

Community policing needs local oversight

Current crisis in criminal justice partly stems from increased involvement of federal government

By Ennio Piano, Ph.D.

The tragic killing of George Floyd in Minneapolis two weeks ago has started a long-overdue national conversation about the causes behind police brutality in the United States and the pressing need for criminal justice reform. Protesters on the streets, advocates, and public officials have called for a series of changes to the governance of law enforcement, including the abolition of police unions, the repeal of qualified immunity, and the defunding of police departments altogether.

To formulate and enact effective reform, we must first understand the causes behind the problem we wish to solve. There are many potential sources for police brutality. A popular argument is that police officers enjoy a high degree of legal protection for their actions. These protections, which may have been introduced with the benevolent objective of ensuring the safety of law enforcement, overtime turned into a shield against legitimate repercussions for those agents that acted inconsiderately and even criminally. Many have identified the doctrine of qualified immunity and the political power of police unions as two sources to this lack of accountability. Others have pointed to a culture of impunity and the presence of racial animosity that dominates some police departments.

It's likely that all these factors contribute to the current crisis in American policing. This crisis is one of community discontent with local law enforcement. In an article titled "[Federalism and the Police](#)," published in 2017 by the *Arizona State Law Journal*, my coauthors Peter J. Boettke (George Mason University) and Liya Palagashvili (SUNY-Purchase) and I argue that the origins of this discontent go back to the 1960s. More precisely, to Lyndon Johnson's "Safe Streets and Crime Control Act" of 1968.

This was the first step towards the growing involvement of the federal government in local policing, a process that contributed to the decline of the community-policing model. In this model, local law enforcement and the community it serves cooperate to guarantee law and order: Law enforcement agents are members of the community, the community itself participates in the production of their own safety by collaborating with the police, sharing information, and funding their activities via local taxes. This system has two desirable features. First, it allows for close scrutiny by the community on the agency entrusted with the duty and

power to use violence within it. Second, it introduces a degree of competition between localities over the quality of the policing they offer to the public. Economists agree that competition is generally a good thing. In this case, for example, it forces local authorities to make sure that their policing efforts reflect the community's preferences over the kind of police activities they need the most.

For community policing to work, communities must be able to exercise significant control over local law enforcement, control which takes the form of direct oversight and the threat of "voting with their feet" and taking their taxes with them. The federal government's involvement with local policing interferes with both. In our article, we document the rise of the federal government as a major source of funding and regulation of local law enforcement over the decades since Johnson's Act. Between 1980 and 2010, the federal government's aid to local police agencies went from about one hundred million dollars to just shy of three billion dollars, a 3,000 percent increase. The flow of dollars from Washington to local police agencies meant that local dollars are less of a concern, weakening competition between jurisdictions.

Direct funding is not the only tool in the hands of the federal government. Two other policies in particular diverted the efforts of local police from the needs of their communities to the policy preferences of federal authorities: Civil asset forfeiture and the "Program 1033." The first program allows local agencies to keep a share of the assets captured during an investigation as long as they cooperated with a federal agency's efforts, a strategy that has been widely employed in the pursuit of the federal government's war on drugs. The second program gives local law enforcement authorities access to military personnel, weapons, and other instruments as long as these are employed in furthering federal objectives.

All these policies contribute to enlarging the wedge between the desires and needs of local communities and the actions of local law enforcement. While our article does not provide explicit recommendations on how to solve the present crisis, it does point to a potential source for the corruption of community policing in the United States. Police brutality is but one consequence of the inability of local communities to influence the rules of the game within which they operate and the process through which the same rules are enforced.

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