Problem Management: The Federal Role in Reducing Urban Violence

Ted Heinrich

I. Introduction

Gary, Indiana has just over 80,000 people, a high poverty rate and high unemployment. But violent crime truly sets Gary apart. In 2010, Gary suffered 54 murders - a murder rate of 67 per 100,000 people, the second highest rate in the country. It is an enduring problem. In 1995, for example, Gary’s murder rate was over 100. Should the federal government help solve the violent crime problem in places like Gary? Does it matter that 85% of the people who live in Gary are black? What is the goal of federal intervention and how might it best be served?

No person or institution is ultimately accountable for the management of the criminal justice system in the United States. The public, the legislature, the police, prosecutors, defense counsel, the courts, and prisons at the local, state, and federal levels all share responsibility.

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1 Covington and Burling Distinguished Visitor and Lecturer on Law, Harvard Law School. I’d like to thank my family for their support and David Kennedy and Anthony Braga for over 15 years of professional education. I have been profoundly inspired by the work of William J. Stuntz, particularly his article Unequal Justice, infra note [], and his posthumous book, The Collapse of American Criminal Justice, infra note [], which I used to teach a seminar about federal law and urban violence in the spring of 2012. I am indebted to Alex Whiting for his help to provide me the opportunity to teach at the law school and to Dean Martha Minow for appointing me and approving the course. Every student in the class contributed to the development of this article: Roozbeh Alavi, Shamis Beckley, Andrew Chan, Cyndy Chen, Tyeesha Dixon, Christopher Eiswerth, Haley Fagan, Omavi Harshaw, Sean Hill, Catesby Holmes, Brian Itami, Dave Jochnowitz, Guillaume Le Masson, Greer Libbey, Tracee Mergen, Erin Monju, Eric Motherander, Marie Ndiaye, Jennifer Paul, Kenny Pyetraner, Severin Randall, Yoni Schenker, Jaime Simon, and Amanda-Jane Thomas; as did a distinguished list of guest lecturers: Anthony Braga, David Kennedy, Boston Foundation Vice President Robert Lewis, Jr., Boston Police Commissioner Edward Davis, Ten Point Coalition Executive Director and Minister Jeffery Brown, Connecticut U.S. Attorney David Fein, and Massachusetts Assistant U.S. Attorney Glenn MacKinlay. Alexandra Wendell and Yoni Schenker provided superb research assistance. [] reviewed a draft and provided helpful comments and suggestions. All remaining errors are mine alone.

2 The murder rates come from the Uniform Crime Report, Crime in the United States (UCR) published annually by the Federal Bureau of Investigation (FBI). Table 8 compiles the offenses known to law enforcement for each city and town that submits data. One of the eight reported offenses is murder and non-negligent manslaughter, which I refer to throughout generically as murder. The UCR also lists the population for each city, thus permitting the calculation of the murder rate, or the number of murders per 100,000 population, a conventional measure that permits a manner of comparison among cities.
Thus, when problems arise, no one person or institution bears sole responsibility and no one person or entity alone can solve the problem. Nor is there a meaningful sense of shared responsibility. That is a shame, because real problems abound. A short list certainly includes high rates of offending, mass incarceration, racial discrimination, wrongful convictions, police and prosecutorial misconduct, and over-criminalization. It would be nice to know who to blame and where to go to seek meaningful change.

This paper directly addresses one such problem, urban violence, and indirectly touches on two related problems, mass incarceration and racial discrimination. Our present criminal justice system enables too many murders, too much imprisonment, and too many young black males as murderers, victims, and inmates. That the United States tolerates any of the three problems ought to surprise and appall.

The notion that the United States even has a murder problem may come as a surprise to many. We are, after all, in the midst of an unprecedented crime drop. The nation’s murder rate has plummeted from 9.8 homicides per 100,000 in 1991 to 4.8 in 2010. The national murder rate has not been so low since the early 1960s. The problem, however, is that from the late 60s to the early 90s, the country endured an epic crime wave. That we are now returning to mid-century levels of violence is cause for relief, not celebration. Moreover, one might expect continued reductions in violent crime as a modern society continues to evolve. In 1957, the U.S. murder rate was 4.0. Why are we still behind ourselves? Indeed, the U.S. murder rate is far higher than our modern peers. Canada, England, France, Germany, Holland, Italy, and Japan all have murder rates under 2. The U.S. rate is comparable to countries like Nicaragua, Thailand, and the Dominican Republic. Why are we behind our peers? Finally, our poorest cities have murder rates comparable to failed states. In 2010, St. Louis, Gary, Flint, New Orleans, and

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4 UCR 2010, Table 1.


Camden all had murder rates over 40. Detroit, Baltimore, and Newark had rates over 30.\textsuperscript{8} High crime neighborhoods in these and other cities are far more dangerous.\textsuperscript{9} Why have we left our most vulnerable behind?

Mass incarceration is more shocking. Various writers have called it the “moral scandal” of American life; “out of control;” and “unprecedented” in the history of liberal democracy.\textsuperscript{10} Again, one might expect an evolving society would develop stronger and stronger social controls and imprison fewer and fewer of its citizens. The U.S. imprisonment rate stayed relatively steady until 1970. Since then it has more than quintupled, even as crime has dropped.\textsuperscript{11} No other country on the planet - not China, not Russia, not Myanmar - even approaches the rate at which we imprison our own citizens.\textsuperscript{12}

The twin tragedies of lethal violence and mass incarceration fall disproportionately on young black men. Black Americans are roughly 15\% of the population, but more than 50\% of murder victims and offenders.\textsuperscript{13} According to Michelle Alexander, the U.S. imprisons a larger percentage of its black population than South Africa did at the height of apartheid. She calls it the New Jim Crow.\textsuperscript{14} The American Academy of Arts and Science suggested the issue may well

\textsuperscript{8} UCR 2010, Table 8.


\textsuperscript{11} Stuntz, \textit{Collapse}, supra note [], at 244.

\textsuperscript{12} Lynch and Pridemore, supra note [] at p. 27-28 (“In terms of population-based incarceration rates, the United States is clearly the most punitive nation in the world.”). The U.S. rate of 760 persons incarcerated per 100,000 is higher than Russia’s rate of 626. The gap between the U.S. and other industrialized democracies is much wider. France, Germany, England, Canada, Japan and Australia, for example, all have incarceration rates between 63-153. \textit{Id.}

\textsuperscript{13} UCR 2010, Expanded Homicide Data Tables 1, 3.

be the most important civil rights issue of our time.\textsuperscript{15} How can this be? Slavery, segregation, and overt racism are supposed to be historical artifacts in a post-racial country. Even systemic disadvantage is scheduled to disappear by 2028.\textsuperscript{16} How can our criminal justice system remain shot through with what is, at best, grossly disproportionate racial impacts?

The problems are cruelly intertwined. Violence in the United States is highly concentrated. It is concentrated in cities, in disadvantaged neighborhoods within those cities, and among a small slice of young men involved with criminally-inclined street groups or gangs. This small slice is overwhelmingly black.\textsuperscript{17} Though unrepresentative, the popular image of violence and young black men is a recipe for harsh justice policies. And those harsh policies fall disproportionately where the violence is, in disadvantaged neighborhoods where the young men are mostly black.\textsuperscript{18}

The symptoms fairly scream for attention. The criminal justice system, however, does not respond well to such problems, for many reasons. The system is complex, with inputs in one part dramatically affecting outputs far removed. It has potentially conflicting goals, including justice, public safety, and efficiency. It has many actors across many levels of government - legislators, police, prosecutors, courts, prisons and probation, operating at the federal, state, and local level.\textsuperscript{19} It has many unintended and even perverse incentives. With no one in control or

\begin{itemize}
  \item \textsuperscript{15} Daedalus: The Journal of the American Academy of Arts & Sciences, Summer 2010.
  \item \textsuperscript{16} The reference is to the Supreme Court’s opinion in \textit{Grutter v. Bollinger}, 539 U.S. 306 (2003). In \textit{Grutter}, the Court upheld the admissions policy of the University of Michigan Law School, which favored black students in order to promote diversity. For the majority, Justice O’Connor wrote, “[w]e expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” \textit{Id.} at 343. Justices Thomas and Scalia dissented, but nonetheless agreed on that point. \textit{Id.} at 351.
  \item \textsuperscript{17} \textit{See, Part II}, infra.
  \item \textsuperscript{18} \textit{See, i.e.} Richard S. Frase, \textit{What Explains Persistent Racial Disproportionality in Minnesota's Prison and Jail Populations?} 38 Crime & Just. 201, 262 (2009) ( “the high degree of racial disproportionality in Minnesota's prison and jail populations appears to reflect racial differences in criminal behavior, the disparate impact of seemingly race-neutral sentencing policies, and, possibly, racial stereotyping or disparate impact in policing decisions and in decisions to revoke probation or post-prison release.”)
  \item \textsuperscript{19} \textit{See, i.e.} David Cole, \textit{Turning the Corner on Mass Incarceration?} 9 Ohio St. J. Crim. L. 27 (2011) ( due primarily to our federal system, “it is dangerous to make generalizations about the ‘American criminal justice system,’ as it does not actually exist.”); Stephen D. Mastrofski, James J. Willis, \textit{Police Organization Continuity and Change: into the Twenty-first Century}, 39 Crime & Just. 55 (2010) (“Among police scholars America is regarded as the most fragmented
accountable, the system as a whole may well be unmanageable.\textsuperscript{20}

Which makes it all the more imperative to try to manage the worst problems within that system. Emerging strategies that stress collaboration, localism, enhanced data analysis, substantive accountability, and urgent pragmatism offer hope and a possible new paradigm. This article describes the U.S. murder problem, suggests what a responsible management scheme might look like, and outlines how the federal government might take a few critical but practical steps to shape a framework that might enable dramatic, enduring improvement. Comparative performance measures and targeted funding to support accountable local partnerships are the central focus.

The balance of this article proceeds as follows. Part II describes the concentration of the murder problem in the United States. Concentration is the central fact of murder in the United States and the key to fashioning a national response. Part III looks at evolving theories that explain this pattern. Social and racial history, along with mismatched political institutions explain most of the result. The theories also suggest the ingredients of the needed response - fully functioning police operating in empowered communities with mutual respect and support. Part IV examines local developments, particularly of problem-oriented/community policing and two particular manifestations - New York City’s Compstat and Boston’s Operation Ceasefire. Both are credited with dramatically reducing murder rates: New York with a focus on accountable policing; Boston with a focus on strategic community partnerships. The police-centric and community-centric directions must converge, not diverge. Some police scholars have suggested that these new approaches represent a new paradigm they call the New Criminal Justice. Some legal scholars have suggested that similar approaches in other fields represent a new paradigm they call New Governance or Democratic Experimentalism. Part V explains how the latter provides a helpful framework for thinking about the proper federal role for urban violence, one that respects the structure of federalism and the imperative of equal protection. Part VI draws the lessons together into a federal proposal that consists of two main parts. The first is a simple, but greatly enhanced system of comparative performance evaluation. Such a system would enable the federal government to compare comparable cities, evaluate the effectiveness of their efforts, enhance accountability, and show where additional resources are most urgently needed. The jolt of competition and attention might also spur local innovation and learning. The second is a funding and action program designed to insure a minimal acceptable level of protection from violence throughout the United States. The primary prerequisite to the disbursement of funds and resources would be the formation of a local partnership consisting of a sufficient set of stakeholders who can take responsibility for managing the local murder problem and complex system for delivering public policing services in the industrialized world.”).

\textsuperscript{20} See, \textit{i.e.} William J. Stuntz, \textit{The Political Constitution of Criminal Justice}, 119 Harv. L. Rev. 780, 831 (2006)(noting that changes in one area produce changes in others, such as Constitutional changes prompting political changes, and arguing that seeing the system whole may be the key to wise reform).
and be held accountable for the results. Part VII concludes.

II. Concentration

At first glance, violence in the United States appears to be a broad problem requiring sustained systemic change to remedy. A closer look shows the problem is extremely concentrated. So too, perhaps, the remedy. Murder is concentrated in poor urban neighborhoods of color, mostly black, and among groups of young men who engage in substantial criminal activity. Stop the shooting among violent urban gangs and the U.S. resembles Canada.

In 2010 in the U.S., 14,748 people lost their lives to murder. With a population just over 308 million, the national murder rate per 100,000 people was 4.8. For all cities with a population lower than 100,000, the rate was under 4. For cities over 250,000, the rate was 10.21

Every fall the FBI releases Crime in the United States as part of the Uniform Crime Report (UCR) program. The program is voluntary, but close to 97% of cities and towns submit to the FBI the numbers of all of the reported murders, rapes, robberies, aggravated assaults, and four categories of property crimes that occurred in each jurisdiction during the previous year. By wide acclamation, the murder numbers are the most reliable. To scroll down the murder column and see zero after zero is to realize that most cities and towns in the United States do not have a murder problem. To be sure, there are many entries of 1 and 2 murders. But there are very few in the double digits.22

In fact, in 2010, only 165 cities suffered more than 10 murders. Eleven rural states did not have a single city with more than 10 murders.23 Eleven other states had only one city with more than 10 murders.24 Those 165 cities represent 22% of the U.S. population, but accounted for 51% of the murders. The murder rate for these 165 cities is 11. The murder rate for the country without these cities is 3.

21 UCR 2010, Table 16.

22 UCR 2010, Table 8.

23 Id. The states were Idaho, Iowa, Maine, Montana, New Hampshire, North Dakota, South Dakota, Utah, Vermont, West Virginia, and Wyoming. Indeed, Vermont and Wyoming did not have more than 10 murders in the entire state in 2010.

24 Id. The states (and cities [number of murders/rate]) were: Alaska (Anchorage [13/5]); Delaware (Wilmington [28/38]); Hawaii (Honolulu [19/2]); Maryland (Baltimore [223/35]); Mississippi (Jackson [41/24]); Nebraska (Omaha [34/7]); Nevada (Las Vegas [107/8]); New Mexico (Albuquerque [42/8]); Oregon (Portland [22/4]; Rhode Island (Providence [15/9]); Wisconsin (Milwaukee [94/16]). Thus, only four of these eleven states had a city with a murder rate over 10.
In 2010, only 70 cities suffered more than 25 murders. Those 70 cities account for 41% of total murders and have a combined murder rate of 12.2. Still, these 70 cities include cities where murder rates are low. The real problem is in disadvantaged cities and neighborhoods.

In 2010, only 39 cities suffered a murder rate higher than 20. Of those 39, 20 were cities with a population lower than 100,000. Only 14 cities suffered more than 50 murders with a murder rate higher than 20. These 14 cities, a mere 1.7% of the population, produced 10.6% of all murders in the U.S. What binds the 50/20 cities together are large communities of concentrated disadvantage, most tellingly revealed by race.

Look first at the largest cities. Of the ten U.S. cities with a population over 1 million, no city had a homicide rate over 20. The rates ranged from a high of 19 in Philadelphia to a low of 2 in San Diego. San Diego, a city of 1.3 million, suffered less than 30 murders in 2010. Philadelphia, a city of 1.5 million, suffered 306 murders. Philadelphia has a black population of

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25 Id. These 20 cities were East St. Louis IL (murder rate 75); Gary IN (67); Chester PA (64); Blytheville AR (63); College Park GA (50); Camden NJ (47); Harvey IL (44); Inkster MI (43); East Chicago IL (40); Wilmington DE (38); Riviera Beach FL (37); Petersburg VA (36); Youngstown OH (35); Newburgh NY (35); Harrisburg PA (30); Atlantic City NJ (28); Compton CA (27); Irvington NJ (25); Macon, GA (25); and Hempstead NY (23). With the exception of Gary and Camden, all these cities had less than 30 total murders.

26 Id. Six cities with a population higher than 100,000 had a murder rate higher than 20, but suffered less than 50 murders. They were: Jackson MS (murder rate of 24); Dayton OH (22); Hartford CT (21); Richmond CA (21); Rochester NY (20); and Miami Gardens FL (20).

27 Id. The 14 cities were: Gary IN (murder rate of 67); New Orleans LA (49); Flint MI (48); St. Louis MO (41); Baltimore MD (35); Detroit MI (35); Newark NJ (32); Baton Rouge LA (30); Birmingham AL (27); Oakland CA (22); Washington DC (22); Kansas City MO (22); Buffalo NY (21); and Cincinnati OH (21). In the past two years, five cities have come off the list (Camden, Jackson, Cleveland, Pittsburgh, and Memphis) and two have come on (Flint and Gary). Flint and Gary have high, enduring murder rates, but their populations of around 100,000 are so low that even with high murder rates they may not suffer more than 50 homicides in a particular year. Likewise, Camden has roughly 80,000 residents and suffered 37 murders in 2010 for a rate of 47. Similarly, Jackson’s population is just under 175,000 and has a murder rate of 23, but less than 50 murders. Among larger cities, Cleveland, Pittsburgh, and Memphis have lowered their murder rates below 20 in the past two years. When the UCR comes out in October, Washington DC will move off the list and Philadelphia will move on. David S. Barry, Philadelphia’s Killing Spree, The Crime Report, March 29, 2012; Allison Klein and Matt Zapotosky, as Homicides Fall in D.c., Rise in Prince George’s, Numbers Meet in the Middle, The Washington Post, December 31, 2011 (reporting a drop in murders from 132 to 108, which translates to a rate of approximately 18).
43%. San Diego’s black population is 5%.\textsuperscript{28}

The pattern holds in the next tier as well. Among the nineteen cities with a population of 600,000 to 1 million, only three had a murder rate over 20. Those three, Detroit (35), Baltimore (35), and Washington DC (22), have black populations of 83%, 64%, and 51% respectively.\textsuperscript{29} By contrast, cities like Seattle, San Francisco, and Austin have murder rates below 6 and black populations below 10%.

