

The Rise of Mass Misdemeanors

New Yorkers have for years felt that the quality of life in their city has been in decline, that their city is moving away from, rather than toward the reality of a decent society. The overall growth of violent crime during the past several decades has enlarged this perception. But so has an increase in the signs of disorder in the public spaces of the city.

—POLICE STRATEGY NO. 5, 1994

For most of the peak crime years in New York City—about 1988 to 1991—felony arrests outpaced misdemeanor arrests. In 1993 that changed. Rudolph Giuliani was elected mayor, and he appointed William Bratton police commissioner. In 1994, they introduced a series of tactical and organizational reforms to the NYPD that have—perhaps somewhat misleadingly—been collectively classified under the unifying rubric of Broken Windows or quality-of-life policing. In policy documents and speeches, the NYPD and mayor aligned themselves with the central claims made by criminologist George L. Kelling and political scientist James Q. Wilson in their 1982 seminal article “Broken Windows.” The article maintained that the police ought to refocus

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on maintaining order in urban spaces and reducing fear of generally disorderly conditions. Embracing these arguments, the NYPD announced in a 1994 policy document titled *Police Strategy No. 5: Reclaiming the Public Spaces of New York*, a new policing regime.

This chapter briefly recounts the origins of the policing experiment of the early 1990s that flew under the Broken Windows banner and explores how that experiment has become an institutionalized feature of New York City’s law enforcement since then. The history is tailored to highlight those changes in enforcement that most affected the flow and composition of cases into the lower criminal courts and how the justifications for this policing model demanded bureaucratic practices that in turn shaped how these low-level cases came to be processed by criminal justice actors. Specifically, I emphasize the new record-keeping and record-sharing practices that the police and courts innovated in this period in an effort to mark suspected persons for later encounters and to check up on prior records to identify and target persistent or serious offenders.

Lower criminal courts are not islands of judicial activity; they are part of a larger field of criminal justice in a particular space and time. The law enforcement practices and political understandings that generated the flow of misdemeanor arrests are essential context for understanding the logic by which lower courts currently process those arrests. Therefore, this chapter also touches on the sociological and political understandings that underpin the Broken Windows policing model to foreshadow how those understandings inflected the entire field of misdemeanor justice. I then present data from a number of sources to profile what these changes in policing tactics meant for the types of cases and defendants that were fed into misdemeanorland.

The Plan: *Police Strategy No. 5* and the Broken Windows Theory

The document that established New York's Broken Windows regime made two claims that have endured as guiding principles of the city's policing. First, *Police Strategy No. 5* identified low-level offenses as an intrinsically important enforcement priority. It listed a series of quality-of-life conditions the police would target—noise complaints such as loud music, motorcycles, and car alarms; illegal double parking; blocking traffic; prostitution; aggressive panhandling; squeegee cleaners; graffiti; illegal peddling and vending; aggressive bicyclists; loud clubs and discos; and public drunkenness. The mayor and police department

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proclaimed their intent to take these issues seriously in an effort to restore New York to a “society of civility.” As Bill Bratton explained in a 2013 interview, “[Q]uality of life crimes actually didn’t victimize a person, but what they were victimizing was the city psyche about itself. . . . [They] contributed to the decaying of neighborhoods. The victim was the neighborhood. The victim was the borough. The victim was the city. And this malaise was spreading because it looked like government and the police—as the agents of the government—weren’t addressing what was creating fear and unease in people as they watched their

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neighborhoods deteriorate.”

Second, the strategy document endorsed another central claim from Kelling and Wilson’s article, which

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was that “disorder and crime are usually inextricably linked, in a kind of developmental sequence.” Although the paper was released after the city hit its peak of violent crime, it was not obvious at the time that the trend would continue in the downward direction, much less that crime would decrease at the magnitude it eventually did. Announcing their new plan, the NYPD and the mayor declared, “*Police Strategy No. 5: Reclaiming the Public Spaces of New York* will emerge as the linchpin of efforts now being undertaken by the New York Police

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Department to reduce crime and fear in the city.” They repeated such claims in various other pronouncements during this period, arguing that a renewed focus on low-level crime was instrumental in reducing serious violent

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and property street crime through various mechanisms.

Much of the theory and practice of New York’s signature policing model laid out in the early 1990s has endured over changes in the city’s political and police leadership. More than two decades after authoring *Police Strategy No. 5* under Republican Mayor Rudy Giuliani, Bratton returned to take up the position of NYPD

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commissioner under a progressive Democratic mayor, Bill de Blasio. Both the mayor and the commissioner reaffirmed their broad support for the model and tactics of Broken Windows policing, albeit with some stated modifications. Bratton repeatedly reiterated the intertwined theoretical claims presented in early iterations of Broken Windows, namely, that disorderly conditions license serious offending, that violent criminals are also committing minor crimes, and that minor criminals will grow up into major criminals if not interdicted early in their offending arc. He also reaffirmed his faith in the efficacy of tactics that he gathered under the rubric of

Broken Windows policing. In a 2015 NYPD publication titled *Broken Windows and Quality-of-Life Policing in New York City*, Bratton explains that his reasons for initially embracing Broken Windows policing were verified by his experience in the early 1990s:

We wouldn't ignore the little things. Fare evasion and graffiti would no longer be considered too petty to address. In fact, we'd focus on them as vigorously as on serious crimes like robberies, if not more so. Why? Because serious crime was more likely to occur in a lawless environment—and ubiquitous low-level disorder signaled lawlessness even more than serious crime, which was less common. We also quickly learned that the serious criminals committed petty crimes, too. When they weren't committing robberies or assaults, they were hopping turnstiles, unlawfully moving between cars, and generally diminishing the quality of life that should have been enjoyed by other, fare-paying riders. A subway criminal arrested for a misdemeanor rather than a felony wouldn't be

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going to prison, but he wouldn't be victimizing anyone for a while, either.

This same document went on to insist that the Broken Windows policing model was not only responsible for the major crime decline in New York City, but also for New York State's significant incarceration decline. "Arresting someone for a misdemeanor frequently prevents him from graduating to committing felonies, for which severe sanctions like prison may result. That's why index-crime arrests are down 36% from 1994 . . .

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[and] from 1990 to 2012, New York City has sent 69% fewer people to state prisons."

Both early and current proponents of Broken Windows policing have put forward various mechanisms whereby enforcement against low-level offenses would cause a reduction in serious street crime. The most familiar of these is what Bernard Harcourt calls the "social meaning" thesis, which holds that disorderly

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conditions send a signal to potential lawbreakers that there is no collective enforcement of norms or law. As Kelling and Wilson put it in their seminal article, "Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more

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windows costs nothing."

Another mechanism whereby intense low-level enforcement activity might reduce violent street crime is by offering frequent possibilities for information collection and surveillance. When police stop, summon, or arrest people, they have the opportunity to question them about unsolved crimes, check for outstanding warrants, and initiate records collection on the people encountered. Bratton's memoir *The Turnaround* illustrates how the police understood the value of quality-of-life policing as an information source about serious crime and its perpetrators. In it, he recounts a meeting from the 1990s in New York at which Jack Maple, Bratton's deputy commissioner, urges a precinct commander reporting a series of shootings in public housing to engage the pretextual intelligence-gathering uses of quality-of-life enforcement: "How are we doing with the buy-and-busts? Are we debriefing prisoners? When you have CIs [confidential informants], are you bringing them in to look at photos so they can give you the organizational structure of the criminal element in and about

the housing project? . . . Are we doing any quality-of-life enforcement? Are we doing warrant checks? Have you done the overlays from the computer with the people with active bench warrants and parole warrants and systematically gone through them, arrested them for warrants, and debriefed them to find out who was engaged

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in this activity?”

In this and other arguments for the assorted tactics under the Broken Windows rubric, he highlighted how low-level enforcement had tactical value beyond signaling a norm of order maintenance. He noted that these tactics would identify scofflaws, those with the potential to commit violent crimes, and those who had outstanding warrants for serious charges. Intensive, low-level arrests were of value to the overall crime-fighting mission by bringing the serious offenders back to court to be adjudicated and keeping tabs on marginal offenders. But in order to do so, the NYPD had to transform how patrol cops approached their beat, because they had long thought of low-level enforcement as piddly police work. Bratton explained:

So it was a matter of changing the attitude of the cops; that these crimes were important to address. And one of the ways that cops began to understand the linkage between quality-of-life, minor crime and more serious crime was as they began to encounter these people they found that many of them were wanted on warrants for other offenses that they hadn't bothered to show up in the courts for. Why? Because the department didn't go out and arrest them when they didn't show up because they were minor offenses. But many of these people were wanted for very serious offenses. . . . So by going after quality of life we were also having an impact on more serious crime, because we were finding people who had failed to show up in court. We were finding people who were carrying

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weapons into the [subway] system—many who were carrying them into the system to use them.

So the police came to understand that in order to use these tactics as a means of stopping the underlying conduct that constituted quality-of-life offending or as a means of deterring and incapacitating people who were on their way to commit serious crimes, they had to engage mechanisms to identify and sort *who was who* in high-crime or ostensibly disorderly spaces. They had to implement enforcement in a way that would allow them to figure out who was committing the serious crimes; who was an occasional troublemaker, one-time errant citizen, or incorrigible misdemeanor; who had disregarded the obligation to show up at court; who had information on other serious street crime; and who might be on his way to becoming a persistent low-level

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offender or serious criminal. Formal enforcement against low-level offenses with summonses or arrests—instead of informal admonishments—offered the opportunity to do this by generating records about

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people and engaging them in the demands of the court system.

In order to effectively sort people living in high-crime or ostensibly disorderly spaces, the police needed *both* more low-level contacts and new tools in these contacts. They needed more uniformed bodies on the street observing and intercepting low-level offending, and they needed mechanisms for recording encounters so they could reliably trace people through space and time. Luckily for Bratton, the new tactical changes he proposed were implemented in an era of rapidly increasing police staffing. Starting in 1990 under Mayor David Dinkins and Police Commissioner Lee Brown, the city added thousands of new uniformed officers to the ranks of the NYPD. Figure 1.1 shows that, relative to a 1990 baseline, the NYPD expanded its total uniformed officers by 30 percent by 1995 and by 42 percent by 2000 (excluding the ranks of Housing Authority Police and Transit

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Police, which were formally incorporated into the NYPD in 1995). The figure also shows that the largest increase in staffing levels during the mid-to-late 1990s was in patrol and narcotics officers.

With increased capacity, especially in patrol and narcotics units, the police were able to engage in more street-level enforcement activities. The absolute staffing levels began to fall in the early 2000s, but relative to index crime, NYPD staffing is much higher today than it was in the 1990s. During the past ten years, the overall ranks of the NYPD have fluctuated between 12 and 25 percent *above* 1990 levels, with both index violent crime

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and index property crime between 73 and 79 percent *below* the 1990 levels. Therefore, the NYPD has a much larger force of police officers, especially in basic patrol units, out on the streets and trained to detect and enforce low-level crimes. The department used that enhanced capacity not only to increase the *frequency* of low-level enforcement, but the *formality* of the enforcement actions.

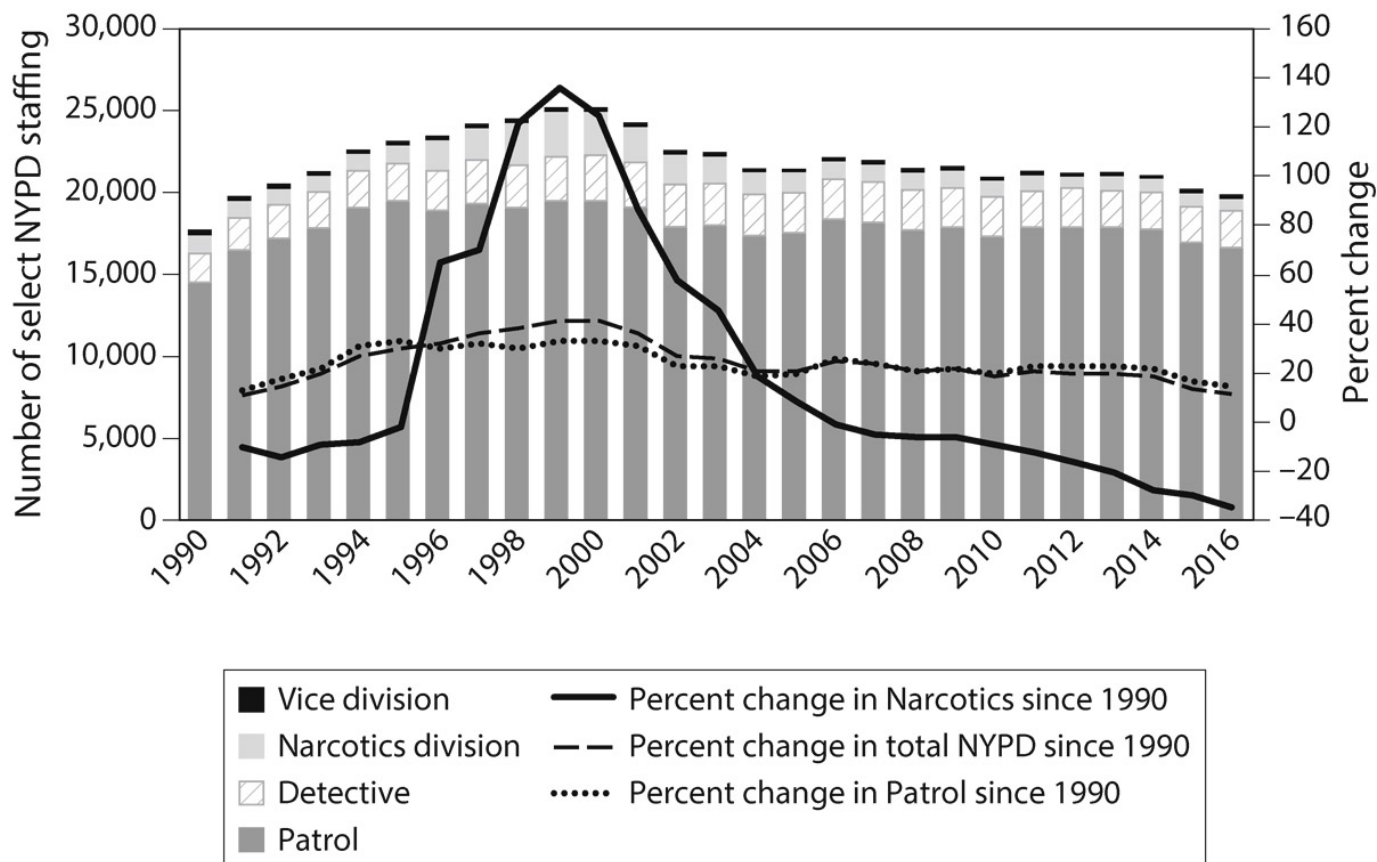


FIGURE 1.1. Total Number of Select NYPD Staffing and Percentage Difference in Total Uniformed Officers Relative to 1990, Excluding Transit Police and Housing Authority Police Note: Data from NYPD.

