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Defunding Police Agencies

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DEFUNDING POLICE AGENCIES

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ABSTRACT

This Article contextualizes the police defunding movement and the backlash it has generated. The defunding movement emerged from the work of Black-led activists to reassert democratic control over policing and shift resources to social service agencies and other institutions serving community needs. In reaction, states have enacted anti-defunding bills checking local government reduction of law enforcement budgets. These anti-defunding measures continue a long tradition of state and federal control over local police spending, subverting local democratic control over police agencies. These limits include direct legal constraints on local police spending and indirect constraints through grants and authorization to collect fines, fees, and forfeitures. These mechanisms form a ratchet, bribing local governments to increase police spending and then mandating them to maintain it, at the eventual cost of cutting social services. This leaves cities little choice but to try to police their way out of the problems of poverty and inequality. Thus, constraints on local police funding help explain the decades-long shift of resources from social welfare to law enforcement. The problem revealed by the defunding controversy is not just the size of police budgets but also the perverse process determining those budgets. Before police agencies can be right-sized or reformed, police budgeting must be put in the hands of the people policed.

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INTRODUCTION

While police reform has won widespread support, proposals to “defund the police” have met with decidedly mixed reactions. To reformers frustrated by...
the difficulty of subjecting police to meaningful public oversight, defunding offers a Gordian solution, at once damning and disabling police. The formula’s flexibility adds to its allure, as its meanings span the spectrum from complete abolition of law enforcement to a modest reallocation of some police responsibilities.

Despite these ambiguities, this pithy proposal, formulated by a Black-led abolitionist social movement, packs a profound critique of the “War on Crime.” Framing police violence as a fiscal problem locates it within the neoliberal reconfiguration of the social safety net from a welfare state to a carceral state. Redescribing law enforcement as a fiscal burden wryly substitutes the police for the poor as the underperforming assets to be shed in search of profit. “Defunding” also seeks to reverse police “mission creep,” whereby problems


3 Lyndon Johnson, Special Message to Congress on Law Enforcement and the Administration of Justice (Mar. 8, 1965) (transcript available at the American Presidency Project).


5 The term “mission creep” was coined to describe the extension in time and escalation in scale of military intervention as a result of adding objectives beyond those originally invoked to justify the use of force. See, e.g., Jim Hoagl, Beware ‘Mission Creep’ in Somalia, WASH. POST (July 20, 1993), https://www.washingtonpost.com/archive/opinions/1993/07/20/beware-mission-creep-in-somalia/e98b9e2-9ceb-45c3-9baf-844a8a2671e9/.

We apply this term to the allocation of social service functions to police either (1) to justify increased budgets, or (2) because entrenched police budgets make redeploying police the only affordable way to staff these services. Examples include the deployment of officers in schools as drug educators and school resource officers, pursuant to federal grant programs. Drug Abuse Resistance Education (D.A.R.E.), U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS (Sept. 1995), https://www.ojp.gov/ncjrs/virtual-library/abstracts/drug-abuse-resistance-education-dare-fact-sheet; Supporting Safe Schools, U.S. DEP’T OF JUST., OFF. OF CMTY. ORIENTED POLICING SERVS., https://cops.usdoj.gov/supportingsafeschools (last visited May 5, 2022).


Calls to defund the police call out a neoliberal politics of redistribution from poor to propertied, and from Black to white.

While much controversy over the slogan has debated its rhetorical merits, this Article assesses “defunding” as both a diagnosis of policing’s ills and a prescription for its cure. A focus on police funding shows how the war on crime has subverted local democracy, distorted urban policy, and further eroded the social safety net. Yet an anatomy of police funding also reveals daunting obstacles to defunding as a path to police reform. If state government lacks the will, local government lacks the way to substantially shrink the police.

Our previous research has shown that police agencies are intractably difficult to reform, in part because they are legally insulated from oversight not only by courts but also by local legislative and executive officials. This raises the question, to what extent can local democratic majorities use their spending power to check or change police behavior? While the defunding movement has succeeded in a few cities in reducing police budgets or subjecting them to regular legislative review, several state legislatures have moved quickly to preempt and even penalize such laws. Moreover, these recent anti-defunding measures continue a lengthy history of state and federal measures to dictate local spending on law enforcement, while reducing the ability of local governments to control police operations. States and the federal government have also influenced local police budgets indirectly by implementing grant programs and authorizing the collections of fines, fees, and forfeitures.


8 See O’Rourke, Su & Binder, supra note 1, at 1328.

9 See infra Part I.C.

10 See, e.g., Mike Crowley & Betsy Pearl, Reimagining Federal Grants for Public Safety and Criminal
Together, these mandates and incentives form a web of constraints that limit the ability of local government to redirect police funding. Local government can rarely wield the power of the purse to control police or confine their mission. But these constraints also determine policy, often in perverse ways. Inflexibly high police budgets force localities to slash other services during fiscal downturns, requiring police to take on problems for which they are unprepared. Grants are temporary, but the staff positions created may become permanent. The pursuit of fines, fees, and forfeitures draws policing priorities away from serious crime and falls most heavily on the poor. Funding government by exacerbating poverty is not only regressive but also self-defeating, generating new social problems without improving government’s capacity to solve them. Thus, high police budgets contribute to inequality and reduce the capacity of government to redress it. Yet, the problem with police budgets is not only their size. The prevailing process of budgeting deprives local government of capacity to prioritize problems and fashion solutions. Redirecting resources from police to social services will require budgetary autonomy local governments now lack.

To be clear, we make no claim that urban electorates have sought smaller police forces. They may have rationally supported investment in more police, as data supports the plausible intuition that increasing enforcement capacity (including through federal grant funding) reduces crime.12 Moreover, Black constituents have sometimes supported leaders seeking to increase police presence and enforcement in their communities.13 Yet other public investments


12 Steven Mello, More COPS, Less Crime, 172 J. PUB. ECON. 174, 176 (2019) (finding slightly lower murder rates (by a fraction) in cities that received federal COPS hiring grants after the Great Recession than in those which did not); Emily K. Weisburst, Safety in Police Numbers: Evidence of Police Effectiveness from Federal COPS Grant Applications, 21 AM. L. & ECON. REV. 81, 83 (2018) (finding similar results with different controls and different city sizes); Aaron Chalfin & Justin McCrary, Are U.S. Cities Underpoliced? Theory and Evidence, 100 REV. ECON. & STAT. 167, 184 (2018) (finding statistically significant “police elasticities” of crimes reported in the Uniform Crime Reports). However, while there is evidence that increased police staffing slightly lowers crime rates, it is less clear that reductions in arrest rates lead to increases in crime (and evidence points against the proposition). See Sungwoo Cho, Felipe Gonçalves & Emily Weisburst, INST. OF LAB. ECON., DISCUSSION PAPER SERIES: DO POLICE MAKE TOO MANY ARRESTS? THE EFFECT OF ENFORCEMENT PULLBACKS ON CRIME 2 (May 2021); see also Jeffery Fagan & Daniel Richman, Understanding Recent Spikes and Longer Trends in American Murders, 117 COLUM. L. REV. 1235, 1293 (2017) (citing Steven Mello, Police and Crime: Evidence from COPS 2.0, at 27 (2016) (unpublished manuscript) (on file with Colombia Law Review) and Chalfin & McCrary, supra, for the proposition that “the most appropriate strategic response to homicide spikes, if not epidemics, may have less to do with the number of police than with how those police are deployed”).

13 See James Forman, Jr., Locking Up Our Own: Crime and Punishment in Black America 11 (2017) (documenting Black officials advocating for “tough-on-crime measures in race-conscious terms” and
may also reduce crime in the short or long run, with further social benefits or fewer social costs. Beyond police spending, interventions shown to reduce crime include welfare programs, early education, increased educational attainment, drug rehabilitation, and lead abatement. Local electorates should be free to choose among different conceptions of, and pathways to, public safety.

Instead, legal constraints frame a political economy in which police are often the only policy tool available to local officials for tackling any problem. Thus, our claim is that fiscal and legal constraints restrict the agenda of local politics. The entrenchment of police budgets makes redirecting these resources seem futile as both a policy strategy and an electoral platform. This constricting effect of the police budgeting process on the agenda of ostensibly democratic politics is an example the “second face” or “second dimension” of political power.
Our argument proceeds in four parts. Part I explains the aims and strategies of the movement to “defund” police and describes recent efforts of states to preempt or punish local defunding measures. It identifies the movement to defund as an outgrowth of penal abolitionism, aimed at shifting investment from penal enforcement to developing the social infrastructure for peace and security by fostering education, employment, and health. It observes that the movement has focused its advocacy at the level of city governments and reviews recent successes in passing defunding measures in several cities. Part I then traces the recent reaction against municipal defunding at the state level, where dozens of anti-defunding bills have been introduced, preempting and punishing city defunding measures.

Part II reveals the more fundamental impediments to shifting fiscal and policy priorities by unraveling the web of direct legal constraints on local decisions to fund or defund law enforcement. Direct constraints include state legislation mandating local governments to fund police agencies at certain levels of spending, staffing, pay, benefits, or job security; requiring indemnification; or mandating that police perform certain functions. They also include state-permitted or state-mandated collective bargaining agreements that set pay, benefits and job security levels or require indemnification. These constraints continue longstanding efforts by states to control local enforcement, often reflecting mistrust of urban populations as dissolute and urban politics as corrupt. State control of local police budgeting sometimes originated as part of more comprehensive regimes of state control of law enforcement or of local finance.21 States mandated and regulated funding of sheriffs’ offices from the outset, often financing them indirectly through permissions to charge fees. State control of local expenditures was unaccompanied by any state responsibility to fund these expenditures. Police agencies came to see themselves as largely independent of local government, and learned to cultivate relationships with patrons in state government.

21 See infra notes 166–69 and accompanying text.
Part III shows how state and federal revenue programs, rather than enabling localities to achieve their most pressing priorities, indirectly constrain them to either prioritize crime control or shift responsibility for other problems to police. These indirect constraints on funding allocation include state authorization for local law enforcement agencies to collect fines and fees; state and federal authorization to law enforcement to seize and forfeit property; and federal and state grants programs. In many localities, fines and fees have assumed an ever-larger share of local government expenditures, and have financed law enforcement even as social welfare expenditures have declined. Forfeiture programs have further freed law enforcement from having to seek local authorization.22 Federal grant programs like the community policing program, enacted during the Clinton administration, intentionally incentivized police expansion, which then became locked in by state mandates and collective bargaining agreements.23 These programs replaced an earlier generation of general-purpose federal grants that enabled local governments to choose their own priorities. By contrast, the community policing grants incentivized only one priority: expanding the footprint of law enforcement. When the grants expired, local governments had to keep paying their newly expanded police forces and were constrained to cut other programs. This incentivized localities to shift social welfare functions over to untrained but contractually secure police. An account of the police takeover and abandonment of Baltimore’s recreation programs will illustrate this phenomenon. By tracing how expanding police expenditures impoverish social services, Part III exposes one of the mechanisms through which the carceral state replaced the welfare state.