Among all population groups, there were 19 cities in the U.S. with a murder rate over 30. All but one had a black population over 40%; all but four were majority black.\textsuperscript{30} The highest

\begin{center}
\begin{tabular}{|c|c|c|}
\hline
City & Murder Rate & \% Black Population \\
\hline
East St. Louis IL & 75 & 98 \\
Gary IN & 67 & 85 \\
Chester PA & 64 & 75 \\
Blytheville AR & 63 & 56 \\
College Park GA & 50 & 79 \\
New Orleans, LA & 49 & 60 \\
Flint, MI & 49 & 57 \\
Camden, NJ & 47 & 48 \\
Harvey, IL & 44 & 76 \\
Inkster, MI & 43 & 73 \\
St. Louis, MO & 41 & 49 \\
East Chicago IL & 40 & 43 \\
Riviera Beach FL & 37 & 66 \\
\hline
\end{tabular}
\end{center}

\textsuperscript{28} The murder rates are drawn from UCR 2010, Table 8. The percentage of black residents is taken from U.S. 2010 Census data. [http://quickfacts.census.gov/qfd/states]. With the exception of New York, the four cities with a murder rate over 10 (Philadelphia, Chicago, Houston, Dallas) had black populations over 23% and the five cities with a murder rate under 10 (Los Angeles, Phoenix, Las Vegas, San Antonio, San Diego) had black populations under 12%. New York had a murder rate of only 6 and a black population of 26%.

\textsuperscript{29} Id. Five of these 19 cities had murder rates from 10-15 (Milwaukee [40% black], Memphis [63%], Columbus [28%], Indianapolis [28%], and Boston [24%]). The remaining eleven cities had murder rates below 10, ranging from 9.7 in Jacksonville, Florida to an astoundingly low 0.8 in El Paso. The percent black populations in those cities range from 35% in Charlotte to less than 5% in San Jose, El Paso, and Honolulu. Ironically, El Paso sits across the Rio Grande River from Ciudad Juarez, the epicenter of drug violence in Mexico and a city that has been called the murder capital of the world. The 600,000 plus residents of El Paso suffered just 5 murders in 2010. The 1.3 million residents of Ciudad Juarez suffered more than 3,000 murders in 2010, a rate of 230.

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murder rate in the country was in East St. Louis. The 28,000 residents suffered 21 murders, a rate of 75. East St. Louis is 98% black.

Correlation, of course, is neither cause nor destiny. As for cause, social problems, violent crime among them, come bundled together and have deep historical roots. An analysis of the 63 most populous cities in the U.S. found that five factors explained roughly 75% of the differences in the murder rate among cities: poverty, unemployment, income level, percent black, and single parent families. Thus, the cities with the highest degree of demographic disadvantage generally have the highest murder rates.

As for destiny, the murder rates within even the most disadvantaged cities have dropped dramatically over time. For example, the murder rate in Washington D.C. dropped from a high of 80 in 1991 to its 2010 rate of 20. Moreover, the murder rate in struggling cities varies

<table>
<thead>
<tr>
<th>City</th>
<th>2009</th>
<th>2010</th>
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<tbody>
<tr>
<td>Petersburg VA</td>
<td>36</td>
<td>79</td>
</tr>
<tr>
<td>Newburgh NY</td>
<td>35</td>
<td>30</td>
</tr>
<tr>
<td>Baltimore MD</td>
<td>35</td>
<td>64</td>
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<tr>
<td>Detroit MI</td>
<td>35</td>
<td>83</td>
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<tr>
<td>Newark, NJ</td>
<td>32</td>
<td>52</td>
</tr>
<tr>
<td>Baton Rouge LA</td>
<td>30</td>
<td>54</td>
</tr>
</tbody>
</table>

31 Stuntz, *Collapse* at 20-22 (noting “the correlation between race and urban violence . . . is striking” and would be clearer if neighborhood-based homicide rates were widely available.). Stuntz suggests that racism contributed to increased crime and increased crime contributed to a kind of racism.

32 Robert Friedmann, Richard Rosenfeld, *Improving Crime Data Project*, 2008 report. [http://www.cjgsu.net/initiatives/HomRates-PR-2010-01-21.htm](http://www.cjgsu.net/initiatives/HomRates-PR-2010-01-21.htm) (Released January 12, 2010). A Harvard Law School student in my Urban Violence class performed the ICD socio-economic analysis for 14 of the largest cities in Massachusetts in 2009 and 2010 based on overall violent crime rates (he substituted violent crime for homicide because the number of homicides in the cities was too small to permit reliable analysis). Like the ICD, he found that the same factors explained 65-79% of the variation in violent crime rates among the cities, with female head of households alone explaining 68% of the variation in 2010. The highest homicide rates in Massachusetts in 2010 occurred in Lawrence and Chelsea, two small, poor cities with Hispanic populations over 50%, the only cities in Massachusetts that are majority Hispanic. The student’s analysis suggested that Chelsea’s violent crime rate was about what the ICD model would predict, whereas Lawrence had far fewer violent crimes than its socio-economic conditions would predict. Andrew Chan, *Controlling for Socioeconomic Factors in Massachusetts Crime Statistics*, Unpublished Manuscript, on file with the author (2012).

widely.\textsuperscript{34}

The big picture, however, is profoundly disturbing. Roughly 13.6\% of the total U.S. population is black, yet black victims account for almost half of murder victims. The overwhelming majority of the incidents involve black men killing other black men.\textsuperscript{35} Looked at another way, the murder rate among black Americans is over 20 while the rate for non-blacks is under 4.

The disproportionate rates of offending and victimization are not spread evenly across the black population. Even within cities, the violence problem is typically concentrated in a few severely disadvantaged neighborhoods and committed by an astonishingly small percentage of high offending gang members. If there existed standard measures of murder rates in high crime neighborhoods, the statistics would paint a stark picture. John Klofas showed, for example, that young black men living in a high crime area of Rochester, NY had a murder rate of 520.\textsuperscript{36}

In Boston, for another example, downtown murders are rare. Boston has over 600,000 residents and recorded 73 murders in 2010; none occurred downtown. Close to 80\% of Boston's homicides occurred in Dorchester, Roxbury, and Mattapan\textsuperscript{37} - 3 districts with roughly 30\% of the population. (This would make Boston’s murder rate approximately 3 outside these three districts and 30 within them). Even within these troubled districts, large swaths are relatively safe. The murders occur in small, persistent 'hot spots,' typically in neighborhoods of concentrated disadvantage.\textsuperscript{38} Yet, even within these troubled neighborhoods, the shootings are committed by

\textsuperscript{34}Of the 43 U.S. cities with a population over 500,000, only 5 have murder rates over 20. Those 5 have black populations that range from 21-83\%. Twelve have murder rates between 10-20; their black populations range from 23-63\%. Memphis is impressively anomalous among this group; its 63\% black population is comparable to Baltimore’s, yet its murder rate of 13 is almost three times lower. The remaining 26 cities have murder rates below 10; their black populations range from 3-35\%. Note that New York is a significant anomaly, with a low murder rate of 6, yet a substantial black population of 26\%. Likewise, Jacksonville (10/31\%), Nashville (9/28\%), Charlotte (8/35\%), Raleigh (3/29\%), and Virginia Beach (3/20\%) also have far fewer murders than their percentage of black population and concentrated disadvantage might predict.

\textsuperscript{35}UCR 2010, Expanded Homicide Data, Tables 1, 3.


\textsuperscript{38}Anthony A. Braga, David Hureau, Christopher Winship, \textit{Losing Faith? Police, Black Churches, and the Resurgence of Youth Violence in Boston}, 6 Ohio St. J. Crim. L. 141, fn 34 (2008) (\textit{Losing Faith}) (“Research has consistently demonstrated that a very small number of “hot
and aimed at a small number of young males who belong to high-offending groups frequently referred to as gangs. Boston has roughly 65 active gangs and 1400 active members. Members usually range in age from 15-30, have extensive criminal records, and engage in "cafeteria-style" offending, such as drug dealing and other on-going criminal conduct. Many are on probation or pre-trial release. They are known (and known to be a problem) by knowledgeable police officers. And they are responsible in any given year for 50-75% of Boston's murders. If these numbers are right, Boston residents who are not gang members have a murder rate of less than 5; gang members, on the other hand, have a murder rate over 2500.

The analysis for Boston turns out to be true of most other cities across the country - extreme demographic and geographic concentration is the central fact of lethal violence in the United States. The extreme racial and geographic concentration creates enormous political barriers to enacting and implementing progressive solutions. Marginalized groups do not fare particularly well in American politics. Khalil Gibran Muhammad captured a big part of the problem:

It's true that black-on-black violence is an exceptionally grave problem. But this does not explain the allure of the violence card, which perpetuates the reassuring notion that violence against black people is not society's concern but rather a problem for black people to fix on their own. The implication is that the violence that afflicts black America reflects a failure of lower-class black culture, a breakdown of personal responsibility, a pathological trait of a criminally inclined subgroup — not a problem with social and institutional roots that needs to be addressed through collective effort well beyond the "spot" locations generate a bulk of urban crime problems.”).

39 Kennedy, Don’t Shoot at 42-43.

40 Braga et. al. Losing Faith. at fn 36 (“A large body of research evidence documents the extensive prior criminal justice system involvement of an overwhelming majority of homicide offenders.”)

41 Id. at 153. In 2010, gang and drug-related murders accounted for approximately 70% of Boston’s murders and gang members were involved in 69% of all shootings. Anthony A. Braga and David M. Hureau, Understanding Homicides and Serious Gun Violence in Boston, June 2011 (presentation, April 2012); Kennedy, Don’t Shoot, at 42-43.

boundaries of black communities.43

The “social and institutional roots” of the problem are under-appreciated and frequently misunderstood. Three recent works by an experimental psychologist, a historian, and a legal scholar are eye-opening resources, and help point toward the kind of collective effort needed.44

III. Theory

Why is murder in the United States so desperately concentrated among young black gang members in our poor cities and neighborhoods? The answer to that question has substantial implications for fashioning the best law enforcement response. The short answer is that gang violence is not subject to effective state control and gang members don’t have a strong enough connection to functioning communities. The long answer is that both lack of control and connection are rooted in U.S. racial and social history. The hopeful answer is both can be addressed by collective, energetic, customized intervention. The distressing answer is that they are not adequately addressed by the present, so-called criminal justice system, and have not been for decades.

Human Nature and Evolving Social Control

Humans, according to Steven Pinker, are survival machines. They use violence to survive, not out of innate impulses. Violence by humans against other humans is generally disfavored because those other humans hit back. When a tendency toward violence evolves, it is always strategic. Pinker cites Hobbes for the proposition that three strategic motives explain all human violence: competition, fear, and glory.

The first use of violence, to make masters of other men’s persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons or by reflection in their kindred, their friends, their nation, their profession, or their name.45


Pinker convincingly shows that violence has dramatically declined over the course of human history. He argues the decline was caused both by government and the governed. The state, or the Leviathan in Hobbes’ metaphor, embodies the will of the people and holds a monopoly on the use of force. An effective state drastically reduces or eliminates incentives for violence based on competition, fear, and glory. Around the world, established democracies and autocracies have low violent crime rates; emerging democracies are plagued by violent crime; and corrupt or lawless states are racked by violence. But to have low violent crime rates and avoid despotism, the governed must be properly motivated to shun violence as well. On this score, Pinker credits an evolving psychological change that began in the Middle Ages when Europeans acquired manners: they inhibited coarse impulses, anticipated long term consequences, and considered the thoughts and feelings of others. Violations of this new refined, broad, empathetic social code brought shame and humiliation to the violator. These changes in social affairs were triggered by - were strategically adapted to - increased government authority and commerce.

Government and social inhibitions ought positively re-enforce one another. Society must feel that the laws, their enforcement, and other social arrangements are legitimate so that they do not fall back to baser motives even if the state is not peering over every shoulder. Thus, according to Pinker, reducing rates of violence to European lows requires not only the rule of law, but also “a more nebulous process in which certain populations accede to the rule of law that has been imposed on them.”

In modern societies, the majority of the violence occurs within low socio-economic classes because they do not as often resort to legal authority but rather take the law into their own hands. The perpetrator typically believes he is resorting to violence in the pursuit of justice. Thus, the violence does not arise from a deficit of morality, a diseased mind, or because of economic needs. It arises from the perpetrator’s belief that the state is not protecting him or does not deserve his forbearance.

**United States’ Exceptionalism**

Why is the United States more violent than Europe? Our shorter history is complicated by the federal system, the frontier, and the enduring legacy of slavery, segregation, and racial

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46 Pinker, *Better Angels* at 31-128.

47 *See also*, Stephen J. Schulhofer, Tom R. Tyler, Aziz Z. Huq, *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 101 J. Crim. L. And Criminology 335, 347 (2011)(arguing that without legitimacy, obedience to the law can only be obtained through intensive enforcement and harsh punishment and that such policies are unsustainable).

discrimination. Still, the overall pattern fits the theory - violence rates were trending downward in the United States at the turn of the last century. According to historian Randolph Roth, unlike Europe, where pacification and civilization carried murder rates to the 1-2 range, the U.S. rate usually got stuck in the 5-15 range. He argues that homicide rates are correlated with the degree to which people: believe the government is effective and fair; share concern for their neighbors or political, religious, or racial fellows; and view the social system as just and respectful. In other words, homicide rates are lowest when people feel protected, respected, connected, and empowered.

Psychological scholarship also increasingly supports the idea that “people obey the law, irrespective of expected rewards and penalties, when they view the government as worthy of trust and respect.” The primacy of legitimacy would explain why racial differences in murder rates are matched by public attitudes toward our legal system sharply polarized along racial lines. For example, a 2012 Quinnipiac poll found racially disparate approval rates concerning the NYPD’s ‘stop and frisk’ policy: 59% of white New Yorkers approved of the practice; only 27% of black New Yorkers approved. Of note, another study found less than 20% of black Americans consider the U.S. legal system fair.

49 Pinker, Better Angels at 96; Roth, American Homicide at []. Fellow violence historian Roger Lane argues these conditions are both “too obvious to be of much use . . . and . . . they present enormous problems of definition and evidence.” Likewise, Lane points out that in applying his thesis to the past 50 years, Roth suggests presidential politics played a decisive role in determining whether people thought government and society fair and just and, consequently, whether murder rates went up or down. Roger Lane, Review: Taking the Mystery out of Murder Rates: Can it Be Done? 8 Ohio St. J. Crim. L. 553 (2011). Elizabeth Dale is not convinced of Roth’s conclusion that not much can be done about the U.S. murder rate from a policy perspective. Elizabeth Dale, Book Review, 28 Law & Hist. Rev. 1084 (2010). As this article I hope makes clear, I think good policy can make a difference but that Roth’s theory is helpful despite problems of definition because it emphasizes the shared importance of police and community. I agree with Lane, however, that Roth’s discussion of national politics and homicide rates is unconvincing.


Social scientists have also tried to tease out the connections among concentrated disadvantage, race, crime, and social control. Researchers long ago rejected the idea that individual or genetic differences explain the differential rates of violent crime. Pioneering scholars argued that low economic status, ethnic heterogeneity, and residential mobility led to the disruption of community social organization that, in turn, accounted for variation among communities’ crime and delinquency rates (together with other social problems such as disorder, infant mortality, school dropout, and child maltreatment). Thus, it is not the aggregated demographic qualities of individuals who live in communities that directly cause social disorganization, but rather the community characteristics that either do or do not lead to social disorganization. Those characteristics, or community structures, include kinship, friendship, and acquaintance networks and formal and informal associational ties rooted in social activities and institutions such as family life, school, work, church, and recreation. Good and bad ideas, referred to in academic circles as community “norms” [cooperate with police, don’t snitch, handle your own business, supervise your kids, trust the system] travel through these networks and associations. Gangs thrive amid social disorganization and tolerant norms. Thus, in broad terms, residents in cohesive communities with greater agreement on norms (greater collective efficacy) are better able to control gang violence. Those controls include supervision of youth leisure time activity, intervention in street corner congregation, and mentoring wayward youth. Strengthen the network and clarify the norms and violent crime ought to go down.

If true, the police/community theory - the idea that low murder rates are the result of people feeling protected, respected, connected, and empowered - has to be able to explain the two startling phenomena of lethal violence in the U.S. in the last 50 years - the epic crime wave from 1960-1990 and the equally epic crime drop from 1990-2010.

What triggered the crime wave that emerged and solidified in the last half of the past century? Pinker argues, essentially, that we entered a period of cultural de-civilization. The baby boom, television, a dramatic shift in cultural norms, and the retreat of law enforcement all contributed to the process. Pinker points out that these trends, and the resulting increases in violence, occurred throughout the newly connected modern world.

The late Harvard Law School professor William Stuntz pays more attention to the pattern


of concentration in the U.S.. He suggests that the crime wave was best explained by a racially discriminatory and failing urban economy, falling rates of incarceration, and an isolating sense within high crime communities that the criminal justice system was illegitimate.\textsuperscript{56}

So how to explain the crime drop 30 years later? Debate over the reasons has been rampant within criminology for at least the past ten years. Both Stuntz and Pinker are tentative in ascribing a cause, Pinker more colorfully describing research on the question as “the usual social science rat’s nest of confounded variables.”\textsuperscript{57}

Pinker argues the crime drop occurred because the Leviathan - the police - got bigger, smarter, and more effective and because socially we re-adapted to modernity. His latter argument is more complicated, but at heart he suggests that as a country we got fed up with disorder and violent crime and re-established norms of non-violence, albeit in less traditional, more ironic, and, arguably, less hypocritical ways.\textsuperscript{58} Stuntz cites the end of the crack epidemic, some demographic changes, more police, and more incarceration. He acknowledges that less discernible cyclical forces may be at play. And he emphasizes that police are more cost effective crime reducers than the modern scourge of mass incarceration, which has gone far beyond what was necessary to correct lenient mid-century practice. He further emphasizes that an incarceration policy entails vastly diminished marginal returns at present and, due to its profligacy and unfair targeting, has itself become a social catastrophe.\textsuperscript{59}

**Mal-adaptations**

Although Pinker shows that the late 20\textsuperscript{th} century increase in violent crime occurred all over the civilized world, the timing was particularly calamitous for race and justice in the U.S. Stuntz portrays two very different criminal justice systems in the United States: one before and one after roughly 1960. Obviously the system did not change overnight, but as he persuasively shows, before and after look very different now. As he further explains, the system responded to patterns of offending and the patterns of offending responded to the system.\textsuperscript{60}

Before 1960, the justice system was local, political, and relational. Cities were controlled by political machines. The machines chose the judges that imposed sentences, the district attorneys who prosecuted cases, and the police chiefs responsible for keeping the peace. Jobs in

\textsuperscript{56} Stuntz, *Collapse*, at 26-32.