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The police have long had a range of different tools to deal with low-level crimes. They can choose to disregard certain low-level offenses or informally address the conduct (by telling the person to desist or “move

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along”), or to formally engage the conduct (by issuing a summons or making an arrest). Police can also, in

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many instances, choose what level of offense to charge for a given conduct. They have engaged dramatically different strategies and tactics in reaction to perceived disorder or low-level offending over different historical

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periods.

During most of the peak crime years of the 1980s until 1993, the police either paid less attention to low-level offenses or dealt with the conduct informally. When they did formally engage, the record keeping and

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organizational arrangements were such that the encounter often lacked, as one interviewee put it, “teeth.” That is, the response lacked punitive effect and did not link up with the larger record-keeping systems enabling the

tracking of people over time and space. The new policing regime introduced in the early 1990s entailed both qualitative and quantitative changes to low-level enforcement.

Fully understanding the changes that took place in policing under the umbrella of Broken Windows requires a measure of engagement with the gritty detail about arrest procedures and official state record-keeping law. New York law distinguishes between “non-fingerprintable” and “fingerprintable” offenses, and that distinction has implications for a range of record-keeping practices. Non-fingerprintable offenses are classified as violations (not crimes) in the penal law, infractions under various other statutes, or misdemeanors outside the

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penal law. “Fingerprintable” offenses are, by and large, felonies or Class A or B misdemeanors for which the police are authorized to take the arrestee’s fingerprints and transmit them to the Division of Criminal Justice

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Services (DCJS), the state agency responsible for maintaining criminal records and producing and

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transmitting criminal history reports (aka rap sheets).

For many low-level offenses, the same conduct could be charged as a violation or misdemeanor offense,

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and which level offense is charged has important implications for potential sentences and record keeping. A person arrested for an A misdemeanor faces higher potential sanctions than, say, a person arrested for a violation, because the penal law authorizes up to one year in jail for an A misdemeanor but only fifteen days for

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a violation. But it also determines what type of records the police can retrieve on the person at the time of arrest, what records the court will see at the time of disposition, what criminal records systems the encounter will be entered into, and what records of the encounter will be accessible at a later time. Rap sheets are

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generated and matched to the criminal court files only for fingerprintable offense arrests. As will be explained in more detail below, this means that *most* non-fingerprintable offenses are adjudicated without legal actors accessing a record of the person’s prior encounters and prior adjudications.

Most, but not all, non-fingerprintable violations and infractions are addressed by police with what is called

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a summons. The summons is an “accusatory instrument”; it must include the code or penal law provision the

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recipient is accused of violating and when and where to appear to answer the summons. Although the police have the legal authority to make a custodial arrest for most non-fingerprintable offenses (if the officer observes it firsthand), it is both official policy and standard practice to issue a summons for violations and infractions in

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most circumstances.

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New York also authorizes different types of arrest procedures. The most common is called an “online”

arrest. The name comes from the NYPD's Online Booking System, which indicates that the person is booked into that system at the time of arrest. The arrestee is detained at a local precinct for arrest photos, fingerprinting,

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and completion of the online booking paperwork. The person is then transferred to Central Booking, where more paperwork is generated and the arrestee is held in detention cells until seen by a judge for arraignment. The typical arrest-to-arraignment time is twenty-four hours for an online arrest.

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The other type of arrest is called a desk appearance ticket (DAT). The police still execute an arrest on the street: the person is handcuffed and transported back to the precinct in custody. He or she is then photographed and fingerprinted at the precinct as discussed above. But instead of being transferred to Central Booking to await arraignment, the defendant is released from the precinct with an appearance ticket indicating a date to appear in court for arraignment. The law limits the offenses eligible for DATs to essentially less serious offenses, but that still leaves wide discretion for patrol officers (subject to approval by the desk officer), because

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eligible offenses cover the majority of arrests made. Since 2013, the NYPD has significantly increased the

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proportion of misdemeanor enforcement actions given DATs, but online arrests are still far more common. Figure 1.2 presents a simplified summary of the information above.

The import of the changes launched by *Police Strategy No. 5* is only apparent if we understand what distinguishes different types of low-level enforcement options. Bill Bratton explained that, prior to his tenure, inadequate capacity to trace people summoned for low-level offenses was a major law enforcement concern. "There was nobody showing up. Until we basically got into place our warrant units—and we had six hundred officers going out every day serving the warrants. . . . It quickly became understood if you didn't show up in court with your DAT [desk appearance ticket], we were going to send officers to arrest you in your home. . . . And so the idea was: ensure compliance with the law. If you were going to compound your initial offense by breaking the law by not showing up in court—we needed to close all those loopholes, if you will, where people

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were dropping through the net and dropping out of the system." *Police Strategy No. 5* declared that "permissive and poorly monitored policies regarding issuance of summonses and Desk Appearance Tickets have enabled many offenders to flaunt the criminal justice system, thereby undermining the authority of police

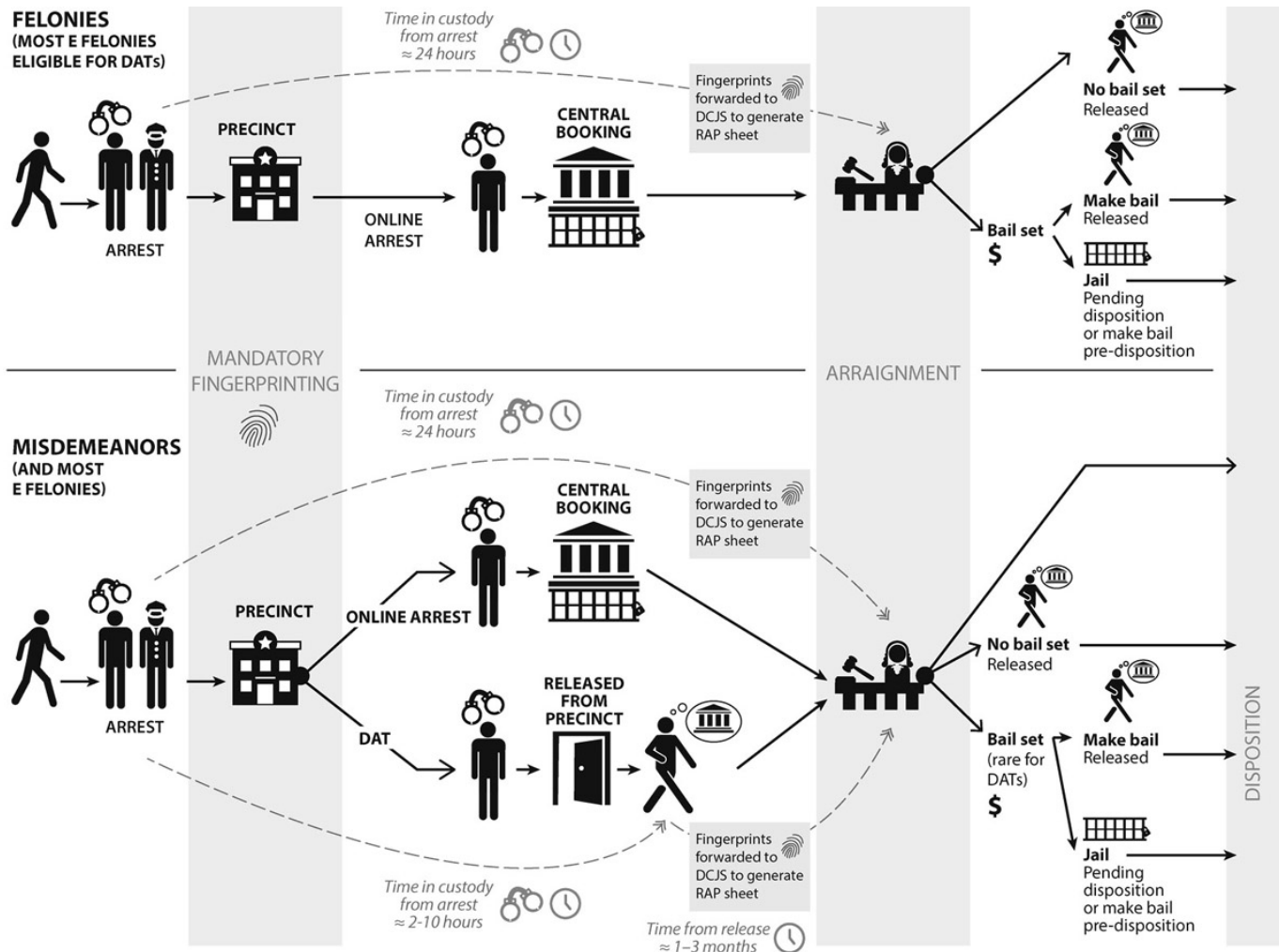
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officers who respond to these conditions." In response, new policies would be implemented: "tighter eligibility requirements, higher identification standards, and supervisory screening of release decisions," with respect to both the issuance of desk appearance tickets (or, as the police called them prior to 1994, "desk

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disappearance tickets") and summonses. The preference would now be for full online arrests. Individuals without government identification would be ineligible for desk appearance tickets or summonses so as to prevent the use of false addresses and increase the burdens of the encounter. All these enforcement mechanisms

would now be docketed and backed by warrant. Taken together, these changes in enforcement practices allowed the police to both generate new records about the people they targeted and also to use the encounter as an opportunity to check the records of the person's prior encounters.



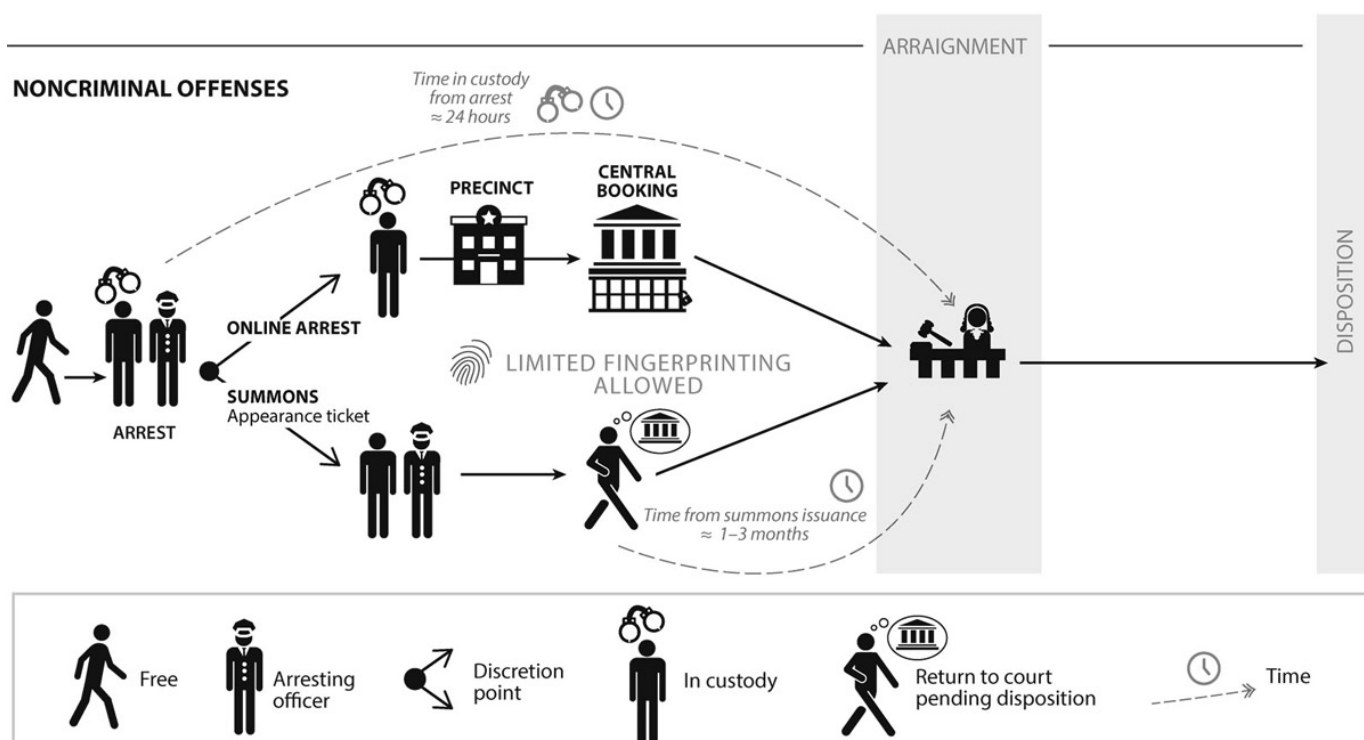


FIGURE 1.2. Enforcement Actions by Offense Type and Records Generated

Note: Only E felonies are eligible for DATs, except the following: PL § 130.25 (rape in the third degree), 130.40 (criminal sexual act in the third degree), 205.10 (escape in the second degree), 205.17 (absconding from temporary release in the first degree), 205.19 (absconding from a community treatment facility), and 215.56 (bail jumping in the second degree). NY CPL § 150.20 (1).