Part IV sums up the dynamic we have described, in which cities under financial pressure—as most cities were in the last third of the twentieth century—turned to law enforcement as a revenue source. In this way, the availability of funding dictated government function, inverting the expected relationship between public finance and public policy. A further effect of shifting policy choices to the budgeting process was to insulate these decisions from public scrutiny since budgeting is an opaque and technical process attracting little attention and is especially insulated from local democratic input.

Recounting how municipalities came to over-invest in law enforcement reveals that the defunding movement is taking on a deeper problem than excessive law enforcement: the impotence of local government to set its own

22 See infra Part III.B.
priorities democratically. We conclude by urging the abandonment of methods of financing law enforcement that distort budgetary priorities. We urge freeing local governments to require law enforcement to prove its worth in competition with other funding priorities. We also suggest a return to more flexible federal grant programs, funding government functions rather than particular agencies. Finally, fines, fees, and forfeitures should be drastically reduced as they create perverse incentives for law enforcement to harass the public, while freeing armed officials from democratic oversight.

I. DEFUNDING AND ANTI-DEFUNDING

This Part maps the arguments, strategies, and aims of the defunding movement. It identifies the movement’s political successes and describes the backlash it has elicited.

A. The Rise of the Defunding Movement

Although the defunding movement may strategically equivocate on the scope of its demands, and adherents may diverge in their ultimate goals, its focal aims are clear. The movement seeks to (1) reduce the budgets of local police agencies, (2) shift those resources to such other social needs as health care, housing and education, and (3) thereby improve the public’s capacity for prosocial behavior.

24 For our own diagnosis of the pathologies of policing and why they may require dramatic institutional and structural reforms, see O’Rourke, Su & Binder, supra note 1, at 1337–59.


26 See generally Jessica M. Eaglin, To “Defund” the Police, 73 STAN. L. REV. ONLINE 120 (2021) (providing a taxonomy of the political goals of those advocating to “defund the police”).

27 See, e.g., INTERRUPTING CRIMINALIZATION INITIATIVE, #DEFUNDPOLICE TOOLKIT: CONCRETE STEPS TOWARD DIVESTMENT FROM POLICING & INVESTMENT IN COMMUNITY SAFETY 3 (2020) [hereinafter #DEFUNDPOLICE TOOLKIT], https://www.interruptingcriminalization.com/defundpolice-toolkit (“#DefundPolice is a demand to cut funding and resources from police departments and other law enforcement and invest in things that actually make our communities safer.”).

28 See id. (calling for reinvestment in “quality, affordable, and accessible housing, universal quality health care, including community-based mental health services, income support to stay safe during the pandemic, safe living wage employment, education, and youth programming”); see also Amna A. Akbar, An Abolitionist Horizon for (Police) Reform, 108 CALIF. L. REV. 1781, 1830 (2020) (“Demands to divest from police and prisons are often accompanied by demands to invest in social provision and collective care: for example, housing, health care, and education. By demanding investments, these campaigns suggest alternate modes that the state can take to respond to all manner of currently criminalized social problems.”).
These demands emerged from the work of Black-led social movements to implement policies developed by abolitionist theorists. Abolitionists conceived defunding as a strategy to empower Black communities and challenge the legitimacy of policing as a mode of governance. There are three significant components of this argument. First, abolitionist theorists and activists often trace contemporary policing institutions to eighteenth- and nineteenth-century slave patrols of the American South. This connection, they argue, calls into question the political legitimacy of police agencies as institutions that govern Black and Brown people in the United States. Second, as Professor Angela Y. Davis has argued, Black incarceration occurs in part because the legacy of slavery continues to leave many Black people without access to material resources necessary to live “free lives.” Third, in the late-twentieth century, changes in the labor market further deprived poor people, including many Black people, of economic opportunities. Simultaneously, state and local governments defunded social services while expanding police budgets. These changes ensured that, especially in localities with high concentrations of poor people of color, “the ‘social safety net has been replaced by a criminal dragnet.’”

Building on these premises, abolitionists turned their attention to the large share of many local budgets consumed by police funding. This focus has motivated defunding initiatives in cities with well-organized activist communities. In Chicago, for example, activists organized protests in response

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30 See #DEFUNDPOLICE TOOLKIT, supra note 27, at 3 (“#DefundPolice ... is not just about decreasing police budgets, it is about reducing the power, scope, and size of police departments. It is about delegitimizing institutions of surveillance, policing and punishment, and these strategies, no matter who is deploying them, to produce safety.”).

31 See O’Rourke, Su & Binder, supra note 1, at 1342; Akbar, supra note 28, at 1817–18, 1830. This story of the origins of American policing has a particularly explanatory value in its description of Southern police agencies, with large urban police agencies in the North having a distinct evolution. See Elizabeth Hinton & DeAnza Cook, The Mass Criminalization of Black Americans: A Historical Overview, 4 ANN. REV. CRIMINOLOGY 261, 263 (2021).


34 GILOMERE, supra note 4, at 70–76; see also JONATHAN SIMON, POOR DISCIPLINE: PAROLE AND THE SOCIAL CONTROL OF THE UNDERCLASS, 1890–1990, at 5 (1993) (arguing that the collapse of labor markets exacerbates incarceration).

35 GILMORE, supra note 4 at 76–77, 94–95.

36 Id. at 77 (citation omitted).


38 Sam Levin, These U.S. Cities Defunded Police: ‘We’re Transferring Money to the Community,’ GUARDIAN (Mar. 11, 2021, 11:03 AM), https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-
to building plans for an expensive “cop academy.” These protests ultimately failed, and the projected costs of the new police academy ended up being far higher than the ninety-five million dollar estimate that triggered the protests. However, the organizing effort contributed to more ambitious calls to defund the Chicago Police Department.

While abolitionist in origin, calls to defund the police have been well received by some activists and scholars who do not see policing institutions as inherently illegitimate. Such reformers may reject abolition but still see the cost of police diverting resources from other public goods that would better address significant social problems. For example, Professor Barry Friedman has called for disaggregating the policing function by shifting many responsibilities to social workers, psychologists, and other professionals. Reformers argue that this strategy could improve social services, which communities currently rely on police officers to provide. At the same time, shifting responsibilities could strengthen public safety by freeing law enforcement to focus on addressing the violent crimes that are currently underpoliced in poor communities of color.

As Professor Friedman notes, even some police leaders have voiced support for this endeavor. Such reforms resonate with the U.S. Department of Justice.
“Justice Reinvestment Initiative,” which supports local government efforts to divert resources from corrections to evidence-based public safety strategies.48 In practice, however, these strategies would likely require defunding in order to reallocate law enforcement resources.49

B. The Aims and Strategy of the Defunding Movement

While advocates of defunding may diverge in their ultimate goals,50 they share a common assessment of the need to target police budgets.51 They also share a localized strategy for achieving their aims, reflecting the localized nature of police funding and the concentration of political support for defunding in certain cities. This subpart maps these aims and strategies.

1. Movement Aims

In recent years, Black-led social movements have turned to structural reform not only out of principled opposition to punitive and carceral methods of governance, but also as a practical strategy for reducing police violence. As shown in our previous research, efforts to reform police behavior have been impeded by insular organizational culture, powerful unions, monitoring difficulties, intermittent political will as a result of high political costs,52 and legally entrenched organizational autonomy.53 Accordingly, movement leaders have sought to mobilize urban communities to reduce police budgets with three aims: (1) improving allocation of resources, (2) improving democratic representation, and (3) tangibly reducing police violence.54


50 See supra note 42 and accompanying text.

51 In a previous essay, we presented an affirmative case for disbanding police agencies as a strategy of political dis-entrenchment. See O’Rourke, Su & Binder, supra note 1, at 1337. Many of these arguments apply with equal force to the case for police defunding. Here, rather than rehearse our previous arguments, we examine the origins of the defunding strategy in Black-led social movements. In both pieces, we take seriously the call for legal scholars to “think alongside” social movements and acknowledge that the arguments presented in this section have their roots in activist organizing. See Anna Akbar, Sameer Ashar & Jocelyn Simonson, Movement Law, 73 STAN. L. REV. 821, 826 (2021) (arguing that legal scholarship should study and “think alongside” the strategies of social movements).

52 O’Rourke, Su & Binder, supra note 1, at 1343–55.

53 Id. at 1389–96.

54 See K. Sabeel Rahman & Jocelyn Simonson, The Institutional Design of Community Control, 108
First, defunding would enable communities to reinvest in depleted social services. To be sure, critics of the defunding movement claim that state and local governments together spend only four percent of their budgets on police and local law enforcement. Yet this figure obscures the fact that law enforcement is primarily a local function and fiscal responsibility. The Urban Institute data on which these critics rely reports that cities, towns, and counties spend thirteen percent, ten percent, and eight percent of their respective budgets on policing when disaggregated from state government budgets. And even these figures exclude the substantial costs of police retirement and health benefits.

Because different cities may have different fiscal responsibilities, it is difficult to compare how much different communities spend on policing relative to other priorities. For example, cities that include schools in their municipal budgets (such as New York) will appear to spend a smaller portion of their budgets on police than cities that have independent school districts. However, police budgets in many medium and large cities have ballooned in recent years, while spending on other services has stagnated. And, as noted above, police budgets tend to be particularly large in cities with larger and more concentrated Black populations. Thus, as movement activists have observed, law enforcement expenditures appear to choke out other pressing priorities in the budgets of many large and small cities. For example, according to Black Lives
Matter Chicago, that city currently “spends nearly [forty percent] of its annual operating budget” on its police department, thus redirecting much-needed money away from schools, mental health centers, social services, and community institutions. A Bloomberg study found that twenty-five of thirty-four major cities examined would spend more than twenty-five percent of their general budgets on police in 2021. Similarly, a systematic review by activists of ten major city budgets found that all but New York City spend more than twenty-five percent of their general funds on their police departments, with the City of Oakland spending 41.2%. In each of these cities, activists observed, spending on law enforcement dwarfed expenditures on community priorities such as infrastructure, job training and placement, affordable housing, drug rehabilitation, educational support, youth programs, and jobs. The remedy for this disparity, activists argue, is greater community control over city spending priorities through a participatory budgeting process in which community members decide how to spend a portion of the public budget.

Second, defunding advocates contend that defunding could invest poor and minority communities with more democratic control over the institutions that govern them. This claim is distinct from the question of where money spent on police should be reallocated. These activists argue that police overfunding is not

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65 Sarah Holder, Fola Akinnibi & Christopher Cannon, ‘We Have Not Defunded Anything’: Big Cities Boost Police Budgets, BLOOMBERG CITYLAB (Sept. 22, 2020), https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/. These estimates do not account for the significant municipal costs of litigating and paying for settlements and judgments in police misconduct cases—a set of costs that, for example, reached half a billion dollars for Chicago over a ten-year period. Scharff, supra note 59, at 941–42. Nor does it appear that these figures account for the indemnification insurance that many local governments rely on to pay judgments in police misconduct cases.

