

scottish justice matters

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CHANGING TIMES

Special features on the reforms facing Scotland's criminal justice system

Also

Problem-Solving Courts

Interview with
HM Chief Inspector of
Prisons, Hugh Monro



REFORM
IN SCOTTISH CRIMINAL JUSTICE

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Scottish Justice Matters is a publication of the Scottish Consortium of Crime and Criminal Justice (SCCCJ). The Consortium is an alliance of organisations and individuals committed to better criminal justice policies. It works to stimulate well informed debate and to promote discussion and analysis of new ideas: it seeks a rational, humane, constructive and rights-based approach to questions of justice and crime in Scotland.

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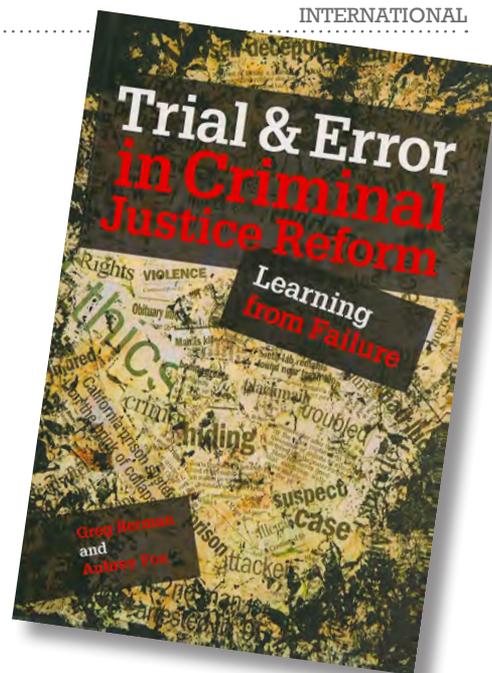
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THE F-WORD:

LEARNING FROM FAILURE IN CRIMINAL JUSTICE REFORM IN THE USA

The following is an edited version of the conclusion to **Greg Berman** and **Aubrey Fox's** (2010) *Trial and Error in Criminal Justice Reform: learning from failure*.



THIS BOOK has sought to examine what we would call ‘promising failures’ – efforts to improve the criminal justice system that have achieved something less than an unqualified success. In truth, the only kind of success possible in the field of criminal justice is a qualified one; even the best, most well implemented initiatives are incapable of producing entirely crime-free communities.

We have identified a number of failure traps that reformers stumble into repeatedly. What follows are some of the most common mistakes that reformers [in the USA] have made over the past 25 years, along with some thoughts about how to address these problems in the future.

Mistake 1: Failing to engage in self-reflection

President Barack Obama speaking about education reform, has said, “One of the things we want to get out of is this notion that somehow one law one program, magically is going to change things. What happens then is that people get disappointed, they scrap it, and they try a whole new thing”. This dynamic should be instantly recognisable to anyone who has worked in the field of criminal justice. Criminal justice is not immune to faddishness. There are numerous obstacles that stand in the way of reformers engaging in meaningful self-analysis, including discomfort or unfamiliarity with research methodology and a natural tendency to engage in cheerleading in order to protect new ideas from external attack.

Lesson: Criminal Justice officials should constantly ask themselves what’s working, what isn’t, and why

An ongoing commitment to research and analysis can help reduce the likelihood that today’s innovation becomes tomorrow’s conventional wisdom in need of being overturned.

Mistake 2: Defining success too narrowly

Reducing crime should be the central goal of the criminal justice system. However, contrary to what many politicians seem to think, this is not the only goal that matters.

Lesson: Reducing crime is just one of many outcomes what should be sought from the criminal justice system

Instead of just asking “does this program work or not?” reformers should be posing a different set of questions:

- ❖ What makes a program work in one place but not another?
- ❖ Is it possible to identify successful elements within unsuccessful programs?
- ❖ Does a given initiative work better for some populations than others?

Mistake 3: Thinking that more research will lead to purely rational, evidence based criminal justice policies

While research can tell us a lot, very few evaluations offer the type of simple, categorical judgments about what works and what doesn’t that policy makers crave.

Lesson: Evaluation is no substitute for judgement

Policymakers and practitioners must become better consumers of social science research. On the other side, researchers must acknowledge that research is just one of many factors that go into formulating criminal justice policy.

Mistake 4: Expecting too much from criminal justice efforts

Policymakers and the public need to have realistic expectations of how much the criminal justice system can achieve.