\textsuperscript{57} Pinker, *Better Angels* at 123-24.

\textsuperscript{58} Pinker, *Better Angels* at 116-128.

\textsuperscript{59} Stuntz, *Collapse* at 274-281.

\textsuperscript{60} Stuntz, *Collapse* at 244-283.
the police department were filled by patronage. All were accountable to voters - mostly city voters - upon whom system actors depended for power and privilege. And the earlier system had more trials before more local juries, a legal check that supplemented an efficient political economy. Although Stuntz concedes that Gilded Age policing was more brutal, corrupt, and lazy than today, that enduring image masks an important truth; that Gilded Age criminal justice was also more lenient, more locally democratic, less discriminatory, and more effective. Urban violence rates in the Gilded Age were markedly lower than today. 

The Great Migration of black Americans from the South transformed urban populations and politics. White flight to the suburbs increased the political power of county governments and decreased the power of cities and neighborhoods. The influx of millions of mostly poor young men into crowded city slums naturally increased violence. Racial discrimination in jobs, housing, and education no doubt increased social frustration and presumably further increased violence. The de-stabilizing effects of the 1960s and 70s also increased violence, and the de-stabilization was more pronounced in poor black neighborhoods. The racially disproportionate violence likely exacerbated the sense and reality of social marginalization among black males.

At the same time, reformers were professionalizing police departments, intentionally isolating them from the corrupting influence of politics, but inadvertently isolating them from communities most in need. Urban prosecutors and courts, already subject to the new political cross-currents, became over-burdened by the increase in crime and began to engage in assembly-line justice, unmooring those institutions from an effective political economy and largely eliminating oversight from juries as so many cases were resolved, of necessity, by plea bargain.

The consequence of these trends was to limit local democracy’s power over the levers of criminal justice. The police, prosecutors, judges, legislators, and most voters grew distant from black, high crime neighborhoods. When ownership is separate from control, those in control will manage to suit their interests, not the interests of owners. Criminal justice faces this fundamental governance problem in a particularly egregious form, since the managers of the criminal justice system have little to lose from mismanagement. The success and failure of criminal justice policy is felt in high crime neighborhoods, not in leafy suburbs, where violent crime is largely an abstraction or entertainment. “Decision-makers who neither reap the benefit of good decisions nor bear the cost of bad ones tend to make bad ones.” Disadvantaged black communities tended

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61 Id. at 129-157.

62 Id. at 15-20, 26-30.

63 As Pinker notes, researchers found that in dealing with blacks in poor neighborhoods, the police seemed to vacillate between indifference and hostility, reluctant to become involved but heavy handed when they did. Pinker, Better Angels, at 84.

64 Stuntz, Collapse at 32-35.
to see those bad decisions as evidence of racism and the system and its arrangements as illegitimate.\textsuperscript{65}

Thus, in “the twentieth century’s third quarter, criminal punishment collapsed; high crime black neighborhoods were abandoned to their fate. In the century’s final quarter, those neighborhoods saw the mass incarceration of their young men. Near-anarchy in one generation led to authoritarianism in the next; extreme severity followed extreme lenity.” High violence rates in black urban neighborhoods began due to understandable social disorder, much like in northeast cities during the beginning of the Gilded Age and the influx of immigrants from Europe. The rates exploded due to the de-stabilizing effect of the 1960s, racially fueled mistrust, and the retreat of government authority. The rates endure because local black communities have never exercised the level of political control necessary for effective, accountable, legitimate, stable crime control.\textsuperscript{66}

So the big problem, according to Stuntz, is the fading power of local democracy and consequent loss of legitimacy. For most of U.S. history, local democracy held critical, warring incentives in check. Neighbors want safe streets. Neighbors are loath to imprison their own. “Local political control over criminal justice harnesses both forces without giving precedence to either.” As a result, local power tends to be more stable and less extreme. It relies more on the so-called soft power of social controls. It cares more about outcomes than procedures and is more directly accountable. Local democracy is, surprisingly, more effective in controlling criminal violence, less punitive, and less discriminatory.\textsuperscript{67} More pragmatic.\textsuperscript{68}

Not so with the increasingly strict, centralized criminal justice system of the past 50 years. At first indifferent to increased violence in urban America, the system quickly embraced a punitive backlash. Centralized criminal justice has been pathologically devoted to the use of hard power, arrests and imprisonment, with little effort directed toward the levers of social control. It is legalized, bureaucratized, procedure-based, and stubbornly unaccountable. It sees

\textsuperscript{65} Id. at 36-39. Likewise, Pinker notes, “mistrust of the criminal justice system turned into cynicism and sometimes paranoia, making self-help seem the only alternative.” Pinker, \textit{Better Angels} at 115.

\textsuperscript{66} Stuntz, \textit{Collapse} at 34-39.

\textsuperscript{67} Id. at 36.

\textsuperscript{68} Stuntz’s conception of localism echoes John Dewey, the champion of pragmatism, who also stressed a local, participatory approach to public problem solving. Dewey believed that “community” is distinguished from “society” by its members’ recognition of their shared interest, and that equality is the fruit of community if its action is directed by its character as a community. Brandon L. Garrett and James S. Liebman, \textit{Experimentalist Equal Protection}, 22 Yale L. & Pol’y Rev. 261, 277-78 (2004).
criminal violence as a problem with “them,” not us, and responds accordingly.69 It is overtly, symbolically, hollowly moralistic. Lincoln’s verdict is no less apt now: “I have always found that mercy bears richer fruits than strict justice.”

Implications

Put this all together and violent crime ought best be controlled by larger, more effective police departments operating with urgent accountability in close conjunction with communities where there is mutual trust, respect, and support. If true, the crime drop ought to be explained by the re-assertion of government authority, strengthened community networks, and changing norms. Likewise, cities with enduring problems ought to be characterized by the lack of local control and legitimacy. The study that definitively tests this theory does not yet exist. Nor are there studies that attempt to show, for example, that cities that experienced the greatest violent crime drop in the 1990s differed from cities that experienced the lowest violent crime drop in ways this theory might predict.

Still, the available evidence is increasingly coalescing around these ideas. More importantly, there is a vast difference between science and practice.70 Criminal justice officials have to act on available evidence and common sense. They cannot wait for scientific certainty. Our present system has enabled the tragedies of high, racially disproportionate murder and imprisonment rates for at least 30 years. The time for meaningful change is past due.

Stuntz argues that the residents of high crime neighborhoods are the best hope for meaningful reform. The issue is power. People in disadvantaged communities lack sufficient power to best balance the competing interests of punishment and mercy. The police department is the criminal justice institution most connected and accountable to the community. Thus, to Stuntz, they offer the best path toward reform.71

This is particularly insightful in light of the revolution in policing in the U.S. over the last 20 years. If police were brutal, lazy, and corrupt in the Gilded Age, “reform” transformed them into detached, professional, crime responders by mid-century. The crime wave was a wake-up

69 Stuntz, Collapse at 31, 34, 310-312.

70 Mark H. Moore, Improving Police Through Expertise, Experience, and Experiments, in Police Innovation, Contrasting Perspectives, Weisburd and Braga eds. Cambridge University Press (2006) (critiquing ‘evidence-based policing’ and urging that crime policy, although it should be guided by responsive science, should be driven by practical wisdom and experience).

71 Stuntz, Collapse, at 36, 288, 294, 308.
IV. Police Innovation - Community Policing, Compstat, Ceasefire

In 2004, Steven Levitt argued that the 1990s crime drop had little to do with police innovations. Levitt argued that the drop was largely attributable to the waning of the crack epidemic, more police, higher incarceration rates, and the increased availability of abortion a generation earlier. Certainly the fact that crime dropped everywhere argues against idiosyncratic local factors as the primary source of the reduction. Levitt's conceptualization, however, fails to reflect reality. Police innovations did not just involve idiosyncratic local strategies. Police innovations included a new philosophy and better management and therefore may have interacted in complex ways. Additionally, the effects of police innovation are difficult to isolate because innovations evolve from previously developed practices and are quickly adopted or adapted elsewhere. Moreover, the energy and competence with which innovations are implemented varies greatly, muddying evaluation.

Looking back, it seems more likely that police innovations in the 1990s played a major role in the crime drop. It certainly fits the Roth-Pinker-Stuntz theory. The most prominent innovations of the past two decades include Community Policing, Compstat, and Ceasefire. Taken together, the mission statement of these innovations might as well be: Protect, Connect, Respect, and Empower. A brief description of the development and operation of these innovations, with particular attention to their application to gang violence, sets the stage. In each case, an idiosyncratic critic of criminal justice business as usual made enormous contributions.

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73 Steven D. Levitt, Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not, 18 J. Econ. Persp.163 (2004).

74 David A. Klinger, Spreading Diffusion in Criminology, Criminology & Public Policy, Vol. 2, No. 3 (July 2003). See also, Stephen D. Mastrofski, James J. Willis, Police Organization Continuity and Change: into the Twenty-first Century, 39 Crime & Just. 55 (2010) (explaining that police associations and other pressures exert an increased influence on police departments such that many reforms ‘go viral”)

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1. Community Policing - Connect

Community policing evolved from Herman Goldstein’s conception of Problem-Oriented Policing, a model that fundamentally rejected the professional model characterized by the ‘the three Rs’: rapid response, random patrols, and reactive investigation. Goldstein began his career as a city manager in Portland, Maine. A chance encounter with O.W. Wilson, an architect of the professional model, led Goldstein to a succession of positions as a police researcher, police executive, and ultimately as police law professor (sans law degree). Goldstein’s seminal 1979 article, *Improving Policing: A Problem-oriented Approach*, still offers critical insight.

Goldstein noted all bureaucracies, but especially the police, were susceptible to the "means over ends" syndrome. To illustrate the syndrome, Goldstein cited a newspaper report from Midlands, England:

Complaints from passengers wishing to use the Bagnall to Greenfields bus service that "the drivers were speeding past queues of up to 30 people with a smile and a wave of the hand" have been met by a statement pointing out that "it is impossible for the drivers to keep their timetable if they have to stop for passengers."

Writing amidst the crime wave that shattered the confidence of the professional model of policing, Goldstein wondered why police leaders were so surprisingly reluctant to move beyond procedure to substance, from administrative competence to outcomes. At heart, Goldstein argued that the function of the police was to deal with the problems of society. There are few, if any, problems more fundamental to contemporary U.S. society than urban gun violence.

Goldstein suggested that in defining and addressing problems, the police must be both realistic and specific. Unrealistic goals lead to inevitable failure, discouragement, and abandonment of useful efforts. And realistic goals must be precise, as overly broad goals are unaccountable. Violence is too broad. Even specific offense categories are not good markers because they represent diverse forms of behavior and cloud unofficial aspects of the problem under consideration. Thus, in researching the problem, the police should review not only police


77 Interestingly, Goldstein noted that the most ambitious national effort to institutionalize problem oriented policing - a program funded by Congress in the 1970s to reduce murder, rape, assault, robbery, and burglary in 8 cities - died because of a politically motivated commitment to achieve fast and dramatic, but naive and unrealistic results: 5% in two years and 20% in five years. *Id.*
reports, but also question and observe line officers and community members and make that ‘network knowledge' readily available to all within the community of interest.

Goldstein believed that police could not avoid responsibility for the most serious problems, but ought to make partnerships with social service agencies and the community to address problems of mutual concern. Arrests are not the only tool police possess, especially when they engage partners. Changes in the physical environment or government services, sharing information, negotiating among groups and individuals, advocating city ordinances and zoning changes all are part of the tool kit. Finally, Goldstein thought it critical that the police be able to learn from experience; to manage themselves by collecting and analyzing data about whether their attempts to solve problems were in fact reducing the problems. Ideally, he thought the community ought be involved in that process.

Problem-oriented and community policing have continued to evolve, as is evident from the operation of Compstat and Ceasefire. Nevertheless, the basic insights endure. There is a Stuntzian preference for substance over procedure, a pragmatic focus on precisely articulated, manageable problems, and creative partnerships with the community, whose soft power assets are frequently more effective than law enforcement.

2. Compstat - Protect

Compstat is the computer management system developed by the late NYPD Deputy Jack Maple to track crime in real time, deploy resources where they are needed, and hold precinct captains accountable for measurable reductions in crime. The government has no profit motive, stock market, or box score to assess its success. Compstat substitutes meaningful, real-time statistical measures to continually assess performance and thereby creates potentially comparable, powerful incentives for beat officers, district commanders, and chiefs to work from shared information toward shared crime reduction goals. Critically, Compstat makes outputs (crime increase or decrease) rather than inputs (i.e. arrests) the central performance measure. While much criticism has focused on simple-minded and militaristic implementation, better leaders have used the system to reduce violent crime in more pragmatic and unconventional ways.

Maple is certainly one of the more colorful characters in policing history. Profiled in the New Yorker by David Remnick in 1997, Maple wore bow ties and homburgs, stayed out late, and cracked wise up and down the chain of command. His self-serving account of the creation of Compstat had him sitting in Elaine's, the Manhattan nightclub, considering the overlooked parallels between policing and business. He watched owner Elaine Kaufman constantly tallying receipts so she knew at all times how well the night was going. If the receipts were down, she would immediately prod the waiters to attend every customer need and hit the tables herself "to keep the joint hopping." After his third glass of champagne, Maple claimed he scrawled on his napkin the four principles of the Compstat system: 1) accurate, timely intelligence; 2) rapid
deployment; 3) effective tactics; and 4) relentless follow-up and assessment.\textsuperscript{78}

The first was refined to accurate, timely intelligence that is clearly communicated to all. This meant gathering reported Part One crime information for every precinct on a daily basis, mapping it, identifying hot spots, and analyzing underlying causes. Before Compstat, crime numbers were rarely gathered more than twice a year to send to the FBI Uniform Crime Report. And even then they were not analyzed. Instead, police departments measured effort rather than results by such proxies as arrests and calls for service. Procedure rather than substance. Maple's insight was to use the crime numbers as the key to management. Computer-generated crime data is not only quick and accurate, but it can be dis-aggregated by crime type, by district, by time, day, and year, and compared with prior trends. Thus, it permits police leaders to recognize, analyze, and diagnose problems and evaluate interventions much like business leaders. Not surprisingly, since its inception, software products and crime analysts have proliferated.\textsuperscript{79}

The second principle was rapid deployment that is concentrated, synchronized, and focused. As Maple described it, the key here was to guarantee a unity of command. Specialized units like narcotics, homicide, and gang units could not free-lance, they had to coordinate and combine their efforts with patrol. This required a unity of command which the Compstat system lodged in the district commander, who was given the necessary resources and made to assume responsibility for the use of them.\textsuperscript{80}

The third principle was effective tactics, defined to mean any tactics that reduced crime. Maple meant to ensure that what worked was rewarded and copied throughout the department and what did not work was identified and discontinued.\textsuperscript{81}

Finally, relentless follow-up and assessment was meant to assure accountability. The primary mechanism used to promote this principle was the weekly Compstat meeting, where Maple and other department leaders regularly and transparently reviewed crime maps and statistics with commanders in order to gauge their ongoing compliance with the four principles. According to Maple, nobody ever got in trouble because crime numbers went up; trouble arose only if the commanders didn't know why the numbers were up or didn't have a plan to address the problems. Based on the district's crime trends, a commander received praise, criticism, questions, suggestions, resources, or new marching orders. In this way, district commanders were simultaneously held accountable and given substantial operational autonomy. And the


\textsuperscript{79} Id. at 32, 92-119.

\textsuperscript{80} Id. at 32, 120-148.

\textsuperscript{81} Id. at 32, 148-177.
meetings further served as an ongoing seminar in which the entire department learned from experience.\textsuperscript{82}

To Maple, the four steps "reset the standards by which operations were assessed at every level of the organization," from executive corps down to beat cop.\textsuperscript{83} They were managing toward the goal of crime reduction.

Mark Moore, a professor of Criminal Justice Policy and Management at Harvard University's Kennedy School of Government, analyzed the nature of the Compstat innovation. He concluded that Compstat was best viewed as a combined technical and managerial innovation that:

embeds the technical system for the collection and distribution of performance information in a broader managerial system designed to focus the organization as a whole, and a subset of managers who are relied on to exercise leadership in meeting the organization's objectives, on the task the organization faces. It becomes a powerful managerial system in part because the technical capacity of the system allows it to produce accurate information on important dimensions of performance at a level that coincides with a particular manager's domain of responsibility. This has the effect of not only measuring performance, but also pinpointing responsibility for action to improve performance."\textsuperscript{84}

In this view, Compstat worked because of its immediate, relentless focus, its institutionalization of "the sense of urgency about crime-fighting."\textsuperscript{85} To a great extent, Compstat institutionalized Goldstein’s model of problem solving policing.

A managerial innovation is not, as Mark Kleiman has noted, a substitute for strategy.\textsuperscript{86} That is, however a particular commander mixes strategy and tactics, the important criteria is substantive performance - whether the mix actually reduces crime. The connection between Compstat and New York’s parallel adoption of aggressive order maintenance tactics have left

\textsuperscript{82} Id. at 32-33, 178-188.

\textsuperscript{83} Id. at 33.


\textsuperscript{85} Heather MacDonald, \textit{The NYPD Diaspora}, City Journal, Vol. 18, No. 3 (Summer 2008).

many critics less than enamored with Compstat.\textsuperscript{87} Maple conceived of aggressive enforcement as an effective tactic to target violent criminals, but only a tactic. Someone stopped for public drinking may be wanted on a warrant, carrying an illegal firearm, or have crucial information about a violent drug gang. Quality-of-life enforcement allowed cops to act on problems quickly and ‘lock up the bad guys.’ Still, while Compstat is theoretically a neutral managerial innovation, it has come to be seen and implemented in a manner that supports arrest and incapacitation as the primary strategy to reduce violent crime. That need not be so. As Franklin Zimring notes, despite widespread recognition of New York’s unparalleled success in reducing violent crime, there is still no agreement among experts about which elements of New York’s approach caused the crime drop.\textsuperscript{88} Perhaps New York’s aggressive stop-and-frisk tactics were not a critical component of the success, or need not be.

