

A Proposal to End Regressive Taxation through Law Enforcement

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Our strategy calls for combining public investment, a secure social safety net, and fiscal discipline. In that framework, the Project puts forward innovative proposals from leading economic thinkers — based on credible evidence and experience, not ideology or doctrine — to introduce new and effective policy options into the national debate.

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This policy proposal is a proposal from the author(s). As emphasized in The Hamilton Project's original strategy paper, the Project was designed in part to provide a forum for leading thinkers across the nation to put forward innovative and potentially important economic policy ideas that share the Project's broad goals of promoting economic growth, broad-based participation in growth, and economic security. The author(s) are invited to express their own ideas in policy papers, whether or not the Project's staff or advisory council agrees with the specific proposals. This policy paper is offered in that spirit.

BROOKINGS

Abstract

Many jurisdictions in the United States have coopted law enforcement to serve the fiscal objectives of their governing administrations. This repurposing of police officers as revenue-generating agents has come at the expense of public safety, while it sows fear and resentment of officers with whom any interaction is a potential financial catastrophe. I propose one federal policy reform and three state policy reforms to return law enforcement to its core mission.

At the federal level I propose that equitable sharing be reconfigured such that revenues flow only to state and federal general funds. At the state level, the narrowest reform would have all fine and forfeiture revenues sent to the state government, which would in turn allocate the revenues to local jurisdictions on a per capita basis. This would sever the relationship between seized property and the budget of the arresting agency; this policy is already in effect in eight states. Next is a comprehensive proposal that would require the remittance of all criminal justice revenues—including court and incarceration fees as well as law enforcement revenues—to state government general funds for redistribution as per capita block grants, weakening the incentive for revenue-driven local law enforcement and adjudication without significantly reducing the pool of revenue available for most local governments. The final state proposal would establish a public safety rebate, channeling all proceeds from law enforcement into a refund targeting the low-income households most likely to be victimized by crime. This would create genuine revenue neutrality in law enforcement. The rebating of fine and forfeiture proceeds to low-income households, combined with the remittance of adjudication and incarceration fees to the state for per capita redistribution, would be a major step toward reestablishing public trust that the day-to-day mission of police officers remains solely to serve and protect their communities.

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Introduction

Over the past few decades the directives handed down to the everyday agents of law enforcement have incrementally shifted focus away from public safety and toward public finance. This distortion in the objectives of police officers has come at the expense of public safety as well as public trust in law enforcement. It has also generated economic and legal burdens borne unequally across communities. The reconfiguration of law enforcement as revenue generation has disproportionately come at the expense of the politically and economically vulnerable, particularly members of racial minorities, resulting in a biased and regressive system of taxation. This de facto taxation via law enforcement is more than just effectively regressive: The costs of successfully challenging a charge or negotiating a reduced sentence result in a tax burden that is greater—not just as a percent of income, but in absolute magnitude for lower-income households. Beyond its regressive impact, law enforcement as a revenue-generating mechanism is exceptionally destructive. No tax on income, property, or consumption comes close to the collateral damage of imposing a criminal record or debt within the justice system.

In February of 2019 the Supreme Court held (in *Timbs v. Indiana*) that the Eighth Amendment prohibits the states from levying excessive fines. The decision noted that “fines may be employed ‘in a measure out of accord with the penal goals of retribution and deterrence,’ for ‘fines are a source of revenue,’ while other forms of punishment ‘cost a State money.” While the decision does not solve the problems addressed by this proposal, it does highlight the dangers inherent to a revenue-motivated criminal justice system and lays the legal foundations for solutions going forward.

Any policies seeking to address revenue-motivated law enforcement will have to contend with municipal police departments that have benefited from subsidizing their own budgets and the elected leaders of many local governments whose fiscal solvency has become, at the margin, dependent on discretionary decisions of police officers. These challenges, however, are well worth taking on if we are to restore one of the most important institutions of a safe, secure, and functioning society.

Background

Following the 2014 shooting death of Michael Brown, the U.S. Department of Justice conducted an investigation of the Ferguson (Missouri) Police Department. The resulting report details how local government directed law enforcement to support its budget, explicitly shifting police objectives away from public safety or criminal deterrence and toward revenue generation. “City officials routinely urge Chief Jackson to generate more revenue through enforcement. [...] The importance of focusing on revenue generation is communicated to FPD [Ferguson Police Department] officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership.” (U.S. Department of Justice 2015, 2). The report also summarizes how these fiscal motivations led to very different racial impacts: “[The Ferguson Police Department] appears to bring certain offenses almost exclusively against African Americans. For example, from 2011 to 2013, African Americans accounted for 95 percent of Manner of Walking in Roadway charges, and 94 percent of all Failure to Comply charges. [...] Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law.” (U.S. Department of Justice 2015, 4–5)

The tragedy of a young man’s death brought attention to the specific targeting of African Americans for financial expropriation by the Ferguson police, but the fiscal landscape over which it occurred is common across many U.S. towns and counties. Local governments have had to cope with the fiscal strains of weakened property tax bases, uncertain state transfers, and growing legacy costs of pensions and other obligations, often while operating under state-level constitutional tax limits. It should come as little surprise that governments in distress found some fiscal relief in the revenue generated by traffic tickets, fines, adjudication fees, and in the property seized on the front lines of the drug war. This has all occurred within a criminal justice system that has evolved to minimize resistance to imposed penalties. What has emerged from the confluence of political, legal, and economic forces within local government are police officers directed to execute their duties in a manner that maximizes the revenue generated.¹

Research has demonstrated that the political economy of law enforcement—the need to raise revenue through the criminal justice system—exacerbates racial bias and the expropriation of wealth from politically vulnerable subpopulations through the criminal justice system (Blumenson and Nilsen 1998; Goldstein, Sances, and You 2018; Makowsky and Stratmann 2009; Makowsky, Stratmann, and Tabarrok forthcoming; Sobol 2015, 2017a). These findings have a silver lining, however: The observed distortions in law enforcement are caused by narrowly identifiable incentives for revenue-motivated police discretion that can be undone and, furthermore, can be reconstructed to the benefit of both communities and the officers who serve them.

Local government budgets consistently face fiscal vulnerability and uncertainty far greater than their federal and state counterparts. Tax bases are more mobile and credit markets tighter, and there is no emergency fiscal escape via inflation. If the prospect of constituents voting with their feet was not threat enough to prevent regular raises in taxes, states have far more frequently tied themselves and their constituent local governments to the fiscal mast, constitutionally committing to tax and expenditure limits that leave local bureaucrats with little in the way of budgetary slack when planning for and accommodating the vicissitudes of the business cycle (Joyce and Mullins 1991). It should come as little surprise that when taxes cannot be raised and reduction of expenditures is both politically costly and institutionally difficult, elected officials and agents of the bureaucracy will seek out new and unconstrained sources of revenue to bolster budgets and insulate them against the next rainy day.

The composition of local revenues has transformed since the Tax Revolt of the early 1980s.² While the federal government has responded to antitax pressures with increases in deficit spending, local and state governments do not enjoy the same access to inexpensive and plentiful credit (Deller et al. 2013; Joyce and Mullins 1991). Instead, state and municipal governments have found themselves managing portfolios of nontax revenue sources within which fines, fees, and the proceeds of forfeited property make up ever-increasing portions. While these alternative revenue sources may offer local officials the welcome relief of a balanced budget, they

also squarely place the men and women of law enforcement in a new role: that of revenue collector.

DATA ON FINES AND FORFEITURES

In 1977 the U.S. Census Bureau’s Census of Governments began asking local governments to separately report revenues from fines and forfeited property. The average fine and forfeiture revenues per capita for local governments steadily increased between 1977 and 2005 (see figure 1 for revenue trends of the upper half of the distribution of governments). In 2005 the Census of Governments noticed that local officials were often including fine and forfeiture revenue as “miscellaneous revenue” and asked that officials identify it separately under its own header. This reclassification effort corresponded with extending record collection to counties with smaller populations, resulting in a precipitous increase in reported fine and forfeiture revenues for the highest percentiles (i.e., the jurisdictions collecting the most fine and forfeiture revenues).

In 2012 county fine and forfeiture revenues were equivalent to 15 percent of all law enforcement operating expenses (as opposed to total revenues, the denominator in figure 1b). In one out of every ten police departments these revenues accounted for nearly one-third (32 percent) of operating expenses. In roughly 1 percent of counties fines and forfeitures nearly covered the entire budget, accounting for 90 percent or

more of all law enforcement operating expenditures. These numbers include all fines and penalties, as well as conviction-contingent fees. They do not, as prescribed (see endnote 3), include the yield from confiscated property sales, processing fees, and supervision or incarceration fees, which are often far greater than the principal fines. Baicker and Jacobson (2007) estimate that U.S. Department of Justice and state seizures amount to roughly \$3 per capita on average (with a standard deviation of \$5). Including such revenues, it is likely that significant number of local governments employ a police department that generates revenues in excess of costs.³ For this minority of local governments, law enforcement has become a source of revenue that local governments depend on for fiscal solvency.

