly white,⁵² black

publications/NYCLU_2011_Stop-and-Frisk_Report.pdf; *Frequently Asked Questions*, N.Y. POLICE DEP'T, http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#stop (last visited Oct. 5, 2015); Leah Libresco, *It Takes a Lot of Stop-and-Frinks to Find One Gun*, FIVETHIRTYEIGHT (June 3, 2015, 2:36 PM), <http://fivethirtyeight.com/datalab/it-takes-a-lot-of-stop-and-frinks-to-find-one-gun>.

⁴⁸ *Broken Windows Policing*, CTR. FOR EVIDENCE-BASED CRIME POL'Y, <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing> (last visited Oct. 5, 2015).

⁴⁹ BRIAN A. REAVES & MATTHEW J. HICKMAN, U.S. DEP'T OF JUSTICE, POLICE DEPARTMENTS IN LARGE CITIES, 1990–2000, at 2 (2002).

⁵⁰ See discussion *infra* Part V.

⁵¹ ZIMRING, *supra* note 2, at 119.

⁵² See *supra* notes 3–12 and accompanying text.

and Latino people are still disproportionately represented among those arrested for drugs in New York City.⁵³ For example,

[t]he Drug Felony Arrest population is most frequently Black (42.7%) or Hispanic (41.1%). White arrestees account for (13.6%) and Asian Pacific Islanders account for (2.5%) of the total Drug Felony arrest population. The Drug Misdemeanor Arrest population is most frequently Black (47.6%) or Hispanic (35.4%). White arrestees account for (14.2%) and Asian Pacific Islanders account for (2.6%) of the total Drug Misdemeanor arrest population.⁵⁴

Black and Latino New Yorkers make up the overwhelming majority of people arrested in connection with drug crimes (43.9% and 38.8%, respectively). White and Asian or Pacific Islander New Yorkers make up the remainder of suspects in drug cases (11.5% and 5.8%, respectively).⁵⁵ All of this is despite the fact that drug use is roughly equal across races.⁵⁶ Some studies have even suggested that white people are more likely than black people to use drugs and to develop substance abuse disorders.⁵⁷

Perhaps the most striking example is marijuana enforcement. Looking at Professor Zimring's statistics from 2004 to 2008, black and Latino people are disproportionately represented among New Yorkers arrested for marijuana possession.⁵⁸ Black and Latino people are disproportionately represented among New Yorkers arrested for marijuana possession. Although they constitute 28% of the city's overall population, black people constitute 52% of misdemeanor marijuana possession arrestees; Latinos make up 31% of such arrests,⁵⁹ but are only 28.6% of the overall population—a smaller disparity to be sure, but a

⁵³ See N.Y. CITY POLICE DEP'T, CRIME AND ENFORCEMENT ACTIVITY IN NEW YORK CITY (JAN 1–DEC 31, 2014), at i (2015) [hereinafter CRIME AND ENFORCEMENT ACTIVITY IN NYC], http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/enforcement_report_year_end_2014.pdf.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.*

⁵⁶ ZIMRING, *supra* note 2, at 122.

⁵⁷ Maia Szalavitz, *Study: Whites More Likely to Abuse Drugs than Blacks*, TIME (Nov. 7, 2011), <http://healthland.time.com/2011/11/07/study-whites-more-likely-to-abuse-drugs-than-blacks>.

⁵⁸ ZIMRING, *supra* note 2, at 122.

⁵⁹ *Id.* Harry Levine and Deborah Small compiled a report that provides similar statistics for the years 1997 to 2007. See HARRY G. LEVINE & DEBORAH PETERSON SMALL, N.Y. CIVIL LIBERTIES UNION, MARIJUANA ARREST CRUSADE: RACIAL BIAS AND POLICE POLICY IN NEW YORK CITY: 1997–2007 (2008), http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf. Levine also reported updated data for the years 1997 to 2009. HARRY G. LEVINE, NEW YORK CITY'S MARIJUANA ARREST CRUSADE... CONTINUES (2009), <http://marijuana-arrests.com/docs/NYC-MARIJUANA-ARREST-CRUSADE-CONTINUES-SEPT-2009.pdf>.

disparity nonetheless.⁶⁰ White people, who constitute 35% of the city's population, make up less than 10% of such arrestees.⁶¹ Why? Professor Zimring explains:

The racial and ethnic disproportions are a natural result of the two-stage selection process that uses stops and minor arrests as crime prevention tactics. The first stage of selective control is concentrating police attention and resources in areas where serious crime is high. . . . The second stage of the selection process that concentrates stops and minor offense arrests on racial and ethnic minorities is restricting the use of these tools to persons who look dangerous to a street patrolman⁶²

Again, this is true even though people across the races use and sell drugs at similar rates.⁶³

In 2014, the de Blasio Administration shifted course and started issuing tickets for misdemeanor marijuana possessions in lieu of making arrests.⁶⁴ This is a step in the right direction, but it does not help the millions of people—overwhelmingly young men of color—who are already in the system because of a previous misdemeanor marijuana arrest and who are now saddled with criminal records. Unless enforcement of low-level marijuana violations is reduced, the population that might have been incarcerated on low-level marijuana charges will still be involved in the criminal justice system, albeit in a far less onerous way.⁶⁵

The data on “stop and frisk” bear out this dynamic as well. A very small percentage of stops result from complaints of criminal activity; rather, the overwhelming majority are the result of an officer's observations and an officer's belief that a person is “suspicious.”⁶⁶

⁶⁰ POPULATION DIV., N.Y. CITY DEP'T OF CITY PLANNING, CITY OF N.Y., NYC2010: RESULTS FROM THE 2010 CENSUS: POPULATION GROWTH AND RACE/HISPANIC COMPOSITION 15 (2011), <http://www.nyc.gov/html/dcp/pdf/census/census2010/pgrh.c.pdf>.

⁶¹ ZIMRING, *supra* note 2, at 122.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Joseph Goldstein, *In City, Marijuana May Mean Ticket, Not Arrest*, N.Y. TIMES, Nov. 10, 2014, at A1.

⁶⁵ An arrest for a drug-related charge has serious consequences for immigrants as well. Immigrants who suffer from drug addiction, including those with lawful status, are defined by federal law as deportable. *See* 8 U.S.C. § 1227(a)(2)(B)(ii) (2012).

⁶⁶ On the UF-250, the form used in a stop, an officer must indicate at least one circumstance that led to a stop. In 2011, when stops were at their highest, officers indicated “fits a relevant description” in 15.9% of stops. STOP-AND-FRISK 2011: NYCLU BRIEFING, *supra* note 47, at 4. In 2012, that number was 16.5%. CHRISTOPHER DUNN, N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2012: NYCLU BRIEFING 4 (2013), http://www.nyclu.org/files/publications/2012_Report_NYCLU_0.pdf. In 2013, it rose to 20.6%. CHRISTOPHER DUNN, N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2013: NYCLU BRIEFING 5 (2014), http://www.nyclu.org/files/publications/8.26.14_Stop-and-Frisk_2013_final.pdf. Most recently, in 2014, it increased to

Although black people make up just 22.6% of New York City’s overall population,⁶⁷ they make up 54.6% of those stopped and frisked.⁶⁸ And while white people make up 32.8% of the overall population,⁶⁹ they are only 12.2% of those stopped and frisked.⁷⁰ “Stop and frisk” is not a new phenomenon. Though fewer New Yorkers are stopped and frisked today than in previous years, the racial disparities have remained roughly consistent since 2002.⁷¹ More importantly, being stopped and frisked is rarely associated with criminal behavior. Eighty-two percent of those stopped and frisked in 2014 (as well as in the first two quarters of 2015) were innocent.⁷² Although former Commissioner Ray Kelly had denied it, there is evidence that he has stated explicitly that the NYPD intentionally targeted communities of color “because he wanted to instil [sic] fear in them that every time that they left their homes they could be targeted by police.”⁷³ This approach is consistent with the philosophy articulated by former Mayor Bloomberg, who said—without a hint of concern for the impact on the millions of innocent New Yorkers subjected to preventive stops—that “[b]y making it ‘too hot to carry,’ the N.Y.P.D. is preventing guns from being carried on our streets That is our real goal—preventing violence before it occurs, not responding to the victims after the fact.”⁷⁴

The NYPD’s excessive “stop and frisk” practices have been declared unconstitutional,⁷⁵ and the number of stops reduced to less than 7% compared to the number reported at the height of the Bloomberg era.⁷⁶

29%. N.Y. CIVIL LIBERTIES UNION, STOP-AND-FRISK 2014: NYCLU BRIEFING 1 (2015) (on file with authors). All analyses were performed using the NYPD: Stop, Question and Frisk Report Database. See *NYPD: Stop, Question and Frisk Report Database*, N.Y. POLICE DEP’T, http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml (last visited Nov. 2, 2015).