The Compstat management system has become ubiquitous in police departments across the country. More broadly, mayors in numerous cities such as Philadelphia, Baltimore and Washington have implemented the system across all manner of government functions to assure accountability and progress in achieving goals.\textsuperscript{89} More broadly still, the data revolution has greatly increased the speed and ability of computer systems to gather, mine, analyze, and present relevant data across agencies.\textsuperscript{90} Thus, Compstat provides a widely diffused, effective, and viable model upon which to expand.


\textsuperscript{88} Franklin Zimring, The City That Became Safe, New York: Oxford University Press USA (2011). On the other hand, New York’s remarkable decline in violent crime was achieved with lower incarceration rates. Id.

\textsuperscript{89} On November 9, 2011, for example, New York Mayor Michael Bloomberg convened officials from Chicago, Boston, Newark, and Philadelphia to share advanced data analytic techniques to save tax dollars and solve urban challenges. “I’ve long said that my time in business and government has taught me that if you can’t measure it, you can’t manage it,” said Mayor Bloomberg. Data-driven analytics is the systematic use of information to find patterns of interest to identifying areas of high risk and high cost. Cities respond to these findings by prioritizing the high impact areas appropriately. The conference announcement noted that in the past, individual agencies have been limited in their ability to conduct large-scale analytics by mandate, scope, and organizational structure. Bloomberg created teams specifically for the purpose of data investigation that can cross agency boundaries. nyc.gov/html/om/html/2011b/pr401-11.html

3. Ceasefire - Respect, Empower

Although both were developed locally, the origins of Ceasefire and Compstat are otherwise near polar opposites. Compstat was top-down, hierarchical, and business-like. Ceasefire was bottom-up, partnership-heavy, and academic.

In 1995, David Kennedy and Anthony Braga, criminology researchers from Harvard's Kennedy School of Government, obtained a federal grant for gun research in Boston. Unlike most research projects, Kennedy and Braga participated in their own study by convening meetings, advising managers, and designing interventions.

Their first step was right out of the problem-oriented policing play-book. They analyzed youth murders in Boston to refine the problem. They mapped the murders. They looked at the age, race, and criminal history of the victims and offenders. And, following Goldstein, they did something startlingly simple but too rarely done - they surveyed line level police officers, probation officers, and street workers to learn what was really going on. In other words, they turned street knowledge into data. At the end of the process, Kennedy and Braga made three critical insights. First, the vast majority of the violence was committed by an incredibly small number of shooters who were vulnerable to the criminal justice system (even though the ‘system’ as a whole rarely understood the connection) because they were also busy committing a large number and variety of other offenses, such as drug dealing, gun possession, theft, minor assaults, motor vehicle and probation violations.91 Second, they found the violence was group based and status motivated. The back and forth shootings were beefs about respect or other ‘trifles’ carried out over months and years according to street codes that, first and foremost, did not allow calling in law enforcement. This small sub-culture was stateless acting under the worst of norms. Finally, they found repeated instances where, after a series of shootings by a local gang, the police and probation officers decided to impose their authority; they stepped up patrols, intensified drug and gun investigations, served outstanding warrants, and increased probation visits and surrenders.92

91 Gang members may also commit a disproportionate amount of domestic violence. See, Videtta A. Brown, Gang Member Perpetrated Domestic Violence: a New Conversation, 7 U. Md. L.J. Race, Religion, Gender & Class 395 (2007).

Two things were different from the ordinary, ineffective, and highly resented ‘crack-downs’ conducted by police elsewhere. First, the law enforcement attention was directed solely at known members of the gang responsible for the shootings. And second, the enforcement was coupled with direct communication to gang members of an explicit message: "Hey, maybe we can't stop all the violence and drug trafficking in the city, but we can stop your gang for the time being. Until the violence stops, we will continue to focus all our resources on you. You don't want that, do you?" Invariably, the violence in the area of concentration stopped, quickly. To Kennedy and Braga, these examples demonstrated that concentrated gang violence could be reduced by a highly concentrated police response, which they dubbed "pulling levers."

Kennedy aspired to apply this insight into a city-wide strategy to reduce youth violence by systematizing this concentrated response to eruptions of violence. That is, concentrate specifically on the small number of gang shooters; regularly collect and review current ‘soft’ data - observations and experiences - of police and others familiar with the troublesome gangs; combine soft data with traditional crime data and intelligence in order to identify violence hot spots; and deploy a multi-agency team to carry out a coordinated, communicated pulling levers intervention. And repeat the process until all 1400 gang members in Boston got the message.93

Ceasefire began as a focused deterrence strategy. Criminal justice policy primarily relies on formal sanctions to generate deterrence: in theory, a long prison sentence chills the enthusiasm of potential criminals. The obvious flaw is well understood. Violators are rarely caught; if caught, the process is long and the majority of convictions still receive probation. Thus, punishment is unlikely, untimely, and unimposing. Less obvious flaws are not so well understood. Gang members are not as deterrable as they might be because, among other reasons, they don’t understand the risks of being caught or the likely sentence; they don’t believe the police will be able to arrest them for any shooting or try to pull levers for other offenses; and they don’t believe the system is entitled to their respect in any event.

Ceasefire sought to ensure the certainty, swiftness, and severity of the sanctions for violence by expanding their scope and range. Instead of targeting individuals, Ceasefire introduced the concept of sanctioning the group. Instead of relying solely on prosecution of the underlying act of violence, Ceasefire employed novel ways to sanction groups involved in shootings. To make the point plain, the police directly communicated the new rules to the gang members. Working with Kennedy and Braga, the police orchestrated "forums" in which gang members would be called in to hear warning and encouragement. Police told members they would all be targets of all the expanded tactics if shootings by their gang continued. Social

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93 I was a member of the Boston Gun Project working group that developed and implemented Operation Ceasefire. I was at the time an Assistant U.S. Attorney in Boston responsible for prosecuting drug, gun, and gang cases. Among other things, I drafted the operations plan, prosecuted pulling lever cases, and attended nearly all of the forums among gang members, law enforcement, social services, and community members. My account here is drawn from the cited sources and from my own participation.
service providers were on hand to offer help in a positive direction with education, job training, mediation, and other programs.

In the recent book *When Brute Force Fails*, Mark Kleiman explains the deterrent value of what he usefully calls ‘dynamic concentration.’ Law enforcement cannot successfully investigate, arrest, prosecute and punish all offenders. Faced with a constant stream of shootings, police often feel as if (and gang members recognize) they are playing a hopeless game of whack-a-mole, always responding equally to each shooting. The trick, says Kleiman, is to choose one subject rather than trying to respond equally to all. He draws the same analogy Kennedy does, to the Texas Ranger facing down a mob with one bullet. “Whoever takes the first step forward, dies.” If everyone in the mob believes him, no one steps forward. If enough gangs believe the message, the situation tips; fewer actual shootings mean police have more resources to respond to the next shooting and re-enforce the credibility of their initial warning. Kleiman further suggests that temporarily adding additional enforcement capacity can tip the system to a low violation rate that can subsequently be maintained with fewer enforcement resources. The policy implications are obvious enough, especially for federal enforcement: don’t spread enforcement resources evenly or randomly. Instead concentrate or swamp enforcement resources on a few selected locations, tip the location to a low offending rate, and move on.⁹⁴ Same resources, fewer violations, less imprisonment. More effective and more just.

But deterrence turned out to be less significant to the Ceasefire equation than legitimacy. The forums became a place for community engagement, a place to articulate, discuss, and spread community norms and build legitimacy and collective efficacy. Street outreach workers, ex-gang offenders, beleaguered urban ministers, grieving mothers all found forums to be a far too uncommon opportunity to stand with police and say to those who needed to hear it that shooting was wrong, that their community cared about them, and that they had to stop hurting their community.

Youth violence in Boston declined quickly and dramatically after the forums were initiated. Ceasefire was implemented in the middle of 1996. Murders in Boston, which had reached a high in 1990 of 151, fell from 95 in 1995 to 59 in 1996 to 43 in 1997. By 1999, Boston had only 31 murders. Boston's murder rate in 1999 was 5.5, lower than New York, and even below the national rate. Boston's murder rate stayed low until 2000, when the city unwittingly abandoned Ceasefire by transferring the police official who led the effort. In 2001, Boston suffered 65 murders. Lack of institutionalization led to Ceasefire's unheralded demise.⁹⁵

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The Ceasefire strategy has been implemented in dozens of cities. It has been carefully evaluated in seven cities, six of which saw significant declines in violent crime. One of Ceasefire's strategic insights is that the initiative's energy need not be spent maximizing the number of arrests or the length of prison sentences handed out to gang members. Rather, the resources are spent maximizing the deterrent value of targeted arrests, creating and employing additional formal and informal sanctions to deter shootings by gang members, and utilizing all such sanctions as an occasion for their "community" - mothers, preachers, former convicts - to tell gang members directly that shooting one another is wrong.

Leading scholars view the success of Ceasefire-type programs as evidence that legitimacy and social control are more effective, efficient, and humane than tough law enforcement practices grounded in deterrence theory. The procedural justice model stresses legitimacy rather than deterrence based on the belief that people are more likely to obey the law when they perceive decision-making and treatment by police and other authorities to be fair. In this view, police should take concrete steps to gain community trust; Ceasefire is a positive development, but does not go far enough because it is only a discrete program of limited scope rather than a central emphasis guiding all police and law enforcement decision-making and action.

4. Something New?

Action Research

According to former National Institute of Justice official Lois Mock, the success of Ceasefire gave birth to an approach she calls ‘action research,’ in which researchers play an active role in local criminal justice problem solving. Researchers enhance data collection and analysis, and sharpen the articulation of the problem. They are familiar with research results across the country and can advise on promising strategies and best practices. They can improve the monitoring of the intervention and better evaluate and present the results. Over the past ten years, the action research approach was greatly expanded and institutionalized in Project Safe


98 Schulhofer et. al, supra, note [], at 351.
Project Safe Neighborhoods

Implemented in 2001 in all 94 U.S. Attorney Districts nationwide, PSN was intended to be a comprehensive national program to reduce gun violence at the local level. PSN was “built on what were viewed as successful approaches utilized in the Boston Ceasefire project, the ten-city Strategic Approaches to Community Safety Initiative (SACSI), and Richmond’s Project Exile. It was designed as a collaborative problem solving initiative utilizing a strategic research-based model to reduce firearms violence through enforcement, deterrence, and prevention.”

PSN had five key components: 1) partnerships; 2) strategic planning and research


101 Id. SACSI was a program to model action research projects similar to Operation Ceasefire in 10 new cities. Project Exile, originated in 1997 in the United States Attorney's Office in Richmond, Virginia, was a federal and state initiative to prosecute gun possession cases in federal court at a time when Richmond had one of the highest homicide rates in the country. In addition to dramatically increasing the number of federal firearms prosecutions, Exile relied on a creative and extensive general media campaign to deter gun possession. David E. Patton, Guns, Crime Control, and a Systemic Approach to Federal Sentencing, 32 Cardozo L.Rev. 1427, 1447 (2011); Daniel C. Richman, “Project Exile” and the Allocation of Federal Law Enforcement Authority, 43 Ariz. L. Rev. 369 (2001). Richman suggests Exile-type programs were used by Republican politicians to counter Democratic calls for gun control legislation by arguing the real need was to get guns out of the hands of criminals via tough, existing enforcement measures. Democrats reluctantly agreed for fear of appearing weak on crime. In the political sphere, Republicans favored Exile and ‘supported’ Ceasefire while Democrats favored Ceasefire but ‘supported’ Exile. Thus, there was an obvious political tension when the Bush Administration combined the approaches in a single program. Here is how the Final Project Report diplomatically describes the mix: “A key component of the PSN strategy was the increased federal prosecution of gun offenders but with a recognition that increased prosecution was likely to have the greatest impact if coupled with strategic problem solving at a local level and communication strategies targeted at both offenders and the general population.” Final Project Report at 6.
integration; 3) training; 4) outreach; and 5) accountability. “The intent was that these components would maximize the investment of federal resources through a focus on the contexts driving gun crime in particular jurisdictions. Research would assist in focusing resources and local and state partners would bring understanding of local conditions as well as resources to the interventions. The goal was to significantly reduce gun crime.”

The degree and manner of implementation depended significantly on the discretion of individual U.S. Attorneys. Districts that had solid, well-functioning partnerships invariably had a high level of commitment and involvement by the U.S. Attorney. Additionally, many U.S. Attorneys experienced a tension between the desire to serve their entire judicial district and the recommendation to focus resources on those cities suffering the most gun crime.

Strategic planning faced a significant hurdle in the lack of timely data specifically about gun and gang crime, both locally and nationally. According to the Final Project Report, accountability suffered as well:

reporting of potential performance measures was very limited. At its peak in 2002 only 60 percent of the districts submitted data and by 2005 this dropped to 10 percent. At its peak, only one-third of the data reports were judged to be of good or very good quality in terms of accuracy and completeness. The data submitted by PSN districts could be used for within-district assessment in only a small number of jurisdictions and did not allow for cross-site, much less national, assessment of either program outputs (e.g., arrests, prosecutions, prevention programs, etc.) or outcome measures (e.g., gun crime).

Nevertheless, the Final Project Report concluded that PSN target cities experienced a significantly greater decline in violent crime than non-target cities, and that “high dosage” target cities had a significantly greater decline than “low dosage” cities. The authors of the Final Report recommended, among other things, better, more timely gun and gang crime data locally and nationally; better targeting of resources to cities most in need; and better needs and capacity assessments to insure that cities have functioning partnerships and information infrastructure before receiving significant enforcement resources.

102 Final Project Report at iii.
103 Id. at iv, 170.
104 Id. at v.
105 Id. at vi-vii, 140-143 See also, Patton, Systemic Approach, supra note [] at 1450-52 (describing research methods and results).
106 Id. at vii-viii, 187-190.
The New Criminal Justice

Despite the setbacks, Klofas, Hipple, and McGarrell argue that PSN has ushered in a new era they call the New Criminal Justice. They argue that the old linear model of the criminal justice system - where cases move forward across semi-autonomous agencies - no longer captures the reality on the ground. Instead, problem solving and the imperative to reduce crime has caused a new model to emerge, one characterized by complex and powerful collaboration, a focus on local problems and solutions, and a deep commitment to research. Although the authors believe the new model is a positive development, they caution that it may be susceptible to abuses of power and violations of privacy, and that it may prove difficult to sustain over time.

New Governance and Democratic Experimentalism

Largely outside the sphere of criminal justice, a growing literature describes a policy-making approach termed “the New Governance” or “Democratic Experimentalism” that shares significant similarities with evolving police practice and the New Criminal Justice model. According to this literature, New Governance operates outside the traditional, formal ‘top-down’ legal infrastructure and is generally a ‘bottom-up’ approach “characterized by the greater participation and collaboration of non-traditional players, the use of consensus building mechanisms, reliance on peer review and collaboration, and the integration of public-private partnerships and research experiments into the formal policy-making process.”

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107 The New Criminal Justice: American Communities and the Changing World of Crime Control, John M. Klofas, Natalie Kroovand Hipple, Edmund F. McGarrell (eds) Routledge: New York (2010). The media is increasingly beginning to take notice of many of these new approaches. See, i.e. John Buntin, How Game Theory is Reinventing Crime Fighting, Governing Magazine (February 2012)(discussing Ceasefire and dynamic concentration as smart, cost effective alternatives to incarceration that appeal to conservatives as well as liberals).

108 The New Criminal Justice at 12-13. David Sklansky expands on the possible dangers. He argues that pulling lever strategies like Operation Ceasefire reflect a trend he calls ad hoc instrumentalism, which treats criminal justice issues pragmatically and views broad discretion as a necessity. Sklansky views the trend with concern and argues that transparent, political accountability is perhaps the most important means of controlling against abuse. David Alan Sklansky, Crime, Immigration, and Ad hoc Instrumentalism, Vol. 15, No. 2, New Criminal Law Review 157-223 (Spring 2012).

experimentalist approach relies less on formal scientific experiments and more on “robust public participation, benchmarking, and information sharing to solve public problems.”\textsuperscript{110} The model “embeds these local problem-solving efforts within larger structures of transparency that promote accountability and cross-jurisdictional learning” to foster continuous improvement.\textsuperscript{111} They enable government to harness “the power of new technologies, market innovation, and civic engagement to enable different stakeholders to contribute to the project of governance.”\textsuperscript{112}

Although normally applied to regulatory agencies, scholars have recognized features of the New Governance at work in efforts to address the criminal justice problems of drugs, wrongful convictions, and police misconduct.\textsuperscript{113} The approach is nascent; a full blown program or regulatory regime has yet to emerge.\textsuperscript{114} Among the practical challenges are gaining buy-in to a collaborative effort among diverse stakeholders and creating institutional structures to sustain improvement as a continuous process.\textsuperscript{115} Among the more fundamental challenges is reaching agreement in fields where goals are multiple and complex.\textsuperscript{116}

The scholarly literature suggests experimentalism is a useful approach to public problem


\textsuperscript{114} Simmons, \textit{New Governance} at 419; Kruse \textit{Instituting Innocence Reform} at 674.


solving. But is it suitable model for a national program to reduce urban violence?

V. Federal Role

Any national policy or program to reduce urban violence must account for the Constitutional designs of federalism and equal protection. As regards urban violence, federalism has long counseled a hands off approach while equal protection has been little more than an empty promise.