HOW LAW ENFORCEMENT GENERATES REVENUE: FINES, FEES, AND SEIZURES

Municipalities can use the criminal justice system in a variety of ways to raise revenue. In Chicago, traffic tickets make up more than 7 percent of the city’s total revenues (Woodstock Institute 2018). Municipal courts in Arizona generated \$167 million in 2016, roughly half of all criminal justice revenues, despite accounting for only 13 percent of the cost of running the state’s court (Flatten 2017). In the state of Washington, the median conviction in 2004 resulted in \$1,110 of assessed fines and fees (Beckett, Harris, and Evans 2008).

FIGURE 1A.
Per Capita Fine and Forfeiture Revenues, 1977–2012

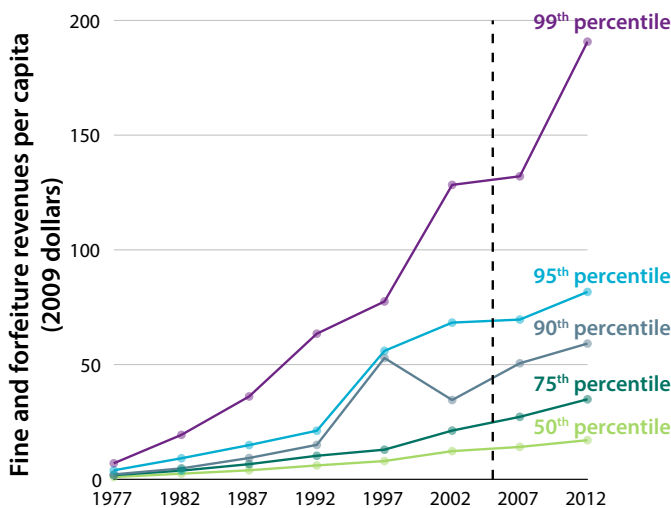
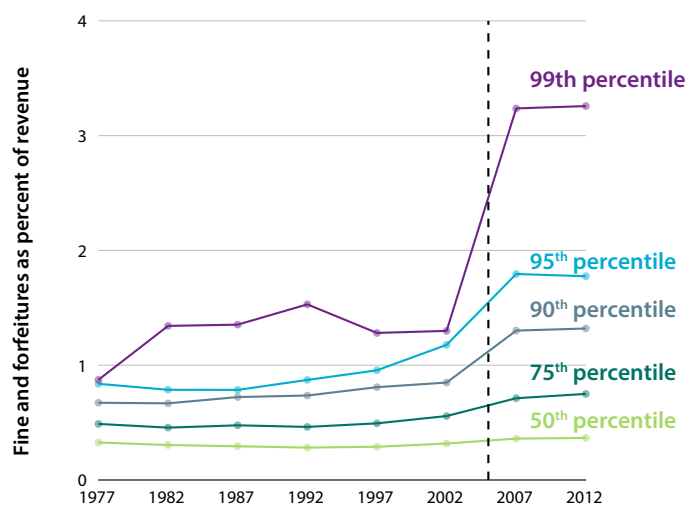


FIGURE 1B.
Fine and Forfeiture Share of Total Revenues, 1977–2012



Source: Census of Governments, U.S. Census Bureau (Census) 1977–2012; author’s calculations.

Note: In 2005 the Census of Governments revised the classification manual, which for some local districts moved fine and forfeiture revenues from residual categories (e.g., from miscellaneous revenues). This did not have a significant impact on the median county but appears to have motivated many local governments above the 90th percentile to recategorize revenues as fines and forfeitures. This revision coincided with the expansion of the Census of Governments to smaller counties, generally those with populations less than 250,000. The dotted black line indicates when these changes took place. Percentile bins are recalculated in each year.



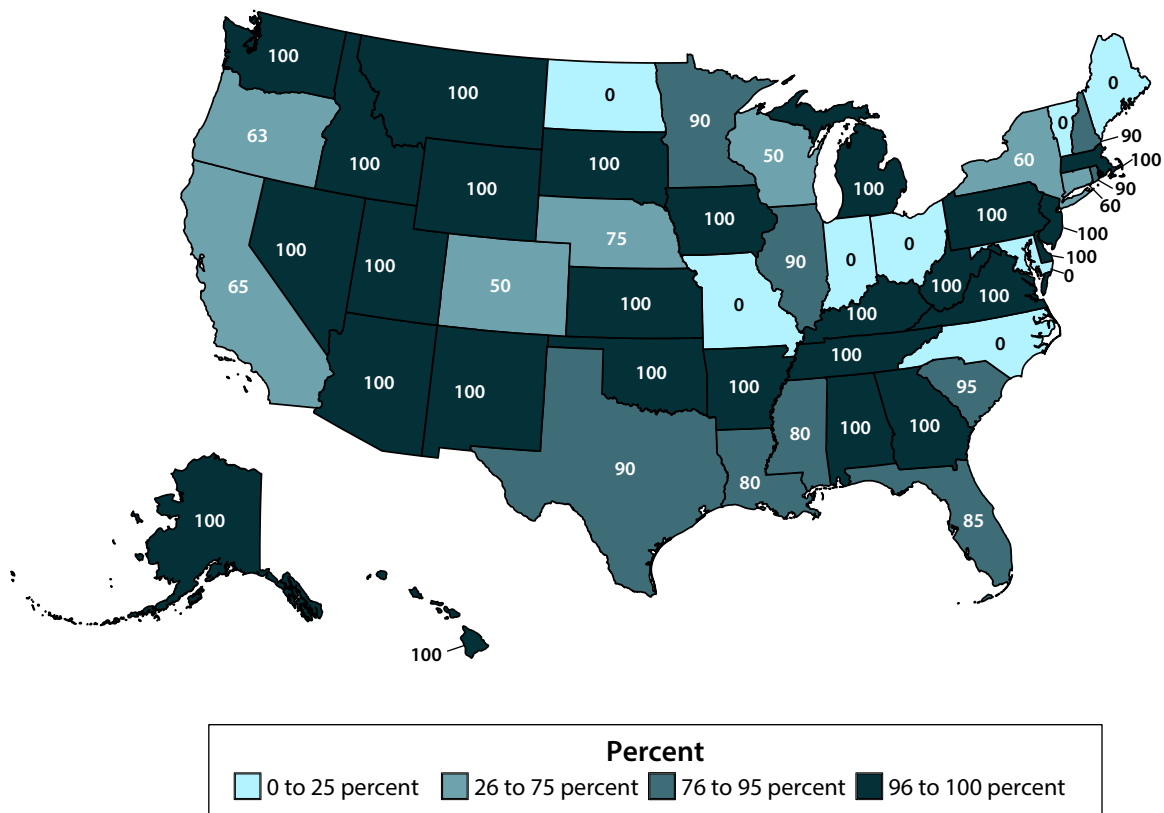
Similar to the fine and forfeiture revenues presented in figure 1, the broader revenues from the criminal justice system are not uniform across jurisdictions. The financial burden of conviction in Washington State varies tremendously across counties, with local medians ranging from \$600 to \$7,049. Examining this variation, Beckett, Harris, and Evans (2008), found that comparable individuals, committing identical infractions, could incur 10-fold differences in fines and fees incurred across counties.

Today there is scarcely an arrest made that does not directly generate some amount of revenue, be it through fines, fees, or the seizing of property. Traffic citations, perhaps the most frequently discussed example in modern revenue-generating law enforcement, are the predominant source of fines, but felony and misdemeanor crimes generate fines as well. In 2009 36 percent of all nonincarcerated drug offenders and 19 percent of property crime offenders were fined, typically with community service or treatment conditions attached.

Like most revenue-generating offenses, however, traffic citations are more an exercise in the collection of fees than the imposing of fines (Lawyer’s Committee for Civil Rights

[LCCR] 2017; U.S. Commission on Civil Rights 2017). While fines are monetary punishments intended to deter crime and punish offenders, fees serve, in theory, to defray the costs of the criminal justice system. Fees, however, have outpaced fines in their growth, particularly following the 2008–9 recession. When coupled with increasing rates of guilty pleas and out-of-court settlements, court and processing fees offer an opportunity for revenues that exceed costs (Bannon, Nagrecha, and Diller 2010; Diller 2010). A random sample of felony defendants in Washington State in 2004 found that 66 percent of prisoners and 84 percent of felony defendants had been assessed criminal justice fees, amounting to an average of \$2,540 per offense (Harris, Evans, and Beckett 2010). Arrestees typically find themselves facing a bundle of fees, such as DNA database, clerk’s, crime lab, and supervision fees. In addition, there are court costs in the event of a guilty verdict. Defendants may also have to pay a fee for public counsel. The Supreme Court case *Gideon v. Wainwright* (372 U.S. 335 1963) acknowledged a constitutional right to counsel—“If you cannot afford an attorney, one will be appointed to you”—but not a right to *free* counsel. Every state and the federal government have recoupment statutes that impose fees or posttrial liens on those defendants who use

FIGURE 2.
Percentage of Forfeited Property Proceeds Retained by Local Arresting Agency



Source: Holcomb, Kovandzic, and Williams 2011.