⁶⁷ CRIME AND ENFORCEMENT ACTIVITY IN NYC, *supra* note 54, at B-1.

⁶⁸ *Id.* at 15.

⁶⁹ *Id.* at B-1.

⁷⁰ *Id.* at 15. Latino people make up 28.9% of New York City’s overall population, *id.* at B-1, and 27.8% of those stopped and frisked—which is *less than* their percentage in the overall population. *Id.* at 15.

⁷¹ *Stop-and-Frisk Data*, N.Y. CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Oct. 28, 2015). For example, from 2002 to 2013, the percentage of black New Yorkers being stopped varied around 53% to 56%. In 2004, this number was reported to be 55%; in the first two quarters of 2015, it was 54%. *Id.*

⁷² *Id.* (“Nearly nine out of 10 stopped-and-frisked New Yorkers have been completely innocent, according to NYPD’s own reports . . .”).

⁷³ Ryan Devereaux, *NYPD Commissioner Ray Kelly ‘Wanted to Instil Fear’ in Black and Latino Men*, GUARDIAN (Apr. 1, 2013, 6:23 PM), <http://www.theguardian.com/world/2013/apr/01/nypd-ray-kelly-instil-fear>.

⁷⁴ Kate Taylor, *Stop-and-Frisk Policy ‘Saves Lives,’ Mayor Tells Black Congregation*, N.Y. TIMES (June 10, 2012), <http://www.nytimes.com/2012/06/11/nyregion/at-black-church-in-brooklyn-bloomberg-defends-stop-and-frisk-policy.html>.

⁷⁵ See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

⁷⁶ See *Stop-and-Frisk Data*, *supra* note 71.

The program, at least on paper, appears to have virtually disappeared; but some community advocates report that it has not ended in practice.⁷⁷

The “broken windows” strategy of policing—of which hyper-aggressive stop and frisk was a key component—continues under the de Blasio administration. “Broken windows” is often referred to as “quality of life” policing, and claims to enforce low-level offenses in an effort to improve the quality of life in communities. But that is not how it functions. The police are not aggressively enforcing low-level offenses in all neighborhoods, and they are not aggressively enforcing gambling, prostitution, and other “quality of life” offenses, which one would expect if the end goal really were to help stabilize communities.⁷⁸ Instead, according to one advocate:

[T]he broken windows philosophy gives police cover to continue to use stop-and-frisk tactics under a different name. Talk to people in the targeted neighborhoods or the people appearing in court . . . and they report that “the police are still harassing them, they’re still stopping them, they’re still going into their pockets and searching them illegally.”⁷⁹

In other words, community advocates and people in targeted communities report that by continuing with the “broken windows” strategy, the NYPD is doing business as usual.

Given the dynamics of crime (for example, economic distribution, geographic distribution, and the existence of implicit and explicit biases at all levels of the system), the adoption of this combination of tactics and strategies made race disparities in policing inevitable. And it occurred during the same time period in which civil society was being eroded in black and Latino communities in New York City.⁸⁰

IV. IMPLICATIONS

First, we applaud the #BlackLivesMatter movement⁸¹ and the broad and sustained public conversation about the need for police reform in the wake of the killings of Eric Garner, Michael Brown, Tamir

⁷⁷ Mark Obbie, “*This Is a Fundamentally Different Way of Policing*,” SLATE (Sept. 3, 2015, 5:40 AM), http://www.slate.com/articles/news_and_politics/crime/2015/09/meet_susan_herman_the_woman_bill_bratton_has_tasked_with_repairing_the_nypd.3.html.

⁷⁸ ZIMRING, *supra* note 2, at 146.

⁷⁹ See Obbie, *supra* note 77.

⁸⁰ See discussion *supra* this Part.

⁸¹ #BlackLivesMatter is a social media movement and chapter-based national organization “working for the validity of Black life.” See *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited Dec. 24, 2015).