Federalism suggests that state and local governments should be free to adopt their own rules and govern their own affairs because they are closer to the community and will make better, more legitimate judgments about public value. The Constitution makes clear that crime was intended to be a state and local responsibility, as the only crimes mentioned in the text are piracy, counterfeiting, treason, and offenses on the high seas and against the law of nations. Outside these discrete crimes, federal criminal jurisdiction is based, oddly enough, on the power of Congress to regulate interstate commerce. Thus, the principle justifications for the use of this authority are to control or eliminate truly interstate activities that implicate national interest, such as securities fraud, and to address instances where local enforcement is ineffectual to the detriment of national interests, such as public corruption or organized crime. That design has been the historical norm and, although much legal scholarship decries creeping federal encroachment, it mostly endures. The federal government prosecutes only 7% of all felony cases.

In contrast to direct enforcement, the federal government’s authority to provide funding to state and local government entities for criminal law enforcement is lodged in the General Welfare clause and is virtually unlimited. Thus, the Constitution provides Congress the power to “lay and collect Taxes” to provide for the “general Welfare of the United States.” This so-called spending power enables Congress to spend for any purpose that serves the ‘general welfare,’ whether or not that purpose falls within other enumerated powers. Congress’s apparently boundless power to spend includes an only slightly more limited power to regulate through


\[\text{\textsuperscript{117}}\text{ Stuntz, } \textit{Collapse}\text{ at 159-160.}\]

\[\text{\textsuperscript{118}}\text{ The Constitution delegates to Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Art. I, § 8, cl. 3. Commerce is “commercial intercourse” and is regulated by prescribing rules for carrying on that intercourse. The commerce power “is the power to regulate; that is, to prescribe the rule by which commerce is to be governed.” } \textit{Gibbons v. Ogden}, 9 Wheat. 1, 189-190, 6 L.Ed. 23 (1824).\]

\[\text{\textsuperscript{118}}\text{ William J. Stuntz, } \textit{Unequal Justice}, 121 Harv. L. Rev. 1969, 2027 (2008).\]
conditional spending. Thus, Congress may further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives. Although the spending power has been put to substantial use in grants and subsidies to specified state and local law enforcement activities, the power to condition such funding upon compliance with explicit policy directives has been far less evident.120

As for equal protection, the 14th Amendment provides that no state shall deny to any person the equal protection of the laws. In contrast to the hands off ideal of federalism, equal protection implies a hovering federal power. In contrast to general welfare spending, equal protection imposes an express duty upon the states. Broadly construed, Stuntz argues that equal protection might mean that states that routinely fail to protect black victims and prosecute their killers within certain cities and neighborhoods at grossly higher rates than elsewhere might be

119 In South Dakota v. Dole, 483 U.S. 203 (1987), the Court confronted Congress's effort to impose a nationwide drinking age of twenty-one--a goal Congress arguably could not achieve by direct regulation or fiat--by threatening to withhold a portion of federal highway funds from any State that failed to impose such a rule on its own. South Dakota objected, arguing, among other things, that Congress's carrot-and-stick efforts "violate[d] the constitutional limitations on congressional exercise of the spending power. . ." The Court rejected the argument. Such conditional spending is permitted if it serves the general welfare, conditions the receipt of funding unambiguously, is related to the federal interest in a national program or project, and does not run afoul of other constitutional provisions. Id. at 208.

120 See, i.e. Kami Chavis Simmons, Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability, 62 Ala. L. Rev. 351 (2011)(proposing increased conditions upon the receipt of COPS funding to assure adoption of safeguards to prevent police misconduct). The amount of federal funding to local law enforcement has varied since it began in earnest in the late sixties. In 1968, Congress enacted the Law Enforcement Assistance Administration. It provided block grants to states for disbursement to state and local police to improve crime control. Between 1968 and 1982 LEAA disbursed $8 billion. LEAA was discontinued under the Reagan Administration largely because it was viewed as inefficient, mismanaged, and ineffective. New programs quickly took their place. The Crime Control Act of 1990 authorized $900 million for the state administered Byrne grant programs to fund violence reduction and narcotics enforcement. Annual appropriations for these programs ranged from $535-569 million from 1996 to 2001. Daniel C. Richman, the Past, Present, and Future of Violent Crime Federalism, 34 Crime & Just. 377, 391-99 (2006). In 1994, near the height of the crack epidemic, Congress established the Office Community Oriented Policing and provided funding directly to city police departments to hire more officers. Between 1994-2010, the COPS office disbursed between $500 million to $1.5 billion annually. Nathan James, Community Oriented Policing Services (COPS): Background, Legislation, and Funding, Congressional Research Service, January 4, 2011. The total DOJ budget request for 2013 for federal assistance to state and local law enforcement is approximately $2 billion.

www.justice.gov/opa/pr/2012/February/12-ag-205.html
committing a Constitutional violation. It would be an understatement to note that such a construction has not animated either Constitutional jurisprudence or national urban violence policy.\textsuperscript{121}

Nor is the legal landscape likely to change anytime soon. Thus, equal protection will remain a question for the political branches to resolve. Garrett and Liebman argue that may be just as well, as interior, structural solutions are more effective than exterior, judicially enforced commands.\textsuperscript{122} They argue that collaborative federalism and experimentalist equal protection can achieve more with less wrenching practical difficulty in a variety of policy areas. Analyzing the thinking of James Madison and John Dewey, Garrett and Liebman argue that experimentalist regimes embody federalist design and a pragmatic means of achieving meaningful equal protection.\textsuperscript{123} The key is to establish arrangements characterized by “continuous interactive cycles of local innovation and central monitoring.”\textsuperscript{124} The core themes echo the evolution of problem-solving policing, Compstat, and Ceasefire.

\textsuperscript{121} As David Sklansky has noted, there is no useful body of law regarding the equitable allocation of criminal justice resources. Although the denial of police services to minorities might be grounds for a violation, the Supreme Court has made clear that the Equal Protection Clause generally prohibits only decisions made with “discriminatory purpose” – that is, “because of,” not merely ‘in spite of,’ adverse effects on minority groups.” David A. Sklansky, The Private Police, 46 UCLA L. Rev. 1165 (1999). Stuntz tells the story of how the Supreme Court killed the legal promise of equal protection during Reconstruction by overturning federal convictions of individuals involved in Klan-inspired massacres of black citizens. Stuntz, Collapse at 99-128; see also, Charles Lane, The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction, New York: Henry Holt (2008). Stuntz suggests the historical ripples have helped enable the current wildly disproportionate rates of urban violence and imprisonment on the basis of race. As Stuntz sums it up, “the ideal of equal protection - the notion that all Americans are entitled to a measure of freedom from private violence, the same measure their well-to-do neighbors received - was dead.” Stuntz, Collapse at 117. He argues that if the original vision of the 14\textsuperscript{th} Amendment was revived, then in poor violent neighborhoods, both the under-policing and the under-enforcement of violent felonies, and the over-enforcement of drug laws, would be more than a mere policy failure. It would be a constitutional violation that all levels of government would be collectively obliged to remedy. Collapse, at 291.

\textsuperscript{122} Brandon L. Garrett and James S. Liebman, Experimentalist Equal Protection, 22 Yale L. & Pol’y Rev. 261, 263 (2004); see also Michael C. Dorf and Charles F. Sabel, Drug Treatment Courts and Emergent Experimentalist Government, 53 Vand. L. Rev. 831, 836 (2000) (“Courts have had difficulty improving the performance of troubled institutions.”)

\textsuperscript{123} Garrett and Liebman, id.

\textsuperscript{124} Id. at 276-77.
“The gist of experimentalism, or public problem-solving, is the definition by the ‘center’ of an important problem and the center’s setting of rough improvement goals and incentives for improvement.” The center’s actions serve to spur formation of local teams to tackle problems but leaves them the “freedom and responsibility” to fashion the means to achieve the desired results.

In such a regime, the center defines the problem, sets rough improvement goals, creates incentives for improvement, monitors performance, compares performance across jurisdictions, and publishes data and analyses to facilitate cross-jurisdictional learning. Goals are rolling, not static, as the center continuously re-assesses goals and ratchets them upward as experience permits. The center also pays specialized attention to the laggards - jurisdictions not meeting improvement goals - and may send teams of professionals to consult or, in more aggressive regimes, to take over failing local jurisdictions. Through these various actions, the center and local jurisdictions develop stronger connections and shared purpose, what Garrett and Liebman call fraternity.

Local activity is typically undertaken by “teams of stakeholders with a variety of informational perspectives who are all committed to defining the target problem more precisely, then solving it.” These teams collect data, plan strategies, organize, and employ tactics to achieve the desired results and then continuously report their progress.

“The classically experimentalist situation arises when the problem at hand is of sufficient moment to warrant a national commitment and the diversion of national resources to its solution, but when the problem cannot be solved without the application of local knowledge to the problem’s local idiosyncrasies followed by the national dispersion to similar localities of the comparatively best results.”

This experimentalist model is well-suited to the problem of urban violence. Despite sharing similar fundamental characteristics in cities across the country, urban violence is an acutely local problem whose nature and intensity vary considerably from city to city, as does the form and capacity of the stakeholders trying to address it. Urban violence is serious and complex

125 Id. at 290.
126 Id. at 291.
127 Id. at 291-295.
128 Id. at 305-308.
129 Id. at 291.
130 Id. at 298.
and ought to call forth urgent action, trial and error, and a rich feedback system of data analysis and assessment. Moreover, non-traditional partnerships are under-utilized but are a practical necessity because state and social control are both essential to reducing violence. Finally, the similarity and success of problem-oriented and community policing and developed models like Compstat and Ceasefire shows the promise of overcoming various potential challenges.

Indeed, PSN might be viewed as an ambitious experimentalist design to address the urban violence problem. However, a careful experimentalist critique reveals critical design and implementation flaws that undermined its fidelity to the model.

PSN’s problem definition and improvement goals were too vague to meet experimentalist needs. PSN “was intended to be a comprehensive national program to reduce gun violence at the local level.” Among other things, that broad definition of the problem fails to capture the extreme concentration of firearm violence within poor minority neighborhoods and among gangs. As a result, PSN could be dismissed as a typical programmatic blandishment rather than a vibrant experimentalist endeavor. Likewise, the general goal to “reduce gun violence” is too vague. As Goldstein advised, to avoid discouragement and maintain accountability, goals must be realistic and specific. Reducing gun violence is elastic enough to be realistic, but hardly specific enough to maintain accountability.

PSN did provide incentives for improvement, with over $3 billion allocated to the program over 8 years. Much of the money went to local task forces to hire research partners and prevention activities.

The biggest flaw, however, was the monitoring and comparison of performance. Although PSN usefully focused on outcomes, it did not establish a system of real time reporting, the data reported was not uniform, and no significant attempt was made to compare performance across jurisdictions and publish the results. These factors dissipated local incentives to improve performance and fatally undermined the federal government’s ability to insure local accountability and promote cross-jurisdictional learning.

Finally, PSN lodged responsibility at a local level, but not local enough. Local U.S. Attorneys were responsible for forming PSN task forces. However, U.S. Attorneys are responsible for entire judicial districts, giving rise to an inevitable tension between concentrating resources on the cities and neighborhoods with the highest rates of gun violence and spreading

\[ \text{Final Project Report at iii.} \]

\[ \text{Final Project Report at iii.} \]

\[ \text{Final Project Report at 4 (each district provided with $150,000 for three year grant to research partner), and at 13 (block grants to partnerships supported prevention and intervention activities).} \]
resources equally across the district. Even when efforts were concentrated within the cities suffering the highest rates of gun violence, coordinators were only encouraged to include non-law enforcement partners on the PSN task forces. In design and practice, PSN relied too heavily on traditional hard law enforcement power and too infrequently on non-traditional soft community power.

In short, PSN failed to achieve its potential to create an experimentalist equal protection regime. On the other hand, PSN apparently succeeded in reducing violent crime rates, encouraged and expanded criminal justice partnerships, and embedded researchers within the criminal justice system. All of these are positive trends that help lay the groundwork for a more ambitious experimentalist regime.

VI Proposals

The lessons so far might be summarized this way: the urban violence problem is a concentrated local problem in poor cities and neighborhoods across the country that developed in similar ways for similar reasons. As such, it is also a national problem. It is both a law enforcement problem and social problem whose solution requires the combined, focused, energetic actions of the police and the community. Federalism counsels a limited, supplementary enforcement role for the federal government in criminal justice. By contrast, the spending power and equal protection clause provide the means and obligation to ensure no poor city or neighborhood is abandoned to a violent fate. Throwing money into a rudderless system, however, is bound to fail, as is issuing orders to “fix” troubled institutions. Thus, the federal government should take a problem management approach, focus available resources on the problem, and collaborate with local teams of police and community to continually improve performance, especially in the most violent cities and neighborhoods. The key elements of a problem management approach are strict accountability and broad, urgent participation; the key actions are to:

- Use data to identify the problem more precisely and realistically;
- Address the problem substantively, not procedurally, by measuring its incidence and striving to reduce it;

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New York Times columnist David Brooks is the public intellectual who most consistently highlights and advocates a flexible, collaborative, experimentalist approach to vexing social problems. In a recent column criticizing the Obama administration’s decision to end a locally supported school voucher program, Brooks wrote that a realistic antipoverty program works in the opposite way of a top-down, technocratic organization. “It’s not like a military unit. It’s like a rain forest, with a complex array of organisms pursuing diverse missions in diverse ways while intertwining and adapting to each other.” Thus, he urged problem solving programs to “flood the zone with as much rich diversity as possible.” David Brooks, *Flood the Zone*, The New York Times (February 6, 2012).
- Create structures to encourage stakeholders to address the problem with urgency;

- Work through police and local partners, focus on the small number of groups committing the most firearm violence, and combine hard legal and soft social power (and maximize the latter);

- Lodge responsibility both nationally and locally in identified agents and give them sufficient resources to tackle the problem;

- Continually and transparently evaluate and compare progress.

In the experimentalist model, the tasks of the center are to largely to monitor the action. The action itself occurs at the local level. Thus, the primary task of the center is to create a coherent system of enhanced comparative performance measures. In addition, the center ought to attend to the relatively few disadvantaged cities that consistently suffer unacceptable levels of violence. To address this problem, the center should devise a system of targeted funding and support to empower focused law enforcement-community partnerships in the most violent cities (and eventually in the most violent neighborhoods). Together, the envisioned program of enhanced performance measures and targeted support would go a long way toward steering a sustainable national policy to dramatically reduce urban murders, imprisonment, and racial discrimination.

1. Central Monitoring

In experimentalist regimes, the center (A) defines the problem, (B) sets and re-sets rough improvement goals, (C) creates incentives for improvement, and (D) monitors performance, compares performance across jurisdictions, and publishes data and analyses to facilitate cross-jurisdictional learning. In addition, the center pays specialized attention to the laggards. This last concern will be the subject of Part VI(2). This part addresses (A) through (D).

A. Defining the Problem

PSN’s definition of the problem as gun violence was too broad to be of much value and probably led to significant waste, at least insofar as the program encouraged the use of federal enforcement resources where state resources would suffice. As discussed in Part II, the problem of gun violence in the United States is a problem concentrated within cities in neighborhoods of concentrated disadvantage. It occurs among young males, disproportionately black, in criminal groups and gangs fighting over issues of respect. To use federal resources to address all gun violence is over-broad. This a problem because resources are wasted on cities that don’t need them and because cities that do need them don’t get enough. For a problem whose solution requires a concentrated focus and application of available resources, dissipation is fatal.

Framing the problem to highlight the extreme concentration provides far greater clarity,
albeit at some political risk. It becomes clear, among other things, that apart from urban gang violence, there is little systemic need for federal efforts to reduce violent crime. It becomes clear that criminal groups and gangs play a primary role in fostering gun violence and highlights the need for more analysis and practical understanding of group dynamics. It becomes clear that violence afflicts cities and neighborhoods of concentrated disadvantage and that those cities and neighborhoods must be the locus of the response. And it becomes clear that the issue of race is deeply implicated in the problem and inseparable from the solution. Finally, it becomes clear that the certain stakeholders not traditionally a part of the criminal justice system have a critical role to play. Community activists, mentors, social service providers, and civil rights organizations, among others, can affect neighborhood, group, and racial dynamics in ways that might help solve the violence problem. At the same time, such a frank acknowledgment of the concentrated nature of the problem carries political risk: it implies a redistribution of resources to the poor; it confirms to the majority that the problem does not directly implicate their self-interest; it increases the likelihood of partisanship, as urban constituencies tend to be heavily Democratic; and it requires a discussion about race. These ingredients are not in the standard recipe for political change. Nevertheless, if energetic focus is imperative, the political obstacles must be overcome. The potential for less violence, less imprisonment, less discrimination, and less cost ought to be strong political counter-weights.

B. Goals

In an experimentalist regime, the center sets rough goals that local jurisdictions try to meet. Importantly, the goals are rolling, not static, as the center continuously re-assesses and aspires to better performance as experience permits. For urban violence, these goals ought to include both minimum protection goals and improvement goals.

That all cities and neighborhoods should have a minimum level of protection from urban violence seems uncontroversial. What that goal ought to be is, of course, a political decision. Nevertheless, the foregoing discussion helps set the parameters.

As noted, only 165 cities in the country suffered more than 10 murders in 2010 and only 70 cities that suffered more than 25 murders. Only 39 cities suffered murder rates higher than 20 and half of those were cities with a population below 100,000. Only 14 cities suffered more than 50 murders with a murder rate higher than 20.

The national goal ought to be manageable, or in Goldstein’s formulation, specific and realistic. Thus, an example of a specific and realistic goal might be that within 5 years no city endure more than 50 annual murders with a rate over 20. If this were the goal, several consequences ought naturally to follow.