66 HAMAJI ET AL., supra note 63, at 1–2 (examining budgets for 2017). The exception, New York City, still spent nearly $5 billion on police and is unusual among cities in having fiscal responsibility for schools and county services. Id. at 2.

67 Id. at 1–2. But note that schools are typically funded separately. See Scharff, supra note 59, at 941.

68 HAMAJI ET AL., supra note 63, at 79–80 (describing participatory budgeting as a process consisting of four main phases: (1) brainstorming ideas, (2) developing proposals, (3) voting on proposals, and (4) funding winning projects).

69 See Jocelyn Simonson, Police Reform Through a Power Lens, 130 YALE L.J. 778, 801, 818 (2021); Rahman & Simonson, supra note 54, at 730.
simply a fiscal problem—it is also a community governance issue. They observe that activists within poor communities of color often have a deeply informed understanding of the sources and dynamics of violence in their communities, and have well-developed plans for reducing violence and repairing injustice without relying on police institutions they deem illegitimate instruments of social control.

For these activists, police defunding is a strategy to disempower institutions they regard as inherently racist and immune from reform. In this view, incremental reforms require expanded police budgets, which only serve to “increase resources and legitimacy to the institutions that maintain inequality and systematic suffering.” The solution, they argue, is to defund these institutions in order to reduce their presence in the lives of those living in poor Black neighborhoods and materially support alternative social infrastructures. Thus, some activists view the defunding movement as part of what Professor Jocelyn Simonson calls a power-shifting strategy for asserting community control over police governance.

Third, defunding has appeal as a practicable reform strategy that could affect the scale of police violence and also sustain mobilization by rewarding supporters with a tangible success. Relative to more ambitious structural reforms, such as disbanding police departments, advocates may view police defunding as politically feasible. Given its potentially cross-ideological appeal, police defunding can be a successful coordinating strategy for coalitional politics. Consider, for example, the political coalition behind recent

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70 Simonson, supra note 69, at 803–04.
71 See O’Rourke, Su & Binder, supra note 1, at 1334, 1336.
72 #DEFUNDPOLICE TOOLKIT, supra note 27, at 3; Akbar, supra note 37, at 104.
74 Akbar, supra note 37, at 108–10; Eaglin, supra note 26, at 127–28.
75 See Simonson, supra note 69, at 803–04.
76 O’Rourke, Su & Binder, supra note 1, at 1335–36 (outlining feasibility challenges with disbanding police departments).
77 See infra note 86 and accompanying text.
78 Indeed, advocates of police defunding have had victories in at least thirteen cities nationwide. See Jemima McEvoy, At Least 13 Cities Are Defunding Their Police Departments, FORBES (Aug. 13, 2020, 3:04 PM), https://www.forbes.com/sites/jemimamecvey/2020/08/13/at-least-13-cities-are-defunding-their-police-departments/?sh=7d7fde5c29c3. In March 2021, support for redirecting funds for social services still stood at forty-three percent, but only sixteen percent of those polled supported “the movement known as ‘Defund the Police.’” Elbeshbishi & Quarshi, supra note 2. Some of these successes, however, were reversed the following year. See, e.g., McEvoy, supra (reporting that the City of Baltimore cut $22 million in police spending in its Fiscal Year 2021 budget); Emily Opilo, Baltimore Officials Pass Budget with $555 Million in Police Spending Without Amendments, BALTIMORE SUN (June 8, 2021), https://www.baltimoresun.com/politics/bal-md-ci-baltimore-budget-approved-20210608-b3k7bnajadfovloigxy7mvq-story.html (reporting that the Fiscal Year 2022 budget
defunding successes in Los Angeles. Grassroots abolitionist organizations such as the People’s Budget LA first developed proposals for police defunding and abolition.79 This laid the groundwork for a coalition of institutions and officials—many of them conventionally reformist in their aims—to organize a successful ballot initiative to amend the Los Angeles County Charter.80 This initiative—which abolitionist organizers also supported81—requires that ten percent of the County budget be directed toward alternatives to incarceration and prohibits those earmarked funds from being spent on law enforcement agencies.82 During this same period, the Los Angeles City Council and Mayor Eric Garcetti authorized a $150 million reduction in the Los Angeles Police Department.83 Citing the city’s fiscal crisis, Mayor Garcetti vetoed the City Council’s plan to reallocate a portion of this money to other city services—showing that police defunding can win the support from those primarily interested in fiscal responsibility.84 While these victories build on years of abolitionist criticism and organizing,85 they reveal wider constituencies for police defunding in large cities than previously imagined.86 Thus, for both radical reformers and liberal incrementalists, a focus on police funding provides an avenue for reform that they perceive to be more readily available and politically possible than disbanding police agencies or other significant structural reforms.87 Any such success, even if relatively modest, can enhance the political credibility of a grassroots movement with both constituents and coalition partners.88 However, as explained below, there has been political pushback, and even moderate defunding faces legal impediments.

“includes a $28 million increase in spending on the Baltimore Police Department to cover employee health insurance and higher pension obligations”.

79 About People’s Budget LA, PEOPLE’S BUDGET LA, https://peoplesbudgetla.com/about (last visited May 5, 2022); see also Simonson, supra note 69, at 791 n.38, 823 (describing People’s Budget LA organizing).
81 See, e.g., About People’s Budget LA, supra note 79 (listing coalition members).
83 Kevin Rector, A Cool Response to LAPD Budget Request, L.A. TIMES, Nov. 24, 2020, at B1. The City Council rejected subsequent pleas by the police department to partially refund the agency. Id.
85 Akbar, Abolitionist Horizon, supra note 28, at 1830.
86 There are other examples of cross-ideological coalitions coordinating around police defunding. See, e.g., NYC Budget Justice, CMYS. UNITED FOR POLICE REFORM, https://www.changethenypd.org/nycbudgetjustice (last visited May 5, 2022) (calling for a one-billion-dollar reduction in the New York Police Department’s budget).
87 See O’Rourke, Su & Binder, supra note 1, at 1359–88.
2. Localist Movement Strategy

As the victories described above suggest, defunding activists have primarily sought to achieve their goals by mobilizing at the levels of city and county governments.99 There are several straightforward explanations for this localist strategy. First, and most obviously, policing in the United States is and historically has been quintessentially local.90 Accordingly, police agencies are primarily funded by local governments through local sales and property taxes.92 It therefore makes sense to assume that these local governments should be the principal target of any effort to reduce police funding.

Second, the political constituencies supporting police defunding are concentrated in cities. Indeed, in some cities, support for police defunding appears to be overwhelming.93 The slogan “defund the police,” while unpopular nationwide, can nevertheless serve as a successful mobilizing tool in some localities.94 This concentrated support for police defunding is particularly potent since local officials tend to be more receptive than state or federal officials to grassroots citizen mobilization around criminal justice issues.95

Third, defunding advocates have identified city laws as necessary targets for reform. Consider, for example, defunding activists’ successful effort to amend the San Francisco City Charter to assert greater control over police budgets.96 A 1994 amendment to the City Charter required that the San Francisco Police Department maintain a minimum staffing level of 1,971 full-time officers.97 In

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99 For an exception, see The Demilitarization of Law Enforcement, MOVEMENT FOR BLACK LIVES, https://m4bl.org/policy-platforms/the-demilitarization-of-law-enforcement/ (last visited May 5, 2022) (urging activism at the federal budgetary level to address militarization).
92 See Rushin & Michalski, supra note 56, at 287.
93 In San Francisco, for example, a seventy-one percent majority voted to amend the city charter in order to eliminate mandatory police staffing levels and thereby empower the Board of Supervisors to reduce the size of the city’s police department. See San Francisco, California, Proposition E, Police Staffing Charter Amendment (November 2020), BALLOTpedia, https://ballotpedia.org/San_Francisco,_California,_Proposition_E,_Police_Staffing_Charter_Amendment_(November_2020) (last visited May 5, 2022).
94 See supra notes 2, 5, 51, and accompanying text.
November 2020, San Francisco residents voted to amend the Charter to repeal this minimum staffing requirement. The amendment further requires the Police Chief to submit a report and recommendation for police staffing to the Police Commission every two years that will be considered when determining the police department’s budget. The President of the San Francisco Board of Supervisors, who sponsored the Proposition, explained that the reform would allow the city to “dispatch[] teams of social workers and substance use counselors to respond to calls seeking their skills and service when appropriate.”

C. The Backlash Against “Defunding”

While widespread demonstrations against the killing of George Floyd prompted demands to “defund the police,” these protests also sparked a political backlash aimed at limiting local governments’ authority over law enforcement funding. Indeed, while the defunding movement has gained some traction at the local level, it is facing new challenges at the state level. A growing number of states are considering “anti-defunding” bills that would prohibit and punish localities that reduce law enforcement funding.

During the first eight months of 2021, at least twenty-five anti-defunding bills were introduced in ten states. While all seek to limit local efforts to restructure the role of local police agencies through the funding process, they set different limits on what structures of defunding would be impermissible. Some impose restrictions on any reductions, in either relative share of the municipal budget or absolute dollar amounts. Others prohibit reductions over a certain percentage in a given year or over a number of years. Moreover, most of
these proposed bills do not simply mandate a certain threshold of funding. Following the wave of “punitive preemption” laws in the past decade, they impose significant penalties on localities violating their requirements. State funding is withheld, or localities lose the ability to increase local taxes or to keep sales tax receipts.

Thus far, four bills have been signed into law. Florida House Bill 1 authorizes a state attorney or a member of a municipality’s governing board to appeal a police budget that reduces funding. Once an appeal has been filed, a commission appointed by the governor can amend or modify the budget allocation as it sees fit. Georgia House Bill 286, signed a few weeks after Florida’s HB 1, bars budget reductions of more than five percent over a five-year period unless the reduction is due to a shortfall in revenues. Any shortage-justified reduction must be proportional to the overall decrease in the municipal budget. HB 1900 in Texas prohibits any reductions to law enforcement budgets in cities with over 250,000 residents unless it is proportionate to the reduction of the municipal budget overall. Texas Senate Bill 23 requires all counties with over one million residents to receive voter approval for nearly all budget or personnel reductions affecting law enforcement agencies. The population cut-offs in Texas ensure that these anti-defunding restrictions are limited to metropolitan areas of the state where defunding efforts are garnering the most support. Moreover, these new laws include a number of punitive provisions targeting local fiscal capacity and territorial integrity. These include denial of state funds and prohibitions against raising local tax and utility rates. In addition, defunding municipalities are denied the authority to annex any new territory into their city, and areas annexed within the last thirty years may vote to secede from the city.

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110 See La. H.R. 38.