Note: Includes any percentage of funds required to be allocated to prosecutors and district attorneys. Excludes funds allocated to programs such as drug treatment programs, court expenses, and drug education programs. See Holcomb, Kovandzic, and Williams (2011) for more details.

their constitutional right to an attorney (Holly 1998). Courts may assess fees for time spent and services received in jail (American Civil Liberties Union 2010; Bannon, Nagrecha, and Diller 2010; Harris, Evans, and Beckett 2010).

While all arrests stand to generate revenue for the local governing body, some arrests are potentially more lucrative than others. Civil asset forfeiture is a significant and growing source of revenue from law enforcement (Baicker and Jacobson 2007; Benson, Rasmussen, and Sollars 1995). Under current civil asset forfeiture doctrine, police can seize property on the suspicion that it is connected to a crime (Benson, Rasmussen, and Sollars 1995; Holcomb, Kovandzic, and Williams 2011; Holcomb et al. 2018; Kelly and Kole 2016; Williams et al.

2010). Once property has been seized, prosecutors can bring a civil case against the property rather than against the owner. Police can keep 100 percent of the value of any seized cash or property in 26 states, and at least 50 percent in an additional 16 states (see figure 2; Holcomb, Kovandzic, and Williams 2011). Police departments particularly value funds from seizures because there is little oversight of their allocation. In eight states, including Maryland and Ohio, seized cash and the receipts from the sale of seized property are allocated to the state's general fund rather than to law enforcement agencies.

The Challenge

Consider, for a moment, the incentives facing elected local government leaders and the law enforcement administrators they appoint. Traditional taxes are often constitutionally constrained, usually politically costly, and always subject to the vicissitudes of the business cycle. Revenues from law enforcement, on the other hand, are unconstrained by tax limits, are paid by individuals who may or may not be voting constituents, and are roughly constant throughout the business cycle, if not countercyclical (Yang 2017). Police chiefs and commissioners appointed to oversee law enforcement have every reason to be keenly aware of the revenues they are collecting. Every dollar generated via law enforcement is both an implicit subsidy of the police budget and a shift toward dependence on law enforcement for fiscal solvency.

This alignment of incentives toward revenue-motivated law enforcement, of course, requires the opportunity for increasing arrests and citations. Arrests in response to crimes such as homicide, armed robbery, or burglary can only be made when victims, or those related to victims, report an incident; in other words, these arrests are constrained by the number of reported incidents. Police can increase their attentiveness to reported incidents but would be hard-pressed to produce more reported crimes. There is a ceiling to how many revenue-yielding arrests even the most aggressive department can generate from policing such crimes.

So-called victimless crimes and infractions, such as drug possession, prostitution, jaywalking, or everyday traffic violations, are much more amenable to officer choices and discretion; they require little or no cooperation on the part of the community. Furthermore, the laws prohibiting many activities are often out of alignment with social norms that are far more permissive. Driving above the speed limit, possessing recreational marijuana, jaywalking, and engaging in prostitution are examples of offenses whose rates of transgression in the population are far higher than victim-reported crimes. The pool of potential violators is likely greater than the arrest and citation capacity of police (i.e., there is no binding ceiling on police action). The arrest totals for victimless crimes are to a large extent under the control of law enforcement, subject to the deployment of personnel and the personal strictness of individual officers. It is in this

choice of how to pursue perpetrators of victimless crimes that we see the direct distortionary effects of revenue incentives.

The distortion in how officers apply their discretion in the day-to-day execution of their duties is demonstrable. Budgetary shortfalls have been connected to larger numbers of speeding tickets (Garrett and Wagner 2009); stricter officers and larger fines (Makowsky and Stratmann 2009, 2011); increased arrests for drug crimes, DUI, and prostitution; and higher rates of property seizure (Makowsky, Stratmann, and Tabarrok forthcoming). This distortion of law enforcement is self-reinforcing because local governments and their police departments become dependent on these revenues (Baicker and Jacobson 2007). Law enforcement is no longer just providing a public good, but is now also a tax collection mechanism (see box 1).

A REGRESSIVE TAX

Most tax institutions in the United States are progressive (e.g., income, estate) or flat (e.g., sales, property). Some taxes, while flat in application, are effectively regressive due to their disproportionate impact on low-income individuals, such as tobacco taxes or tariffs on lower-priced goods. There is likely no tax institution in the United States, however, that is as steeply regressive as revenue extracted via law enforcement. This is due in part to the fact that low-income adults and youths from low-income households are more likely to be arrested and incarcerated (Kearney et al. 2014). In their study of bail assignment for 420,000 arrestees in Miami and Philadelphia, Dobbie, Goldin, and Yang (2018) observed that the average felony defendant had earned less than \$7,000 in the year prior to their arrest.

The criminal justice tax becomes more regressive when one considers the financial barriers to paying up front, mounting an effective legal challenge, or negotiating a reduced sentence (Natapoff 2011). Californians who cannot afford to mail in immediate payment for a traffic citation face far harsher consequences including license suspension, arrest, jail, wage garnishment, and vehicle seizure, all for the same minor underlying offenses (LCCR 2017). Arrestees lacking the resources to hire private legal representation are convicted at higher rates and incur harsher penalties, including larger financial penalties. For both guilty and nonguilty decisions,

defendants who rely on assigned counsel face penalties double the size of those with private representation (Agan, Freedman, and Owens 2018).⁴ Even without adjusting for defendant differences (aside from types of convictions), Agan, Freedman, and Owens (2018) find that defendants without privately hired representation pay 26 percent larger fines. Arrests in which property is seized are especially attractive as sources of revenue, in part because they are costly for an arrestee to defend against and the burden of proof is often on the defendant in order to retrieve their property.⁵ The cost of challenging a forfeiture case is sufficiently high that most go unchallenged. Awaiting trial in jail is costly, bail can be prohibitive, and the price of hiring effective legal representation is beyond the reach of many.⁶ For many low-income arrestees, the optimal response is a foregone conclusion: enter a guilty plea. This pathway from arrest to guilt, from a fiscal perspective, is a picture of grim efficiency.

Punitive law enforcement is an institution particularly suited to use as a system of regressive taxation. The targets of law enforcement are often from subsets of the population that are unable to offer electoral retribution. Revenue burdens can also be exported through arrests and citations of nonvoters, such as speeding tickets issued to out-of-town and out-of-state drivers. When local municipalities experience budgetary shortfalls and are constitutionally constrained from raising property taxes, they increase the rate at which officers ticket nonconstituent drivers (Makowsky and Stratmann 2009).⁷ A wider concern, however, is not the out-of-town traveler who lacks a political stake in local elections, but rather the broader subpopulations characterized by felony disenfranchisement or other, softer, exclusions from democratic processes. As such, revenue-generating law enforcement may disproportionately target minority citizens—who are more likely to be disenfranchised—in addition to low-income individuals.

BOX 1.

Revenue Generation and the Political Economy of Law Enforcement

The “town that raises all its money with speed traps” may be an extreme case, but the underlying phenomenon of opportunistic revenue collection is not. Using records of every police stop for two months in Massachusetts and the state’s particular tax and expenditure limits, Makowsky and Stratmann (2009) demonstrates that local fiscal conditions affect officer discretion during routine traffic stops. Proposition 2 ½ in Massachusetts places limits on municipal property tax revenues. If a municipality wishes to raise and spend money in excess of their limit, they must propose both a specific expenditure project and a dollar amount to be raised that constituents will then vote up or down via referendum.

What Makowsky and Stratmann (2009) show is that in the event of a referendum failing—signaling a budgetary shortfall, a desired expenditure, and voter unwillingness to bear higher taxes—local officers become far stricter in their application of traffic law, issuing citations (instead of unpenalized warnings) at higher rates. They apply this additional strictness, however, almost entirely to out-of-town drivers who cannot participate in local elections. Out-of-town drivers who are also out-of-state drivers (in this case, those who are not from Massachusetts) receive even stricter treatment. In fact, both the citation probability and the dollar amount of the fine issued are higher when the distance is greater between the driver’s home and the courthouse in which out-of-town drivers would have to appear to challenge the citation.

The effect of local budgetary shortfalls and restrictions on revenue generation from civil asset forfeitures on criminal arrests is demonstrated in Makowsky, Stratmann, and Tabarrok (forthcoming). African American and Hispanic drug and DUI arrests, and associated seizures of cash and automobiles, increase with local deficits when police can retain revenues from forfeited property. Comparable white drug and DUI arrests are unrelated to forfeiture laws. Effects on officer discretion, again, would appear to be critical to observed outcomes. The interaction of budgetary shortfalls and retention of forfeited assets has no effect on violent crime arrests. Drug and DUI arrests, unlike violent crimes, do not require an incident report, nor a victim to press charges, and are sufficiently prevalent that the marginal arrest made will almost exclusively be a function of how aggressive officers choose to be in the application of the law.