First, the problem would be manageable - it would focus on just 14 cities. Second, the goal would be realistic. While 8 of the cities had murder rates over 30, the remaining 6 are already close to below the target level (and in fact, Washington DC achieved a murder rate below
20 in 2011, although Philadelphia took its place). Third, the goal would give DOJ more powerful political incentives to provide those 14 cities with resources sufficient to achieve its stated goal. That is to say, the mere setting of the goal would focus and energize action by the center. Fourth, the goal might create incentives for local action as well. That is, local stakeholders within the 14 cities might use the goal as a spur to come together to address the problem. Fifth, the stated goal would signal to the states that the bulk of outside support for smaller cities will have to come in the first instance from the states, not the federal government. In other words, the Governor of Michigan would understand that intensive federal commitment of resources would be confined to Detroit and Flint, so that intensive commitment of resources to bring down the homicide rate in Inkster would have to come from the state. Sixth, the goal would give substantive relief to the proceduralist debate over the federalization of street crime. With this goal, it would become clear that the federal government is not primarily responsible for urban violence; apart from the central umpire function, its role is an emergency responder in the few cities where the state and local response is plainly inadequate.135 And finally, because there is a stated goal, the President, Congress, the press, and the public can readily determine if the goal is being met and, if not, DOJ will face pressure to explain why and, ideally, learn from its successes and failures and improve its approach. Thus, DOJ would likely be in constant contact with the 14 cities to see how things were going.

A realistic time frame is important because, as McGarrell demonstrated, many jurisdictions do not have a history of working partnerships among law enforcement and community agencies nor high functioning data systems or research capacity. The first year of funding might address information systems and analysis; the second year partner identification and inventory; the third working through the logistics of coordinating action.

A minimum protection goal inevitably excludes cities whose murder rates are lower than the established minimum. A national program should create appropriate incentives for all cities to improve. Improvement goals could perform that function. Thus, for example, the center could establish as a rough goal that all cities annually reduce their murder and shooting rates and that the reductions total 10% over five years. Those reductions would be tracked and compared and the cities with the biggest annual reductions could be rewarded, their strategies, tactics, and interventions analyzed, and possibly replicated elsewhere. Likewise, the cities at the opposite end of the spectrum would be recognized, analyzed, and, hopefully, improved by interaction with the center and comparison with peers.

Finally, as the goal in experimentalist regimes is rolling, not static, initial goal setting can be conservative, focused, and attainable since everyone understands the goal will be revised. If an initial goal is achieved, Congress or DOJ can set new goals that ratchet down the minimally acceptable of violence and ratchet up the target level of improvement. And perhaps, based on evolving experience, the center might begin to set goals to address other issues of deep consequence, such as mass incarceration and discriminatory impact.

C. Incentives For Improvement

Apart from the obvious incentive that all cities want safe streets, there are two primary incentives for local cities to participate with the center in this experimentalist endeavor: money and glory.

As regards money, the federal government provides state and local government with a significant amount of money to support police departments and programs to reduce crime and improve the criminal justice system. The spending power carries with it the power to condition receipt of funds on compliance with regulatory directives. Here the primary directive would be to report on standardized violent crime outcomes in real time. Such a directive would not include otherwise common procedural restrictions on how funds are spent or what particular policies or tactics are employed. Moreover, government agencies, especially police departments, are increasingly accustomed to reporting real time data internally and on publicly accessible websites. Thus, conditioning federal funding on implementing transparent reporting practices should not be onerous.

As regards glory, one problem with ‘War on Drugs’ or ‘War on Crime’ metaphors is that they create the wrong incentives. Wars are expensive, destructive, and (at least in the past) they end. A war against a social problem never ends. The war metaphor encourages unrealistic expectations, exhaustion, and cynicism. Sports is a better metaphor. Competition focuses effort, spurs better performance, and clarifies assessment.

An annual competition among cities would dramatically embed local efforts to reduce firearm violence within a larger, immediately transparent structure that would promote accountability and cross-jurisdictional learning and thereby foster a cycle of continuous improvement. Better incentives and better learning. For that to happen, the center (in the role of Major League Baseball, FIFA, or the IOC), must establish the ground rules, especially

\[136\] Liu, Interstate Inequality, supra, Note [], (arguing that “the level of educational opportunity adequate for equal citizenship cannot be reduced to a static, absolute minimum. Instead, it will depend on the evolving demands of one's society and on the range and contours of the society's overall distribution of opportunity.”)

standardized performance measures.

D. Comparative Performance Measures

Compstat showed the value of timely crime data in holding police managers accountable for progress toward crime goals. National statistics show violent crime concentrated in disadvantaged cities and neighborhoods. Problem-oriented research shows that group and gang related shootings account for the great majority of the violence in these troubled cities and neighborhoods. And recent evidence suggests that the power and perceptions of the affected communities bear substantially on crime rates. Stakeholders and policy makers at federal, state, and local levels ought to hunger for timely data on group and gang gun crime in distressed urban areas, compare cities, and figure out what law enforcement and social activities and characteristics best reduce gun crime. At present, there is no readily available data or system to guide that assessment.\(^ {138} \) “Without processes for defining goals and assessing experiments against those goals, the larger society has little chance of learning what works and what does not.”\(^ {139} \) The time has come to fix that management shortcoming. The federal government - DOJ with regular input from Congress - should be the national violence reduction commissioner and score-keeper.\(^ {140} \)

Timely data on shootings and as well as murders, tallied by group, with trends compared among demographically similar cities (and ultimately neighborhoods) would be a major breakthrough. Such focused, timely data would better enable DOJ to identify and precisely articulate emerging trends, better evaluate the efforts of police community partnerships receiving federal financial, technical, and enforcement assistance, and better compare the performance in crime reduction of similar cities to pinpoint effective and ineffective strategies. Moreover, it would advance research by having more detailed, consistent crime data from multiple cities.

The proposal here is focused strictly on the problem of urban violence. Thus, it need not be implemented in every jurisdiction across the country. The collection, analysis, and

\(^ {138} \) See Miriam H. Baer, Choosing Punishment, 92 B.U. L. Rev. 577, 599 (2012) (“we lack reliable and legitimate methods for measuring and testing retributive policy. Our metrics are not much more sophisticated than tabulating annual enforcement actions, criminal cases, convictions, and fines and pointing out particularly salient wins or losses.”).


\(^ {140} \) Discussing the book “Uncontrolled,” by Jim Manzi, David Brooks notes that government conducts few policy experiments because there is no infra-structure and no good way to conduct randomized tests of policy. The solution is decentralization, trial and error, and good feedback loops to insure we “fail less badly every day.” David Brooks, Is Our Adults Learning? New York Times, April 27, 2012.
submission of such performance data should, however, be a condition for any jurisdiction that receives federal funding or enforcement resources to address urban violence. It might be first modeled within the cities receiving enhanced federal funding and subsequently expanded to all jurisdictions receiving any federal urban violence funding.

i. Timely Data

A national Compstat system would significantly advance the ability of DOJ to monitor, evaluate, and compare local performance data and, consequently, better manage its response to urban violence. Moreover, reporting such data on the web would better enable researchers, practitioners, and the public to understand and participate in efforts to reduce violence. Such a proposal is not new.

In 2007, the Police Executive Research Forum (PERF) recommended a national Compstat system “to search for pockets of violence” whenever and wherever they occur and react quickly, analogizing police to public health epidemiologists who need to respond quickly. The National Research Council proposed an extraction system to take advantage of advances in the sophistication of computer networks and the timeliness of crime data. In its final report on PSN, McGarrell et. al. noted, “As DOJ increasingly emphasizes performance measures, and as policymakers seek more timely information about trends in crime and the impact of a program such as PSN, the limitations of existing crime information systems will serve as a source of continual frustration. In the information age, it seems realistic to expect that one could access trends in homicide on as “real-time” a basis as trends in consumer confidence, the consumer price index, or the cost of gasoline in markets across the country.”

Most large urban police departments maintain web-sites on which they post weekly Part One crime data and, mimicking Compstat, compare it to the same data at the same time the prior year. Thus, for example, one can look at the Boston Police Department web-site and see that from January 1 to June 25, 2012, Boston suffered 22 homicides, whereas it had suffered only 17


143 Final Project Report at viii.
homicides as of June 25, 2011. Leading economic indicators come out monthly or quarterly. Sports standings are updated daily. Real-time data speeds learning, encourages urgency, and strengthens transparency and accountability. There is no reason why violent crime data should not get real time treatment as well.

ii. Shootings

The collection of UCR crime data has changed surprisingly little in the past 80 years. Prior to 1930, there were no uniform, centrally reported crime statistics. The UCR program began in 1930. Under the program, local police departments submitted to the FBI the number of reported instances of seven categories of crime thought to be likely to be reported, verifiable, and sufficiently serious - the so-called Part One crimes: four violent crimes and three property crimes. The few minor changes to the program show how crime statistics are most reliable and useful when the crime is susceptible to uniform classification. Arson is the only recent

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144 In addition, newspapers like the Los Angeles Times and real estate websites like trulia.com map crime on a real time basis. Jochnowitz, supra, note [].

145 The utility of such data is underscored in a recent New York Times article analyzing an upsurge in violence in Chicago. The article noted, “Homicides are up by 38 percent from a year ago, and shootings have increased as well, even as killings have held steady or dropped in New York, Los Angeles and some other cities.” It also included a graph comparing the number of homicides in the past five years and the number this year compared to last year at this time in six cities: Chicago, New York, Los Angeles, Detroit, Philadelphia, and Houston. The source was listed as the FBI’s UCR and police departments. The five year comparison showed steady declines in Los Angeles and Houston and flatter profiles in the other cities, but also showed Chicago, Philadelphia, and Houston had increases this year whereas the other cities showed decreases. Monica Davey, Rate of Killings Rises 38 Percent in Chicago in 2012, New York Times, June 25, 2012.

146 The other primary crime data program is the National Crime Victims Survey, established in 1979 and administered by the Bureau of Justice Assistance. The NCVS is critical to evaluation of under-reported crimes like rape. Murder and shootings tend not to have an under-reporting problem. Since the focus here is on the worst urban violence, the NCVS is less consequential.

147 The seven offenses were murder and non-negligent homicide, rape, robbery, and aggravated assault (the violent crimes); and burglary, larceny, and motor vehicle theft (the property crimes).

148 As Steven Pinker recently explained, "Conventions are unstated agreements within a community to abide by a single way of doing things—not because there is any inherent advantage to the choice, but because there is an advantage to everyone making the same choice.
addition to the Part One crimes; it was added in 1979. The FBI opposed the addition, arguing that arson was very difficult to properly classify and that the utility of the statistics would be severely limited. Those arguments were overcome by the proponent of the change, Senator John Glenn, who insisted inclusion would focus attention on a solution to a national problem. Similarly, in 1990 Congress passed the Hate Crime Statistics Act to focus attention on the problem of bias crimes. The utility of both arson and hate crimes has been limited by a lack of uniform application. Shootings do not suffer that problem.

Part One crime is a problematic measure of the most serious urban violence. As noted, most urban murders are gun homicides committed by group or gang members. Homicide statistics, however, include gun and non-gun murders and gang and non-gang murders. Moreover, the homicide numbers are typically such small numbers in most jurisdictions that random variations are extremely difficult to differentiate from significant trends. Other Part One crime is largely irrelevant. Rape and robbery do not correspond to levels of gang violence. And aggravated assaults include a diverse variety of offending that may include but does not measure gun crime or group offending.

As McGarrell et. al noted in their PSN report, “at the local level, although many police departments have developed very sophisticated crime information systems, in many jurisdictions it remains extremely difficult to analyze patterns of gun and gang crime. This was evident in the limited participation and poor quality of data reporting by PSN task forces.” They further note, “at a national level, the limitations were also obvious. The UCR crime reporting system is the only consistent national measure of crime at a city level. Yet, its limitations for research are significant. Foremost, there is no category of gun crime.”

The UCR should be amended to include submission of shootings as a separate category of offense. At the very least, Congress and DOJ should encourage and conditionally require urban police departments to submit crime data on shootings. Many police departments already track

|Standardized weights and measures, electrical voltages and cables, computer file formats, the Gregorian calendar, and paper currency are familiar examples. | http://www.slate.com/articles/arts/the_good_word/2012/05/steven_pinker_on_the_false_fronts_in_the_language_wars_.single.html |

149 Hate crimes are those offenses motivated in whole or in part by offender’s bias against a race, religion, disability, sexual orientation, or ethnic or national origin. As with the UCR program, reporting under the Act is voluntary. In 2010, the FBI reported that 15,000 jurisdictions participated in the Hate Crimes program, compared to 17,000 in UCR program. But 87% of participants reported no hate crimes. For example, California reported more hate crimes per capita than Alabama and Mississippi, leading some scholars to suggest a lack of good faith reporting by at least a portion of the participants.

150 Final Project Report at vii.
shootings as an independent crime statistic derived from the initial police report. A shooting includes any person actually struck by a bullet fired from a firearm. Shootings, like murder, tend to involve the same high percentage of gang-driven offending.\textsuperscript{151} Shootings are verifiable, as they typically result in hospital visits and police response.\textsuperscript{152} Shootings are typically 4-6 times more numerous than homicides, thus they more easily reveal trends.\textsuperscript{153} Moreover, a shooting can become a homicide as the result of a seemingly random collection of situational variables such as the quality of the shooter’s marksmanship, the response time of emergency medical services, and the skill of the attending emergency room doctors. Thus, shootings provide a more accurate and sensitive indicator of criminal violence than homicides. For example, in Boston earlier this year, homicides were slightly up but shootings were slightly down. The shooting data helped demonstrate that the homicide rise, while serious, was likely an aberration rather than an indication of systemic failure.

iii. Group Shootings

Shooting data addresses the need for gun crime measures. What about gang crime measures? The lack of uniform definition and the difficulty of determining whether a gang member was involved has hobbled the measure of gang crime.

One of Goldstein’s central lessons was to make ‘network knowledge’ available to all. Recall the initial Ceasefire research in which Kennedy and Braga determined that gangs were responsible for 60-75% of homicides in Boston. This ‘network’ data came from case reviews of murders with line level officers, probation officers, and street-workers. More recently, Braga and the Boston Police Department have expanded this ‘street knowledge-case review process’ to fatal and non-fatal shootings and accelerated the collection and analysis process to deliver close to

\begin{itemize}
  \item \textsuperscript{151} Braga, Anthony A., David Hureau, and Christopher Winship. (2008). "Losing Faith? Police, Black Churches, and the Resurgence of Youth Violence in Boston." Ohio State Journal of Criminal Law, 6 (1): 141 - 172. (finding gang members were involved as either perpetrator or victim in 70% of the fatal and non-fatal shootings in Boston in 2006).
  \item \textsuperscript{152} Because they are verifiable, shootings are more immune both from manipulation by police departments and from claims that police departments are engaged in manipulation. Hence, shootings are an accurate measure and likely to be perceived as legitimate. See, i.e. Wendy Ruderman, Crime Report Manipulation Is Common Among New York Police, Study Finds, New York Times, July 3, 2012 (reporting study by Eli B. Silverman and John A. Eterno based on survey of retired New York City police officers concluding that Compstat systemically fosters incentives to downgrade crimes to lesser offenses and discourage victims from filing complaints to make crime statistics look better).
  \item \textsuperscript{153} See, i.e. http://www.bpdnews.com/wordpress/wp-content/uploads/July-9-2012.pdf (showing 22 murders and 104 shootings in Boston in 2012 as of July 9. The 4-6 figure is based on my own comparison of Boston murder and shooting numbers over the past seven years.
\end{itemize}
real-time data.

Every week day morning, the Boston Regional Intelligence Center (BRIC) hosts a conference call of detectives and officers from the districts and specialized units, probation officers, and other criminal justice practitioners. The circumstances of shootings from the previous day are reviewed and a preliminary assessment is made of the gangs involved. This information is codified in the BRIC databases for immediate decision-making purposes. Every quarter, Harvard researchers and BRIC personnel hold more formal shooting incident reviews where additional details of the event are recorded and gang-involvement and motives are confirmed.

By categorizing shootings by group, Boston can now quickly and effectively identify the most violent groups and communicate that information within the department, to its partners, and even to offenders and the public. If one accepts that small known groups of offenders are overwhelmingly responsible for the great majority of drug and violent crime and that coordinated, surgical enforcement and direct engagement can deter crime without the need for destructive campaigns relying on mass arrests, then group shooting data is critical tactical intelligence. By pin pointing the most serious violent crime problem, group shooting data can better energize effective police and community responses, discourage destructive responses, and promote accountability and legitimacy. For example, in forums police and community can point to group shooting data to objectively tell members how violent their group is. If arrests and prison sentences are tracked, group members can better see for themselves the likely consequences of violence. The sanitized information can also be reported in court or to the press, giving the public a clearer sense of the problem and added confidence in the legitimacy of targeted law enforcement responses. Community and social service partners can use the data to better target and evaluate their own anti-violence activities.

Likewise, group shooting data can serve as the core of a powerful performance evaluation system by incorporating it into a Compstat-like process. If the city sets as a goal the reduction of shootings by 20%, during the year, tracking of the shooting data will show whether the city is meeting the goal, or whether more focused, enhanced efforts are needed. The shooting data categorized by group will show the gangs responsible for the majority of the shootings. Assume, for example, that Gang A is responsible for 20% of the shootings and Gangs B, C, D, E, and F are responsible for another 50% of the shootings. Local officials might decide that Gang A will receive a “pulling levers” intervention and that Gangs B-F will get a lower level of law enforcement attention, but enhanced attention from social service and community members with

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154 Anthony Braga, David Hureau, Christopher Winship, Losing Faith? Police, Black Churches, and the Resurgence of Youth Violence in Boston. 6 Ohio St. J. Crim. L. 141, 155 (2008)(explaining that by focusing on overall homicide rates from 2000-2005, the Boston police missed the fact that gang-related homicides steadily increased through the decade.”).
social influence. As the year progresses, tracking of the group shooting data helps the partnership determine whether the incapacitation of Gang A eliminated their shootings; whether direct engagement reduced shootings within Gangs B-F; and whether any new gangs have erupted in violence. In this conception, the gang shooting data hold the police and its partners accountable for shooting reductions.

The ranking of groups by level of violence might serve as a spur to collect and analyze additional group based data about the most violent groups - such as group arrests, group street-worker contacts, group social service participation, and group moral voice exposure. Such data may permit the police and community to draw tentative conclusions about what mix of tactics caused the biggest shooting reductions with the fewest arrests. Further qualitative group research - asking police, street-workers, service providers, and community members about the activities of the group during the year - may shed additional insight into the effectiveness of various tactics and prompt the use of new tactics. Thus, the group shooting data can become the basis of an ongoing seminar in which the police and community continue to learn and refine and improve their approach.