111 See H.R. 1, 123d Leg., Reg. Sess. (Fla. 2021).


113 See H.R. 1900, 87th Leg., Gen. Sess. (Tex. 2021). As of 2020, this includes approximately eleven cities in Texas. Id.

114 See Tex. S. 23.

115 See id. (prohibition against increasing county property taxes); Tex. H.R. 1900 (prohibition against cities raising tax and utility rates).

There is little doubt that the recent wave of anti-defunding measures is motivated more by the politics of police reform than by concerns about fiscal responsibility or public safety. All these anti-defunding measures were introduced in response to the growing movement for police reform. The anti-defunding measures in both Florida and Texas were enacted alongside measures aimed at suppressing political protests and making local governments liable for property damage if they instruct police officials to exercise restraint. Moreover, even though many of the anti-defunding bills provide exceptions if law enforcement reductions are due to budgetary shortfalls, none provide any state assistance to localities in those circumstances. From this perspective, the state’s interest appears to be less about ensuring police agencies are adequately funded for public safety purposes and more about foreclosing defunding as a tool for police reform.

At the same time, these anti-defunding laws threaten to upend municipal budgeting. Indeed, even localities uninterested in police reform are affected by these constraints. During budgetary shortfalls, measures prohibiting cuts to law enforcement would force localities to cut other services and departments. In times of growing revenues, localities required to dedicate a fixed percentage of their budgets to law enforcement would need to proportionally increase law enforcement funding even if that increase is unnecessary. Moreover, all this affects the structure of municipal government, even on issues unrelated to the matter of policing. The city of Gainesville, Florida, for example, currently has youth and social service programs funded through their police budget. The city council would like to transfer those programs to a different municipal department. But Florida House Bill 1 precludes this reorganization, which would reduce the law enforcement budget.

Taken together, these anti-defunding bills represent a startling effort by states to interfere with local budgeting authority. To be sure, state laws normally preempt local laws, but anti-defunding bills go much further than simply overturning a local ordinance or regulation. By stripping the power to set their own budgets, anti-defunding bills intrude upon the internal governance of cities.

117 The anti-protest measures in Florida were included alongside the anti-defunding measures in HB 1. See H.R. 1, 123d Leg., Reg. Sess. (Fia. 2021). Texas House Bill 1900, the anti-defunding measure in Texas, was signed on the same day as HB 9 and HB 2366, both of which increased penalties for activities that took place during Black Lives Matter protests. See H.R. 9, 87th Leg., Gen. Sess. (Tex. 2021); Tex. H.R. 1900; Tex. H.R. 2366.


and other localities. In doing so, they clash with the traditional understanding of police departments as subdivisions of local governments, spending funds allocated to them by representatives of local residents.

But as will see in the next Part, these anti-defunding bills may simply be the latest example of longstanding state efforts to control the budgets of locally funded law enforcement agencies. To be sure, few state laws have mandated local funding as directly as these proposed bills, at least not in recent history. Yet state-local conflicts over law enforcement funding are hardly new, and today, local discretion over law enforcement funding is mandated, constrained, and circumvented in several ways. And as we will see, fiscal considerations only rarely have factored into these conflicts. In most cases, like today, states sought to determine the function of law enforcement agencies and insulate them from control by local residents.

II. Direct Constraints on Law Enforcement Defunding

Funding has come to the fore of the policing debate. Both radical and incremental reformers—even officials now shedding the “defunding” brand—hope to redirect law enforcement resources to other social services in an effort to reimagine public safety. Yet supporters of anti-defunding legislation seek to foreclose this avenue of reform by blocking police budget cuts. Both sides focus their efforts on local funding authority over police departments and sheriffs’ offices. But how much budgetary discretion do local governments actually have?

To be sure, American police agencies are primarily funded at the local level. But as this Part shows, even absent explicit anti-defunding legislation, the budgetary discretion of local officials is already constrained. Later, in Part III, we will consider the indirect constraints on reducing law enforcement expenditures—more specifically, the programs and policies that incentivize local officials to expand law enforcement budgets. Here, we focus on the direct constraints that strip local budgetary discretion altogether through targeted mandates. Moreover, we reveal the deep historical roots of these funding mandates in the context of local law enforcement agencies. From this perspective, the current battles over law enforcement funding are merely the latest escalation of a longstanding political struggle over policing. And the persistence of this battle reflects the contradictory desires of states to exercise control over policing and disclaim responsibility for funding it.
A. Mandates and Restrictions on Law Enforcement Funding

Anti-defunding legislation directly limits local governments’ abilities to reduce funding for police agencies. But even absent explicit limitations, local budgetary discretion faces several legal and structural constraints. State and local laws set baselines compelling local governments to fund law enforcement at specific levels. Collective bargaining agreements constrain the ability of local officials to reduce law enforcement budgets without union buy-in. States increasingly impose duties on local police agencies, many of which require local funding without state assistance. In addition, many local police agencies operate independently of the local governments they serve or have dedicated funding streams outside of local control. The scope and extent of these constraints vary from state to state. But together, they form a system in which local budgetary authority is narrower than commonly assumed. These constraints restrict the potential of budgeting as a strategy for reforming law enforcement activities.

First, local budgeting discretion is constrained by laws mandating certain levels of law enforcement spending. This is most common when it comes to personnel expenses, which comprise the major part of law enforcement budgets.120 Some of these mandates are locally imposed. For example, the Minneapolis municipal charter, which can only be amended through a cumbersome process, requires the city to maintain at least 1.7 police officers for every thousand residents.121 In most cases, however, the legal requirements are the result of state laws. And it is here that states impose some of the most specific mandates. Although many are now outdated, minimum salaries for police officers are statutorily set in at least fifteen states and often on the basis of rank or years of service.122 Almost all states guarantee a pension for police officers, many of which are funded in large part by local contributions.123 Moreover,

121 See MINNEAPOLIS, MINN., CITY CHARTER art. VII, § 7.3(c) (2021).
122 See, e.g., MO. REV. STAT. § 84.510 (2016) (providing a salary schedule for Kansas City Police Department); MONT. CODE ANN. § 7-32-4116 (2021) (establishing the minimum wage for police at $750 per month in “first and second class” cities, with an annual one percent increase); 53 PA. STAT. AND CONS. STAT. § 639(a) (West 2016) (setting a minimum salary for borough and township police of $5,200 annually); TEX. LOC. GOV’T CODE ANN. § 143.041 (West 2022) (establishing criteria on police salaries in cities with populations under 1.5 million); WYO. STAT. ANN. § 15-5-106 (2007) (giving a civil service commission the power to set salaries no lower than the statutory minimum of $425.00).
personnel policies for police departments are commonly dictated at the state level. In Louisiana, shift schedule and overtime pay are mandated entirely by state law and, in many cases, on a city-by-city basis. Wisconsin not only mandates an eight-hour workday for police officers, but also requires police departments to dismiss officers on the basis of seniority when their cities face a budgetary shortfall. Wisconsin also imposes a salary ratchet for police officers: city councils are authorized to increase salaries, but prohibited from reducing them without a written recommendation from an independent police board.

State laws are even more specific when it comes to sheriffs’ offices. This is due to the unique status of sheriffs as constitutional offices in most states and their independence from the county governments that fund them. Thus, in states like Maryland, sheriff salaries are statutorily determined on a county-by-county basis: $75,000 in Somerset County and $132,734 in Prince George’s County. In Alabama, sheriff salaries are either set at a dollar amount, as is the case for Coffee County, or as a percentage of other county officials’ salaries, as in Mobile County. Georgia authorizes counties to increase the sheriff’s salary above the statutory minimum but prohibits the county from reducing that

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124 See, e.g., MONT. CODE ANN. §§ 7-32-4118 to -4119 (2021) (setting working hours and overtime pay); W. VA. CODE § 8-14-2 (2011) (same).
125 See LA. REV. STAT. § 33:2213.
126 WIS. STAT. § 62.13(7o) (2019-20) (limiting the workday to eight hours “except in cases of positive necessity by some sudden and serious emergency”); see also W. VA. CODE § 8-14-2 (same); MO. ANN. STAT. § 84.110 (same).
127 WIS. STAT. § 62.13(5m) (2019-20); see also N.J. STAT. ANN. § 40A:14-115 (West 2019) (requiring seniority as basis for demotion when necessary for county police department); 53 PA. STAT. AND CONS. STAT. § 813 (West 2016) (same if no employees eligible for retirement); TEX. LOC. GOV’T CODE ANN. § 143.085 (West 2022) (requiring demotion or dismissal of least senior officers when positions eliminated). Seniority rules often have a disproportionate impact on minority police officers, many of whom lack the seniority of white officers. See MARTIN SHEFTER, POLITICAL CRISIS/FISCAL CRISIS: THE COLLAPSE AND REVIVAL OF NEW YORK CITY 135 (Columbia Univ. Press 1992).
128 WIS. STAT. § 62.13.7 (2019-20); see also id § 62.50.10 (on the authority of the police board in first class cities).
129 See, e.g., MONT. CODE ANN. § 7-32-2111 (2021) (limiting deputy sheriffs to forty hours of work per week “except in case of an emergency”); Id. § 7-32-2107 (limiting grounds for termination of deputy sheriffs).
130 O’Rourke, Su & Binder, supra note 1, at 1371–73.
132 Id. §§ 2-330 (a)-(b)(1)(i) (setting salary for 2013; thereafter salary to match that of circuit judge).
133 See ALA. CODE § 45-16-230 (1975) (setting salary for the Sheriff of Coffee County at ninety percent of the salary of the District Attorney or seventy-five percent of the salary of the highest paid circuit court judge in county).
supplemental allocation during any term of office. In addition, Georgia law requires counties to “provide reasonably sufficient funds to allow the sheriff to discharge his legal duties,” and grants counties no power to “dictate to the sheriff how that budget will be spent in the exercise of his duties.” In Florida, county authority over sheriff spending is also procedurally constrained. Florida sheriffs not only initiate budgetary requests to counties, but can also appeal any adverse county decision to a state commission appointed by the Governor. The budget determined by the state commission then binds the county.

Legal constraints on personnel expenses and budgeting procedures have the most direct impact on the funding of police agencies. But other areas of state law also directly limit local discretion. States increasingly mandate that law enforcement agencies perform certain responsibilities, including many outside of their traditional role, like immigration enforcement. Fulfilling these mandates necessitates local funding while limiting local officials’ ability to prioritize other law enforcement activities unless they add further funding.

State laws also regulate the liability of localities for law enforcement activities. Not only is sovereign immunity often waived for localities in ways that are not applicable to the state, but states also frequently require local governments to indemnify law enforcement officials for all damage judgments.