Regardless of the optimal strictness of traffic enforcement or frequency of drug arrests, what seems clear is that the current fiscal health of the local government should not be driving police behavior in these areas.

RACIAL BIAS

Evidence of racial bias continues to be found across multiple dimensions and stages of the criminal justice system, including traffic stops (Persico 2002; West 2018), searches (Knowles, Persico, and Todd 2001), jury trial outcomes (Anwar, Bayer, and Hjalmarsson 2012), sentencing (Alesina and La Ferrara 2014; Rehavi and Starr 2014; Tonry 2011), and bail decisions.⁸ Implementing what amounts to a regressive tax via a demonstrably racially biased institution would be a problem by itself, but the reality may actually be worse. Makowsky, Stratmann, and Tabarrok (forthcoming) present evidence that revenue-motivated law enforcement can lead to racially biased arrest rates even if officers are themselves unbiased. Otherwise racially neutral institutions can, when combined with revenue-driven policing, generate racially nonneutral outcomes. When combined with institutions that are, in fact, racially biased, revenue-driven policing will exacerbate racial bias (Alabama Appleseed Center for Law and Justice [AACLJ] 2018; U.S. Commission on Civil Rights 2017) and, perhaps more disconcertingly, calcify biased institutions by increasing the fiscal and political costs of change (Baicker and Jacobson 2007).

African Americans constitute nearly half of all drug arrests despite representing only 13.4 percent of the population and consuming illegal drugs at roughly the same rate as other racial groups (Reaves 2013; Census n.d.). Given the emphasis on property seizures in drug arrests, this leads to a disproportionate impact of revenue-maximizing law enforcement on African Americans. Furthermore, if minority groups perceive that the criminal justice system is biased against them at the adjudication, bail, and sentencing levels, they will rationally choose to enter guilty pleas at higher rates and at earlier stages of due process. From the standpoint of fiscal profitability, it is in the interest of local governments to maximize the revenue-yielding arrests of individuals who are the most likely to plead guilty. In figures 3 and 4 we see that the per capita fine and forfeiture revenues for local governments within counties are increasing at a faster rate with the arrest rate of African Americans for drugs and DUI than the comparable white arrest rates. The contrast is sharpest for DUI arrests, where per capita revenues are actually declining with white DUI arrests.⁹

When each arrest is implicitly an act of taxation, the political costs and benefits of individual acts of enforcement will differ according to the levels of political representation and influence. In their analysis of local government budgets in 2012, Sances and You (2017) find that while fine and forfeiture revenues increase with the size of a county's African American population, this effect is significantly mitigated by the presence of African American representatives on elected city councils. Given that local political economy affects law enforcement, political representation has become an

important source of relief from targeted fiscal expropriation via law enforcement.

REVENUE MOTIVATIONS UNDERMINE THE CORE MISSION OF LAW ENFORCEMENT

“Communities like Ferguson begin to see police not as trusted partners but as an occupying army constantly harassing them to raise money to pay their salaries and buy new weapons” (Editorial Board 2015).

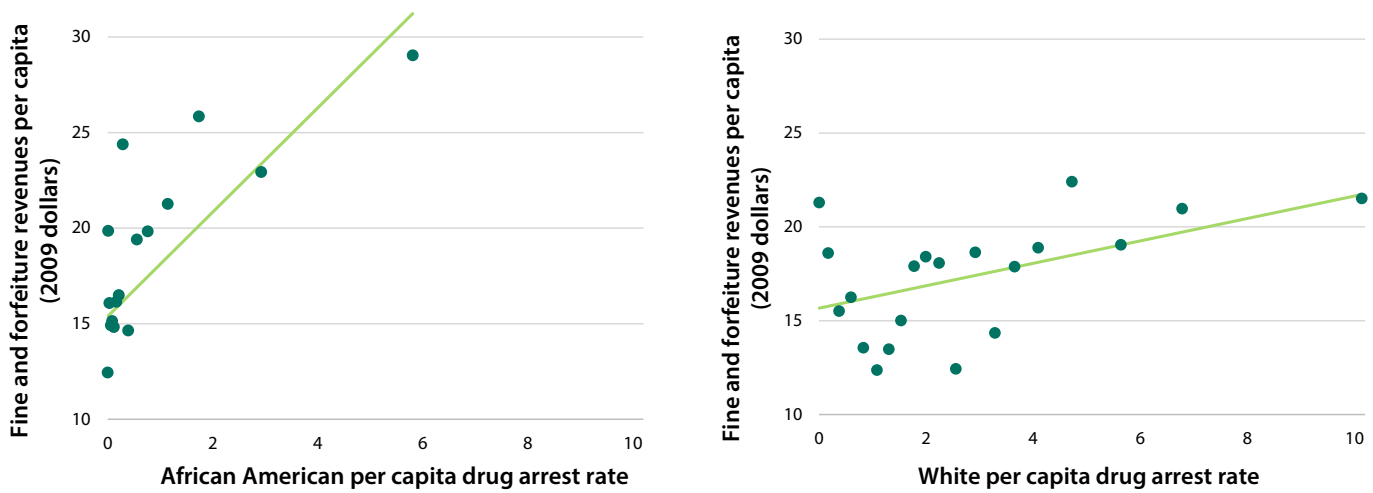
When law enforcement is optimizing revenue rather than safety, officers cease to be partners in the communities they ostensibly serve. This generates immediate costs through reductions in law enforcement actions that promote public safety, but the total cost is likely far higher. If members of a community believe the criminal justice system views them as revenue sources to exploit, they are likely to expect less fair treatment at each stage of due process. Public and officer safety are both reduced when the public views the police as unfair and their authority as less legitimate (Lea and Young 1984; Murphy and Barkworth 2014; Murphy, Hinds, and Fleming 2008; National Research Council 2004; Tyler, Goff, and MacCoun 2015).

Murphy, Hinds, and Fleming (2008) find that lower public views of police legitimacy correspond with reduced public cooperation with the police. Respondents who believe police are engaged in procedural justice in their dealings with the public (i.e., that they operate more in accordance with rules and less by their own personal discretion) are more likely to perceive law enforcement as legitimate. Similar effects have been observed with regard to rates of trust in police (Murphy, Mazerolle, and Bennett 2014) and reporting of crimes by victims or witnesses (Murphy and Barkworth 2014). To the extent that revenue-motivated policing undermines the relationship between police departments and the communities they serve, it is fundamentally incompatible with the optimal provision of law enforcement.

Revenue-motivated policing can impact the decisions individuals make when they are being processed in the criminal justice system as well. As defendants lose faith in the possibility of exoneration, they are more likely to enter a guilty plea in hopes of minimizing costs incurred and eliciting lenience in the court's sentencing (Savitsky 2012). Guilty pleas reduce the procedural costs of due process, increasing the efficiency (from a fiscal perspective) of the criminal justice system and, in turn, increasing the net of revenue over expenditures generated per arrest. As the profitability of arrests increases, so do the intensity of incentives motivating revenue-maximizing law enforcement, contributing to a self-reinforcing cycle that serves to isolate officers from their communities and inculcate an adversarial relationship. This cycle erodes trust and communication,

FIGURE 3.

Fine and Forfeiture Revenues over Drug Arrest Rates



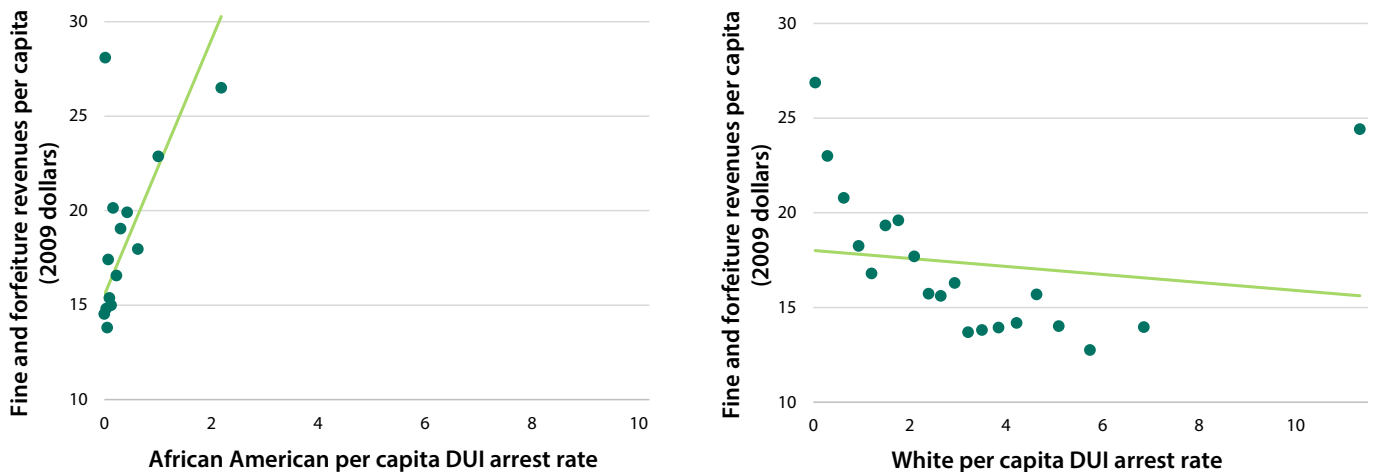
Source: National Archive of Criminal Justice Data 2007–12; Census of Governments, Census 1977–2012; author’s calculations.