Moreover, by focusing on gang shootings rather than gangs, the proliferation of group shooting data will serve as a disincentive to police to stop and arrest members on non-violent gangs, thereby reducing risks for discrimination and violation of civil liberties.155

Finally, although the information is generated and analyzed locally, the federal government can gather the information from all cities with an urban violence problem. Such data will provide a powerful management tool to focus and energize state and federal violence initiatives. Thus, law enforcement leaders will be better able to prioritize investigations, assess the competing claims of local authorities for scarce resources, and demonstrate the danger of targeted gangs. Social service officials will be better able to assess whether programs reach the problem. Likewise, researchers and grant makers will benefit in many of the same ways.156 Finally, cross-jurisdictional learning will be enhanced because the group-related shooting data

155 See, i.e. Rebecca Rader Brown, the Gang's All Here: Evaluating the Need for a National Gang Database, 42 Colum. J.L. & Soc. Probs. 293 (2009) (expressing concern over increased dissemination of gang intelligence).

156 For example, Blumstein has recommended initiation of a major program within the Office of Justice Programs to strengthen the ability of medium sized cities to respond to outbursts of violence. The program would analyze approaches that have worked in a variety of places, document successful innovations, and facilitate replication by mobilizing technical assistance and training teams. Robust group shooting data from around the country would greatly further the analysis. New Strategies For Combating Violent Crime: Drawing Lessons From Recent Experience, 2008: Hearings Before the Senate Committee on the Judiciary, 110th Cong. 36 (testimony of Alfred Blumstein, Professor, H. John Heinz III School of Public Policy and Management, Carnegie Mellon University)
will allow cities to better compare their circumstances to successful and unsuccessful cities.

Congress and DOJ should condition funding for urban violence on reporting group shooting data. Initially, the methods and definitions should be suggested but not required to leave cities the freedom to fashion methods and definitions to reflect the local circumstances of the gun violence problem. DOJ should carefully review the data and continue to improve and standardize both the data collection methods and the definition of group and group shooting to insure that the data continues to maintain its local tactical and strategic value while at the same time providing national value.

iv. Comparative Performance

Competition is the American way. In business, sports, entertainment, and politics, competition hones performance. Intense comparison and competition motivate change and reveal secrets. Just ask any Major League Baseball general manager. When Michael Lewis wrote Moneyball in 2003, the Oakland As, with a payroll of less than $40 million, were outperforming the New York Yankees, who had a payroll five times greater. The reason? Oakland aggressively used sophisticated metrics to evaluate performance and inform strategic decisions.\textsuperscript{157} Within just a few years of the book’s publication, every major league team was using similar statistical analysis. Oakland’s secret advantage is now gone.

Not so in crime control. Indeed, the federal government actively discourages competition. In a “word” about UCR data on its web-site, the FBI states, “Since crime is a sociological phenomenon influenced by a variety of factors, the FBI discourages ranking the agencies and using the data as a measurement of law enforcement effectiveness.”\textsuperscript{158} This is bad

\textsuperscript{157} Michael Lewis, \textit{Moneyball}. New York: W.W. Norton & Co. (2003). Some critics complained that Lewis’s glorification of the Oakland A’s was unwarranted because they did not discover sophisticated statistical analysis. Lewis replied that the Oakland A’s “never claimed Beane discovered sophisticated statistical analysis. They claimed to be ramming it down the throat of an actual big league baseball team.” (Paperback edition, Postscript at 292).

\textsuperscript{158} \url{http://www.fbi.gov/about-us/cjis/ucr(word}. Every year, CQ Press ignores the FBI and publishes rankings of city safety based on the UCR statistics. Every year mayors and police chiefs complain that the rankings are unfair. Criminologists back them up, explaining that the risk of being a victim depends more on who you are and what you do than where you live. And variations within cities are more important than variations between cities. Mary E. O’Leary, \textit{Crime rankings create false negative picture, experts say}. New Haven Register, January 24, 2012 (quoting criminologists Janet Lauritsen and Richard Rosenfeld). “In all cities, serious crime is disproportionately concentrated in a handful of high-risk neighborhoods. Differences in crime rates are far greater within cities than between them,” according to criminologist Richard Rosenfeld. He is right. As noted, 65-75\% of Boston's homicides occur in Dorchester, Roxbury, and Mattapan - 3 districts with roughly 30\% of Boston’s population (last year 40 out of 62, or
If the rankings actually measured the effectiveness of the police response to violence, they would be enormously useful. Cities would be accountable and cross-city comparisons would aid the accounting. The citizens of Detroit would complain that the Detroit police were 10 times less effective than the San Diego police because Detroit’s murder rate is over 30 and San Diego’s is less than 3. Of course, such a comparison based on the raw crime numbers is baseless because the frequency of crime is based on more than just the actions of police. The most effective police force in the country would not make Detroit safer than San Diego.

Yet, we know how to construct a fair system. Police researcher Edward Maguire explains that in order to make a system of comparative performance measure work, the comparisons must be fair. “Just as police departments located in the poorest, most disorganized communities might be expected to have the highest crime rates, hospitals admitting the most at-risk patients might be expected to have the highest death rates, and prisons admitting the worst offenders might be expected to have the highest recidivism rates.” There are two primary ways to control for these factors. One method is stratification, or creating peer groups of cities with similar populations and socio-economic factors. The other method is risk assessment. Risk assessment means to control for the demographic factors that correlate to violent crime. Such adjusted assessments or rankings would be an important measure showing how well or how poorly cities are doing controlling violent crime in light of their comparative demographics.

Not only does the knowledge about how to construct such a system exist, the federal government has supported research to construct it. Strangely, federal officials have not put the research to any substantive use and it has received precious little public attention. Given the potential value, the neglect is hard to accept. Criminologists Richard Rosenfeld, Alfred just under 65%). And the rankings fail to account for happenstance - if Boston included the populations of Cambridge and Brookline, its murder rate in 2010 would have been 9.1 instead of 11.3. Cities with a smaller footprint typically have a higher murder rate. According to Rosenfeld, St. Louis has the second worst crime rate among US cities, but its metropolitan area crime rate is 120th. A neighborhood specific measurement system would be helpful in assessing comparative danger.


This article proposes that the federal government should remedy that neglect. Of course, in theory other entities could play the role of the center. For example, while the federal government is well-positioned to play the role, a consortium of foundations might be able to construct a comparative performance system more efficiently. In return for violence reduction grants, cities would be required to report murder, shooting, and group shooting data and
Blumstein, and Robert Friedmann, using federal funds, constructed a statistical model that adjusts the homicide figures for cities with populations greater than 250,000 by differences across the cities in poverty, median income, unemployment, race composition, and female-headed households. They maintain that the model provides a more meaningful comparison of city homicide levels, especially for providing insight into the effectiveness of criminal justice policies and programs. In particular, they found that the five demographic factors explain roughly 75% of the differences in the murder rate among cities. They hypothesize that any additional differences in observed murder rates among the cities reflect the effectiveness or ineffectiveness of law enforcement. By that reckoning, Detroit, Memphis, Cleveland, Atlanta, Chicago, Dallas, and Philadelphia all have significantly fewer murders than their socio-economic numbers would predict. New York and Boston also both outperform their predicted rates. Affluent, low homicide cities like San Diego and Seattle do not.¹⁶¹

demographic data to the consortium which would then collect, analyze, and publish the results.

¹⁶¹ Ranked by out-performers, to be expected, and under-performers, their analysis looks like this (the unadjusted column is the city’s rank based on the murder rate with 1st as worst and 63rd as best; the adjusted column is the rank based on the murder rate adjusted for what one would expect, and the differential column is the difference between the two - or the presumed measure of how much they out-performed expectations):

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<th>City</th>
<th>Unadjusted</th>
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<td>Corpus Christi (TX)</td>
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<tr>
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<td>38</td>
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DOJ should erect a meaningful system of comparative performance measures in urban violence. They might begin by convening a panel of criminologists, police scholars, practitioners, and management experts to determine whether stratification, risk assessment, or some combination is most useful. If stratification, the panel would suggest the best number and membership of peer groups. If risk assessment, the panel would critique and improve the ICD model. In keeping with experimentalist models, the peer groups or risk assessment models would evolve over time as experience determined which were most useful.

Assume, for example, that DOJ decides stratification is the best approach. They might form three divisions, with cities like San Diego and Seattle in the safest division, cities like Detroit and Baltimore in the most dangerous, and cities like Boston and Indianapolis in the middle division. All cities would report murder, shooting, and group shooting data on a weekly basis. DOJ would maintain updated “standings” based on the greatest percentage reduction in shootings from the previous year (or, if they combine stratification with risk assessment, the cities might be ranked by greatest reduction from expected number of shootings based on demographic factors). DOJ might also report “box scores” for each city including the number of murders, shootings, and group shootings, and the name and number of shootings for the five most violent groups in the city. At the end of the year, DOJ would recognize and reward the winners in each division and provide a detailed analysis of the law enforcement and community stakeholders and the strategies they employed during the year.

Such a system would have enormous value in several respects. First, the competition would inject a level of urgency and accountability into the business of crime reduction. Most teams and cities want to win; no team or city wants to finish last. A weekly, public announcement of how cities compare with their peers provides immediate incentives to focus attention on reducing shootings. Second, the system would improve cross-jurisdictional learning. Cities that consistently outperform their socio-economic factors would be more easily and immediately apparent. Additional study of such cities would help pinpoint effective tactics and

<table>
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<th>City</th>
<th>Murder Number</th>
<th>Shooting Number</th>
<th>Group Shooting Number</th>
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<td>Albuquerque (NM)</td>
<td>44</td>
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The panel might also take an initial crack at explaining why the more conspicuously anomalous cities like New York and Memphis are safer than their demographic indicators would predict.
strategies that could be successfully implemented elsewhere. Likewise, it would help identify under-performers, pinpoint strategies that don’t work, show the need for outside consultation, and perhaps the need to condition additional funding on the implementation of new management structures and strategic programs. Perhaps - like Moneyball did for players with high on base percentages - a system of enhanced performance measures would help reveal the best police leaders, strategists, and analysts and increase their market value (and the best community leaders and increase their social capital). In any event, such a system would give the public, press, and city managers the far better tools to hold police and their partners accountable for performance. Finally, a system that took account of socio-economic realities would better demonstrate the need for increased resources for our hardest hit cities and neighborhoods.

v. Future Data

More comprehensive, real time data on arrest rates, imprisonment rates, and racial and community variables would be enormously helpful. DOJ should not only provide money to local departments to enhance their capabilities in this regard, it should ensure that the data is transmitted and available, and standardized to the extent possible so DOJ can track, evaluate, and make even better comparisons of the performance of cities across the country.

Two primary areas ought to be the focus of continued innovation in management tools. First, neighborhood data. As noted, the urban violence problem is a problem within the most severely disadvantaged neighborhoods. There is no current system to collect and evaluate data on a neighborhood level. One obvious problem is there is no consistent or practical definition of neighborhood. Nor does it match with any lines of political authority. As a consequence, there are substantial limits about what we know about whether strategies have worked to reduce violence in troubled neighborhoods. A consistent method of evaluation would help that process.

Second, beyond data showing the reduction of violent crime, additional data would better show the most efficient and effective means of achieving those reductions and balancing them with other social goals. So, for example, city imprisonment and arrest rates, collective efficacy, and citizen satisfaction with police all bear on not only whether a city is safe, but whether it is also efficient, functioning, fair, and livable. Standardized measurements in these areas would facilitate cross-jurisdictional performance evaluations and provide better incentives to improve performance in these critical areas.

So, for example, “perceived legitimacy is assessed by asking people to express their

163 That is exactly what happened in New York City schools when new rankings were released. “The rankings were based on a complex formula that took into account demographics and past test results to predict student performance, then credited or blamed teachers for the difference between the projections and the actual performance.” Winnie Hu and Robert Gebeloff, After Release of Ratings, a Focus on ‘Top’ Teachers, The New York Times, February 26, 2012.
degree of faith in various public institutions, as measured by their belief that officials are trustworthy, concerned about the welfare of those with whom they deal, able to protect citizens against crime, and otherwise do their jobs well.”¹⁶⁴ Standardized survey instruments and sampling techniques would allow legitimacy to be measured and compared across cities to determine which police departments and justice systems perform better in this regard and whether greater legitimacy is correlated with lower violent crime rates when adjusted for demographic factors.¹⁶⁵

In short, the system of the future would measure and assess, in real time, equivalent data for cities and neighborhoods concerning violence rates, imprisonment rates, discrimination, and social structures and activities in order to help cities better manage their criminal justice systems by adjusting both hard and soft levers of control. To do that, cities need not only the right data, but also the right management structures.

2. Targeted Funding; Partnership Accountability

Experimentalist regimes address a problem largely by improving accountability. In theory, improved accountability produces better politics and better solutions to intractable problems. The center’s role is to set goals, create incentives, monitor performance, and facilitate learning. The proposed system of enhanced performance measures is designed to accomplish these tasks. However, in experimentalist regimes, the center also pays specialized attention to the laggards. How ought the federal government fulfill that role?

At present, DOJ provides a hodgepodge of funding to states and local agencies across the country to reduce crime and improve the performance and efficiency of the criminal justice system. Whether and how well they have achieved that amorphous goal is, perhaps as intended,

¹⁶⁴ Schulhofer et. al. Crossroads, at 345.

¹⁶⁵ “According to a National Research Council committee's report, the most frequently used measures of police organization success focus on crime and disorder control and law enforcement (Skogan and Frydl 2004, chaps. 5-6). Also used are general measures of citizen satisfaction or assessments of police competence (Gallagher et al. 2001). Less frequently measured are police use-of-force measures and complaints against police. Rarely used are indicators of how police use their authority informally (which is far more frequent than formal applications), the quantity and quality of assistance rendered to citizens in need, and the fairness and effectiveness of police processes. Even less studied is police organization success in community building (Mastrofski 2006a, p. 58). Although there is a growing literature on many of these outputs and outcomes in assessing the practices of individual officers (Skogan and Frydl 2004, chap. 4), there is much less of this research at the organization level, attempting to learn the impact of organizational features.” Stephen D. Mastrofski, James J. Willis, Police Organization Continuity and Change: into the Twenty-first Century, 39 Crime & Just. 55, 74 (2010).
open to substantial debate. Regardless, it is not likely a point of reasonable contention that for the past twenty years a dozen or more cities - cities like Gary, Detroit, New Orleans, and Camden - have been far more violent than other cities. Indeed, the level of violence in these cities is far greater than what any reasonable observer would say is acceptable.

Return to our minimum protection goal and our possible example of a specific and realistic goal: that within 5 years no city endure more than 50 annual murders with a rate over 20. What special, enhanced attention should the center provide to the cities falling below this goal in order to achieve it? Three aspects of such a program are critical. First, Congress and DOJ should form a single unit within DOJ bearing the express responsibility and sufficient resources to address the problem. Second, such a unit would provide targeted, concentrated funding to those cities with the worst urban violence problem. And third, the funding should go not to individual agencies or police departments, but only to comprehensive partnerships with sufficient personnel, resources, and power to act on and be accountable for the urban violence problem.

A. Single Unit

Compstat’s lesson in the unity of command should apply to the federal government as well as city police departments. A single unit within the DOJ should be responsible for implementing the system of enhanced comparative performance measures and achieving the goal of assuring that all cities fall below a threshold level of violence. The unit should include the presently dispersed, largely uncoordinated functions of data collection, research, analysis, evaluation, funding to state and local agencies, and enforcement to supplement local initiatives. That unit should use timely data to make resource decisions; lodge accountability in a single city institution; and continuously evaluate whether the resources provided are having the intended effect - in this case presumably decreases in group related shootings and murders.

Maple’s second Compstat principle was rapid deployment that is concentrated, synchronized, and focused. As noted, the key was to guarantee a unity of command so specialized units like narcotics, homicide, and gang units had to coordinate and combine their efforts with patrol. Likewise, DOJ has specialized units, none of which is specifically responsible for reducing urban violence, but all of whom presently play an uncoordinated role.

In particular, the Organized Crime and Gang Section is in the Criminal Division is a specialized group of prosecutors charged with “developing and implementing strategies to disrupt and dismantle the most significant regional, national and international gangs and organized crime groups.” They are an enforcement group typically using racketeering laws to attack groups who are active in more than one jurisdiction. The Office of Policy and Legislation in the Criminal Division includes a team of attorneys, policy analysts, and professional staff working with all the sections and offices of the Criminal Division and components around the Department to develop, review, and evaluate national crime, sentencing, and corrections policy and legislation. The COPS Office awards competitive and discretionary grants directly to law enforcement agencies across the United States. The mission of the National Institute of Justice
(NIJ) is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety. The mission of the Bureau of Justice Statistics (BJS) is to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government for use by Federal, State, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded. The FBI conducts the UCR. The Bureau of Justice Assistance (BJA) supports law enforcement, courts, corrections, treatment, victim services, technology, and prevention initiatives in order to strengthen the nation’s criminal justice system. BJA funding to communities emphasizes “local control, building relationships in the field, providing training and technical assistance in support of efforts to prevent crime.” The Executive Office for the U.S. Attorneys provides general supervision and evaluation of the 94 U.S. Attorney’s Offices. Finally, each U.S. Attorney exercises substantial independence from DOJ in Washington and can set her own priorities within the broad delegation of priorities articulated by the Attorney General.

Each entity plays an important role in responding to urban violence, yet none is directly responsible for a particular result and all have numerous other responsibilities. This organization by function rather than by substantive problem ensures that effective coordination is impossible and true accountability is non-existent. It is not hard to understand why federal efforts to address urban violence lack consistency, urgency, or direction. As Compstat lodged authority in the district commander, and as Ceasefire brought together law enforcement and community stakeholders in a focused working group, DOJ ought to institutionalize its response to urban violence by designating a single, multi-functional unit to manage the effort to reduce urban violence.

A single ‘urban violence’ unit would be responsible for implementing and managing the system of comparative performance measures set forth in the previous section. It would also be responsible for managing the system of targeted funding to the cities falling below a minimum acceptable level of protection and working with accountable partnerships within those cities to improve performance.