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134 GA. CODE ANN. § 15-16-20(3) (West 2015); see also MINN. STAT. § 387.20(2)(d) (2021) (forbidding reducing county sheriff’s salary).
136 FLA. STAT. ANN. §§ 30.49(5)–(6). It is worth noting that the budget for the sheriff’s office is usually “the largest single budget request” that the county will receive. Aubrey Jewett, County Government Structure in Florida, in FLORIDA COUNTY GOVERNMENT GUIDE 2014 UPDATE 5, at 13 (2014), https://factor.fl-counties.com/themes/bootstrap_subtheme/sitefinity/documents/structure-chapter.pdf. Florida’s HB1, the recently enacted anti-defunding measure regarding police budgets referenced earlier, is also modeled explicitly on this longstanding state law restriction on county budgets for sheriff’s offices. See supra note 117 and accompanying text.
137 Jewett, supra note 136, at 13; see also MINN. STAT. § 387.20(7) (2021) (authorizing a district court, upon appeal by the sheriff, to overturn a budget allocation “[i]f the court shall find that the board acted in an arbitrary, capricious, oppressive or unreasonable manner or without sufficiently taking into account the extent of the responsibilities and duties of the office of the sheriff, the sheriff’s experience, qualifications, and performance”).
and legal costs. All of these financial obligations are further exacerbated by the variable fiscal capacity and limited fiscal authority of local governments. As Professors Rushin and Michalski point out, law enforcement funding differs substantially across counties in accordance with the local economic condition and tax base. Further, structural constraints limit the ability of local governments to incur debt, or to impose new taxes without state authorization.

In addition to funding mandates, union contracts impose further constraints on local law enforcement spending. All but four states allow collective bargaining for law enforcement unions. Indeed, even in states that broadly prohibit collective bargaining for public sector employees, specific exceptions are provided for police and sheriffs. Much attention has been paid to how union contracts shield law enforcement officers from political and personal accountability for misconduct. But, at a more basic level, these contracts also limit local budgetary discretion by defining salary scales, benefits, and job security. All of this hampers local efforts to use budgets to institute reforms, especially without buy-in from the police agencies subject to these reforms. Because approximately sixty-six percent of police officers work in departments covered by collective bargaining agreements, this impact is widespread.

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140 See, e.g., 65 ILL. CODE 5 § 1-4-5 (requiring all municipalities over 500,000 residents to indemnify for injuries caused by police); see also Joanna C. Schwartz, Police Indemnification, 89 N.Y.U. L. REV. 885, 973 (2014) (finding that police officers are “virtually always indemnified” by local governments). A study of indemnification found that twenty-three states statutorily require local government to indemnify employees acting in the scope of their employment. See Aaron L. Nielson & Christopher J Walker, Qualified Immunity and Federalism, 109 GEO. L.J. 229, 268 (2020). Even this might be an undercount, however, as with respect to law enforcement officials. For example, the study lists Nebraska as a state that does not require indemnification. Id. at 270–71. Yet Nebraska law does require counties to indemnify sheriffs for legal costs and damage judgments arising from property seizures implicating the sheriff’s surety bond. See NEB. REV. STAT. ANN. § 23-1720.

141 Stephen Rushin & Roger Michalski, supra note 56, at 292–94.


146 See, e.g., Rushin, supra note 144.

147 See id. at 1205.

State law also confers leverage on police unions in contract negotiations. State law mandates on compensation, pensions, terms of employment, and disciplinary procedures narrow the range of proposals that localities can raise in the bargaining process. Police unions can safely negotiate for additional benefits without needing to concede on other terms below the baseline already guaranteed by state law. In addition, approximately thirty states require negotiation stalemates to be settled through binding arbitration. Evidence suggests arbitration has generally favored police unions, resulting in increases in law enforcement funding that have historically outpaced inflation. Moreover, in many states, collective bargaining agreements supersede state laws. This allows law enforcement unions to not only bargain for benefits beyond those provided by state law, but also to free themselves from state law constraints through the collective bargaining process.

Last, it is important to recognize that many localities do not directly control the funding of their police agencies. In some cases, this is because the police agency that serves their jurisdiction is not a department of the local government. Many cities do not provide for policing on their own, but instead contract with the county sheriff for police services. Some cities have contracted with a sheriff’s office since incorporation, while others, like Camden, New Jersey, may choose to do so only after disbanding a municipal police department as a result of budgetary shortfalls. The precise payments due under these contracts vary;

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149 See supra notes 122–24 and accompanying text.
151 See, e.g., E.J. McMahon & Michael Wright, Empire Ctr. for N.Y. State Pol’y, Police and Fire Pay Keep Rising, Benefits Sticky Under Arbitration 2 (2013) (showing that compulsory arbitration decision in New York increased police and fire budgets more than inflation from 2003 to 2012, and arguing that “rather than risk a more generous arbitration award, local officials” are now incentivized to “agree to contract terms they otherwise would have resisted”); Lynne A. Weikart, Follow the Money: Who Controls New York City Mayors? 68 (2009) (“Binding arbitration often favors the [police and fire] unions since . . . costs are not part of any criteria that an arbitrator uses in negotiations.”). But see Thomas Kochan, David B. Lipsky, Mary Newhart & Alan Benson, The Long Haul Effects of Interest Arbitration: The Case of New York State’s Taylor Law, 63 INDUS. & LAB. REL. REV. 565, 569 (2010) (reviewing union contracts in the 1960s and 1970s and concluding that “[t]here were no significant effects” after the adoption of binding arbitration “in the rates of wage increases granted by arbitrators compared to those negotiated voluntarily by the parties”); Patrolmen’s Benevolent Ass’n of N.Y. Inc. v. City of New York, 767 N.E.2d 116, 122 (N.Y. 2001) (describing the state interest in binding arbitration for contract negotiations involving police departments).
152 See, e.g., TEX. LOC. GOV’T CODE ANN. § 174.002(b) (West 2021); 5 ILL. COMP. STAT. ANN. 315/7 (West 2021); Metro. Council No. 23 & Loc. 1227 v. City of Ctr. Line, 327 N.W.2d 822, 831–32 (Mich. 1982).
154 See Joseph Goldstein & Kevin Armstrong, Could This City Hold the Key to the Future of Policing in
some set an absolute figure, while others assess based on actual costs or a rate schedule.\textsuperscript{155} Short of establishing their own police departments, however, cities usually have few options but to pay the rate set by the sheriff’s office. Moreover, because sheriff’s deputies are not city employees, funding cannot easily be used as leverage to influence law enforcement priorities or conduct.\textsuperscript{156} In addition, some states have created independent police departments with their own funding stream.\textsuperscript{157} The Las Vegas Metropolitan Police Department has a hybrid jurisdiction, serving not only the City of Las Vegas but also the county, including the tourist area known as “The Strip” located on unincorporated territory. To tax casinos for the police services they wanted—but not for urban social services—the state imposed a county-wide property tax dedicated to this department.\textsuperscript{158} Finally, many cities that face fiscal distress, or went through such periods in the past, have ceded control over their budgets to financial control boards imposed by the state.\textsuperscript{159}

In short, while policing in the United States is provided largely at the local level, the authority of any local government over a police agency’s budget is also constrained by state law. None of this is to deny that cities and counties exercise some discretion over law enforcement funding. To that extent, police reform advocates rightly direct their defunding proposals to local government officials. But it does suggest that currently high funding levels are not entirely the result of local discretion. Moreover, restrictions on local discretion cast the emerging anti-defunding movement in new light: though unprecedented in scope, these state constraints are not entirely novel. Indeed, as we will see in the next section,
funding mandates were common historically and rooted in state-local battles over the control of law enforcement agencies like those we see today.

B. The Historic Origins of Funding Constraints

Local discretion over law enforcement funding is currently limited by a litany of legal mandates and structural constraints. These restrictions hamper efforts of defunding advocates to use budgeting to reform policing, yet also serve as models for even more expansive restrictions like those now being proposed in the recent wave of anti-defunding bills. It might be tempting to see these restrictions as the result of contemporary debates over policing, and the partisan divide that separates many cities from their states. Yet constraints on local funding discretion have deep historical roots, going back to the origins of police agencies. Indeed, state efforts to control local law enforcement funding were far more extensive at the turn of the twentieth century than they are today. From this perspective, the anti-defunding bills currently under consideration may have more in common with nineteenth century state controls than with recent ones.

The history of funding controls reflects two overriding interests: one political and the other fiscal. On the one hand, states have long sought to control the role, responsibilities, and operations of police departments and sheriffs’ offices, notwithstanding their status as local agencies. On the other hand, states also had a financial incentive to ensure that police agencies are funded primarily at the local level. To reconcile these two interests, states imposed restrictions to foreclose localities from using their funding responsibility to challenge state control. As a result, as state efforts to control local law enforcement agencies increased, efforts to constrain local funding discretion expanded as well.

This dynamic is most clearly seen in the early history of municipal police departments. In the United States, municipal police departments were created in major cities across the country in the mid-nineteenth century. But soon after cities created these departments, state leaders took steps to wrest control of them from local leaders. The reasons for these state take-overs are not entirely unfamiliar to us today. Partisan, religious, and ethnic divides between city and state leaders created tensions over the composition of police forces and the focus of local law enforcement activities. In the eyes of state leaders, police departments were auxiliaries of local political machines, staffed by catholic

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160 O’Rourke, Su & Binder, supra note 1, at 1366–67.
161 See id. at 1367.
immigrants who turned a blind eye to alcohol, vice, and labor unrest.⁶¹³ States responded by subjecting municipal police departments to police commissions, whose members were appointed by the state, or by replacing municipal police departments with “metropolitan police” forces under the direct control of the state.⁶¹⁴

But even as states assumed direct control of municipal police departments in the nineteenth century, localities remained responsible for their funding. States took care to ensure that local funding responsibility would not undermine state control. Thus, when the Illinois legislature granted the governor full control over the Chicago Police Department in 1861, it also passed laws mandating the number and type of officers to be hired.⁶¹⁵ In 1867 and 1869, the legislature increased those numbers and set the salaries that the city was obligated to pay.⁶¹⁶ Next door in Missouri, the state legislature assumed control of the St. Louis Police Department in 1861.⁶¹⁷ After the city unsuccessfully challenged the takeover and its obligation to continue funding the department,⁶¹⁸ the state took steps to ensure the city’s funding obligations would not undermine the state’s control. In 1898, a state law increased the number of officers the St. Louis Police Department was required to hire and mandated that the city set aside funds at the beginning of the fiscal year based on estimates presented by the state-controlled police board.⁶¹⁹ In Milwaukee, the size of the police department was kept low for decades through low appropriations, in part due to voter disapproval of the

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⁶¹³ Id. at 41–44, 91; see also JAMES F. RICHARDSON, THE N.Y. POLICE: COLONIAL TIMES TO 1901, at 123 (1970) (“The cities tended to be more cosmopolitan and pluralistic, more tolerant of prostitution, gambling, and liquor, and of a different political persuasion from that of the state legislatures.”).

⁶¹⁴ O’Rourke, Su & Binder, supra note 1, at 1367.


