



‘Defund the police’ is not a real reform strategy

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The last few months have been tense, marked by social distancing and physical isolation amid the outbreak of a new virus. In-person communication and deciphering nonverbal cues is made more difficult by widespread use of facial coverings and plastic barriers. The American public has watched as the chasm between them and their government widens, mostly from ever-lengthening, amorphous states of emergency.

Not to discount the persistent issue of violent crime in our cities, among the population, the many accounts of gratuitous violence at the hands of public officials has brought the most hardened supporters of law-and-order to the table to discuss how American society can reform its police and restore accountability.

But, how can this be solved? Police departments are run at the local level. Budgets are allocated through the little-understood mechanisms of city, town, and county government. To many Americans, it can seem like a long way to reform.

Not every police department needs reform. The vast majority of law enforcement officials (LEOs) enter the force to protect and serve their communities, and maintain that commitment throughout their service. Policing would be a dangerous job under the most limited and accountable form of government.

Today, officers are tasked with enforcing numerous laws and rules that do not enhance public safety. This has led to a greater divide between police and the people they serve in many areas of the U.S. and especially our metropolitan areas. To help to remedy this situation, state and local policymakers should look to a myriad of reforms to bridge this divide.

Increase Accountability in Police Union Contracts

A point that cannot be overlooked in this larger debate is the role that public-sector labor unions play in obfuscating their members from full accountability. This facet is on display no more than within police union contracts. By reforming these contracts, policymakers can balance the scales between the powerful, politically-connected bargaining units and city leaders, who delegate managing their forces to their police chiefs.

At a basic level, public officials must be held to the same standards as the people they serve, whether they be police officers, bureaucrats or politicians. When individual police officers receive numerous complaints from the public, union contracts should not get in the way of proper discipline. Yet, quite often, they do.

Stephen Rushin, a Loyola University law Professor, in an interview with [CBS News](#), gave an example from San Antonio, Texas, where all officers accused of a civil service rule violation are

required to receive access to all sorts of evidence against them, such as video, GPS coordinates, witness statements, and affidavits before they can be questioned.

The union for the city's officers, the San Antonio Police Officers Association, noted that those requirements do not apply to criminal proceedings, but many officers are unlikely to face criminal charges for breaching standards of conduct. The union signaled that they understand that the winds of change are blowing in the direction of increased accountability, noting that "as we move forward in time and our industry adapts to changes, there will be a need to make modifications."

In many cases dealing with alleged police misconduct, local taxpayers are likely to shoulder the financial burden. In just 2019 alone, the New York City Police Department (NYPD) paid out nearly \$69 million in settlements; this number does not count the settlements paid in cases settled out of court.

Since the June 2018 U.S. Supreme Court ruling in *Janus v. AFSCME*, public employees are no longer required to financially support their union as a condition of employment. If individual police officers are concerned about losing their community's trust, they may withdraw union support and form smaller, more accountable professional organizations bound by their own values.

While local leaders will need massive political will to take on these powerful public-sector unions, there are solutions that individual officers may pursue in order to strengthen the reputation of their profession and relationship to those they serve. An initiative called the Thick Red Line aims to reach local police officers and empower them to "restore the trust and faith in the police" by organizing with their colleagues, either with or without their union, "into a department-wide refusal to enforce any law or regulation that doesn't have a real victim."

Eliminate Civil Asset Forfeiture in Every State

The next step in examining the interplay between LEOs and the public requires following the money, so to speak. This must include a hard look at the policy of civil asset forfeiture, which allows police to seize personal property simply through the suspicion of a crime.

The tricky thing about this problematic policy, is that it is adjudicated in civil court, instead of criminal court. In these proceedings, the state flips due process on its head, prosecuting your property for its involvement in a crime. This means that the individual whose property was seized must prove the innocence of their property by demonstrating that it is more likely than not ("a preponderance of the evidence") that their property was not involved in the commission of a crime.

In many areas of the U.S., police rely on this tool to make up significant portions of their budgets. Because many jurisdictions allow police to keep much, if not all, of what they seize, a perverse incentive exists for officers and departments at large to engage in this type of activity. The positive side of this is that Maine's laws on civil asset forfeiture are recognized as one of the best in the country.

Instead of seizure of property through a criminal conviction of an individual for a specified crime, police need only be suspicious that a crime took place using the property, in order to seize it under civil asset forfeiture. This practice should be ended in every state in order to protect the

Fourth Amendment rights of Americans. No one should be punished with a loss of property without due process.