Rice,⁸² and a seemingly endless list of black men and boys who have lost their lives at the hands of the police. The time for fair, just, and smart policing is long past due. Heavy-handed, racially lopsided policing, whether prompted by explicit bias or simply willful blindness to the consequences, must become history.

Second, a key point to understand is that *any* involvement in the criminal justice system has implications for individuals' lives. Being stopped is traumatizing and frightening. Being frisked, more so. Being arrested is not only a terrible experience, but it also has measurable implications for a person's ability to obtain or keep a job, and can negatively impact family relationships. This is all the more true if the person being caught up in the criminal justice system knows, or suspects, that the main reason for the encounter is his skin color or the neighborhood in which he lives. Hence, the combination of the policing tactics described above and their racially disparate application, the impact of which was inevitable, has caused serious harm to black and Latino communities during a period of time when real life opportunities were dwindling. The same phenomenon did not happen in white communities in New York.

Third, perhaps ironically, over-policing black communities may ultimately be bad for public safety. Professor Tom Tyler's research consistently shows that people are more likely to obey the law when they perceive authority figures as legitimate, and that legitimacy is linked to being treated fairly.⁸³ Moreover, a recent study showed that a full 70% of black people do not perceive themselves as being treated fairly by the police in their communities.⁸⁴ Black people are more likely than white people to view law enforcement with suspicion and distrust, which means that they are less inclined to cooperate with law enforcement

⁸² See Deborah E. Bloom & Jareen Imam, *New York Man Dies After Chokehold By Police*, CNN (Dec. 8, 2014, 5:31 PM), <http://www.cnn.com/2014/07/20/justice/ny-chokehold-death>; Elliott C. McLaughlin, *What We Know About Michael Brown's Shooting*, CNN (Aug. 15, 2014, 12:10 AM), <http://www.cnn.com/2014/08/11/us/missouri-ferguson-michael-brown-what-we-know>; Abby Ohlheiser, *Death of Tamir Rice, 12-Year-Old Shot By Cleveland Police, Ruled a Homicide*, WASH. POST (Dec. 12, 2014), <https://www.washingtonpost.com/news/post-nation/wp/2014/12/12/death-of-tamir-rice-12-year-old-shot-by-cleveland-police-ruled-a-homicide>.

⁸³ See, e.g., TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006); TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (2002).

⁸⁴ Eileen Patten, *The Black-White and Urban-Rural Divides in Perceptions of Racial Fairness*, PEW RES. CTR. (Aug. 28, 2013), <http://www.pewresearch.org/fact-tank/2013/08/28/the-black-white-and-urban-rural-divides-in-perceptions-of-racial-fairness>.

activities; this is particularly troublesome when police need to rely on community members for crime investigations.⁸⁵

V. PRESCRIPTIONS

We need to reverse course, put a stop to the culture of fear, and invest in civil infrastructure in New York City's communities of color.

There is evidence that "hot spots" policing "works," in the sense that it has contributed to the enormous reduction in violent crime over the last few decades.⁸⁶ However, a few caveats exist:

- It is possible to focus police activity in areas where crime is concentrated without harassing those who live in such communities. A continuation of "hot spots" policing is appropriate, but "broken windows" should end.
- We must understand that if we are going to focus police activity in areas where crime is concentrated, continuing to engage in "broken windows" policing necessarily means that a disproportionate number of black and Latino people will be caught up in the criminal justice system for engaging in very low-level activity. This will have serious consequences for black and Latino New Yorkers and their relationships with the NYPD. We must also understand that this signifies a deliberate choice to govern communities of color through fear and intimidation, rather than through investments in strong social structures.
- Common sense requires that the police department closely tracks and utilizes crime and policing data to shape law enforcement strategies. The NYPD Compstat program is touted as a model for this approach.⁸⁷ But Compstat has also been identified with quotas, excessive low-level enforcement, and out-of-control "stop and frisk" practices, while ignoring data on civilian complaints, case dismissals, use of force, etc.⁸⁸

⁸⁵ PETER H. SCHUCK, MEDITATIONS OF A MODERATE: COOL VIEWS ON HOT TOPICS 140–45 (2006); *Race, Trust and Police Legitimacy*, NAT'L INST. JUST. (Jan. 10, 2013), <http://www.nij.gov/topics/law-enforcement/legitimacy/pages/welcome.aspx>.