⁶¹⁶ Id. at 114 (“This year the legislature amended the police law once more. It was required that the commissioners should devote their whole time to the public service, and each was to receive an annual salary not exceeding $2,500 the exact amount to be fixed by the city council The salaries of police officers were regulated as follows: General superintendent, not less than $3,000; deputy superintendent, $2,500; captain’s, $1,500; sergeant’s, $1,200; patrolmen not less than $800 nor more than $1,000. An act passed two years later (March, 1869) fixed the salary of each commissioner at $3,000, captain’s at $2,000 and sergeant at $1,500 During 1867 the number of patrolmen was increased to 173.”).


⁶¹⁸ State ex rel. McNeal v. Roach, 520 S.W.2d 69 (Mo. 1975); State ex rel. Sanders v. Cervantes, 480 S.W.2d 888, 890 (Mo. 1972). Cases from other states have also justified state control over local police departments on two grounds: (1) the subservience of the locality to the state, and (2) construing policing as a state function, making police state agents. See, e.g., City of Newport v. Horton, 47 A. 312, 314 (R.I. 1900); Eaton v. Town Council of Warren, 161 A. 225, 226 (R.I. 1932); Burch v. Hardwicke, 71 Va. 24, 33–38 (1878).

⁶¹⁹ WAGNER, supra note 167 at 451–52 (noting that in 1907, the state further increased the number of police officers and changed the patrol shifts, which also required more funding to hire the necessary officers to staff the new shift schedules).
department’s strike-breaking activities. But after a series of labor conflicts, Wisconsin passed a law in 1885 removing the city’s control over its police department, increasing the police force by fifty percent and restructuring its organization and operating procedure. The state legislature also granted lifetime tenure to Milwaukee’s Police Chief.

State control of municipal police budgets, then, was initiated as a corollary to increased state control of municipal police departments. Yet funding mandates often persisted even when local control was restored. Take for example, the New York City Police Department. It was the first municipal police department established in the United States (1850), the first to be replaced by a state-controlled police force (1856), and the first to be returned to municipal control (1870). During the period of state control, New York City’s funding obligation was set by the legislature and increased dramatically. Yet even after the restoration of local control, state regulation of salaries and benefits only increased. This was partly because of the rise of police unions and their historical predecessors, which established extensive political operations to lobby for salary increases at the state level. Equally important were the political motivations of the state legislature. As James Richardson explained, “it was easy and politically profitable for the legislators . . . [who] received the political rewards, while municipal officials had to raise the money.” Later, a salary mandate was extended to nearly all municipal employees. When it was observed during the fiscal crisis of the 1930s that New York City only controlled a quarter of its budget because of state funding mandates, the mayor was

171 Id. at 89.
172 Id. at 90.
173 Richardson, supra note 163, at 163–64.
174 Id. at 152–53 (stating, for example, that from 1963 to 1969, the funding obligation for New York City grew by sixty percent from 1.8 million to 2.8 million).
175 Id. at 163–64; see also N.Y. Second Class Cities Law § 134 (McKinney 1909) (prohibiting second-class cities from lowering the number of police and fire officials to lower than it was at the time that this Act was adopted in 1906).
176 See Aaron Bekemeyer, The Labor of Law and Order: How Police Unions Transformed Policing and Politics in the United States, 1939-1985, at 35–36 (2021) (Ph.D. dissertation Harvard University) (on file with authors) (documenting how groups like New York’s Patrolmen’s Benevolent Association, founded in 1892, achieved significant political victories but for pragmatic reasons were “careful not to identify as labor unions” until the mid-twentieth century).
177 Richardson, supra note 163, at 163–64.
178 Id. at 163–64.
granted authorization to reduce municipal salaries. But that authorization was only temporary, and some argue that the restoration of the funding mandates went on to set the stage for the city’s fiscal crisis in the 1970s.

While states codified the funding structure of police departments only after assuming greater control over their operations, they controlled the funding of sheriffs’ offices from the start. Although sheriffs’ jurisdictions usually coincide with counties, sheriffs are constitutional officers of the state rather than departments of counties. Moreover, sheriffs were originally funded on a fee-for-service basis, following the model of sheriffs in England. Despite the structural dissimilarity between sheriffs’ offices and police departments, states mandated that funding for sheriffs also come from local coffers.

For most of the nineteenth century, state control focused primarily on the fee scale that sheriffs could charge counties for their activities. When sheriffs arrested and detained a suspect, claims would be filed with the county for payment. Similar fees were charged for other activities, such as the seizing of property or transferring “lunatic paupers” to the asylum. In nearly all cases, these fees were set by state law. Sheriffs were required to document that they had completed the task for which they were charging. But once a bill was properly presented, localities were required by law to pay according to state statute. The fee schedules also gave states influence over the actions of sheriffs. By raising or lowering the fees to be paid, the state could incentivize sheriffs to pursue certain activities over others.

\[180\] Id. at 64.
\[181\] Id. at 68.
\[182\] Id. at 72.
\[183\] See David B. Kopel, The Posse Comitatus and the Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement, 104 J. CRIM. & CRIMINOLOGY 761, 785 (2014) (“An important American innovation was that the sheriff either had a salary or could only charge fees (e.g., for executing a civil judgment) that were fixed by law.”); James Tomberlin, Don’t Elect Me: Sheriffs and the Need for Reform in County Law Enforcement, 104 VA. L. REV. 113, 120–22 (2018) (describing how the fees and salaries for sheriffs were set by colonial and then later state law).
\[184\] O’Rourke, Su & Binder, supra note 1, at 1371–72.
\[185\] Id. at 1377–78.
\[186\] See, e.g., William L. Murfree, A Treatise on the Law of Sheriffs and Other Ministerial Officers 583–84 (1884) (“A sheriff . . . cannot demand remuneration for services and expenses not expressly provided for by statute or fairly to be inferred from its terms.”); see also id. at 589–90 (noting that when fees are fixed by statute, no additional compensation can be requested or granted by courts).
\[187\] See id. at 593–94.
\[188\] Id. at 589.
\[189\] Id. at 593–94.
\[190\] Id.
Like the early battles over municipal police departments then, current laws governing the funding of sheriffs reflect a similar effort to combine local funding responsibility with state control. Because sheriffs operate independently of counties and municipalities, local officials have little influence over their activities.\textsuperscript{191} But because states largely fund sheriffs’ offices locally, state law mandates the fees local officials must pay.\textsuperscript{192} As a result, localities were unable to use funding to influence the sheriffs’ activities. This arrangement persisted even when many of the sheriffs’ fees were converted to salaries,\textsuperscript{193} which is likely why so many states set sheriff salaries by statute or regulate the process by which counties budget for the sheriff.\textsuperscript{194}

Sheriffs benefitted substantially from state control of their funding. When their revenues were through fees, entrepreneurial sheriffs were able to increase their earnings by cutting costs in the services they provided. An investigation in the nineteenth century, for example, found that a sheriff was able to reduce the cost of feeding a prisoner to eight cents a day, while receiving forty-five from the county.\textsuperscript{195} In addition, by taking advantage of their authority to sell food and other amenities to prisoners, sheriffs could use cuts to the daily rations to induce prisoners or their family and friends to buy supplemental food.\textsuperscript{196} This is why many have described the office of the sheriff in the nineteenth century as “the most lucrative in the county.”\textsuperscript{197} None of this was subject to oversight by the county government, which was obligated to provide funding at statutorily mandated levels.

\textsuperscript{191} See O’Rourke, Su & Binder, supra note 1, at 1372.
\textsuperscript{192} See id. at 1373–74.
\textsuperscript{193} See, e.g., GA. CODE ANN. § 15-16-19 (West 2015) (abolishing fees for sheriffs). Some states still retain a fee schedule in addition to salaries. See e.g., MONT. CODE ANN. § 7-32-2141 (2019) (establishing a minimum fee schedule if one is not set by the county); NEV. REV. STAT. § 248.275 (2019); N.H. REV. STAT. ANN. § 104:31 (West 2013); WIS. STAT. § 59.32 (2021); WILLIAM A. JACKSON, THE OFFICE OF SHERIFF IN IOWA 19 (1924) (describing fee schedule for Sheriffs based on population).
\textsuperscript{194} See, e.g., GA. CODE ANN. § 15-16-20 (West 2015) (setting minimum salary schedule for sheriffs based on population size); N.J. STAT. ANN. § 40A:14-110 (West 2016) (setting a minimum annual salary for county police of $2,250.00).
\textsuperscript{195} Raymond Moley, The Sheriff and the Constable, 146 ANNALS AM. ACAD. POL. & SOC. SCI. 28, 31 (1929).
\textsuperscript{196} Id.
\textsuperscript{197} See LANE W. LANCASTER, GOVERNMENT IN RURAL AMERICA 165 n.11 (1952); see also Moley, supra note 195, at 29–31 (describing and critiquing the profit motives of sheriffs); JOHN A. FAIRLIE, LOCAL GOVERNMENT IN COUNTIES, TOWNS AND VILLAGES 108 (1906) (“At the common law there was no compensation allowed to sheriffs. But statutes now authorize the payment either of fees or a fixed salary to the sheriff and his deputies. Under either system the office is among the best paid of the county posts; and where the fee system is retained in counties with a large city the net compensation is often excessive.”).
This history reveals that state funding controls for local police agencies were common from the start. More importantly, depriving local governments of influence over local police agencies was often their very purpose.

C. Direct Constraints and the Expansion of Police Functions

The direct constraints imposed on local law enforcement funding illustrate the challenges defunding advocates face in reforming policing through the local budgetary process. They limit the discretionary authority local governments have over police agencies they appear to supervise.\textsuperscript{198} And the deep historic roots of these direct constraints reveal states’ persistent fear of urban democracy. From this perspective, the current wave of anti-defunding measures at the state level is hardly surprising—these measures build on existing mandates and resemble expansive restrictions imposed in the past. More importantly, the legacy of funding constraints may have contributed to the “governing through”\textsuperscript{199} police agencies that “defunding” challenges.

Indeed, state funding mandates were often imposed in order to define police functions. States imposed minimum salaries and hiring requirements to effectuate the takeover of municipal police departments by their preferred personnel.\textsuperscript{200} Fee schedules and salary mandates were provided for sheriffs to maintain their independence from the county governments that eventually became their primary funding source.\textsuperscript{201} In both cases, the goal was not just to ensure adequate funding, but also to direct the functions of police agencies.\textsuperscript{202} States assumed control of big city police departments to redirect their activities towards issues that they believed were not prioritized under local control: vice in New York City,\textsuperscript{203} temperance in Boston,\textsuperscript{204} and labor strikes in Milwaukee.\textsuperscript{205} Sheriff compensation was set statutorily not only to ensure that counties fund specific functions, but also to ensure that sheriffs would focus on specific responsibilities.