Note: The figure is a binned scatterplot (Stepner 2014), where the x-axis variable (arrests per capita) is split into equal-sized bins, and the points represent the mean of the x-axis and y-axis variables (fine and forfeiture revenues per capita) within each bin. The line is a regression line using the full population of observations. The full population is county-year pairs for 2007 and 2012.



FIGURE 4.

Fine and Forfeiture Revenues over DUI Arrest Rates



Source: National Archive of Criminal Justice Data 2007–12; Census of Governments, Census 1977–2012; author’s calculations.

Note: The figure is a binned scatterplot (Stepner 2014), where the x-axis variable (arrests per capita) is split into equal-sized bins, and the points represent the mean of the x-axis and y-axis variables (fine and forfeiture revenues per capita) within each bin. The line is a regression line using the full population of observations. The full population is county-year pairs for 2007 and 2012.



undermining police in their efforts to respond to the most pressing threats to public safety. As the capacity for law enforcement to provide public safety declines, so too does the opportunity cost of further emphasizing revenue generation in law enforcement activities (see box 2).

Once internalized within the political economy of a state or local government, law enforcement is no longer charged with the production of a public good, but instead with the subsidizing and sustaining of other government expenditures. Similar to any other productive activity requiring multiple complementary inputs (Hart, Shleifer, and Vishny 1997; Holmstrom and Milgrom 1994), strong, narrowly focused

incentives for police to supply one input (i.e., revenue) are likely to reduce total output. In this case, that output is public safety, which is the product of several factors that are not being incentivized (e.g., the policing of crimes that are not associated with seizable assets or uncontested fines).

Any shifting of law enforcement activities toward revenue generation comes at the expense of public safety (Garoupa and Klerman 2002). Goldstein, Sances, and You (2018) find that clearance rates of criminal incidents reported to police, particularly for violent crime, decrease when the proportion of local government revenue from fines and fees increases. The observed effect is largely driven by small cities where officers must engage in a variety of duties. Emphasis on revenue generation dilutes their attention to responding to reported crimes. In the smaller cities, officers move to collecting more fines and fees and decrease the amount of arrests they make for violent or property crime.

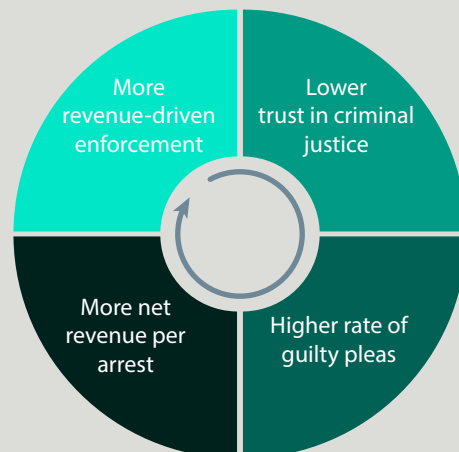
COLLATERAL DAMAGE

When economists discuss the costs and benefits of a tax and its structure, they will typically focus on the deadweight loss and any potential distortionary effects. Taxation through law enforcement brings with it an entire additional cost category: the destruction of human capital. Criminal records have permanent effects on lifetime earning that individuals likely never recover from, restricting access to employment, credit, and housing (Harris, Evans, and Beckett 2010; Pleggenkuhle 2018). The negative personal financial shock from a criminal conviction can result in debt that the individual may pay in increments for the rest of their life (Beckett, Harris, and Evans 2008). Even noncriminal citations can generate fines and fees that, if the individual is unable to pay, can result in the issuance of a bench warrant and subsequent incarceration for failure to remit payment. The emphasis on revenue generation, coupled with the growth in criminal justice fees, has contributed to the disturbing return of incarceration that is effectively due to inability to repay debts (Sobol 2015). The

BOX 2.

Revenue-Based Discrimination: A Self-Reinforcing Cycle

Revenue motivations can lead to discrimination through the interaction of expectations, the personal costs of defending against charges, and the governmental costs of dues process. Savitsky (2012) demonstrates, step by step, how expectations of fair treatment can drive plea bargaining decisions. If members of a subset of the population have lower trust in the criminal justice system, whether because of biases in officer testimony, judicial discretion, or jury outcomes (Anwar, Bayer, and Hjalmarsson 2012; Goncalves and Mello 2017; Rehavi and Starr 2014), then they will have lower expectations for lenience. Lower expectations for lenience will lead a population to enter guilty pleas at a higher rate. Higher rates of guilty pleas lead to fewer negotiated reductions in penalties and not-guilty verdicts, while simultaneously reducing the costs to the court system, all of which leads to more net revenue per arrest, yielding a more fiscally profitable criminal justice system. This greater fiscal profitability increases the incentive for revenue-motivated law enforcement broadly, but also leads to the greater targeting of the groups with the lowest trust in the fairness of criminal justice. Any resultant increase in targeted enforcement will only serve to further lower community trust, perpetuating a now self-reinforcing cycle.



punishments associated with failure to pay criminal justice debt obligations only serve to further financially cripple arrestees who are struggling with interrupted work histories and the stigma of criminal records.

This can, quite perversely, drive individuals toward committing crimes. In a survey of individuals involved with

the justice system conducted by ACLJ and the University of Alabama-Birmingham (2018), 38.3 percent of respondents indicated they had committed at least one crime to pay their court debt. It is not an exaggeration to suggest that revenue generation via law enforcement may impose greater collateral damage than any other tax structure currently implemented in the United States.

The Proposal

The same research that demonstrates the distortions and biases arising from revenue-motivated law enforcement also implies the opportunity for effective policy remedies. The observed distortions are due to institutions that incentivize police to emphasize revenue generation rather than traditional criminal justice objectives. With care taken to consider revenue needs and other concerns, well-designed policy can reduce bias and restore trust in law enforcement by relieving police officers of their role as revenue generators for their administrators and governing bodies.

I propose four related policies: The first would end the retention of federal equitable sharing revenues by law enforcement agencies. The second would eliminate the retention of proceeds from forfeited property by the local arresting agency, instead funneling all associated proceeds to the state general fund. The third proposed policy would build upon the second and require that all criminal justice revenues received by the state then be redistributed to municipal governments as per capita municipal block grants. These three policies aim to dilute budgetary incentives to the point of being inconsequential for officer and agency decisions. The fourth policy is a public safety rebate program through which all fine and forfeiture revenues would be returned to the community.

I have designed these policies to be complementary with one another, allowing law enforcement to return to its core mission as peace officers. Once communities know that police do not have a fiscal bottom line to satisfy, police officers can more easily serve in their primary role: to protect and serve.

PROPOSAL #1: END THE RETENTION OF FEDERAL EQUITABLE SHARING REVENUES BY LAW ENFORCEMENT AGENCIES

When local and federal law enforcement departments cooperate in seizing property, the federal government may share the proceeds with the local department according to federal law rather than state law. Holcomb, Kovandzic, and Williams (2011) find that when states prohibit the retention of proceeds from forfeited property, they increasingly funnel it through the federal enforcement agents, who then return 50 percent of the value to the local arresting agency. To fully dismantle the property seizure mechanism that has taken

hold in police departments all over the country, policymakers must address federal equitable sharing.

Police departments in states that limit police retention of proceeds from property seizure have used equitable sharing programs as a workaround. Holcomb, Kovandzic, and Williams (2011) found that for a 25 percent reduction in the share of proceeds local police were able to retain, there was a corresponding \$0.02 per capita increase in the revenues transferred to the police via equitable sharing. In the absence of federal reform, increases in equitable sharing applications—and subsequent dilution of the benefits from state reform—would be an expected outcome from the complete removal of forfeiture proceeds from police budgets.

I propose that revenues received from federal agencies through equitable sharing be transferred to state general funds only, rather than to the relevant law enforcement agencies. With this change, federal equitable sharing would no longer constitute a workaround for law enforcement in states that have prohibited them from retaining property seizure revenues.

PROPOSAL #2: ELIMINATE THE RETENTION OF PROCEEDS FROM FORFEITED PROPERTY BY THE LOCAL ARRESTING AGENCY

As of early 2019 eight states do not allow the arresting police department to retain seized property.¹⁰ I propose that other states adopt this policy, which would require that police departments turn over revenues to the state's general fund. This policy would reduce the incentive to police in a way that prioritizes revenue generation, as discussed above. Furthermore, it would diminish bias in policing. Racial bias in arrest rates identified when local governments are operating with a budget deficit is unobserved in the eight states that do not allow the arresting police department to retain seized property (Makowsky, Stratmann, and Tabarrok forthcoming). Beyond mitigating an important source of bias, severing this relationship removes an obvious conflict of interest for police officers who operate with considerable discretion, both when deciding whether to arrest an individual and when identifying what property, if any, is directly connected to the observed offense.