Various other policy innovations demonstrated that the NYPD brass were increasingly concerned not only with generating and maintaining records for their own law enforcement uses, but also with transmitting those records about street encounters to courts for their use in case processing. For example, *Police Strategy No. 5* cites lack of adequate record keeping and communication as an impediment to an effective policy dealing with “dangerous mentally ill street people,” saying “there is no capability within the Police Department to keep a history record of contacts with a chronically mentally ill person to assist the medical professional or the

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criminal justice system in making informed judgments.” Around this same time, the NYPD implemented the use of the “Domestic Incident Report” (DIR), a form that “police officers will be required to prepare . . . after responding to incident between family/household . . . to alleviate the Department’s reliance on Complaint Report and On-Line Booking arrest reports as sole sources for compiling information concerning domestic

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incidents.” The police also developed a DIR database, “keeping current data on victims’ status, contact, OOPs [orders of protection], and arrest history”; this information was used to “monitor and identify locations requiring special attention” through “home visits, telephone calls, letters to victims and interviews at the

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precinct station house.”

The Domestic Incident Report is a perfect example of how police record-keeping innovations had

significant implications for both enforcement and courtroom practices. The police consult the database to determine if a crime has occurred when they respond to a domestic service call—that is, to see if there is a current order of protection in place forbidding contact between the parties. It is also used to calibrate the police response, because the NYPD Patrol Guide mandates arrest if officers find on file prior DIRs between parties

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involved in the current call for service. The DIR database currently also plays a central role in judicial and prosecutorial decision making on bail, plea offers, sentencing, and other legal determinations in any arrest classified as a domestic violence (DV) case. Judges, for example, regularly ask if there were “prior DIRs” between the parties when setting bail on such cases, and prosecutors regularly reference the same in determining offer policies or recommendations regarding orders of protection.

In sum, the new policing tactics rolled out in the early 1990s under the Broken Windows banner called for not only more frequent enforcement actions against low-level offenses, but also more formal and intense police responses. They emphasized strategies to increase overall collection of information about people encountered on the street in order to ensure the maintenance of records and to secure transmission of those records to institutions down the line—namely, prosecutors and criminal courts—so that court actors would know about the frequency and nature of a person’s law enforcement contacts and prior performance with the courts.

The concern with record generation and maintenance has persisted over the past two decades of Broken Windows policing. The NYPD has often actively lobbied to maintain the maximum discretion possible in low-level encounters, pushed to retain the legal option to make fingerprintable arrests in the largest number of

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offenses, and to maintain as many records as possible of all street encounters. For example, even after Mayor de Blasio swept into office on a platform to reform low-level police encounters, the NYPD successfully defeated a package of reforms that would disallow custodial arrests for municipal noncriminal violations and infractions. The measures that did eventually pass merely added the discretion to issue civil summonses for certain city code violations, which would not be subject to warrants if the person to whom it was issued failed to appear, as opposed to removing the authority to arrest. As Bratton explained, “The new legislation will allow the NYPD to use the full range of enforcement tools we currently have to address these offenses, while still providing us with the additional option to issue a civil summons instead of a criminal summons or arrest in

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appropriate circumstances.” To further illustrate the importance of record collection and maintenance to the NYPD’s low-end enforcement practices, the Patrol Guide was amended after passage of the legislation to designate certain “recidivists”—namely, anyone who had two or more prior felony arrests in the past two years, was currently on parole or probation, or had three or more unanswered civil summonses in the past eight

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years—ineligible for a civil summons.

Not every aspect of current subfelony enforcement practice is the result of calculated, deliberate design. Many of the practices initiated by *Police Strategy Number 5* were intentional strategies aimed at achieving a set of clearly identified goals, such as reducing serious street crime and eliminating certain designated affronts to quality of life in the city. But, as so often happens when large and complex organizations initiate significant

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reforms, many of the current practices have emerged as the “unanticipated consequences of purposive action.”

The changes instituted by the NYPD in the mid-1990s were not just external, having to do with how officers interacted with the city they policed. They were also internal, affecting how the police functioned as an organization. These tactical, managerial, and organizational changes had significant impacts on the number and nature of low-level enforcement actions. In fact, the internal changes may be the most important factors driving the number and nature of encounters for low-level offenses in the recent decade of stable low property and violent crime.

The NYPD extensively reformed its organizational and management structure starting in 1994. The most famous of these reforms, which has since proliferated to police organizations around the country, is what has come to be called CompStat. There is some debate as to whether the name comes from a shortening of “compare statistics” or “computer statistics,” but in any case, the term has come to encompass a range of practices relating to the collection and analysis of real-time crime data and its consistent use in both tactical and management decisions.

By most accounts, Jack Maple was largely responsible for innovating the practices that grew into

CompStat. Maple was a former transit cop who came into Bratton’s inner circle in the early 1990s when Bratton was chief of the New York City Transit Police. He eventually became Bratton’s second-in-command (deputy commissioner) when Bratton was named chief of the entire NYPD, and together they innovated the

practices that grew into what is now collectively called CompStat. As a lieutenant in the Transit Police, Maple famously kept colored maps of the type and location of crimes on the subway system, called “charts of the future,” in order to direct enforcement efforts to locations where there had been a concentration of recent

robberies. When Bratton named Maple to detective lieutenant, and eventually special assistant to the chief during his tenure as chief of Transit, they worked together to collect and analyze statistics about transit crime

incidents and enforcement.

After Bratton took over as commissioner of the entire NYPD in 1994, one of the primary reforms he instituted with Maple and the rest of his team was the collection of up-to-date crime complaint and enforcement activity data. As taken for granted as the practice is now, it was novel in 1994. Central Command often had to

wait three to six months to receive aggregate crime and arrest reports from precincts or other command posts. Bratton and Maple began extracting aggregate arrest data from the Online Booking System, which was at that time the relatively new computerized arrest system. They used that information, in conjunction with data about the number and type of crime complaints filed in precincts, to evaluate commanders and their enforcement

efforts. These numbers quickly became integral to the NYPD top command’s management strategy over precinct and squad commanders as a concrete accountability metric.

The rise of CompStat was deeply intertwined with a series of organizational and management changes allocating enforcement capacity—and accountability—to precinct commanders and away from citywide

commands such as detectives or specialized enforcement units. The precinct commanders and patrol borough commanders were expected to prove efficacy over their spatial jurisdiction by demonstrating aggressive administration. Bratton explained that up-to-date data on crime complaints and enforcement activity was essential to this reorganization: “Having given the precinct commanders increased power, I had to make sure

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they were handling it properly through accountability and relentless assessment.”

This usually took the form of weekly CompStat meetings at which commanders were grilled on local crime conditions and asked to account for their proactive enforcement efforts in response to changes in crime rates. Unsurprisingly, these same metrics shaped relationships all the way down the organizational hierarchy,

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with middle management relying on the numbers to gauge successful performance of patrol officers. Because the model underpinning the new policing tactics posited the targeting of low-level offenses as a key mechanism of crime reduction, misdemeanor and summonses numbers emerged as an important metric of effort for area

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commanders. As Bratton and Kelling explained in another 2015 defense of Broken Windows policing, low-level enforcement actions were measured because the top of the hierarchy strongly believed that intensive low-level enforcement was the very means by which serious street crime would be reduced: “To counter the violence, the NYPD undertook a concerted effort, beginning in 1994, to regain control of street corners and

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commercial strips, using quality-of-life policing as an essential tool.” The organizational currency was showing a reduction in major crime incidents and demonstrating proactive enforcement activity. This same currency was used to demonstrate the NYPD’s success to the public and to the executive and legislative

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branches.

In a 2015 document, Bratton explained that CompStat functioned on the same logic as Broken Windows policing, only applied internally to the police organization. He argued that top police brass can rationally allocate resources and effectively develop strategies to prevent crime only if they track low-level enforcement activity at the local level. “Using crime mapping and organizational accountability practices, CompStat recreated, at the executive command level, the Broken Windows philosophy of sweating the small stuff before it became the big stuff. The advent of quality-of-life policing for the cops and management accountability for the commanders amounted to a public safety revolution that was about more than fighting crime—it was about

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preventing crime.”

CompStat both reflected and induced a shift in the organization’s orientation toward its task. Means can easily transform into ends in themselves, especially as organizations formalize measurement of the efforts

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ground-level actors take to advance organizational goals. Serious violent and property crime actually peaked a few years before misdemeanor arrests and summonses were ramped up aggressively under Bratton’s first command of NYPD, as shown in figure 1.3. Many people, both inside and outside of the NYPD, have asserted that showing increases or at least steady levels of low-level enforcement activity has become an internal

imperative up and down the organizational hierarchy. Some have maintained that the NYPD commanders explicitly set enforcement quotas. In 2010, NYPD officer Adrian Schoolcraft released a series of secretly recorded conversations with commanders clearly making two sets of demands on beat cops: show more

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“activity,” meaning misdemeanor arrests, stops, and summonses, but write up fewer violent crime complaints.

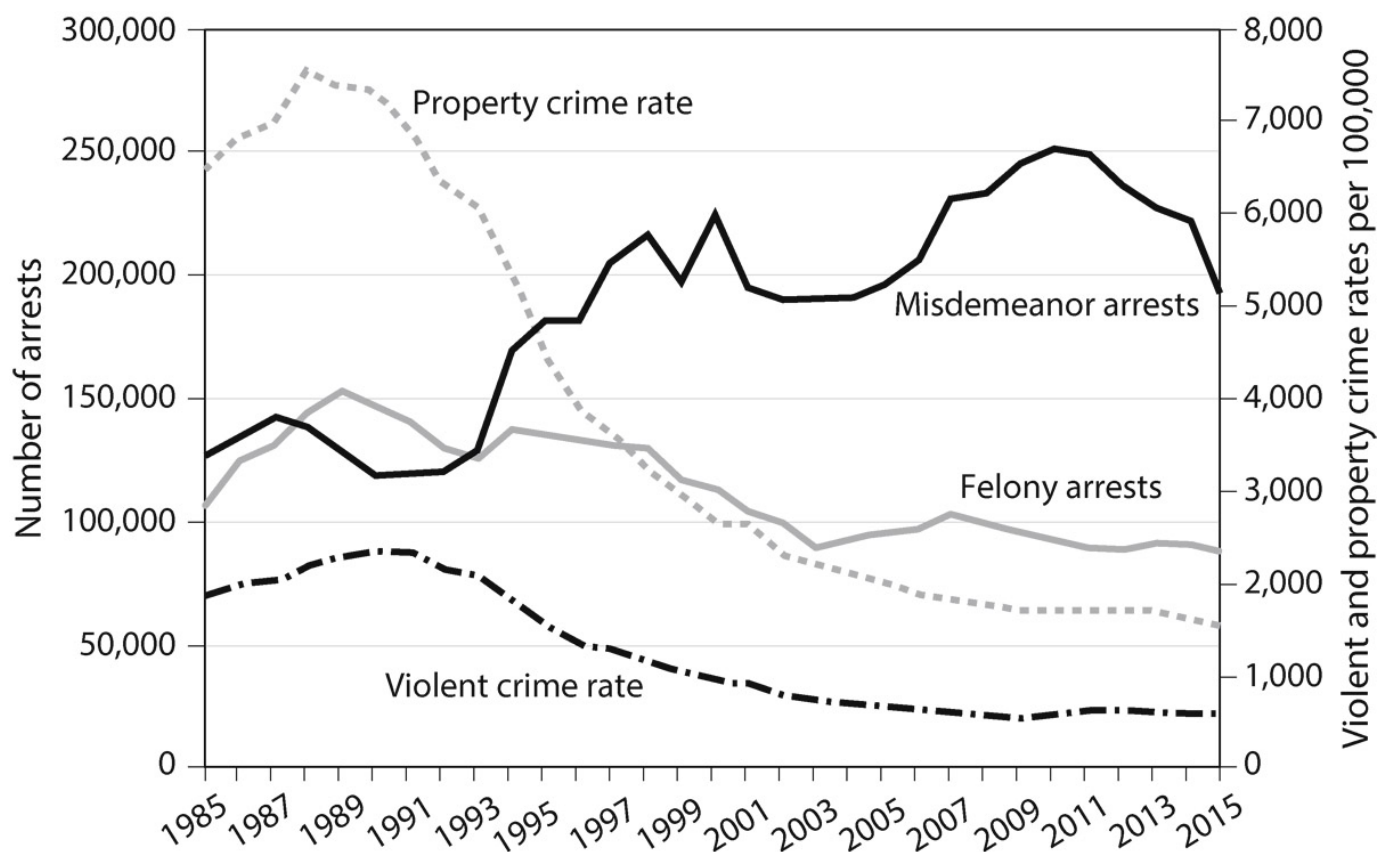


FIGURE 1.3. Violent and Property Crime Rates vs. Misdemeanor and Felony Arrests, New York City, 1985–2015

Notes: Violent and property crime rates from 1985 to 2012 from the US Department of Justice Uniform Crime Reporting (UCR) database, <http://www.ucrdatatool.gov/Search/Crime/Local/LocalCrimeLarge.cfm>. Violent and property crime rates from 2013 to 2015 from the New York State Division of Criminal Justice Services, <http://www.criminaljustice.ny.gov/crimnet/ojsa/countycrimestats.htm>. Numbers of misdemeanor and felony arrests from DCJS.