\textsuperscript{198} See supra notes 120–48 and accompanying text.
\textsuperscript{199} See Simon, supra note 4, at 4–5, 96–101 (arguing that the United States “governs through crime” by using criminality and criminal justice institutions to legitimize governance across a number of different policy arenas).
\textsuperscript{200} See supra notes 120–28 and accompanying text.
\textsuperscript{201} See supra notes 129–37 and accompanying text.
\textsuperscript{202} See supra notes 160–72 and accompanying text.
\textsuperscript{204} See Roger Lane, Policing the City: Boston, 1822–1885, at 123, 132 (1967).
\textsuperscript{205} See Harring, supra note 170, at 99.
Funding control may have also played an important role in how local governments defined the functions of police agencies even after local control was restored in the late-nineteenth and early-twentieth centuries. Because funding mandates persisted, cities were compelled to maintain a certain level of police spending and staffing. These requirements gave local officials strong incentives to shift duties and responsibilities onto police agencies, rather than investing in agencies they had no comparable legal duties to fund. Accordingly, as new urban problems arose, cities turned to the police. As early as the late nineteenth century, police departments were involved in social service functions like the housing of “tramps” and the recovery of missing children. By the early twentieth century, police assumed responsibility over not only traffic control and pedestrian safety but also other functions, such as building code and child labor inspections, truancy, anti-cigarette clinics, and censorship of movies. If progressive era cities wanted social work done, the agency with the personnel and resources to do it was the police. Police have long remained one of the most capable and well-resourced local departments because their budgets have been protected by law. Indeed, these budget mandates limited options to create or expand other departments.

This is not to say that the functions of police agencies expanded without scrutiny. But funding considerations also forestalled efforts to reallocate police functions once they were assigned. Even while seeking to insulate police agencies from local political influence, progressive reformers in the early twentieth century argued that police activities should be confined to a narrower set of core law enforcement functions. Law enforcement officials themselves were often frustrated by the expanding scope of their responsibilities. Yet, funding considerations ultimately sidelined these efforts to narrow their mission. For example, police departments successfully resisted efforts to establish civilian traffic divisions in order to position themselves for funding increases as the number of automobiles increased. All of this, of course, created a self-

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206 See Richardson, supra note 163, at 40–42.
209 See, e.g., Monkkonen, supra note 207, at 151–52.
210 See, e.g., Fogelson, supra note 162, at 84–85.
211 See id. at 84.
212 See id. at 85. See generally David J. Bordua & Edward W. Haurek, Components of the Increase in Local Police Expenditures, 1902-1960, 13 Am. Behav. Sci. 667 (1970) (arguing that traffic control was the costliest of police functions and explains much of the growth of police budgets in the twentieth century).
perpetuating cycle. Funding mandates ensured that police were assigned new responsibilities. These new responsibilities then created more need for police funding. Ever-expanding police personnel created a potent patronage army elected leaders could not afford to antagonize.213

From this perspective, anti-defunding bills represent not just a new obstacle to defunding advocates seeking to reallocate police functions to other local services and departments; they are also the continuation of an old story. Similarly motivated precursors to these recent bills contributed to the very expansion of police functions that defunding advocates are trying to reverse. On the one hand, states imposed funding restrictions to redefine the role of local police agencies. On the other hand, local officials further expanded the function of police agencies to justify the funding mandates imposed by the state and to govern through the agents the state required them to fund.

III. INDIRECT CONSTRAINTS ON LAW ENFORCEMENT DEFUNDING

Beyond these direct legal constraints, 214 local governments operate under fiscal and political pressures that make it difficult to reduce law enforcement funding or invest in other services. Unable to print money and politically punished for raising taxes, local officials have powerful incentives to look for creative sources of revenue to balance the books.215 These pressures and incentives form indirect constraints on local police funding that are almost as inexorable as the direct constraints officials face. This Part surveys some of these constraints and shows how they distort local political decisions about the optimal level of police funding. As we explain, grant programs incentivize local governments to increase their own contributions to police funding and to expand the police mission. Legal financial obligations—such as the fines, fees, and forfeitures that have generated a wealth of recent scholarship—become sources of revenue that local governments must rely on to avoid politically costly or legally foreclosed taxation.216

A. Federal (and State) Grants

Federal grants impose two related constraints on local budgeting decisions. First, while federal grants comprise a modest percentage of law enforcement

213 See O’Rourke, Su & Binder, supra note 1, at 1337–59.
214 See supra Part II.
215 See Shannon R. Graham & Michael D. Makowsky, Local Government Dependence on Criminal Justice Revenue and Emerging Constraints, 4 ANN. REV. CRIMINOLOGY 311, 312 (2021); Reynolds, supra note 143.
216 See infra Part III.B and accompanying text.
funding in many jurisdictions, they impose significant pressures on local authorities to maintain high levels of funding. Second, in both direct and indirect ways, these grants shape the functions of police agencies.

Scholars have documented some of the ways these grants influence the priorities and practices of local law enforcement. Thus far, this work has emphasized the logic of “fiscal attention”—how the promise of federal money can lead police agencies to shift their policing priorities to conform to the express interests of the federal government. As Professor Rachel Harmon has observed, these distortions channel law enforcement into more aggressive forms of policing by incentivizing, or even mandating, more stops, more arrests, and more militarized policing.

Less examined, however, are the indirect ways in which federal grants can alter budgeting constraints by requiring local governments to commit to high levels of police funding. This, in turn, incentivizes police agencies and local authorities to expand the scope of a police agency’s mission to cover functions that were once the responsibility of decreasingly funded social service agencies. Here, we consider how grants constrain not only how much localities spend on police but also their use of police in place of other agencies.

1. Overview of Federal and State Law Enforcement Grants

It is difficult to determine how much money the federal government transfers to local law enforcement through a patchwork of federal grants distributed through an array of agencies. While small in comparison to local funding, the amount is significant. In 2020, for example, the Department of Justice (DOJ)
alone gave more than $3 billion in state and local grants and more than $4.3 billion in overall transfers to state, local, and tribal law enforcement.223 The largest DOJ grant program has been the Edward R. Byrne Memorial Justice Assistance Grant (JAG) Program, which distributed an average of $461 million per year between 2005 and 2013.224 The program was established for states in 1988 and expanded in 2005 to include local and tribal governments, with the mandate to distribute relatively flexible block grants to be used for law enforcement and related criminal justice priorities enumerated by statute.225 The vast majority of these grants are distributed for law enforcement spending rather than on related areas.226 The DOJ is required to distribute Byrne JAG funds according to a statutory formula.227 Each year, forty percent of the funds are disbursed directly to local governments eligible under a formula that considers population and crime rates.228 The remaining sixty percent is distributed to states, which then distribute the money to state police and small local government units that are ineligible for direct grants.229 Despite the DOJ’s recent

225  U.S. DEP’T OF JUST., BUREAU OF JUST. ASSISTANCE, EDWARD BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FREQUENTLY ASKED QUESTIONS (FAQS) 2–3 (2022) [hereinafter BYRNE JAG FAQ], https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jag-faqs.pdf; Harmon, supra note 91. The other purposes for which the grant may be used are prosecution and court programs; “[p]revention and education” programs; corrections programs; drug treatment and enforcement; emergency planning; crime victim and witness programs; and mental health programs related to law enforcement or corrections. 34 U.S.C. § 10152(a)(1).
226  In Fiscal Year 2019, the last year for which data is available, seventy-one percent of Byrne JAG funds were allocated to law enforcement spending. See U.S. DEP’T OF JUST., BUREAU OF JUST. ASSISTANCE, JUSTICE ASSISTANCE GRANT PROGRAM: ACTIVITY REPORT, FISCAL YEAR 2020, at 2 (2021), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/JAG-Activity-Report-FY-2020.pdf.
228  See BYRNE JAG FAQ, supra note 225.
229  See id.
and abandoned effort to deny Byrne grants to “sanctuary cities,”230 there are few meaningful restrictions on how the funds are used.231

The second most significant source of DOJ grants for local policing is the Community Oriented Policing Services (COPS) Program, which provides categorical grants for hiring police and for other defined purposes.232 The COPS Office was established under the 1994 Crime Bill with a mandate to put 100,000 new officers on the street by 2000.233 Its oldest and largest program, the COPS Hiring Program, has disbursed more than $14 billion since 1994 to hire new law enforcement officers.234 These hiring grants typically comprise over fifty percent of funds distributed through the COPS Program.235 But the COPS office also provides grants to support initiatives that include school policing, multijurisdictional drug task forces, and “community policing” development.236

230 In 2016, the DOJ ordered that these grants may not be disbursed to state or local governments that adopt “sanctuary” policies, which limit cooperation and information sharing with federal immigration authorities. See City of Providence, 954 F.3d at 29; Rachel Harmon, The Law of Police 566 (2021). Cities nationwide challenged the order in court, producing a circuit split. Most circuits held that the DOJ’s order exceeded its statutory authority. See City of Providence, 954 F.3d at 26–27; City of Chicago v. Barr, 961 F.3d 882 (7th Cir. 2020); City of Philadelphia v. Att’y Gen. of U.S., 916 F.3d 276 (3d Cir. 2019); City of Los Angeles v. Barr, 941 F.3d 931 (9th Cir. 2019). The Second Circuit disagreed. New York v. U.S. Dep’t of Just., 951 F.3d 84 (2d Cir. 2020). In April 2021, the DOJ rescinded the order. See Legal Notices, U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, https://www.ojp.gov/funding/explore/legal-notices (Apr. 22, 2021)

231 See City of Philadelphia, 916 F.3d at 284–85 (holding that the statute authorizing the Byrne JAG Program gives “exceptionally limited” authority to the Attorney General with respect to setting grant conditions); cf. New York, 951 F.3d at 103 (concluding that the DOJ may withhold grants from “sanctuary” cities but “agree[ing] that the Attorney General’s authority to depart from that formula when awarding grants to qualified applicants is extremely limited” (emphasis omitted)); Harmon, supra note 91, at 899 (noting that Byrne JAG grants give more discretion to localities than COPS grants to determine how funds are spent).


233 Harmon, supra note 91, at 883. The COPS Office was established under the Violent Crime Control and Law Enforcement Act of 1994. See James, supra note 232, at 1–3.

