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Don't defund police; eliminate qualified immunity

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The recent calls for police reform are long overdue. It took the horrific killing of George Floyd to make the subject of police brutality a talking point. Now, as a country we need to make strides toward reform. How? Many activists are presently calling for defunding local police departments, that is, diverting **funds** from law enforcement to other departments. Will this tactic have any meaningful impact on curtailing the incidence of police violence? Alas, the answer is, probably not. Why? Because the defunding strategy is a broad approach to a nuanced problem.

A more direct approach to curbing police brutality would be abolishing qualified immunity. For example, a proposal by U.S. Rep. Justin Amodeo, a Michigan Libertarian, to end this privileged legal protection ("The Ending Qualified Immunity Act") would hold bad actors accountable by incentivizing police officers to be more cautious when subduing suspects. It is also more politically feasible, operating as a more moderate policy than defunding or dissolving police departments. Above all, it provides a clear path for reform measures. Simply defunding police departments does not suggest any means or mechanism for improving arrest procedures. It does not eliminate the institutional roadblocks to reform.

What Is Qualified Immunity?

There is still one question that needs to be answered before contrasting defunding and the abolition of qualified immunity. What is qualified immunity? In brief, it is a legal **doctrine** that protects government employees from being sued for performing essential job functions, providing their actions do not violate any well-established rights. The modern application of this legal status was defined by **Harlow v. Fitzgerald** (1982), establishing the need for clear "statutory" evidence that the plaintiff's rights have been violated and eventually evolving into the requirement for a previous case in which the details of the violation are identical. These strict requirements make it nearly impossible to seek proper recourse when our civil rights have been infringed upon, thus leading to instances of constitutional violations with no restitution. One glaring example is **Baxter V. Bracey** (2014), where a suspect was attacked by a police dog after having surrendered.

Why Defunding Will Not Realign Officer Incentives

Narrowing law enforcement expenditures will not directly incentivize police to refrain from using excessive force. One elementary principle of psychology is that there needs to be a connection between consequences and actions. Punishment is explicitly designed to **reduce** the frequency of a behavioral pattern. Applying broad sanctions will not provide specific adverse consequences to an officer who violates the rights of a suspect in custody. In order to effectively extinguish antisocial behaviors, it is best to have repercussions that impose a true hardship for the guilty parties. Eliminating qualified immunity will make the offending officer financially responsible

for paying damages to victims of police brutality, thus connecting behavior with firm consequences. Most importantly, it would not punish complaint officers with reduced resources to effectively do their jobs.

Defunding also fails at realigning incentives because it leaves the institutional barriers that shelter bad cops from civil liabilities intact. Siphoning money away from the departments does not guarantee abusive actions will stop. As long as qualified immunity remains on the books, it will insulate bad actors from accountability. Per a 2014 study, instances where victims are awarded damages for law enforcement related rights violations, 99.98 % of the settlements were paid out by governments, not the offending officer! To only compound matters, there are institutional biases predisposed to rule in favor of qualified immunity. In the majority of cases that the lower courts deny protection to a police officer, these cases are often overturned by a higher court. These are hurdles that simply cutting funding will not overcome.

One alternative to qualified immunity that would shift incentives toward better conduct would be requiring liability insurance for law enforcement – a concept formulated by Clark Neily of the Cato Institute, paralleling malpractice insurance for doctors. Once a police officer racks up a number of incidents, that officer will become too expensive to be employable and will be priced out of the job market, thus making it impossible for an officer like Derek Chauvin to be on the force for 19 years.

Defunding is Political Suicide

Beyond the defunding mantra having a limited capacity for change, it is a relatively unpopular position. A recent survey reveals that 64% of Americans polled “oppose the defund police movement.” This really shouldn’t be too surprising. The phrase “defund police” has a certain ring of ambiguity to it. What do they mean by defunding the police? There has been quite a bit of controversy over what this slogan actually entails. The majority of groups calling for redirecting tax dollars to other departments are activists on the fringes calling for the abolition of law enforcement institutions. Confusion aside, many in the United States would find either perspective to be too extreme. A more moderate reform policy would garner higher approval ratings from the average voter. Abolishing qualified immunity may be the middle ground we are looking for. It does not seek to dissolve any of the law enforcement agencies but does increase officer accountability.

An equally formidable obstacle in police reform is the police unions. It is well-known that law enforcement unions generally hinder attempts at reform. The unions have worked tirelessly in justifying their opposition to abolishing qualified immunity. The power and influence of labor unions in any industry should never be underestimated. It is a safe bet that union leadership has their sights on discrediting the “defunding movement.” While the unions do have qualified immunity in their cross-hairs, the general public has yet to express disapproval of this policy. Politicians and celebrities are championing abolishing qualified immunity, which will sway public opinion, making abolishing qualified immunity more strategic from a political point-of-view – even in the face of union opposition.

Defunding Lacks A Cohesive Plan

The calls for defunding lack specific details to be a successful policy. There are few proponents of this approach expounding upon how much police expenditures should be cut. Neither are any

of those championing this slogan providing comprehensive budgets for spending relocated funds. These omissions demonstrate a lack of a cohesive plan for implementation, meaning it may fail as a policy. In contrast, there is a formalized plan for abolishing qualified immunity. There is already a **bill** drafted describing a concise plan for ending qualified immunity, providing a clear direction for change.

Defunding also is a long and drawn-out path to reform, which would most likely lead to a piecemeal strategy for addressing police brutality. In practice, defunding each individual police department will take months if not years. As we have seen with marijuana laws, reform is a slow work in progress. It can take years to bear fruit, and that is at the state level, never mind getting as granular as being determined at the municipal level. Whereas getting rid of qualified immunity would provide a national solution. The Ending Qualified Immunity Act would effectively eliminate this institutional barrier to justice across the country, instead of myriad lopsided incremental pushes toward reform. The big picture is this: the fragmented impact of piecemeal defunding may not result in conclusive reform, dampening much of the momentum of the reform movement accelerated by George Floyd's death.

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