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The state legislature passed a bill in 2010 making it illegal to enforce arrest or ticket quotas. But even in subsequent years, significant evidence has emerged that both precinct-level commanders and beat cops continue to feel pressure to “make numbers” and that promotions and evaluations are largely influenced by these

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numbers. The NYPD has repeatedly stated there are no formal or informal arrest or summons quotas, both

before and after the bill banning quotas passed. Nonetheless, a number of lawsuits filed by police officers or civil rights groups allege explicit violations of the anti-quota bill or implicit violation in the form of informal policies demanding a quantity of enforcement actions or pressures to make stops, issue summonses, or make

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arrests with less than reasonable suspicion or probable cause. Commissioner Bratton issued many public statements after retaking command in 2014 disavowing the use of enforcement activity to gauge performance, arguing that “results matter, not numbers,” and called allegations in a federal lawsuit that patrol officers face

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informal quotas “bullshit.”

Nonetheless, high levels of misdemeanor arrest and summons activity have persisted in the city over the past decade of record-low violent crime. An NYPD document from 2015 authored under Bill Bratton’s supervision proclaiming the success of Broken Windows policing also announced the disbursement of a “peace dividend” in the form of reduced numbers of stop, question, frisk (SQF) encounters, criminal summonses, and misdemeanor arrests in recognition of the changed crime conditions in the city. A close inspection of that “peace dividend” shows it mainly consists of a massive reduction of stops largely achieved before Bratton took

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command and a much more modest decrease in “C-summonses” and misdemeanor arrests.

Thus, although there have been reductions in subfelony enforcement in recent years, the intensity of enforcement persists well above the levels prevalent during New York City’s high crime years. Broken Windows policing and management practices seem to have locked in a certain level of subfelony enforcement actions that the NYPD is either unable or unwilling to reduce.

The Yield from the Plan: Offenses, People, and Places

The plans detailed in the prior section were explicitly formulated to change how police conducted low-level enforcement. But much less deliberation and planning addressed what legal actors ought to do with these cases when they arrived at the courthouse. Here I present extensive descriptive data for the same reason that I presented detailed information about record-keeping practices. The records legal actors have available to them to make decisions and the valence this information was given in the larger criminal justice field in which they operate, which includes the NYPD’s embrace of tenets of the Broken Windows model, is essential context for understanding the pattern of action that emerged in misdemeanorland. So too are the social meaning of the offenses, defendants, and spaces from which defendants were arrested, because those social meanings shape precisely what legal actors find acceptable to do with these cases.

OFFENSES

As New York City's policing reforms of the 1990s were explicitly formulated to increase low-level enforcement, it is certainly not surprising that they succeeded in doing so. However, the sheer volume of this expansion, and its persistence even in the past decade of low violent crimes, is striking. The total number of misdemeanor arrests expanded almost fourfold, from about 65,000 arrests in 1980 to a high of about 251,000 in

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2010. As figure 1.3 shows, even as serious violent and property crime fell to historically low levels, misdemeanor arrests rose in the first decade of the 2000s. The policing tactics introduced in the early 1990s

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held steady and even expanded in this later period of stable low violent crime.

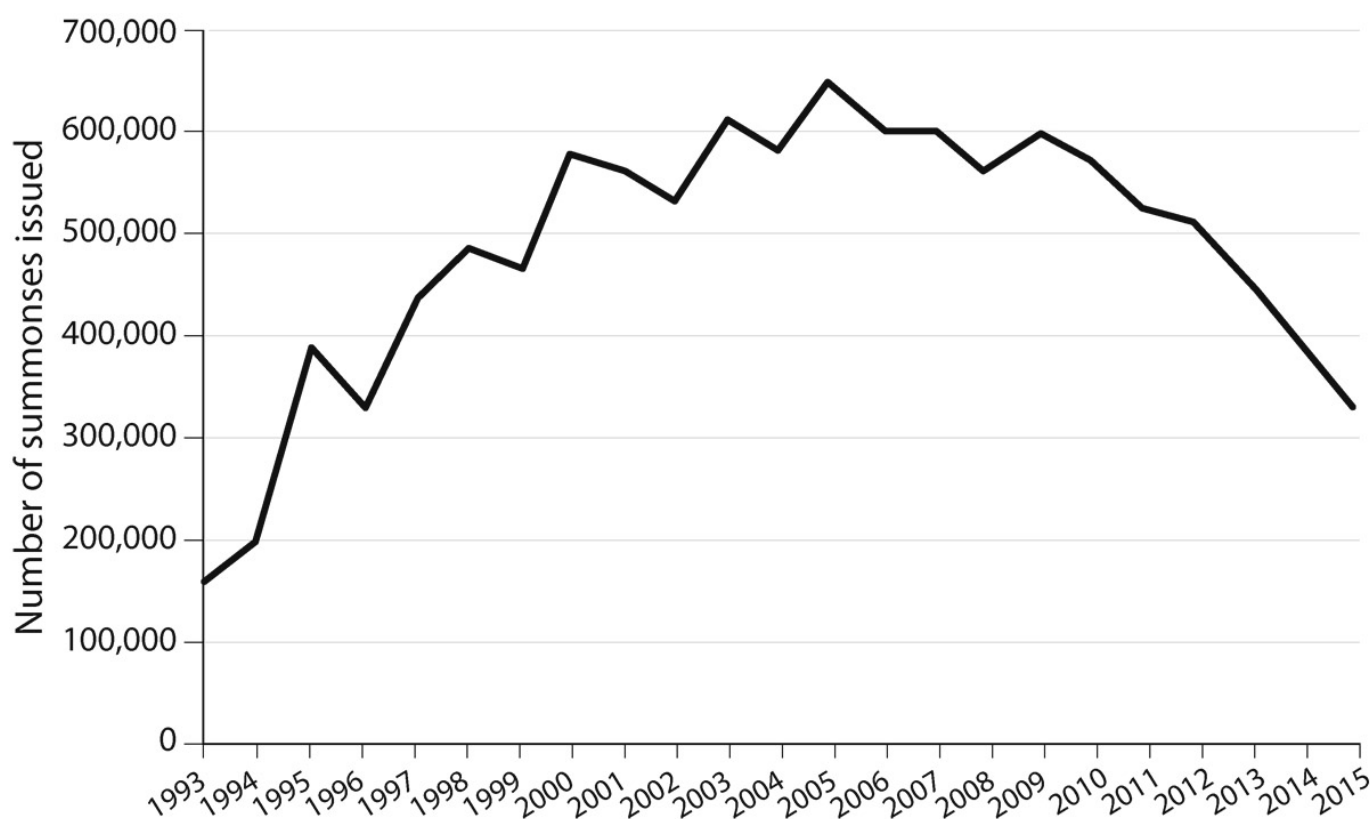


FIGURE 1.4. Summonses Issued, New York City, 1993–2015

Notes: Data from *Police Strategy No. 5* for 1993; Criminal Court of the City of New York, Chief Clerk's Office for 1994 through 2000; the Criminal Court of the City of New York annual reports from 2000 through 2015, <https://www.nycourts.gov/COURTS/nyc/criminal/annual-reports.shtml>. Filings are reported by NYPD and other agencies issuing summonses and are recorded before defect review.

Misdemeanor arrests in New York City began to decrease at a modest rate after 2010. By 2015, the annual misdemeanor arrest volume was about 23 percent lower than it was at its height in 2010. Most of the recent decrease in total misdemeanor arrests has been driven by a change in two penal law arrest categories, marijuana and trespass. Marijuana arrests are down by about 64 percent from the highest point of 60,662 in 2000 and by about 43 percent from the most recent second-highest point of 57,549 in 2010 to 21,614 in 2015. Misdemeanor arrests under New York Penal Law (NY PL) § 140, which are almost exclusively for criminal trespass in the

second or third degree, have gone down by about 52 percent from the highest point in 2009. The decrease in marijuana arrests was the result of a policy announced by Mayor Bill de Blasio and the NYPD in November 2014, and the decrease in trespass arrests was the result of organizing, media, and litigation pressure against the

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NYPD's "vertical sweep" program in public housing and low-income private apartment buildings.

According to *Police Strategy No. 5*, about 160,000 summonses were issued annually in the period

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preceding the quality-of-life initiative. Figure 1.4 displays the summons numbers from 1994 to 2015, showing a steep, threefold increase in yearly summonses between 1994 and the high point of 2005. Over the past five years, summonses have gone down substantially, with 327,306 issued in 2015, which is still a number 105 percent larger than the annual summonses reported in 1993, the year before *Police Strategy No. 5* was issued.

We can never directly interpret arrest rates as an index of underlying criminal behavior because reporting and police practices mediate criminal events and arrests. This is especially true of misdemeanors. In a city like New York, the police can find as many instances of marijuana or drug possession, petit larceny, unlicensed vending, misdemeanor physical altercations, public alcohol consumption, turnstile jumping, prostitution, and disorderly conduct as they devote time and resources to finding. Therefore, recent changes in misdemeanor arrest numbers are largely an artifact of changes in policing practices rather than changes in the frequency of

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low-level deviance. Figure 1.5 shows trends in the top ten misdemeanor arrest categories from 1990 to 2014. It reveals that misdemeanor arrests cover a wide range of conduct, yet the greatest number of arrests are for offenses where a surge in underlying behavior is an unlikely (or at least difficult to prove) explanation.

Marijuana was by far the largest arrest category for most of the Broken Windows policing era. Concealed possession of less than twenty-five grams of marijuana is classified as a noncriminal violation, which means police have the discretion to make an arrest but typically issue a summons. Marijuana possession is a misdemeanor only if the possessed weight is greater than twenty-five grams or the drug is "open to public

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view." During the period when marijuana arrests were the largest arrest category in the city, the most common accounts of these encounters involved either a street stop during which the officer would direct the person to remove all items from his or her pockets and then, if marijuana was revealed, make an arrest for misdemeanor marijuana possession because the drug was then "open to public view," or alternatively, merely commence a search of pockets or personal effects (often, according to those stopped, without any legal basis for such a

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search) and, when marijuana was retrieved, make an arrest for misdemeanor marijuana open to public view. The police narrative sometimes alleged that the arresting officer observed the marijuana open to public view at some point prior to the arrestee putting it back in his pockets, thus giving the officer probable cause to make the

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arrest and search the arrestee's pockets. The police version of these arrests was rarely tested in court because few of these arrests ever proceed to an evidentiary hearing much less a trial; almost every arrest terminated in a

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plea or dismissal.

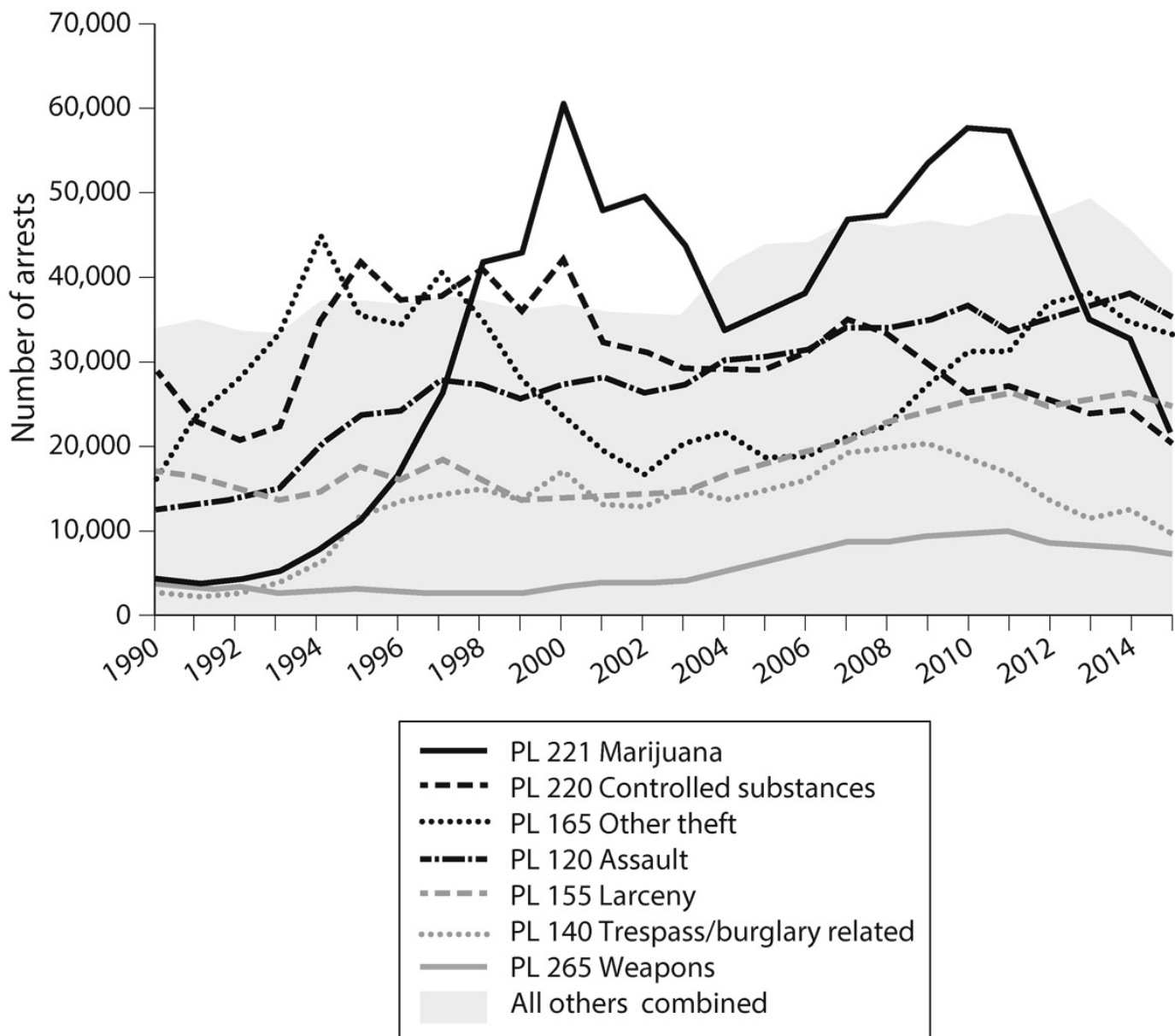


FIGURE 1.5. Top Misdemeanor Arrests by Penal Law, New York City, 1990–2015

Notes: Data from DCJS. Arrests are limited to adult arrests (persons aged sixteen and older, and juvenile offenders prosecuted in the adult courts) for fingerprintable offenses. “Other theft” primarily consists of theft of services, aka turnstile jumping. “All others combined” includes, but is not limited to, public order offenses, prostitution, gambling, driving while impaired, and other vehicle and traffic offenses.