Lesson: Our expectations of criminal justice reform should be modest

Given the limitations of time and resources, it is remarkable that any criminal justice intervention is able to change the behavior of offenders. The truth is that individuals involved in the criminal justice system bring a staggering array of problems with them including

joblessness, addiction, mental illness, and low literacy levels, as well as histories of poverty and abuse. Helping these individuals to get on the right track is no easy job. This is a difficult message to deliver to the public, and to political officials. But having a more honest conversation about criminal justice reform means redefining expectations.

Mistake 5: Failing to navigate local politics

It is enormously tempting for new leaders to jettison the ideas and initiatives associated with their predecessors. Government leaders often demand simple solutions and quick fixes, not to mention public credit. These factors tend to undermine innovation and can even lead to the implementation of politically appealing programs (such as bootcamps) without a strong evidence base. But politics is not always a bad thing, of course. Political pressure is often the only force capable of overcoming bureaucratic inertia, mobilising broad support for change, and keeping well thought out reform plans from being prematurely abandoned.

Lesson: It is amazing what can be accomplished when you don't care who gets the credit

Public acknowledgement is the coin of the realm in public policy. Figuring out how to provide key political actors with the credit they need (be it applause at a public event, a favorable story in the local paper, or a trip to a national conference – regardless of whether they deserve it or not) – is a crucial skill for reformers to master.

Mistake 6: Planning in isolation

Given the conflicting agendas and cultures among the various criminal justice agencies, it is a challenge to get them all to line up behind any single idea. As a result, there is a tendency for agencies to go it alone. If the circle of people involved in a new initiative is too small, the project may have a hard time generating support once the initiators move on, as they inevitably will.

Of course, many reformers err in the other direction, laboring under the impression that if they get everyone around the table, they would be able to hammer out a consensus on a course of action. According to Ron Corbett, the executive director of the Massachusetts Supreme Court, “Every time you add another big agency to your planning effort, the difficulty of getting people to agree and to coordinate goes up geometrically” (Berman 2008, 106)

Lesson: Collaboration should be approached strategically

Reformers need to be strategic in deciding how and when to bring relevant stakeholders to the table – both under and over inclusiveness can have potentially devastating long term consequences.

Mistake 7: Not spending enough time on the details of implementation

While it is crucial to have good ideas, the truth is that most criminal justice experiments fail for other reasons – good ideas are relatively plentiful. Far more difficult is mastering the challenges of implementation.

Lesson: Context matters: there are no cookie-cutter models when it comes to criminal justice innovation

There's no such thing as an idea or program that can be taken off the shelf and successfully implemented regardless of conditions on the ground. The same program that works well in Miami (drug court) can struggle in Minneapolis and Denver. The same idea that reduces crime in Boston (Operation Ceasefire) can fail to catch on in Los Angeles. Instead of seeking foolproof formulas, it should be acknowledged that every place is different and there are hundreds of different ways to achieve success.

Mistake 8: Taking a top-down approach to change

The ultimate success or failure of any effort will depend on implementation on the ground by front-line staff – probation officers, judges, police officers and others. An exclusively top-down approach to reform in which change is simply dictated from above, can lead to resentment or even outright sabotage.

Lesson: The people at the bottom of an agency matter as much as the people at the top

The people charged with implementation must have some faith that what they are being asked to do makes sense. However, it is next to impossible to believe in a reform that you have played no role in conceiving.

Reformers must take pains to market their ideas across all levels of an agency's hierarchy. They must also take care to leave room for some invention at ground level. The good news is that reformers can reap significant rewards if they pursue this course of action – often the most effective way of spreading an idea is by generating positive word of mouth among those who have been directly involved in successful implementation.

We do know how to guarantee failure

In conclusion, while our research has not unearthed a foolproof to successful reform, we do know how to guarantee failure, and that is to continue with business as usual – cycling the same people through the criminal justice system again and again, spending billions of dollars unnecessarily on prisons, and tolerating public disenchantment with justice. This book is dedicated to all of those who have the courage, fortitude and creativity to risk failure and challenge the status quo in the criminal justice system.

Berman, Greg (2008) “Learning from Failure: a roundtable on Criminal Justice Innovation” *Journal of Court Innovation* 1(1): 97 – 121.

Berman, G and Fox, A (2010) “*Trial and Error in Criminal Justice Reform: Learning from Failure*”. Urban Institute Press. Washington.

Our thanks to Greg (Center for Court Innovation, New York) and Aubrey (Centre for Justice Innovation, London) for their permission to use this extract.

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