Roll Back Excessive Fees and Fines

Many laws, ordinances, and regulations are on the books all across the country that local governments rely on to pad their budgets.

A survey by the Institute for Justice, a liberty-focused national public interest law firm, found that in three Georgia municipalities that rely disproportionately on the accumulation of revenue through fees and fines—described as “taxation by citation”—contributed to significantly lower levels of trust in government, particularly among African-American communities, those most likely to be ticketed under these schemes.

By limiting ordinances to those that truly protect community health and safety, localities would greatly limit the incentive for police to become revenue collectors. Some local police budgets around the country depend on ticket fines for minor violations of traffic laws, and numerous other code infractions. An egregious case involving the town of Pagedale, Missouri showed ticketing for ordinances prohibiting barbecuing in front of a house and having holes in window screens.

By getting rid of the incentive for officers to accumulate revenue through fining the population for trivial “offenses,” such as the examples above, taxpayers may rest assured that local governments are spending their tax dollars more wisely while also maintaining a healthy relationship with those they serve.

Treat substance use and abuse as a public health issue, not one of criminality

Our nation’s outdated drug laws and enforcement regimes cause LEOs to view the drug user and the drug-addicted through a lens of criminality, instead of viewing the issue as it is, one that requires a holistic public health response. As my colleague, Julia Bentley argues, our current drug laws are more draconian than necessary for a free society, and have caused much more harm than good, whether measured in fiscal, public health, or social impact.

By reducing criminal penalties, and removing drugs from the criminal sphere altogether, we can eliminate the incentive for police to accost drug users who are not committing any type of violent or property crime. We can also reduce the societal stigma on drug use in order to prompt the drug-addicted to enter voluntary treatment. Yes, this would be a large shift in the mindset of Americans to drug use, but these policy changes will increase the likelihood that those who are addicted will seek therapy for their illness.

The idea of seeking “harm reduction” as a priority for policymakers has gathered greater popularity as public understanding of addiction as a mental illness has come to the fore. Looking at countries who have embraced this policy, namely Portugal, we see that use of drugs among the population, and especially among minors has decreased since the beginning of that policy. The drug-addicted have also been more willing and able to seek treatment and pull themselves out of a deadly downward spiral.

A white paper by journalist Glenn Greenwald published by the Cato Institute in 2009, noted that prior to decriminalization of individual possession of small amounts of drugs in 2001, “The most substantial barrier to offering treatment to the addict population was the addicts’ fear of arrest.”

Portugal continues to hold drug trafficking and production as criminal offenses, but treats individual drug use as a public health issue, offering easier access to treatment. As a result, factors such as new HIV infections have substantially dropped over the last 20 years, reports the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

De-militarize Local Police Forces

In the late 1990s, the federal Department of Defense began the 1033 program, through which local police departments may accumulate excess military equipment from the Pentagon. The equipment has become excess because of updated congressional allocations to the military, rendering previous tools obsolete. The 1033 program equipment is provided to local law enforcement agencies by request, and at little to no cost to localities. Police departments in Maine covering college campuses, the warden's service and small towns and cities have received nearly \$10 million in military equipment from the Pentagon since the beginning of the program.

The largest receipt of military gear went to Sanford since it houses the only SWAT team in Southern Maine. This may well be necessary, as long as use of SWAT force is reasonable given the circumstances. The Bangor Daily News reports that Sanford police have ordered more than \$1.5 million in military equipment, "including two Navistar Defense MaxxPro Mine-Resistant Ambush Protection vehicles, which were designed to protect U.S. soldiers from deadly mines during wars in Iraq and Afghanistan."

In 2014, after clashes between police and protesters as a result of the shooting of Michael Brown in Ferguson, Missouri, President Obama restricted the parameters of the 1033 program, but President Trump restored it in August 2017, after heavy police union lobbying. If the use of this equipment, if ever justified, is used in a reasonable manner, it is unlikely to draw much ire from the public. But combined with the aforementioned excessive fines, fees, and criminalization of victimless offenses, these disbursements can have the effect of further dividing the ethos of local police ("to protect and serve") and their communities.

Society's goal for effective police reform, as it should be for any application of government force, should be a system that requires everyone to follow the same laws so all can be held accountable to the same standard. We must ensure the greatest possible level of human-to-human understanding between agents of the state and the public they serve.

Though not an exhaustive list, by enacting some or all of these reforms, policymakers may well be able to begin to heal the divide between police and some of the communities they serve, avoiding the vague, unnecessary, and unproductive calls from activists to "defund the police."