In response to these accounts, media coverage of the arrests, public organizing, protest, and litigation, there was an attempt in 2012 to amend the penal law directed at the New York Legislature that would have

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redefined “public view” only as smoking marijuana in public. The effort was somewhat puzzlingly publicly

supported by the very people who engineered and carried out the arrest and prosecution policy, such as Mayor ⁸⁵

Bloomberg, Police Commissioner Kelly, and the elected district attorneys of the five boroughs. Nonetheless, ⁸⁶

the push was unsuccessful, largely blocked by upstate Republicans.

The misdemeanor marijuana arrests continued for ten months into newly elected Mayor de Blasio's and newly (re)appointed police Commissioner Bratton's tenure, but in November 2014, the mayor and police ⁸⁷

commissioner did what they could have done all along. They issued a policy directive instructing beat cops to stop making misdemeanor marijuana arrests of people found in possession of twenty-five grams or less and ⁸⁸

treat it as what it probably was in the first place: a violation. The breakdown of misdemeanor arrests by penal law article therefore looked very different in 2015 than in prior years. For the first time since the rise of Broken Windows policing almost twenty-five years ago, the city's single largest arrest category was a complainant-driven arrest, assault in the third degree, as opposed to an officer-driven, proactive arrest, such as turnstile jumping, narcotics possession, or marijuana possession. Nonetheless, the top seven penal law articles of arrest are largely officer-driven, including marijuana possession, controlled substance possession, theft of services (turnstile jumping), and weapons possession (usually folding knives charged as "gravity knives"), ⁸⁹

which together vastly outnumber those that are largely complainant-driven, such as petit larceny and assault.

PEOPLE

Mass misdemeanor arrests—as Loïc Wacquant has pointed out about mass incarceration—are not "mass" at all, ⁹⁰

as they are not a phenomena widely shared over populations and spaces. They are highly concentrated by race, ethnicity, gender, age, space, and class. Certain characteristics of misdemeanor arrestees did not change significantly over the period of Broken Windows policing, and others did. For example, the gender composition of misdemeanor arrestees has changed very little. In 1990, about 77 percent of misdemeanor arrests were of ⁹¹

men, and that figure has never exceeded 82 percent over the past twenty-five years. Figure 1.6 shows that over the past twenty-five years, somewhere between 60 and 70 percent of misdemeanor arrests were of people aged between sixteen and thirty-five. But arrests of older people make up a larger share of misdemeanor arrests in the Broken Windows era. In 1990, about 3 percent of the misdemeanor arrests were of people aged fifty or older, representing about 4,000 arrests that year; by 2015, almost 13 percent of these arrests were of people aged fifty or older, representing about 28,500 arrests.

One of the justifications offered for intensive low-level enforcement was to identify people with serious, violent criminal pasts who were also committing minor offenses and to arrest persistent misdemeanants. To state the obvious, counts of misdemeanor arrests reflect arrests where the most serious arrest charge was a misdemeanor, not a felony. But to what extent are the *people* arrested for misdemeanors the same people who had prior felony or prior misdemeanor convictions? Because of New York's laws governing sealing of

nonconviction criminal records, measures of prior arrests are unreliable and meaningless at best and misleading at worst, because individuals are not traceable over time until they have a disposition that allows the state to

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permanently maintain fingerprints (see [fig. 1.2](#)). Figure 1.7 therefore shows the number of unique

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misdemeanor arrestees by top prior conviction status for select years from 1980 to 2015.

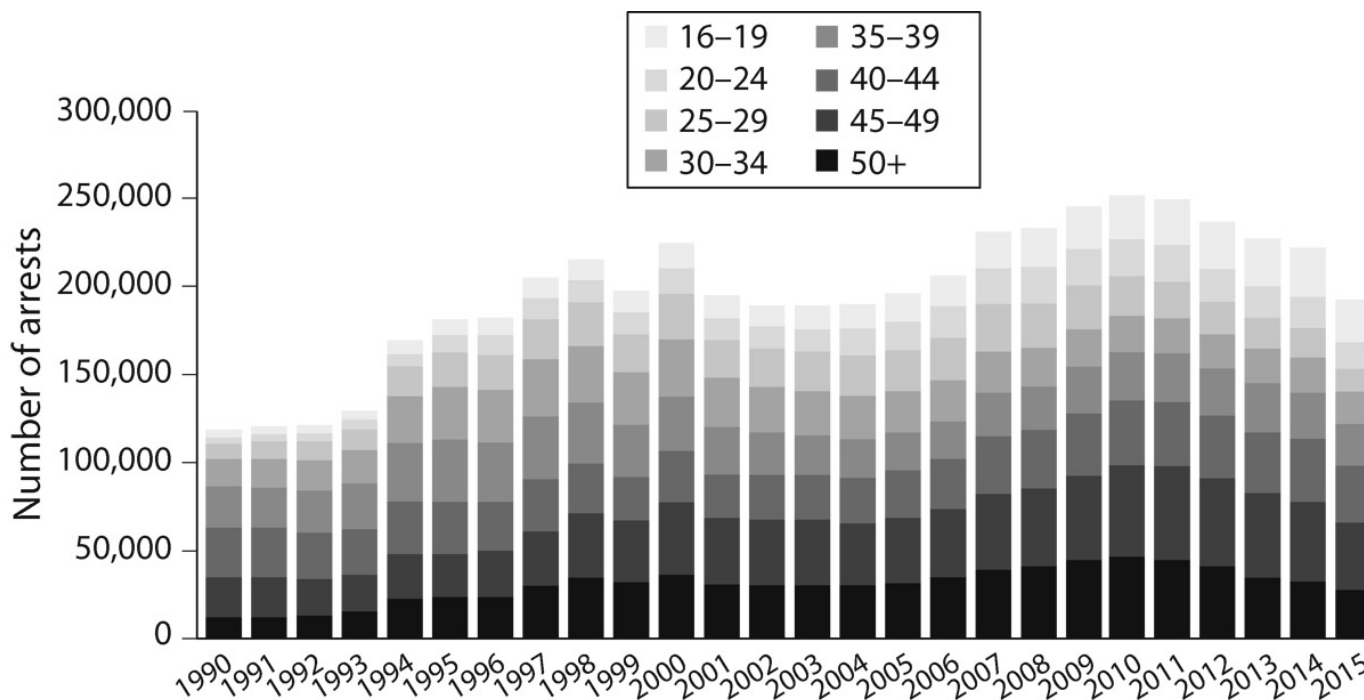


FIGURE 1.6. Misdemeanor Arrests by Age of Arrestee, New York City, 1990–2015

Notes: Data from DCJS. Arrests are limited to adult arrests (persons aged sixteen and older, and juvenile offenders prosecuted in the adult courts) for fingerprintable offenses.

This figure shows that these tactics swept significant numbers of people into misdemeanorland each year. According to DCJS estimates, there were a total of 49,091 unique individuals arrested for misdemeanor crimes in 1980; at the height of misdemeanor arrests, that number had risen to 191,185, an increase of 289 percent, before dropping to 145,448 in 2015. Figure 1.7 also shows that most of the increase in misdemeanor arrestees over the past three decades was driven by arrests of persons *without* prior criminal convictions at the time of their misdemeanor arrest. The percentage of misdemeanor arrestees with prior felony convictions has remained strikingly constant over the past twenty-five years, hovering between 23 percent at its height in 2005 and a low of 19 percent during the years 2012–15. The proportion of misdemeanor arrestees who have only prior misdemeanor convictions has gone down over the past three decades, from a high of 26 percent in 1980 to about 12 percent in recent years.

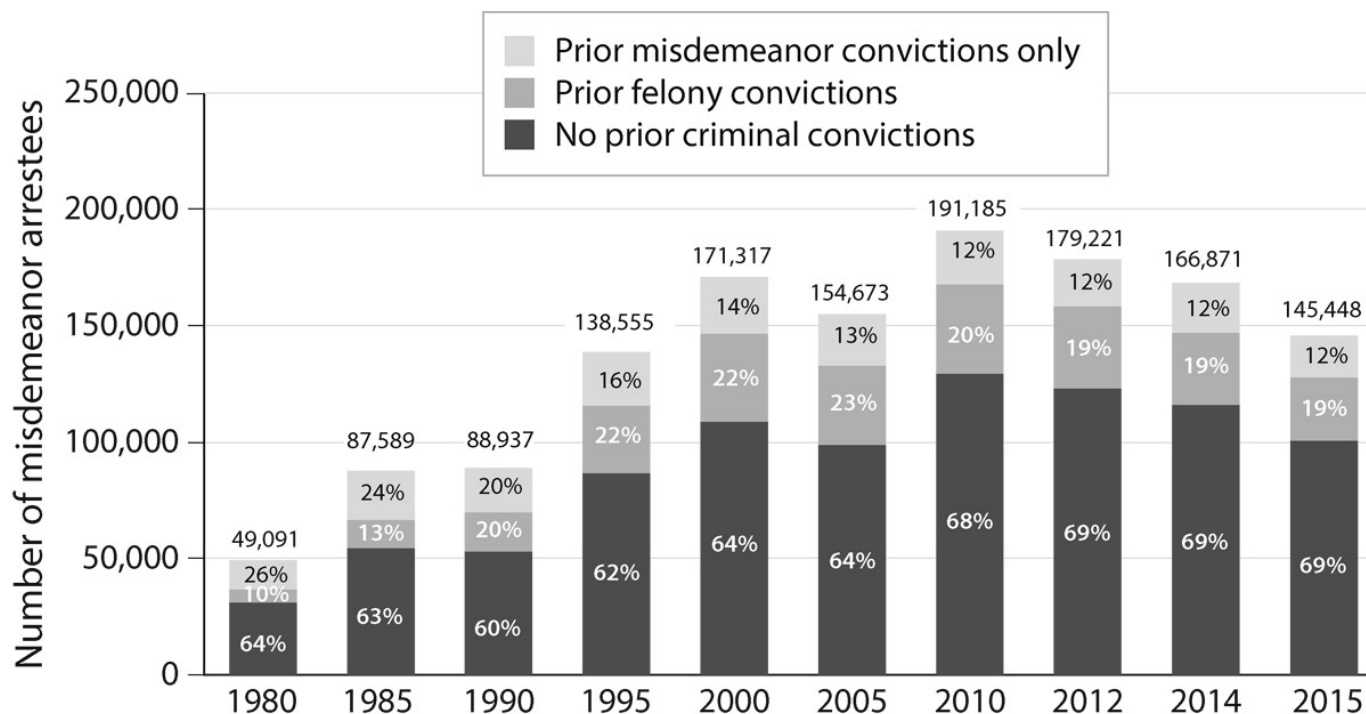


FIGURE 1.7. Prior Criminal Conviction History among New York City Misdemeanor Arrestees, 1980–2015

Notes: Arrestee counts of persons without prior criminal convictions are based on DCJS’s best estimate, using NYSID, of unique persons, and therefore might overcount (insofar as persons without prior criminal convictions who are rearrested multiple times within a year are issued new NYSIDs) or undercount (insofar as non-penal law misdemeanor arrests are not fingerprintable). Prior to 1978, DCJS disposition data was incomplete, and therefore the prior convictions of the 1980 defendants might be undercounted.

Do those misdemeanor arrestees without prior convictions grow up to become felony offenders? The next set of figures show *later* felony arrest and conviction trajectories of those individuals represented in MJACD and first-time misdemeanor conviction cohort data.