While property seizure is currently most closely associated with narcotics offenses, there is no reason to believe this will continue to be the case, particularly as states decriminalize and legalize marijuana possession. Police could easily switch to seizing automobiles, cash, and even homes of the arrestee, for example through arrests related to DUIs, home poker games, or white-collar crimes (Wall Street Journal 2019). Severing the relationship between police activities and agency budgets, as Philadelphia most recently accomplished (see box 3), serves to immediately end revenue-motivated narcotics policing and, just as importantly, prevents the rise of property seizure in other areas of law enforcement.

PROPOSAL #3: REDISTRIBUTE CRIMINAL JUSTICE REVENUES AS PER CAPITA MUNICIPAL BLOCK GRANTS

A key component of the distortion observed in criminal justice system is the concentration of benefits from generated revenues in the arresting agency and local government coffers. Each fine, seized automobile, and court fee has a nontrivial impact on both the total revenues and the relevant line items in the local budget. If, instead, all associated revenues were remitted to the state budget and then reallocated as block grants to local governments in strict accordance with constituent population, the diffusion of revenues across localities would sufficiently dilute, to the point of irrelevance, the revenue incentive behind any individual arrest. The per capita revenues received would likely approximate the previous median in the state, which would cause an unwelcome fiscal shock for only the 5 or 10 percent of local governments that are most aggressive in raising criminal justice revenues.

This policy appeals both for its broad realignment of local policing incentive away from narrow revenue generation and for its minimal impact on local fiscal solvency. While the statewide sharing of law enforcement revenues would necessitate an increased reliance on other local revenue sources in the minority of counties that are heavily dependent on fine and forfeiture revenues (see figure 1), for the overwhelming majority of local governments this policy would serve to improve public trust in law enforcement at little fiscal cost. Leaders will be able to unequivocally assure constituents that enforcement authorities receive no direct financial benefit from arrests. For the minority of municipalities most dependent on law enforcement revenues, this fiscal shock would serve as a feature (and not a bug) of this policy: It would say, in effect, “These are the localities we most want to change.”

The optimal version of this policy would include not just revenues from fines and forfeitures, but also the fees encountered at every step of the criminal justice system, including court and processing fees (Conference of State Court Administrators 2018; Flatten 2017). Per capita redistribution would ensure that the busiest courts remain sufficiently funded, while still undermining any incentives to compensate for lost law enforcement revenues with increased revenues from adjudication.

It is difficult to estimate the total value of all criminal justice revenues, inclusive of not just fines and forfeitures, but also the fees at each step of the criminal justice system. This is particularly the case for the fees collected across the various stages of arrest, adjudication, and incarceration. In Alabama, municipal courts remitted \$19.4 million to the state

BOX 3.

Dismantling Property Seizure in Philadelphia

In September 2018 the Institute for Justice announced a settlement with Philadelphia city officials to reform the city’s civil forfeiture laws (Wimer 2018). The agreement consists of two consent decrees, one limiting the city’s civil forfeiture practices and the second entitling past victims to reparations. The first consent decree places tight restrictions on the conditions under which Philadelphia police and prosecutors are allowed to seize assets for forfeiture. Specifically, the settlement bans the confiscation of property for drug possession and forbids the seizure of any cash amount less than \$1,000 without firm proof of criminal activity. Police officers must now give the arrestee a detailed receipt of the property seized and explain the process to retrieve seized property. In addition, the first decree ensures a prompt hearing for citizens to request the return of their assets and mandates the oversight of a judge in any legal proceedings.

The second component of the settlement establishes a \$3 million fund to compensate innocent civilians whose property was wrongly seized. In addition, in acknowledgment of the incentives facing police in the previous regime, the decree specifically requires that all forfeiture receipts be transferred to community-based drug prevention and rehabilitation programs. This effort to eliminate use of confiscated assets for funding police salaries or other self-interested purposes is welcome. How police react, including any alternative means they discover for funneling confiscated revenues to police budgets, will inform future policy design (Wimer 2018).

budget in FY2017 (AACLJ 2018), but the total collections are unknown. In a survey of individuals who had been engaged with the criminal justice system in Alabama, the 1,000 respondents had collectively incurred roughly \$6.5 million in total legal financial obligations (AACLJ 2018; author's calculations). If law enforcement in Alabama is generating anywhere near \$6.5 million per 1,000 individuals arrested or cited, a criminal justice revenue remittance and per capita redistribution of funds to local governments stands to offer a major reorganization of government funds.

Strengths and Weaknesses of Revenue Remittance Reforms

The core weakness of narrow policy remedies, including the two proposed here, is the potential for law enforcement and the broader criminal justice system to respond by collecting revenues in different ways that are not incorporated into the revenue remittance system. If one source of revenue is closed, the emphasis may simply be shifted to a different dimension of policing or criminal justice operations. Where local police once seized cash from those found in possession of marijuana, they might now seize automobiles from those arrested for DUI, or collect increased fines and fees related to

court costs. Fines can be increased, fees can be created from whole cloth, public defenders can become more expensive—the opportunities for revenue collection may shift, but the motivation always remains.¹¹ Importantly, narrow solutions are unlikely to offer a long-term remedy to how law enforcement provides the public goods that should ostensibly be their only objectives: safety, security, public trust, and the optimal deterrence of crime. (See box 4 for a description of broad reforms implemented by the state of Missouri.)

One rationale for criminal justice fees is to shift, as much as possible, the cost burden of the criminal justice system to the perpetrators that strain and encumber the system. The ambition is to move the criminal justice system toward net budgetary neutrality, such that criminals will pay for officers that arrest them and the courts that process them. Putting aside the merits and feasibility of this ambition, the results are clear: It is not criminal perpetrators that pay for the system, but rather anyone who could be a profitable target of revenue-maximizing law enforcement. Self-financing criminal justice promises law enforcement paid for by criminals, but it does not take a cynic's imagination to foresee a marked increase in whom law enforcement deems a criminal.

BOX 4.

Capping Municipal Revenues from Fines in Missouri

In the response to the revelations of gratuitous revenue-motivated policing and systematic expropriation from African Americans via municipal law enforcement in Ferguson, the state of Missouri passed Senate Bill 5. The key provisions follow:

1. The limit on traffic fine revenues allowed within a city budget is lowered from 30 percent to (eventually) 20 percent for most Missouri towns and 12.5 percent for St. Louis County municipalities.¹²
2. Municipalities that fail to submit a timely and accurate report on their finances to the state auditor will immediately lose jurisdiction over their courts.
3. Combined fines and court costs for a minor traffic offense cannot exceed \$300 each.
4. Defendants cannot be detained in order to coerce payment of fines and court costs.
5. No court costs can be assessed if the case is dismissed.
6. Courts are not permitted to use “Failure to appear” charges for those who do not appear in court on their traffic charges.
7. Courts may not use a jail sentence as punishment for those who are not able to pay a fine and may not use jail as a sentence for most minor traffic offenses.
8. Citizens can vote to dissolve their local governments if they do not turn over excess traffic revenues to the state within 60 days.

These reforms are neither narrow nor trivial. The ability to dissolve a local government by referendum is perhaps the single strongest deterrent against revenue-motivated policing and broader systemic expropriation currently in effect in the United States.

The goal of the criminal justice system that pays for itself—or at the very least, is heavily subsidized by those who break the law—falls in that broad class of policies doomed to fail: those that promise a public good for free. There is no reason that law enforcement cannot or should not be funded in the same manner as most classic public goods. Much like fire safety and basic education, public safety and criminal deterrence are not goods that lend themselves to piecemeal compensation: firefighters are not paid per blaze extinguished, nor teachers per student graduated. If we want to disconnect officer discretion from the revenue generated, we must fully disconnect government revenues available to local officials from the outcomes of each officer decision made while they execute their duties.

PROPOSAL #4: THE PUBLIC SAFETY REBATE

To fully remove revenue motivations from law enforcement necessitates broad and comprehensive reform of how the proceeds from criminal justice are fiscally internalized and dispersed. I propose that all revenues generated via law enforcement be rebated to constituents at the state level. This rebate should be structured as a progressive transfer to the low-income constituents most likely to be victimized both by crime and by historical inequities in law enforcement. This policy offers not budgetary neutrality, but rather revenue neutrality in law enforcement. Neither the state's revenues available for expenditure nor the individual municipal police budgets will change with any individual officer decision to make an arrest or issue a citation, nor with any judge's decision to issue a bench warrant for outstanding legal financial obligations.

Such a refund would share elements with the tax revenue rebate system put in place by the Taxpayer's Bill of Rights (TABOR) amendment in Colorado.¹³ For municipal governments that have not opted out of TABOR via voter referendum, all revenues generated beyond a fixed limit must be refunded to constituents during the subsequent fiscal year. Unlike TABOR refunds, however, a public safety rebate would be provided according to a progressive schedule that would provide larger windfalls for lower-income households. Rather than build a new administrative mechanism for rebating the funds, I propose to tie the public safety rebate to a core income transfer program: the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program.¹⁴ Using the thresholds set every year for this program, the proceeds of the criminal justice system can be directly rebated with minimal additional administrative cost or procedural updating.