⁸⁶ ZIMRING, *supra* note 2, at 109.

⁸⁷ See discussion *supra* note 46 and accompanying text.

⁸⁸ See Nathaniel Bronstein, Note, *Police Management and Quotas: Governance in the CompStat Era*, 48 COLUM. J.L. & SOC. PROBS. 543 (2015).

The current use of Compstat must, therefore, be modified to address these concerns.

- There is no satisfactory evidence that the hyper-aggressive “stop and frisk” tactics of the Bloomberg-Kelly era actually prevented violent crime or got guns off the street. But there is ample evidence that it has ensnared millions of young men of color in the criminal justice system. The data is appalling and all but a fraction—about 18%—of people stopped and frisked are innocent.⁸⁹ The police have the constitutional authority to stop someone who they have an objective reason to believe is armed and dangerous,⁹⁰ but that authority should be exercised fairly, and only when necessary. The police should not be able to use “broken windows” as a cover for continuing “stop and frisk.”
- The policies of school-based arrests and criminal summons for minor school disciplinary infractions, along with heavy-handed use of long-term suspensions, became so pervasive during the Bloomberg era that they were known as the “school-to-prison pipeline.”⁹¹ We see this phenomenon as a facet of “broken windows” policing. The racial disparities are comparable to that in “stop and frisk” situations. While the de Blasio Administration has already reduced the use of these tactics, many reforms are still needed. Some suggestions include: end the use of handcuffs in school except in cases of imminent danger; curtail the use of metal detectors; and reform the structure of the education system to ensure that educators are generally in charge of what goes on in school. Most importantly, we need to change the culture of the NYPD so that:
 - Officers do not view black people, Latinos, or entire communities as the enemy;
 - Officers are given the mandate and training to build relationships in the communities where they work,

⁸⁹ See *Stop-and-Frisk Data*, *supra* note 71.

⁹⁰ *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

⁹¹ Mychal Denzel Smith, *It's Time to Close New York's School-to-Prison Pipeline*, NATION (Dec. 27, 2013), <http://www.thenation.com/article/its-time-close-new-yorks-school-prison-pipeline>.

and to employ conflict resolution and de-escalation strategies; and

- Officers are held accountable for unnecessary encounters and uses of force.

“Justice Reinvestment” has been offered as one approach for building civil society in poor communities.⁹² In Part III, we noted that there are certain New York City neighborhoods whose residents comprise the bulk of a state’s prison population.⁹³ The original Justice Reinvestment strategy was “to redirect some portion of the [money spent] on prison to rebuilding the human resources and physical infrastructure—the schools, healthcare facilities, parks, and public spaces—of neighborhoods devastated by high levels of incarceration.”⁹⁴ Investing in local communities could build the civil infrastructure that can keep these communities safe without the need for hyper-aggressive policing tactics.

CONCLUSION

We know that New York City can be a safe city—the numbers bear this out. The question is what is the best approach to keeping New York City safe? We have options: one is to invest in building healthy communities, and the other is to aggressively police them to the point where people are afraid to leave their homes. We also have options as to which approach we take in particular neighborhoods. Racially disparate aggressive policing causes harm: it builds distrust, and is patently unfair while causing untold, lasting harm to the health and well-being of those subjected to it. And sadly, it perpetuates the “tale of two cities” that has been the story of law enforcement in New York City for decades. Investing in communities would be a much healthier approach. All New Yorkers deserve to be treated fairly.

⁹² See Susan B. Tucker & Eric Cadora, *Justice Reinvestment*, IDEAS FOR OPEN SOC’Y, Nov. 2003, at 2, https://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf.

⁹³ See discussion *supra* Part III.

⁹⁴ Tucker & Cadora, *supra* note 92. In contrast, the “Justice Reinvestment Initiative” is a federal funding stream that focuses more on state sentencing reform than on investment in local communities. See JAMES AUSTIN ET AL., *ENDING MASS INCARCERATION: CHARTING A NEW JUSTICE REINVESTMENT* (2013), https://www.aclu.org/files/assets/charting_a_new_justice_reinvestment_final.pdf. What we are suggesting is more in line with the original approach on investing in local communities.