Figures 1.8 and 1.9 show the percentage of the MJACD and first-time misdemeanor conviction groups over the seven cohorts that have one or more of the following felony events within three years of the cohort-entering event (either the first MJACD or misdemeanor conviction that brought them into the cohort): felony arrest, felony conviction, violent felony conviction. These figures limit the time frame to three years after entering the cohort to make the time “at risk” comparable between the cohorts, as the late entrants to the 2010–11 cohort would have at most three years “at risk” by January 2015, after which the data is censored.

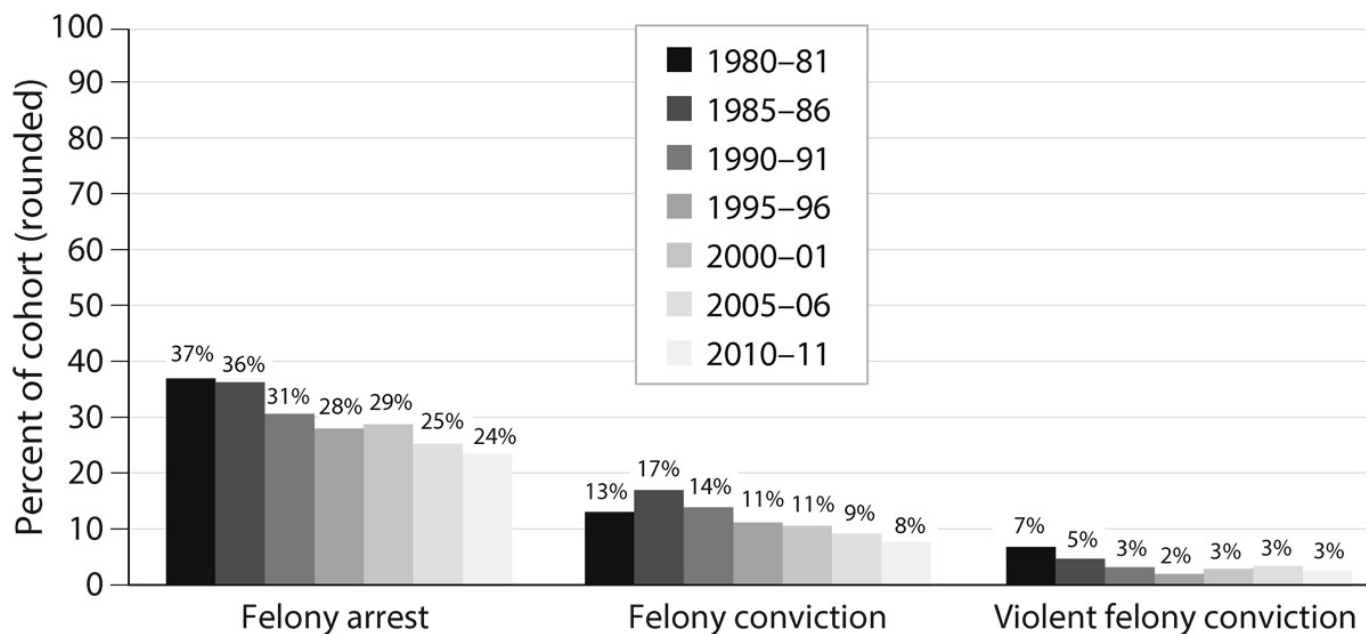


FIGURE 1.8. Percentage of MJACD Cohorts with One or More Felony Arrests, Convictions, or Violent Felony Convictions within Three Years of Entering Cohort

Note: Individual-level data from DCJS; author's own calculations.

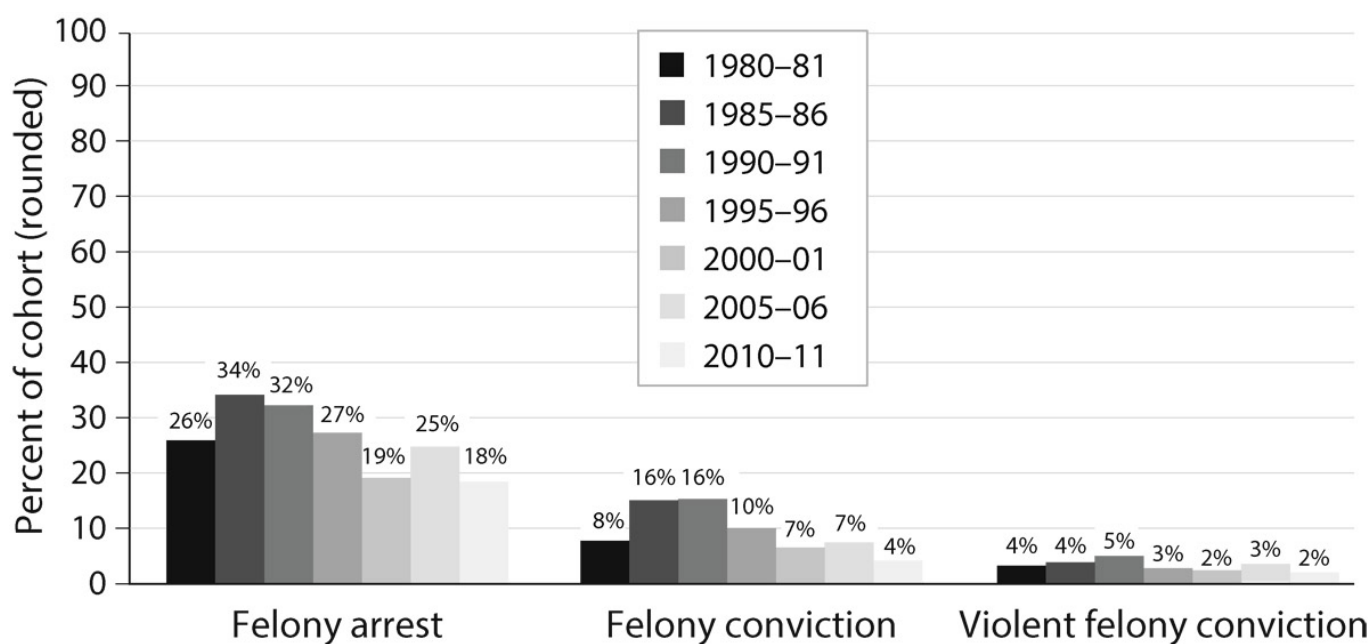


FIGURE 1.9. Percentage of First-Time Misdemeanor Conviction Cohorts with One or More Felony Arrests, Convictions, or Violent Felony Convictions within Three Years of Entering Cohort

Note: Individual-level data from DCJS; author's own calculations.

These figures display some notable trends. First, the earlier cohorts tend to have the highest proportions of later felony arrest and conviction, which is unsurprising given the fact that New York City hit record high violent crime rates and drug arrests in the late 1980s and early 1990s. Second, these figures show that at no

point over the past thirty years have a *majority* of the misdemeanor arrestees that entered the low-end of the criminal justice system without a prior criminal conviction (using the only coherent groups that can be reliably tracked over time) gone on to be arrested, much less convicted, of a felony offense within three years of entering the cohort. The proportion of these cohorts that were convicted of violent felony offenses is even lower over the thirty years of misdemeanor cohorts spanning the years 1980 to 2011. The highest proportion of a cohort to be convicted of a violent felony is 7 percent for the first-time misdemeanor conviction group in the 1980–81 cohort. Recent cohorts in both groups hover around a 3 percent violent felony conviction rate within three years after entering the cohort. So it is apparent that many people caught up in the dragnet of Broken Windows policing stay in misdemeanorland. They are neither cycling back and forth between felony and misdemeanor arrests nor initiating a felony criminal career with misdemeanor arrests.

It is important to note that this data cannot identify the extent to which the tactics embraced under the rubric of Broken Windows policing succeed in identifying individuals who have outstanding felony, parole, or probation warrants, are in the course of a more serious felony (such as weapons possession), or have been deterred from doing so. Despite extensive anecdotal evidence offered by the NYPD and prior mayors contending that aggressive enforcement against low-level offenses interdicts serious offenders or people with outstanding warrants for violent offenses, it is difficult to ascertain with any rigor from currently available administrative data how many serious arrests (such as gun possession) were made possible by a stop or arrest for a low-level offense or how many people with serious outstanding warrants were identified in the same

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manner. This is because aggregate arrest statistics reported by the state are grouped by the top arrest charge,

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so lesser counts are not visible. Even if we could examine the entire docket to see all arrest charges for each incident, absent access to the narrative of the arrest, it would be impossible to tell from court data which charges

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or what incident precipitated the arrest. Claims regarding the deterrent effect of misdemeanor arrests on nascent felony offending are more complicated to specify, both theoretically and methodologically, than most

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proponents seem to grasp.

The difficulty of actually knowing the causal impact of these police tactics or court disposition practices is exactly the point that I will return to in chapter 3 to argue that we should not think of the patterns as being the result of their anticipated effects, because no one knows their effects. We should instead try to understand the disposition patterns in misdemeanorland as a set of practices innovated in the face of particular practical constraints and persistent uncertainty, practices that seemed institutionally viable given the social meaning of the infractions and defendant profile at hand. And that social meaning is inflected by the racial and ethnic status of the majority of the defendants and the spaces from which they hail.

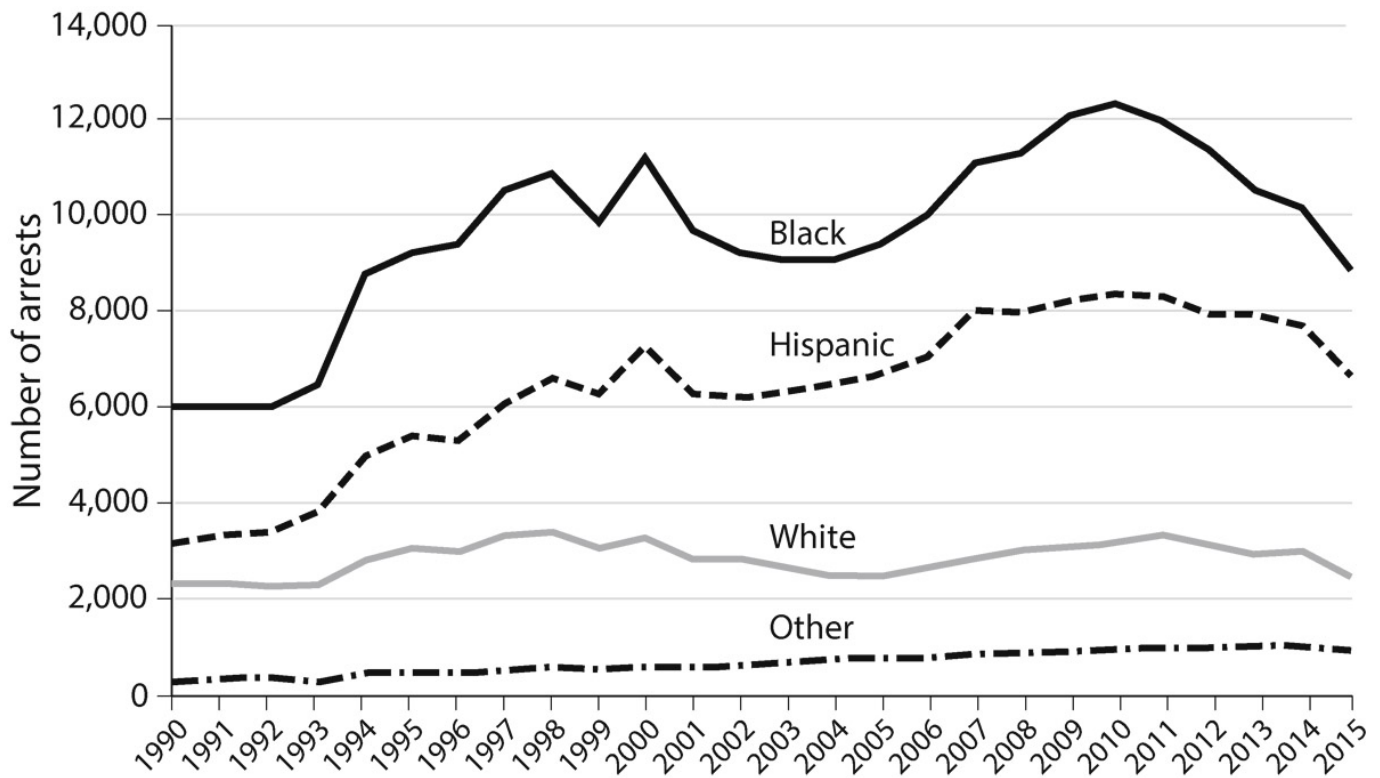


FIGURE 1.10. Misdemeanor Arrests by Race or Ethnicity of Arrestee, New York City, 1990–2015

Note: Data from DCJS.

One of the most marked features of our carceral state is its concentrated impact on communities of color. The same is true of the largely noncarceral expansion of low-level enforcement. Figure 1.10 displays the proportion of annual misdemeanor arrests accounted for by persons classified by DCJS as white, black, Hispanic, or other.

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It illustrates that the dramatic expansion of misdemeanor arrests has been hyperconcentrated on first, black, and second, Latino, individuals. Taking 1990 as a baseline, the increase in misdemeanor arrest levels of white individuals peaked in 1998 at a 144 percent increase over 1990 and hit its second-highest increased level in

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2011 at 142 percent. The expansion of misdemeanor arrests of Hispanic and black individuals peaked later,

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hitting a high of 259 percent over the 1990 levels for Hispanics in 2011 and 206 percent for blacks in 2010. The ratio or disparity in black to white and Hispanic to white misdemeanor arrests also rose over the past decade. In 1990, there were about 1.4:1 misdemeanor arrests of Hispanic individuals to white individuals; by 2007, the ratio peaked at 2.8:1, and in 2014, it sat at about 2.4:1. The black to white misdemeanor arrest ratio started at about 2.5:1 in 1990, peaked at 3.9:1 in 2007 and 2009, and in 2014 sat at about 3.2:1. In 2015, 46 percent of misdemeanor arrests were of black individuals, 35 percent of Hispanic individuals, 13 percent of white individuals, and 5 percent of other racial or ethnic individuals.

