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To improve the criminal justice system, repeal misguided laws

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In response to high-profile instances of police violence, like the killing of George Floyd a year ago, reformers have suggested a range of policy changes, including defunding the police, reforming qualified immunity, outlawing certain tactics like chokehold restraints, holding police departments liable, and lowering the criminal intent standard needed to convict officers of crimes.

Many of these reforms deserve consideration, and some might reduce excessive police violence at the margin.

But none of these reforms addresses the most fundamental problem with our criminal justice system: laws that limit individual freedom without any convincing basis in protecting innocent third parties or promoting public safety. Such laws create more encounters between the police and the public, which by itself raises the risk of excessive force. Even more, such laws tilt perceptions and incentives in ways that make police violence, and especially racially biased violence, more likely.

The most obvious example is drug prohibition. Federal and state governments make more than one million arrests each year for drug violations while incarcerating over 400,000 people on such charges. Enforcing drug prohibition is a crucial goal for every local police force as well as the Drug Enforcement Administration and other federal agencies.

But drug prohibition keeps individuals from exercising the freedom they should have to use or produce drugs, so long as they do not significantly harm others. Worse, rather than decreasing the negatives often attributed to drug use such as violence and overdoses, prohibition exacerbates those problems. In particular, drug prohibition increases racial tensions and creates conditions under which excess police violence is more likely.

Enforcement of any law can have unfortunate or biased outcomes. But since a “crime” like drug purchase or sale has no natural complainant because both sides participate voluntarily, the scope for racially biased enforcement becomes larger. As noted, these laws create more adversarial contact

between civilians, especially racial minorities, which means more opportunities for violent outcomes. And for any given encounter, the low burden of proof allows police to enforce laws in a prejudiced manner: they can simply assert that minorities are more likely to use or sell drugs, and they can easily target enforcement against minorities.

The racially biased impact of drug prohibition is not surprising, since attempts to suppress minorities have been key parts of drug prohibition movements through history. Early alcohol laws targeted Irish immigrants, opium laws targeted Chinese immigrants, marijuana regulations targeted Mexicans, and cocaine laws targeted black Americans.

Many other laws have the same characteristics as drug prohibition: they limit individual freedom without a compelling basis as a response to public safety threats, and they make it easier for racially biased police officers to impose that bias. This includes bans on prostitution, loitering, gambling, public intoxication, vagrancy, and certain weapons offenses. Legalizing these activities would immediately reduce arrests by over one fifth and eliminate many high-risk encounters with law enforcement. Rethinking many kinds of traffic violations would have the same benefit, as black drivers are stopped and subjected to police searches more frequently than white drivers.

Many examples of recent police violence fit exactly this pattern of occurring due to laws that should never have existed in the first place. Eric Garner was killed during an arrest for selling loose cigarettes. Philando Castile was killed during a traffic stop when the police officer allegedly smelled “burnt marijuana.” Andrew Brown Jr. was killed by officers serving a drug-related warrant. Freddie Grey died in police custody after being arrested for possessing a knife. In all, more than 5,000 people have been killed by police since 2015.

Reducing the number of criminalized behaviors, and thus reducing encounters between civilians and law enforcement, will decrease no knock raids, civil asset forfeiture, and other issues that result from inappropriate laws and that raise the risk of violence between police and the citizenry. Repealing misguided laws might also draw a different type of person to the police profession, tilting more toward those who want to protect rather than punish individual choices.

And budgetary concerns also favor eliminating these laws. In 2016, state, local, and federal spending on drug prohibition totaled \$47.8 billion, all while states and the federal government missed the opportunity to collect \$58 billion in tax revenue. Ultimately, legalization of drugs and other non-crimes provides at least partial defunding of the police, plus extra revenue, in a principled way.

Eliminating freedom-inhibiting laws is a necessary condition for improving the quality of policing in America; no police force can perform well at tasks that make no sense.

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