Public Safety Rebate: Basic Structure

The pool of law enforcement revenues will be divided into shares, the value of which will depend on the number of qualifying households. Households will qualify by one of two

mechanisms: (a) filing an income tax return that year with a gross household income below the SNAP threshold, or (b) currently receiving SNAP benefits.

Households can qualify for up to four shares, depending on the fraction of the maximum SNAP benefit they would have qualified for that year: >0–25 percent = 1 share, 26–50 percent = 2 shares, 51–75 percent = 3 shares, > 75 percent = 4 shares. Using the SNAP qualification structure—which phases out gradually with increasing income—ensures that low-income communities will receive the rebate, while also minimizing any possible labor distortions (Hanna and Olken 2018).

Given that 12 percent of the population qualifies for SNAP, and the median county collected \$16 per capita in fine and forfeiture revenues in 2012 (\$77 per capita at the 95th percentile), then we can roughly expect the rebate to transfer \$133 (\$641) annually to qualifying households (Census 1977–2012, 2019; U.S. Department of Agriculture 2019). Using estimates of revenues from seized property revenues from Baicker and Jacobson (2007), those numbers increase to \$158 (\$750). There will be some local governments with high SNAP participation and low fine and forfeiture revenues, but on average we can expect the public safety rebate to provide low-income families with an amount comparable to an additional month of SNAP payments. While the rebate is unlikely to be a program that delivers families from poverty, it is reasonable to expect amounts sufficiently large as to be salient to the finances of a low-income household and to register as a meaningful positive event. Furthermore, the relative modesty of the transfer is a positive feature of the program: these dollar amounts are not so large as to jeopardize the fiscal stability of local or state governments.

Policy Strengths

Rebating the proceeds of criminal justice to the community offers a variety of attractive policy outcomes and can improve law enforcement in ways not possible with narrower reforms. These strengths are apparent for any jurisdictions of sufficient population such that rebates are distributed widely.

1. Rebating the proceeds of law enforcement engenders true revenue neutrality. Law enforcement operating without the ability to generate revenue will be judged only by the quality of the service it provides the community. Considered in the broader context of local government agencies, we should not consider this a radical restructuring, but rather a returning of law enforcement to its roots as a traditional public service.
2. The rebate is robust to obvious or immediate fiscal workarounds that might seek to reapportion funds to police budgets in accordance with revenues generated via law enforcement activities. Committing to rebating every dollar generated from arrests and citations ensures

that those funds never enter the ledger as revenues to be expended. There is no opportunity for law enforcement to subsidize either itself or other government programs: the total pool of available funds is unaffected by local police activities or the discretion of the officers that the police departments employ. More subtly, the rebate also mitigates any incentive for officials to pad police budgets in manners that reward overly aggressive law enforcement with nonwage benefits and perks.

3. It directs transfers to those most affected by law enforcement and crime. Individuals in households operating at or below the federal poverty level experience more than double the rate of violent victimization as persons in high-income households (Harrell et al. 2014). Low-income families are not only more likely to experience violent crime, but are also more likely to have negative interactions with police. Officers are more likely to use higher levels of force in poorer neighborhoods, and in neighborhoods that experience more violence (Terrill and Reisig 2003). While rebates are unlikely to be of magnitudes that stand to radically improve a family's financial standing, cash transfers can have large effects (Hulme, Hanlon, and Barrientos 2012). Relatively small changes in the Earned Income Tax Credit (EITC) and minimum wage reduce criminal recidivism (Agan and Makowsky 2018), and those changes work largely by pushing released prisoners away from income-generating criminal activity. Most importantly, however, structuring the transfer as a low-income lump sum rebate preempts any perverse incentive to use the program as a new means to expropriate from the poor to more-affluent constituents through law enforcement.

4. The rebate rebuilds trust. Every annual rebate can (and should) carry with it a summary of the total pool of law enforcement proceeds rebated, the individual's share, and a breakdown of the types of officer actions taken that generated the proceeds (e.g., seized property; wrote parking, traffic, or jaywalking tickets; made drug arrests; or took another action in any other narrowly defined violation category that generated more than 1 percent of the total pool). Constituents will be able to see how much is being taken from arrestees and the conditions under which it is being taken. This transparency, and the commitment to serving the community rather than expropriating from it, will constitute an important step in rebuilding the relationship between officers and the community they both serve and depend on for cooperation.

A rebate program would also be compatible with several current policies and initiatives being pursued. While rebating the proceeds of law enforcement would not relieve the financial burden experienced by those individuals fined as part of their sentence, it would remove the incentives fueling

the most exorbitant revenue-generating enforcement regimes and the failure-to-pay penalties that underlie the prodigious rise in criminal justice debt (Sobol 2017b).

Rebating proceeds to individuals would broaden the movement for police transparency from a focus on individual officers to a focus on the broader bodies of elected and appointed officials. Throughout the crises of police abuse and overreach, the public and media have applied justified and necessary scrutiny to police officers, but have not applied the same scrutiny to the offices they report to and are funded by. By categorically reporting the net proceeds of law enforcement, rebate-receiving citizens will have the information and, in turn, opportunity to hold public officials accountable for how law enforcement is practiced in their community.

Policy Weaknesses

As documented by Baicker and Jacobson (2007), local governments departments have become increasingly dependent on the revenue generated by law enforcement to directly subsidize their police departments and, indirectly, the broader municipal budget. Revenues from fines, fees, and seized property are especially valued for their flexibility. There are few policy levers available to local officials that can generate greater revenue without legislative or direct voter approval. It is difficult to raise taxes without broad consensus, and even then policymakers will likely incur heavy political costs. Stricter traffic or drug enforcement, and the fines they generate, can be had with a phone call from the mayor's office to the appointed chief of police, or even just advance warning of future budget cuts. Removing such a flexible source of revenue is likely to threaten the solvency, and in turn the services provided by, several local governments.

While reduced revenue flexibility will be a concern, the replacement of lost revenue will certainly be the largest political hurdle. This obstacle, however, is not as high as it might first appear, particularly for rebate programs proposed at the state level. Recall that the median local government has *not* escalated its dependence on law enforcement as de facto taxation (figure 1). For 80 percent of counties, fines and forfeitures remain less than 1 percent of revenues—for the median county, real per capita fine and forfeiture revenues have been unchanged for 30 years. The reason to pursue a rebate policy is not to radically alter behavior in the median police department, but rather to rein in the minority of law enforcement agencies that poison the well of community support and the reputation of law enforcement, while also credibly committing each police officer within the state or county to a mission of public service.

There also exists the eminently reasonable concern that a rebate of revenues generated from law enforcement could

lead to over-policing. Officers may believe that stricter enforcement, through the financial relief it brings working families, is a service they can bring to their community. This outcome is particularly worrisome if the rebate serves to mitigate any sympathetic motivations that previously led to lenience. For the program to backfire, however, it would require that the increase in strictness from rebate maximization outweigh the effect of eliminating agencies' fiscal motivations for revenue-collecting enforcement. We

expect that reduced fiscal motivation would lead to a shift from high-revenue, high-discretion, police-instigated arrests and citations (e.g., for drug possession, jaywalking, or speeding) to lower-revenue, lower-discretion, community-supported enforcement objectives (e.g., burglary, auto theft, or assault). These lower-revenue objectives are largely dependent on reported incidents, and since such arrests and citations face an upper bound, these objectives limit the potential for welfare-reducing increases in strictness.

Questions and Concerns

1. How do your proposals fit together?

The first two policies aim to ensure that fines and forfeiture proceeds are distributed across all of a state's local governments, rather than to particular municipalities or agencies. The third policy is a statewide redistribution of all criminal justice proceeds, with specific emphasis on the inclusion of fees, across all of a state's local governments. This is, in effect, a fully complementary expansion of the first two proposals.

The fourth proposal is a rebate of fines and forfeiture proceeds to a state's low-income constituents. Like the second proposal, it disallows local governments from retaining fine and forfeiture revenues, but instead of redistributing revenues in the form of per capita local grants, it rebates the revenues directly to constituents. Notably, statewide remittance of criminal justice fees—collected by courts and prisons—is complementary with a rebate of fine and forfeiture revenues.

Given concerns that a local government may shift a greater share of the financial burden from fines and forfeitures to judicial fees in an effort to evade contributing to a law enforcement rebate program, the optimal policy bundle would include both the remittance of criminal justice fees to the state general fund for statewide per capita redistribution as well as the rebate of fine and forfeiture proceeds to low-income constituents. This would ensure that high-population court systems remain adequately funded while continuing to constrain revenue-driven law enforcement and preventing adjudication proceedings from becoming a greater focus of revenue generation.