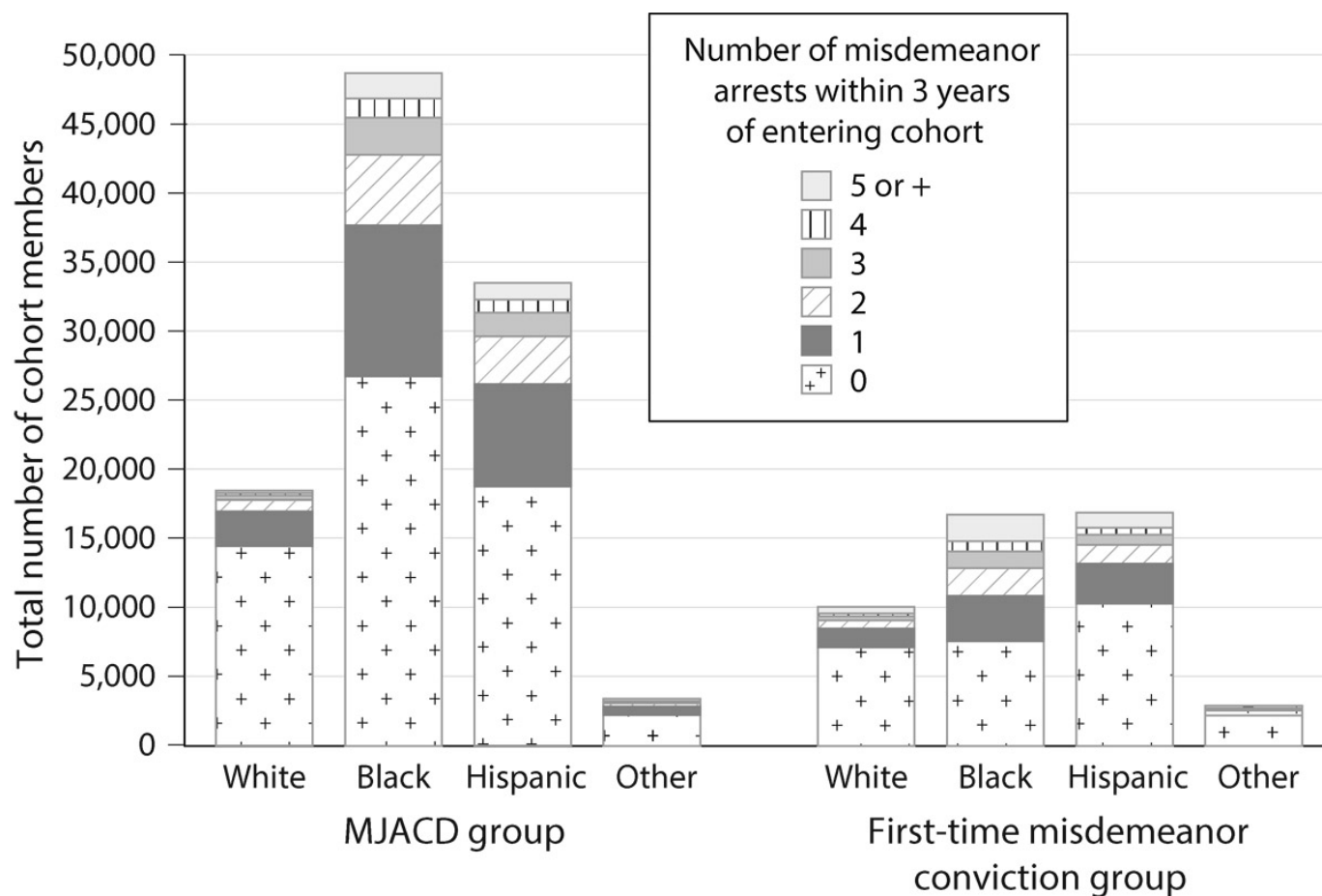


FIGURE 1.11. Number of Misdemeanor Arrests within Three Years of Entering 1995 and Later Cohorts, MJACD and First-Time Misdemeanor Conviction Groups by Race or Ethnicity

Note: Individual-level data from DCJS; author's own calculations.

Not only are more black and Hispanic individuals brought into misdemeanorland; they experience more misdemeanor arrests than white individuals after entering the misdemeanor justice system as recorded in the individual-level cohort data. Figure 1.11 looks just at the post-Broken Windows era by tracking the proportion of all post-1995 cohorts in both the MJACD and first-time misdemeanor conviction groups that experienced any New York State arrest within three years of their initiating disposition. The bars represent the size of all post-1995 cohorts by recorded race or ethnicity and the relative proportions of each group that experienced later arrests after either their first MJACD or their first misdemeanor conviction. Approximately 78 percent of the white individuals in all of the post-1995 MJACD cohorts and 71 percent of the post-1995 first-time misdemeanor conviction cohorts were not arrested within three years after their initiating disposition (MJACD and first-time misdemeanor conviction, respectively). A much smaller proportion of black and Hispanic cohort members were not rearrested within three years of their initiating disposition. Only about 55 percent of both black and Hispanic individuals in the post-1995 MJACD cohorts and about 45 percent of black individuals and 61 percent of Hispanic individuals in the post-1995 first-time misdemeanor conviction cohorts did not experience another arrest within three years after their initiating disposition.

One reason that black and Hispanic *individuals* make up such a high proportion of misdemeanor arrests is that quality-of-life policing is intensely focused in black and Hispanic *spaces*. Figures 1.12 and 1.13 show that misdemeanor arrests have been overwhelmingly concentrated in precincts that have 60 percent or more black or

Hispanic population. Arrests from these spaces have a social meaning, one that translates into a presumption of need for social control over the people who are brought from them to misdemeanorland. Precincts with high concentrations of minority residents tend also to be low-income spaces marked by other forms of social

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disadvantage. Therefore, misdemeanor arrests are not only concentrated by gender, race, and ethnicity but also by socioeconomic class. The state DCJS does not keep income data on defendants, but according to the New York City Criminal Justice Agency (responsible for interviewing defendants to make bail recommendations), only about 46 percent of males interviewed by the agency in 2015 and 38 percent of females

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reported being full-time employed or in a full-time school or training program at the time of their arrest. During my study, I observed very few defendants who did not qualify for public defender services. Therefore, we need to look at the social and economic characteristics of the spaces where misdemeanor arrests are concentrated.

Figure 1.14 is a collection of scatter plots where the unit of analysis is the precinct and the variables are demographics such as black or Hispanic population, percentage of the population below the poverty line, and the unemployment rate. The plots pool all of New York City's precincts over two post-Broken Windows census years, 2000 and 2010, when it is possible to generate related socioeconomic information, and they show that there tend to be more misdemeanor arrests in precincts with higher measures of social and economic disadvantage. Unsurprisingly, spaces that have higher rates of social and economic disadvantage also tend to have higher crime rates. Figure 1.15 shows that misdemeanor arrests are highly correlated with violent felony complaints and the overall "seven major felony" complaints, which include violent and property crime.

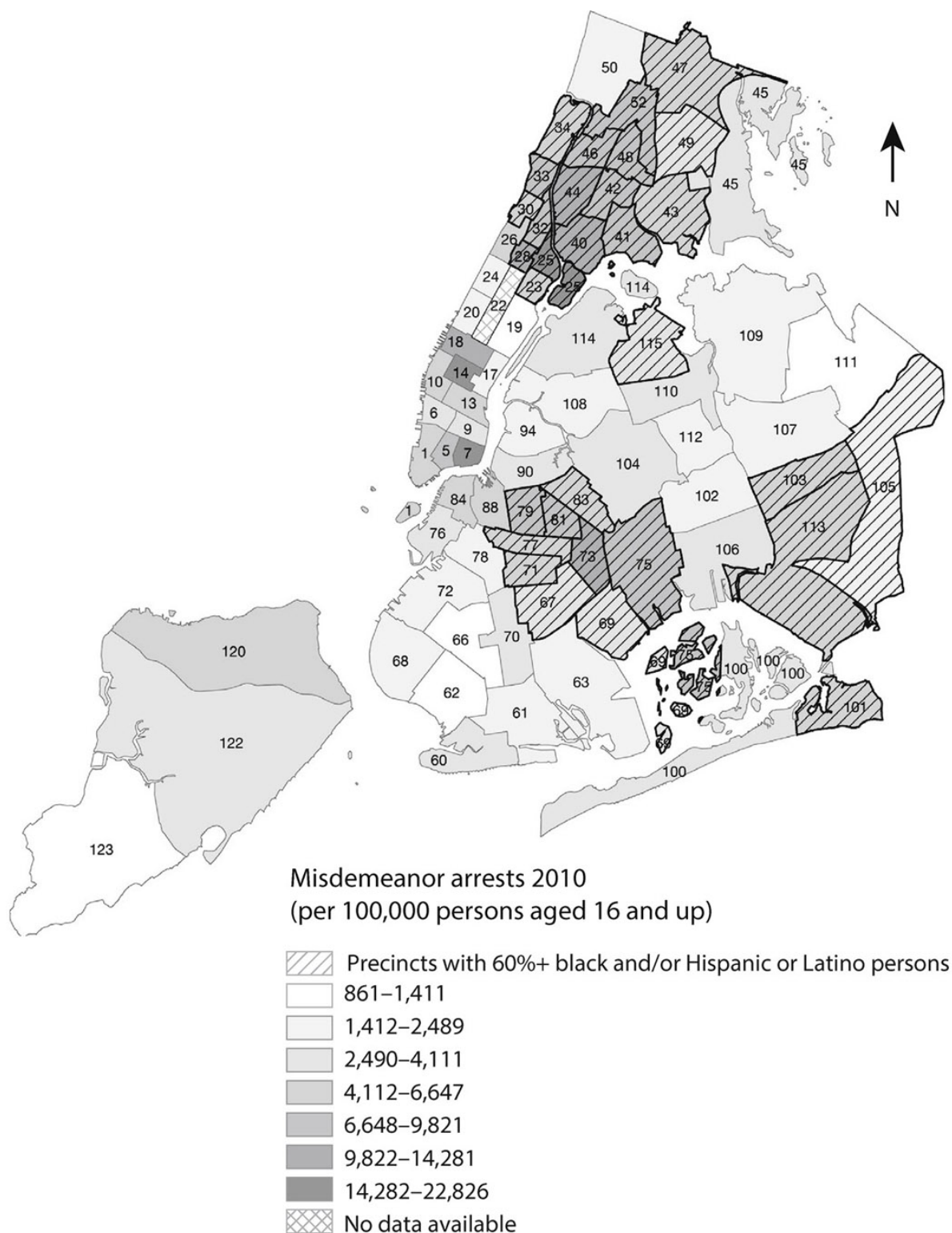


FIGURE 1.12. Population-Adjusted Misdemeanor Arrests per New York City Police Precinct, 2010

Notes: Arrest data from NYPD. No demographic data were available for the 22nd Precinct (Central Park). Total population aged sixteen and over is from the 2010 US Census. Population by race/ethnicity and age was not available in either the American Community Survey or the census data, and therefore the percentage of black and/or Hispanic or Latino persons in the precinct was calculated using total population proportions: adding “Non-Hispanic black persons alone” and all Hispanic persons from the 2010 US Census and dividing by the total population.

To what extent is the concentration of misdemeanor arrests in black and Hispanic neighborhoods

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“explained” by the concentration of violent or serious property crimes? Well, it depends what one means by “explained.” They are certainly not mechanically induced by serious felony complaints because, as the first part of this chapter shows, recent levels of misdemeanor arrests and summonses are the result of extensive discretionary policy changes, most of which took place well after New York’s index crime rate began its precipitous decline. The NYPD’s public explanation for the spatial distribution of low-level enforcement in largely black and Hispanic neighborhoods is that more police are deployed to areas with serious violent crime, and more police mean more misdemeanor arrests, as they are by in large proactive arrests. They also cite more

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service calls complaining of drug activity or assault in minority neighborhoods. It is difficult to sort out the relative importance of the many forces driving these racial disparities because residential segregation patterns in the city mean that most black and Hispanic residents live in spaces with much higher crime rates than white residents, which are also neighborhoods with other types of socioeconomic disadvantage. Consider the fact that in 2010 one-third of the city’s entire black and Hispanic population lived in precincts that have a higher violent crime rate than *any* majority-white precinct. More than 52 percent of the city’s white residents lived in precincts that had a lower violent crime rate than *any* majority-black or Hispanic precinct. Therefore, the social and spatial history of the city make it such that even if police deployment patterns perfectly mirror violent crime rates, the net of Broken Windows enforcement will necessary entangle more minority residents.