The ‘urban violence’ unit, however, would have more levers than funding and monitoring to help cities achieve their goals. Acting in conjunction with the local partnership, the urban violence unit would have the authority to allocate or request additional enforcement resources (including the investigative resources of DEA, FBI, ATF and the prosecution resources of the US Attorney’s Office and the Organized Crime and Gang Unit) to investigate and prosecute the most violent groups within the city. They would develop teams of experts for research, strategic

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166 U.S. Attorney’s Offices retain substantial independent discretion from DOJ in Washington. This proposal is intended to change incentives, not to limit that discretion. Thus, while the urban violence unit would have direct enforcement capacity akin to the present Organized Crime and Gang Unit in Washington, it would not have a corresponding authority to order the local U.S. Attorney to prosecute a particular case. Instead, it would have the ability to
intervention, management, and community outreach that could be deployed to cities for consultation and training.

In addition to measuring progress, disbursing funds to police and communities, coordinating enforcement, and providing expertise, the urban violence unit would more carefully evaluate the performance of the cities receiving enhanced targeted funding. Thus, for example, the urban violence unit might conduct quarterly progress reviews of all targeted cities. By combining the results of these reviews across cities and over time, the urban violence unit would develop a body of case studies and best practices to better guide progress toward meeting minimum protection goals. Likewise, the unit would be authorized to award grants to fund research aimed at further illuminating the most effective, efficient, and fair means of reducing group violence.

In short, a single urban violence unit would promote urgent focus, assure a sufficient level of critical resources, and avoid funding decisions that are duplicative, uncoordinated, or at cross-purposes. Moreover, a single unit would make it far easier for policy makers, the press, and the public to monitor progress as the unit will be a one stop shop for progress reports and research on urban violence. The National Research Council found that the most effective efforts to reduce crime are those that are most focused and tailored to the problem. A single urban violence unit within DOJ would better enable such urgent focus and customization.

B. Targeted Funding

request assistance and the responsibility to evaluate the local U.S. Attorney’s efforts to reduce violence in target cities. The request and evaluation levers might reasonably be expected to motivate U.S. Attorneys to cooperate with local authorities to the best of their ability. At present, many are skeptical that the predominant motivation is to cooperate and achieve outcomes. See, i.e. Daniel C. Richman and William J. Stuntz, Al Capone’s Revenge: The Political Economy of Pretextual Prosecution, 105 Colum. L. Rev. 583, 610-12 (2005) (The federal enforcement bureaucracy continues “to struggle with the tension between quality and quantity--the desire to use enforcement discretion to further broader programmatic or political (not necessarily partisan) goals against the desire to tout its achievements and justify additional funding.” . . . “For decades, federal prosecutors have worked in a system that offered a host of strategic charging options, little clear responsibility, and no external performance measures. In that kind of system, prosecutors' incentives were to (1) select targets (based on whatever criteria prosecutors wish to advance), (2) pursue whatever charges would maximize the odds of conviction, and (3) claim success in the most extreme terms possible.”).

The two primary questions about funding are how much and who gets it. The total 2013 budget request for the Department of Justice was $27 billion. Stuntz argues that the federal government should spend more for local police; he proposes $15 billion. The proposal here is more modest and more targeted. The PSN Final Report recommended funding based on “levels of risk.” Moreover, the logic of dynamic concentration suggests a more dramatic national impact by focusing on a few areas at a time, tipping the situation to a stable lower offending rate, and moving on (spreading) to the next worst area.

Targeted federal funding, however, may well be a political oxymoron. Federal funding for crime control is dispersed mainly by the Office of Justice Programs (OJP) and the COPS office. Both agencies were established to improve police and criminal justice programs generally throughout the country, rather than to confront particular substantive problems in particular jurisdictions. Still, both employ formulas that seek to apportion funds based on population and, to a lesser extent, the seriousness of the crime problem, although the pertinent formulas purposely spread funding to ensure “national distribution.” The net result is insufficient funds to cities most in need.

\[\text{Stuntz,}\ \text{Collapse}\ at\ 290.}\ \text{Although I suspect the $15 billion in new spending is politically unlikely, Stuntz’s systemic point is more important. Stuntz argues that police reduce crime and the number of prisoners, but that cities pay for police but states pay for prisons. Thus, sending more and more people to prison is a free good for cities. If cities paid for prisons and the federal and state governments paid for police, the incentives would change drastically. Id. at 291. Thus, he argues the federal government should help alleviate the under-policing of city streets.}\]

\[\text{Final Report}\ at\ \text{viii.}\]

\[\text{Kleiman, Brute Force, supra note }[]\).


\[\text{A student in my Urban Violence seminar analyzed COPS office funding from 2003 to 2010 for the ten cities with a population higher than 350,000 with the highest violent crime rate. The ten cities (Detroit, St. Louis, Oakland, Baltimore, Cleveland, Washington, Philadelphia, Kansas City, and Nashville) accounted for 7-8% of the country’s violent crime but received only}\]
In other realms, Congress has agreed to funding formulas that provide some degree of targeted funding to reach jurisdictions most in need.\textsuperscript{173} The reality is, however, that “formula fights” in Congress are politically difficult, highly contentious, and driven largely by parochial interests.\textsuperscript{174}

The political necessity to spread federal funding, including criminal justice funding, is unlikely to change any time soon. The pragmatic approach proposed here, therefore, accounts for both fiscal and political reality.

That proposal is a modest carve out of $500 million. Let OJP and COPS continue the current system of ‘general criminal justice improvement.’ But recognize that only a handful of cities require enhanced federal intervention to reduce the worst urban violence rates below a threshold level. For those few cities that need and want enhanced federal help, Congress ought to enact a program of targeted funding to permit the urban violence unit to swamp chosen jurisdictions with proven resources to reduce murder rates until the desired substantive results are achieved. And those goals should be ratcheted down to increasingly lower levels of evolving acceptability.

A goal that requires targeted federal funding in only 14 cities is economically viable. From 1995 to 2010, Congress appropriated COPS funding between $500 million and $1.4 billion 0.5-2.5\% of COPS funding. To cite another example, the student compared the funding received over the life of the COPS program by two cities with comparable populations: Honolulu, one of the safest cities in the country (2010 violent rate of 268 per 100,000), and Detroit, one of the most dangerous (2010 violent crime rate of 1887, seven times higher than Honolulu). Honolulu received $22 million; Detroit received $40 million, less than twice as much as Honolulu. Jaime Simon, \textit{The COPS Grant Programs and Urban Violence}, unpublished manuscript on file with the author (2012).

\textsuperscript{173} In the realm of education, federal funding provides about 10\% of total spending. According to the Education Department, “although ED's share of total education funding in the U.S. is relatively small, ED works hard to get a big bang for its taxpayer-provided bucks by targeting its funds where they can do the most good. This targeting reflects the historical development of the Federal role in education as a kind of 'emergency response system,' a means of filling gaps in State and local support for education when critical national needs arise.” US Department of Education, The Federal Role of Education, accessed 2/13/2012. \url{http://www2.ed.gov/about/overview/fed/role.html}. Likewise, AIDS/HIV funding uses formulas to target those areas and populations disproportionately affected by the problem. Highlights of the 2009 Ryan White Legislation. \url{http://hab.hrsa.gov/abouthab/legislation.html}

\textsuperscript{174} Goodwin Liu, \textit{Improving Title I Funding Equity Across States, Districts, and Schools}, 93 Iowa L. Rev. 973, 1012 (2008).
annually. In this context, $500 million does not seem unreasonable, especially if it will effectively reduce violence in the 14 most troubled cities where over 10% of the country’s murders occurred. With $500 million in total, each city would receive an average of just over $35 million.

Focused violence reduction programs like Ceasefire take advantage of the coordinating power of existing resources and leverage social controls. Thus, although the annual budgets of large urban police forces run into the hundreds of millions, an annual infusion of $35 million is likely sufficient to swamp efforts on this focused problem. Such supplemental funding might be used to: hire dynamic, promising leaders; bolster research, enhance data collection and analysis; establish mechanisms such as project management teams to foster coordination; and provide supplemental enforcement and training. If the efforts successfully reduce the incidence of murders in these cities by just 10%, the savings in direct costs would more than cover the investment; the savings in indirect costs would dwarf the investment.177

175 Nathan James, Community Oriented Policing Services (COPS): Background, Legislation, and Funding, Congressional Research Service, January 4, 2011. The figures exclude carry-over amounts and appropriations in 2009 pursuant to the American Recovery and Reinvestment Act, which included a one-time infusion of $1 billion for the COPS hiring program. Funding levels were over $1.2 billion annually from 1995-1999 and have been significantly lower the past decade. Id.

176 The budget for the Detroit Police Department, for example, is approximately $423 million. City of Detroit, 2011-2012 Mayor’s Recommended Budget at Schedule B. Available at www.detroitmi.gov.

177 Robert J. Shapiro and Kevin A. Hassett, The Economic Benefits of Reducing Violent Crime: A Case Study of 8 American Cities, Center for American Progress (June 2012). In their year long study, Shapiro and Hassett analyzed eight cities - Boston, Chicago, Dallas, Houston, Jacksonville, Milwaukee, Philadelphia, and Seattle to see how much reduction in violent crime (murder, rape, robbery, and aggravated assault) would save in direct and intangible costs. Direct costs included government criminal justice and victim medical costs and indirect costs included pain and suffering, costs to victims’ families, and effect on real estate values. In Philadelphia, for example, a 10% reduction in violent crime would save $17 million in government costs, $30 million in victim costs, and $300 million in intangible costs. The comparable cost reductions for a 25% reduction were: $43 million, $75 million, and $742 million. Such cost reductions would translate to government budget savings of $38 and $96 million. Moreover, the study estimated that a 10% reduction in homicide alone in Boston could increase the value of the housing stock in Boston area by $4.4 billion the following year. Id. at 8. An urban violence unit might track these savings by city and perhaps identify, analyze, and support alternative financing schemes for violence reduction efforts. See, i.e. David Bornstein, For Ambitious Nonprofits, Capital to Grow, New York Times, June 27, 2012 (discussing equity-like financing to build non-profit institutions like businesses); Tina Rosenberg, The Promise of Social Impact Bonds, New York Times, June
C. Accountable Partnerships

If discretionary funds are to flow to disadvantaged cities, the center has a critical interest in assuring the money is not wasted or misspent. Experimentalist theory argues that top-down directives are inefficient. Instead, local activity should be undertaken by “teams of stakeholders” with a variety of informational perspectives. In place of directives, these diverse team members hash out solutions to the problem to assure program outcomes are achieved. Accountability and broad participation protect against possible abuse of discretion. Thus, the key to the design of an experimentalist regime is to assure that there is sufficient participation by the genuine stakeholders and that the team is properly accountable for meeting program goals.

In the area of urban violence reduction, the federal government has increasingly relied on direct funding to police departments. Stuntz, who believed that the key to managing urban violence is local power and accountability, argued that the best policy option was to dramatically increase federal funding for local police departments. The tacit assumption is that the police, on the model of community policing, will assure that local stakeholders participate and will be accountable for the results. Experience suggests that assumption may be inaccurate. A significant criticism of Compstat is that it only measures police performance and re-enforces a police state response to urban violence. A failing of the Ceasefire strategy has been that many jurisdictions have been unable to manage its requirements: energetic partners, unflagging focus, coordinated actions, and lots and lots of organization and planning.

Recent federal policy, as exemplified by PSN, also fell short on local power and accountability. PSN task forces were coordinated by U.S. Attorney’s Offices, not local officials. They were dominated by law enforcement, not the community. And the community input was

21, 2012 (discussing how social impact bonds for non-profit enterprises return money back to investors from the government if the non-profit succeeds in meeting target social outcomes).
spotty and ad hoc at best. Moreover, efforts to insure accountability largely failed.

So what is the answer? Mark Moore is the preeminent scholar to have considered these management issues in the context of youth violence. The youth violence problem, he notes, is complex. Youth violence has many causes operating at different levels. Emotionally and psychologically impaired individuals; dysfunctional families; criminally involved groups; disadvantaged communities; an inequitable society. The different levels interact unpredictably. And the institutions confronting the problem - including family, community, church, school, social welfare agency, and criminal justice system - act and react independently, with different resources, for different purposes. Someone should step forward to help these independent actors coordinate their efforts and create ‘networks of capacity’ in order to deliver a more considered and effective response.

Moore proposes a project management model. The essence of project management is that it cuts across and conflicts with normal organizational structure and requires many decisions and actions from many functional areas at once. To succeed, the objective of the project must be clearly defined, the project manager must be authorized to work with a team that can accomplish the objective, and there must be adequate project controls - that is, a schedule of activities with assigned responsibilities and deadlines. Still, project managers face inherent pitfalls. They are outside ordinary lines of authority, off established career tracks, a target for complaints, and accountable for achieving results without exclusive control over the resources needed to achieve

178 Task forces typically include law enforcement/criminal justice agencies at all levels and paid researchers. AUSA coordinators “were encouraged” to include city and social service agencies, private sector groups (such as businesses, clergy, hospitals), and community organizations. However, only about 30% of task forces across the country included non-law enforcement partners in 2005. Final Project Report at 2, 11, 50-51. Non-law enforcement partners included hospitals, media specialists, domestic violence prevention professionals, college/university partners, public schools, YMCA, media, Boys and Girls Clubs, Campfire USA, former FFLs, firearms experts, National Rifle Association, community members, HIDTA, Weed and Seed, State Department of Correction, CrimeStoppers, former offenders, and sports organizations.


180 Interestingly, Moore described the project management model counseling a team that should be limited to smallest number of participants necessary. It may be that participation of agencies and community members should be broad, but the active management team should be small.
them.

To succeed in this vulnerable environment, Moore concludes that project managers should rely less on formal authority and more on resolving conflicts with objective expertise and by putting all the facts on the table and working until members have reached an agreement of their own. The best environment for success includes a focus on ends rather than means; a relatively small team of skilled people who can work together; and a supportive organizational context that has an accurate and pertinent information system, a performance reward system, and meaningful education and training.

Echoing Moore, a key finding of the PSN Final Report was that partnerships were more effective when there was strong leadership, focused interventions, and full integration of quality research. Partnerships must develop the ability to set goals, build the capacity to share information among group members, and consider a wide range of alternatives, ideally by using an ongoing, Compstat-like process that is able to collect information from all members of the collaborative group and distribute it back to them in a form they can understand and utilize.

There are few current examples of such an approach. Boston’s original Operation Ceasefire utilized an informal working group. That had the benefit of flexibility, but the working group collapsed when key personnel moved on. More recently, Cincinnati hired a project manager and surrounded him with a management structure to effectively coordinate the partners and the range of activities the Ceasefire strategy requires. Cincinnati formed the Cincinnati Initiative to Reduce Violence (CIRV) with law enforcement, services, community, and management teams accountable to an executive board of city, law enforcement, and community leaders. Other cities have begun to follow this model.

There are no doubt innumerable partnership structures and arrangements fitted to local political culture and community actors and institutions. The lessons of problem-solving and Ceasefire are that in order to take advantage of the benefits of dynamic concentration, leveraging, and the mix of hard and soft power, there has to be energetic coordination among critical stakeholders. The form of the partnership is less important than the result. Thus, DOJ need not

\[\text{References for footnotes:}\]

181 Final Report at 167-172.


favor any particular model or arrangement. It must insure, however, that its funds reach a partnership of effective actors who will thereby assume increased responsibility for constantly improving their efforts to reduce urban violence, reporting results, and sharing lessons from successes and failures.

VI Conclusion

Lethal violence is an overlooked problem in the United States, in part because it is concentrated in our most disadvantaged cities and neighborhoods. The racially disproportionate impact obscures the problem; it should signal a fundamental societal short-coming with deep historical roots. Localized racial problems are a great challenge in a federal system dedicated both to local freedom and equal protection. The violence problem has certainly been a challenge to the criminal justice system, a paradigmatic local prerogative whose ability to solve problems is further hobbled by an architecture that seems to defy sensible management.

Evidently, however, at the height of the crack epidemic, the United States crossed a line. Ever since, the country and its systems have been groping toward answers to the violence problem. The good news is there has been tremendous progress; many of the answers have worked to reduce violence. The bad news is that progress has been far too slow to reach the places where people most need it. And progress against violence has blithely and falsely accepted racially discriminatory mass incarceration as the cost.

This problem that affects disadvantaged cities and neighborhoods across the country in similar ways desperately needs local actors to effect local solutions. The policy approach described here might be labeled “urgent muddling,” because that humble term captures the need for the police and the community to focus, come together, hash out differences, and take control. Violence, gangs, race, and criminal punishment are hard issues whose resolution requires delicately balanced passions. But the objective of this article is to formulate the best federal role, and that role is to encourage, energize, and support that muddling and to sort out and make sense of its successes and failures. Urban violence is a promising field to showcase government experimentalism. There is wide agreement on general goals - less violence, less prison, less discrimination, less cost. There is increasing agreement on means - focused enforcement, collaboration, legitimacy, and the primacy of social controls. And finally, modern technology permits more precise, more comprehensive, real time measures to inform and guide action, tactics, strategy, and policy. The federal government can dramatically improve the motivation

185 The use of consent decrees between DOJ and police departments that routinely violate civil rights has provided DOJ with experience and a measure of expertise in helping to fashion accountability and community structures within police departments. See, i.e. Christopher Stone, Todd Foglesong, Christine M. Cole, Policing Los Angeles Under a Consent Decree: The Dynamics of Change Under a Consent Decree, Harvard Kennedy School (2009), available at www.hks.harvard.edu/criminaljustice (describing new accountability measures and community partnership structures adopted by William Bratton while under consent decree).
and ability of local actors to manage the urban violence problem by establishing a system of comparative performance measures, encouraging local partnerships, and working hard to assure that no city, and eventually no neighborhood, has to endure an unacceptable level of violence. The residents of Gary, Indiana deserve to have a federal government that recognizes, understands, and gives content to their violence problem and seeks to insure they are adequately protected, respected, connected, and empowered.