2. Are there alternative mechanisms for distributing the public safety rebate?

Using the SNAP structure is appealing because (a) SNAP is already institutionally and politically established, and (b) there is an existing population of qualified low-income households who would stand to immediately benefit from the tax in every state. There are, of course, alternative disbursement structures available to states. The rebate could be constructed as a lump sum augmentation to EITC payments that simply varies year to year with the size of revenues collected. This offers political advantages of being

attached to an already popular program. Roughly half of states do not offer their own EITC independent of the federal program, however, and often entirely exclude individuals without dependent children. In addition, the EITC only goes to those who receive labor income. The rebate could also be distributed as a means-tested college scholarship program for children of low-income families. This has the benefit of concentration in a smaller number of recipients for greater salience, and the creation of an entirely new outlet unlikely to crowd out preexisting program funding. The small number of recipients within low-income communities, however, would undermine the goal of engaging with broader population and demonstrating that police are operating without the goal of augmenting their own budget at the community's expense.

3. Should states be allowed to exclude individuals from receiving the public safety rebate?

Any state effort to limit the population with access to the rebate is of paramount concern and could conceivably undermine such a program. One of the most regrettable components to the 1996 Welfare Reform Act was the exclusion of drug offenders from food stamps. Several states still deny individuals with criminal records from access to SNAP and Temporary Assistance for Needy Families (TANF). Any state that implements a public safety rebate program would benefit not only from structuring inclusion using the federal SNAP thresholds, but also from guaranteeing that it, or similar means testing, would be the only metric for inclusion or exclusion to the rebate. If we exclude populations disproportionately caught in the criminal justice system from the benefit, such a rebate program could backfire, potentially exacerbating the incentive to expropriate from vulnerable populations.

4. Is there a broader lesson to be learned from the emergence of revenue-driven law enforcement?

Within any democracy, vote-maximizing elected officials will always have incentive to identify the services they can exchange for political support (Peltzman 1976). This includes not only the direct power of their office, but also the discretionary power of the agents they oversee. We should expect that any discretionary power assigned to enforcement agents will, over time, be internalized into the political marketplace, whether

through immigration audits (Makowsky and Stratmann 2014), workplace safety inspections (Jung and Makowsky 2014), property assessment (Makowsky and Sanders 2013), or the myriad dimensions of everyday policing. Opportunities for lenience or strictness will be converted into the political currency of personal favors, campaign donations, and constituent services. Police discretion over whom to arrest or not arrest is just one example of the many commodities to be exchanged within the marketplace of democratic politics. If we want an agent to execute their function more equitably,

with more regard to public benefit and less regard for political gain, we face a tough choice: either reduce the political impact of the agent's function or reduce the discretion available to the agent. In these policy proposals, I have focused on reducing the immediate budgetary impact of police discretion. There can be little doubt, however, that either option stands to fundamentally change the shape of how governments carry out policy and the law at the ground level of day-to-day governance.

Conclusion

Police officers are tasked with making difficult decisions, under pressure and with limited information, in contexts where errors can put lives at risk, including their own. Police cannot provide consistent law enforcement without the cooperation, input, and trust of the community they serve. Anything that aligns law enforcement against law-abiding citizens poisons that well of trust, placing all parties, including officers, at greater risk.

Left unchecked, the use of law enforcement to generate revenue will only get worse. States and municipalities are currently making capital investments to increase the net contributions of law enforcement to their budgets in the form of license plate readers, credit card processing, and database integrations (Martin et al. 2018). With rising fees, legal financial obligations have become a significant part of the debt landscape for low-income households, and the fiscal currents

underlying these trends are unlikely to relent. The more dependent government budgets become on these revenues, the more politically difficult and fiscally costly it will be to relieve police of their unwelcome role as tax collectors.

Eliminating the police retention of seized property and severing the link between revenues and expenditures will go a long way toward reversing the coopting and distortion of law enforcement. However, there is also an opportunity to remove the crutch of police-generated revenue and improve the relationship between police and the communities they serve. By returning the proceeds of law enforcement to the communities currently suffering both the heaviest burden of crime and the financial expropriation of revenue-motivated law enforcement, we can reestablish to citizens, now and every year going forward, that police are working for communities, and not against them.

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Endnotes

1. Perversely incentivized tax institutions have a long and fascinating historical precedent. Tax farming—the practice of paying private tax collectors a share of proceeds—was prominent in England, France, and (in an earlier era) the Roman Empire (Johnson and Koyama 2014). Within the Ottoman Empire the subcontracting out of law enforcement and fines collection by tax farmers may have led to conflict with local military authorities and excess fining that contributed to the dissolution of their fiscal system (Coşgel et al. 2012; Coşgel, Etkes, and Miceli 2011).
2. Motivated, broadly speaking, by a desire to reduce the size of government by starving the beast, these efforts have manifested greater effect in changing how government is funded.
3. Within the Census of Governments classification manual for reporting governments, revenues reported as fines and forfeits (code U30)—referred to in this paper as fine and forfeiture revenues—should include “Receipts from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral)” and should exclude “Penalties relating to tax delinquency . . . library fines . . . and sale of confiscated property (use code U99)” (U.S. Census Bureau 2000). In practice it appears that revenues from confiscated property sales (especially prior to 2005) are likely spread across three categories: fines and forfeitures and two separate miscellaneous revenue categories. As such, we can confidently assume that “fines and forfeits” as a category consistently underestimates the total revenues from law enforcement for any government entity.
4. Policies that have graduating sanctions with income would serve to mitigate this outcome, as described in a companion Hamilton Project policy proposal by Beth Colgan (2019).
5. The burden of proof for seizing property is much lower than that threshold to bring an individual before a judge. It is not even necessary to charge an individual with a crime to seize their cash, vehicles, and house; law enforcement needs only the reasonable suspicion that their property was involved in a crime.
6. See Reaves (2013) as well as a companion Hamilton Project policy proposal by Will Dobbie and Crystal Yang (2019).
7. There is some evidence that voting correlates to lower rates of criminal recidivism (Uggen and Manza 2004), but it also stands to reason that state laws that disenfranchise convicted felons will be more likely to maximize revenues expropriated via law enforcement, though no such analysis has been conducted, to the best of my knowledge.
8. Regarding jury trial outcomes, in Washington State the party demanding a jury in a civil trial must pay \$125 for a six-person jury and \$250 for a twelve-person jury, systematically biasing outcomes further against minorities.
9. Given the emergence of defense attorneys specializing in challenging DUI charges, it may be the case that the opportunity cost of white DUI arrests (i.e., the other potentially revenue-generating arrests local police could be making) is greater than the eventual revenue they yield.
10. These states are Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, and Vermont.
11. In a variation on the “flypaper effect” often observed in public finance, block grants and other forms of state aid may become a function of contributions to state revenues from the efforts of law enforcement, immediately restoring the direct connection between local budgets and officer discretion.
12. These limits are still quite high.
13. It might seem ironic, at first glance, that a public safety rebate would share elements with TABOR, which is representative of legislation passed during the tax revolt of the 1980s. TABOR, unlike other similar legislation, places limits on all revenues, and not just on tax revenues. Colorado municipalities operating under TABOR do not face the same incentives to maximize law enforcement revenues when tax revenue falls short of expenditures that are found, for example, in Massachusetts municipalities operating under Proposition 2 ½ and its ceiling on property tax revenue.
14. SNAP covered an average of 40.3 million people in 20 million households in FY2018—equivalent to 12 percent of the U.S. population, providing an average monthly benefit of \$125 per person (U.S. Department of Agriculture 2019; Census 2019).

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Highlights

In this paper Michael Makowsky of Clemson University describes how the reliance of local governments on fees, fines, and asset forfeiture for revenue generation shapes law enforcement activities. Makowsky proposes a set of reforms that would decouple the revenue collection from the public safety objectives of law enforcement. Breaking this link would realign the criminal justice system with its traditional public safety goals.

The Proposals

End the retention of federal equitable sharing revenues by law enforcement agencies.

The author proposes reforming the federal equitable sharing program so that state revenues collected through federal equitable sharing be transferred to state general funds, rather than to the relevant law enforcement agencies.

Eliminate the retention of proceeds from forfeited property by the local arresting agency. The author proposes that any revenues collected through forfeitures will be remitted to the state general fund.

Redistribute criminal justice revenues as per capita municipal block grants. The author proposes that all revenues be remitted to the state budget and reallocated as block grants to local governments in strict accordance with constituent population.

Require that any revenues generated via law enforcement be rebated to individuals.

The pool of fine and forfeiture revenues would be divided into shares, the value of which will depend on the number of qualifying households. Households will qualify by one of two mechanisms: a) filing an income tax return that year with a gross household income below the SNAP threshold, or b) currently receiving SNAP benefits.

Benefits

Eliminating the police retention of seized property and severing the link between revenues and expenditures will bring law enforcement activities in closer alignment with public objectives. In addition, by returning the proceeds of law enforcement to the communities currently suffering the heaviest burden of crime, the proposal would be a major step toward reestablishing public trust in police officers to serve and protect their communities.



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