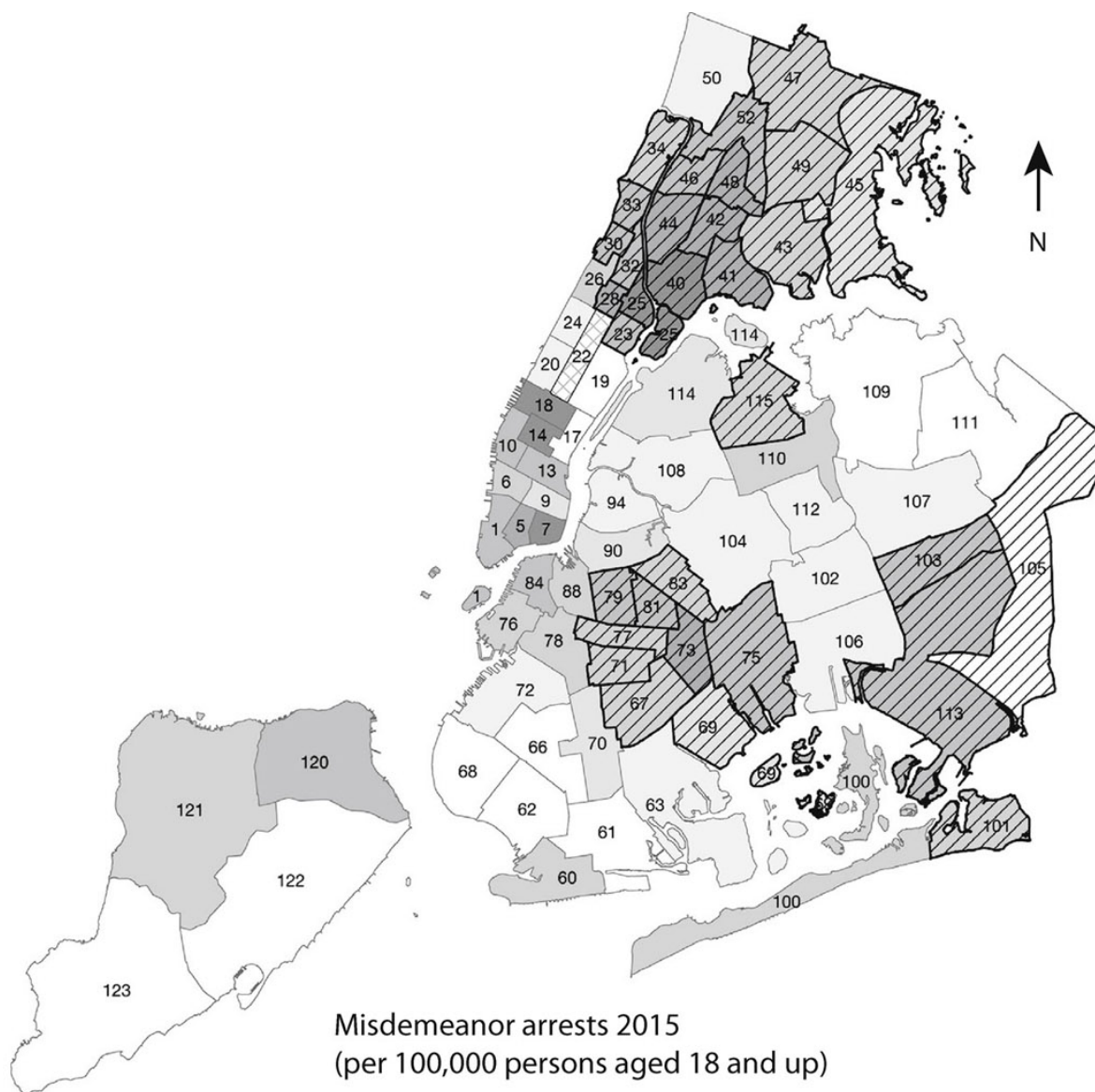


FIGURE 1.13. Population-Adjusted Misdemeanor Arrests per New York City Police Precinct, 2015

Notes: Arrest data from NYPD. No demographic data were available for the 22nd Precinct (Central Park). Total population aged eighteen and over is from the 2011–15 American Community Survey, US Census (“2011–15 ACS”). ACS age groupings required using eighteen and up, instead of sixteen and up, for population adjustments. Because of the creation of the 121st Precinct in 2013, populations for Precincts 120–23 (Staten Island) were calculated based on the 2010 Census Tract population distributions as applied to the 2011–15 ACS population. Population by race/ethnicity and age was not available in either the ACS or census data, and therefore the percentage of black and/or Hispanic or Latino persons in precinct was calculated using total population proportions: adding “Non-Hispanic black persons alone” and all Hispanic persons from 2011–15 ACS and dividing by the total population.

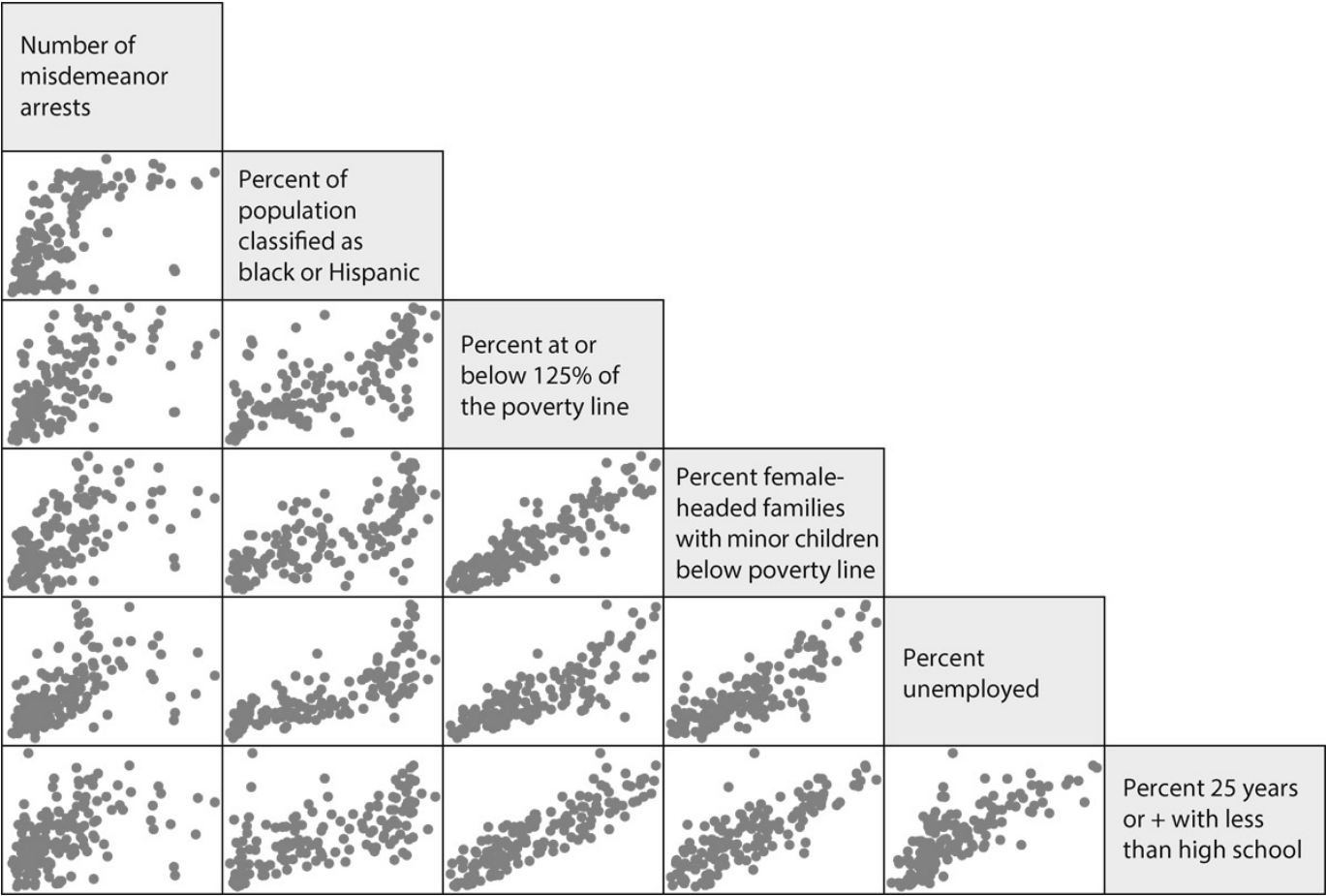


FIGURE 1.14. Precinct Misdemeanor Arrests and Socioeconomic Characteristics, New York City, 2000 and 2010

Notes: Arrest data from NYPD. Socioeconomic characteristics from 2000 and 2010 US Census, compiled to the precinct level by Infoshare Online, <http://www.infoshare.org/main/public.aspx>.

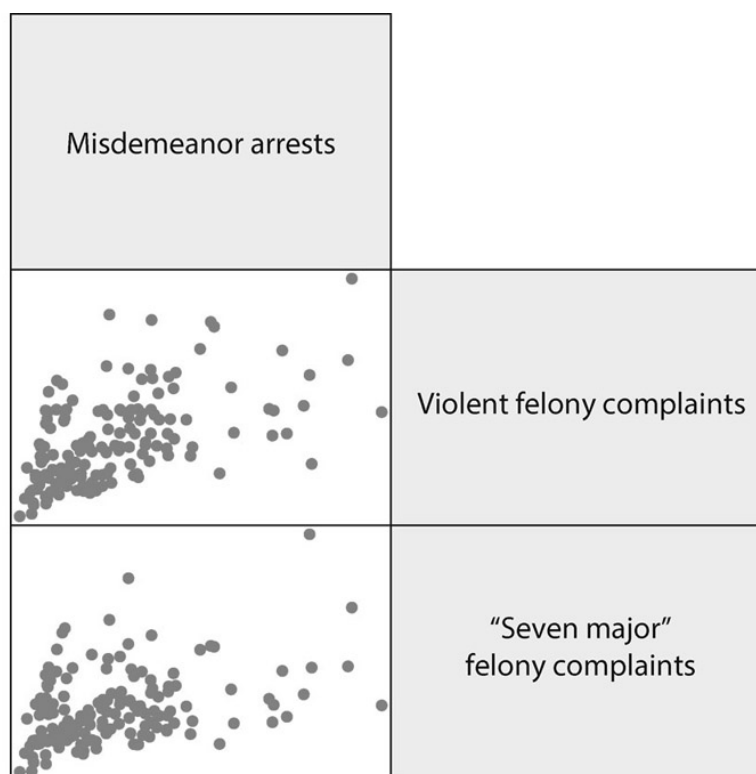


FIGURE 1.15. Precinct Misdemeanor Arrests vs. Felony Complaints, New York City, 2000 and 2010

Notes: Arrest data from NYPD. The seven major felony complaints are murder and non-negligent manslaughter, rape, robbery, felony assault, burglary, grand larceny, and grand larceny of a vehicle.

Most of the city's white population does not live in spaces that have a significant police presence, and therefore they will have a much lower risk of arrest for misdemeanor crimes. There is substantial evidence, however, that the underlying behaviors of some of the largest arrest categories over this period, such as

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marijuana and narcotics possession, are fairly evenly distributed across racial and class groups. Some criminal conduct might be more likely to translate into an arrest because it occurs in communities where police have become an established institution of not only social control but also interpersonal and household control, or because of the conscious or unconscious biases of police officers shaping their discretion to make arrests for

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low-level conduct. Other types of behaviors may be unequally distributed. Research of a different type would be needed to apportion the relative contributions of those different factors to the clearly documented concentration of misdemeanor arrests among black, Hispanic, and low-income communities. But in any case, the preceding figures show that the spaces supplying the majority of the arrests flowing into misdemeanorland have high minority populations and are also characterized by social handicaps such as high poverty, unemployment, and low educational attainment. These spatial characteristics attach certain social meanings to these cases and these defendants, which are discussed in the next chapter.

This chapter establishes four points about the changes in the policing regime that brought about New York City's era of mass misdemeanors. First, starting in the early 1990s, the valence of enforcement against low-level

offenses changed dramatically as law enforcement and political leaders embraced various tenets of the Broken Windows theory. Therefore, secondly, the police set out to intentionally increase misdemeanor arrests and summonses. Third, the new tactics increased not only the frequency but also the formality of subfelony enforcement. The NYPD expanded the types of arrest and ticketing procedures that allowed for more record keeping in order to classify, track, and monitor people the police encountered for low-level offenses. These records were carefully maintained and shared with other criminal justice agencies, especially courts and prosecutors. Fourth, the publicly expressed motivation behind quality-of-life policing tactics was not to identify and punish the maximum number of low-level offenders because the conduct was inherently and intolerably morally deplorable. Rather, it was to use the tactics to reduce major street crime and to abate certain quality-of-life issues, neither of which necessitates punishing every person identified through these tactics.

The policing changes were intentional and based on an explicit theory that was publicly presented and defended in political, policy, and media venues. However, little attention was paid to what *ought* to happen—much less what did happen—to the people arrested as part of these policies once they were delivered to courts. I argue in the following chapters that the judicial response to these arrests was less the result of planned and purposeful policy design than adaptive emergence of practical strategies adopted by front-line legal actors in the shadow of the intentional policy choices made by the police and local and state governments. The theory of Broken Windows never specified a philosophy of punishment for those accused of low-level offenses, much less demanded brute retributivism or severe sanctions. And the practice of quality-of-life policing populated misdemeanorland with people who presented as uncertain risks as opposed to obvious threats to public safety. The greatest proportion of arrests it generated was of people who had no prior criminal conviction. But, at the same time, space, race, and ethnicity infused the arrests with a special set of meanings that would shape how legal actors would process those arrests. The following chapter describes the aggregate trends in misdemeanorland court dispositions of the arrests since the rise of Broken Windows policing and puts forward a model to make sense of them.