234 See Harmon, supra note 230, at 524.

235 See Weisburst, supra note 128, at 85.

236 See Community Oriented Policing Services (COPS) Office, U.S. DEP’T OF JUST., https://cops.usdoj.gov/grants (last visited May 5, 2022). Cong. Rsch. Serv., Community Oriented Policing Service (COPS) Program (2021), https://crsreports.congress.gov/product/pdf/IF/IF10922 (“Funding for COPS has increased in the last four fiscal years, from $276 million for FY2018 to $386 million for FY2021. Increased funding for the COPS account is the result of Congress increasing funding for hiring programs, and for anti-heroine task forces, active shooter training, and grants under the Matching Grant Program for School Security.”). The school policing initiative was formerly called the “COPS in Schools Program” and provided up to $125,000 for hiring a “school resource officer”—a sworn police officer—for a period of three years. See Weisburst, supra note 218, at 342. The program was discontinued in 2005, but schools may continue to apply through other COPS programs for funding to hire school resource officers. See Supporting Safe Schools, U.S. DEP’T OF JUST., COPS, https://cops.usdoj.gov/supportingsafeschools (last visited May 5, 2022).
Funding for COPS has fluctuated over time but is likely to grow in the near future. As one of Clinton’s signature policies, the program has been amply funded throughout its tenure. Prior to 2000, nearly all grant applications were accepted. Citing concerns about its effectiveness, the second Bush administration sharply decreased funding and made the grant applications more competitive. The Obama administration increased funding for COPS and, for Fiscal Years 2009 through 2011, allowed the grants to cover 100% of police salaries to help cities with budget shortfalls from the Great Recession. The Trump administration maintained the general level of funding, with an increase to $400 million in June 2020. In Fiscal Year 2021, the COPS Program’s overall budget was $386 million, with a $156.5 million budget for the hiring program. For Fiscal Year 2022, the Biden administration has requested that the COPS program increase to $651 million, with hiring program’s budget skyrocketing to $537 million.

The Department of Justice’s grant programs for law enforcement are not limited to Byrne JAG and COPS. In 2020 for example, the DOJ’s Office of Justice Programs awarded $223 million in federal and state funding for law enforcement in addition to the $235 million it provided through the Byrne JAG program. Nor is DOJ the only federal agency that funds law enforcement. The Department of Homeland Security, for example, disbursed $243 million to law enforcement agencies in Fiscal Year 2020 and since 2004 has disbursed billions for terrorism preparedness. The Department of Agriculture provides millions

238 See id. at 85–86.
239 Mello, supra note 12. The twenty-five percent co-pay requirement was restored in 2012. Id.
243 Id.
244 Id.
245 See HARMON, supra note 230, at 524 (“[T]he Department of Homeland Security has given away billions of dollars to local law enforcement agencies for terrorism preparedness since 2002. In 2020 . . . , it provided
of dollars annually in community facility grants that may be used to supplement the cost of building police stations in rural areas.  

Less transparent are the state-level grants for local law enforcement. Because states can regulate local police directly, they do not need grant programs to influence law enforcement. Nevertheless, at least two states, California and New York, have nontrivial law enforcement grant programs. In 2021, for example, California provided an unusually large $76 million to cities and community organizations through its California Violence Intervention and Prevention Grant Program. New York State provided approximately $14.4 million in Fiscal Year 2021 to police departments and district attorneys in eligible counties to implement shooting and harm reduction strategies outside New York City.

States can also control which small jurisdictions receive federal funds through the Byrne JAG Program. Under the program’s terms, each state must pass a predetermined percentage of its JAG funds to local units of government for statutorily enumerated purposes. However, the program does not otherwise guide the state’s discretion. Thus, states can use federal as well as state grants to direct local policing priorities.

2. The Distortionary Power of Federal Grants

As Rachel Harmon has argued, federal grants “attenuate[] police accountability” by freeing law enforcement agencies from having to rely on

more than $90 million for law enforcement agency cooperation on the U.S. borders and more than $153 million to law enforcement agencies for urban-area terrorism prevention, among other grants.”); Harmon, supra note 91, at 872; Michalski & Rushin, supra note 217 at 58.


Given the variation in state budgeting transparency, it is difficult to determine which states support law enforcement through state-funded grants.

250 See supra Part II.


253 See Byrne JAG FAQ, supra note 225.

254 34 U.S.C. § 10152(a)(1); Byrne JAG FAQ, supra note 225.
local governments to fund specific priorities. Yet local governments still provide the vast majority of police funding, while federal grants comprise a relatively small amount of many police budgets, including those of the largest cities. This has led Michalski and Rushin to argue that federal grants “may exert little influence on local law enforcement activity.” As explained below, however, that conclusion overlooks realities of municipal budgeting and other scholarship documenting effects of federal grants on policing. To the contrary, theory suggests and observed behavior confirms that (1) small federal grants have potential to influence police funding decisions in even large cities and (2) these influences drive police to adopt enforcement priorities and methods local communities might not choose for themselves. In this way, grants reshape the agenda of policy choices confronting local officials.

Even small amounts of federal money can influence local government funding priorities. Local governments operate under significant budgetary constraints, including fixed spending obligations (such as legacy costs), which leave them struggling to fund basic city services. Unlike the federal government, they cannot print their own money. Moreover, many states constitutionally prohibit local governments from running budget deficits. This leaves local governments under immediate pressure to raise revenue or slash spending. Yet some states also prohibit local governments from unilaterally raising taxes. And even where the tax option is available, local officials are aware of the electoral consequences they will suffer from exercising it. Thus, even small sources of revenue can generate powerful incentives. This is particularly the case for smaller municipalities—which, as Michalski and Rushin acknowledge, receive most federal grants and rely on them for a significant portion of their police budget.

But large city and state authorities also act as if federal grant money matters. Even major cities organize their police funding strategies around the promise of

255 Harmon, supra note 91, at 948.
256 Id.
257 Michalski & Rushin, supra note 217, at 54–55.
258 Id. at 59.
259 See, e.g., Clayton P. Gillette, How Cities Fail: Service Delivery Insolvency and Municipal Bankruptcy, 2019 MICH. ST. L. REV. 1211, 1238 (2019) (“As municipal budgets are subject to constraints, high legacy costs leave less discretion for municipal officials to pay for additional goods and services that might stabilize or augment current delivery levels.”).
260 See Gordon, supra note 142.
261 Scharff, supra note 143, at 296.
262 See Graham & Makowsky, supra note 215, at 312.
263 Michalski & Rushin, supra note 217, at 61.
receiving grants. For example, most major police agencies have grant writers on staff, and more agencies hire outside grant writing consultants and writers.\(^{264}\) Given the financial pressures on cities, we must assume this expense is a rational investment.

Moreover, organizations representing major cities—those proportionately less supported by federal grants—routinely lobby the federal government in support of the DOJ’s grant programs.\(^{265}\) One recent letter urging Congress to increase appropriations to the Byrne JAG Program—signed by the Major Cities Chiefs Association and U.S. Conference of Mayors—hailed the grants as “one of the most important tools states and localities have for spurring innovation and for testing and replicating promising practices.”\(^{266}\) The Major Chiefs Association even deemed it important to publicly oppose a proposed internal DOJ reorganization shifting the COPS Program to the Office of Justice Programs.\(^{267}\) In doing so, the organization claimed that COPS “has guided the law enforcement field in policies and practices that help to establish trust with the communities we serve.”\(^{268}\) This lobbying effort suggests that large departments factor these grant programs into their planning and adjust at least their external messaging to federal funding priorities.

Indeed, both state and local authorities adjust their policing methods to conform to federal grant requirements.\(^{269}\) States, for example, adopted sex offender registry and notification laws after the Byrne JAG program was statutorily amended to withhold just ten percent of the grants for any state that

\(^{264}\) Jeffrey A. Roth et al., U.S. Dep’t of Just., Office of Justice Programs, National Evaluation of the COPS Program 64 (2000), https://www.ojp.gov/pdffiles1/nij/183643.pdf (“Some 40 percent of [COPS] grantees reported using consultants in the application process. Among the largest 100 grantees in our sample, only 11 used consultants, in part because large agencies tend to have their own grant writers on staff.”).


\(^{268}\) Id.

\(^{269}\) See Alexander J. Kasner, Local Government Design, Mayoral Leadership, and Law Enforcement Reform, 69 Stan. L. Rev. 549, 563 (2017) (“[T]he federal government has increasingly found subtle ways to commandeer local law enforcement, most of which are being used to further increase the number of arrests carried out.”).
failed to have such laws in place.270 And at the state and local levels, the federal government has successfully used federal grants to advance arrest-based approaches to an array of social problems.271 In particular, COPS grants resulted in increased arrests for drug offenses and misdemeanor public order offenses.272

This is by design. COPS hiring grants are designed to make police more “productive” by increasing arrest rates for disorder-related and other nonviolent crimes.273 The Byrne JAG program’s relatively flexible block grants also incentivize aggressive policing by virtue of the reporting requirements they select.274 While Byrne grants do not produce similar increases in arrest rates similar to those of COPS grants,275 they require quarterly assessment reports using metrics that incentivize low-level arrests.276 For example, before widespread decriminalization, police departments were able to signal productivity by reporting a high volume of marijuana arrests in their Byrne JAG assessments.277 A Brennan Center study, relying on interviews with thirty state and local JAG recipients, reported that police agencies looked to these metrics in deciding how to spend JAG funds.278

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271 See Harmon, supra note 91, at 913–18.
272 See Jihong Solomon Zhao, Yang Zhang & Quint Thurman, Can Additional Resources Lead to Higher Levels of Productivity (Arrests) in Police Agencies?, 36 CRIM. JUST. REV. 185 (2011) (finding that one dollar in COPS hiring grant money correlates to increases of 36 arrests for disorder-related offense, 4 arrests for drug offenses, 1.8 arrests for property offenses, and 0.58 arrests for violent crimes); David Lilley & Rachel Boba, A Comparison of Outcomes Associated with Two Key Law-Enforcement Grant Programs, 19 CRIM. JUST. POL’Y REV. 438, 453–54 (2008) (finding that COPS grants increased per capita arrests for drug and disorder offenses, but that now-defunct law enforcement block grants (distinct from Byrne JAG Program grants) produced no such effects).
273 See MATTHEW C. SCHEIDER, DEBORAH L. SPENCE & THOMAS C. HAMILTON, U.S. DEP’T OF JUST., CMTY. ORIENTED POLICING SERVS. (COPS) OFFICE, ASSESSING THE COPS OFFICE 1–2 (rev. ed. 2021), https://cops.usdoj.gov/RIC/Publications/copsw0648-pub.pdf (embracing the empirical link between COPS grants and increased rates for disorder-related offenses as evidence that the COPS program “has made a difference in American communities” by “result[ing] in higher police arrest productivity”); see Zhao et al., supra note 272.
274 CHETTIAR ET AL., supra note 265, at 4, 23–27.
275 Harmon, supra note 91, at 899–900; Lilley & Boba, supra note 272, at 457–58.
277 See Jain, supra note 276, at 1408.
Rachel Harmon has argued that these pro-arrest policies fail to consider the true costs of aggressive policing, and thus distort police incentives.\(^{279}\) For example, the Violence Against Women Act (VAWA) includes a federal grant component requiring recipients to “certify that their laws or official departmental policies ‘encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed.’”\(^{280}\) For better or worse, this policy has been successful in driving up arrest rates for domestic violence calls,\(^{281}\) but came with costs to survivors, including increased arrests of complainants,\(^{282}\) decreased calls from survivors reluctant to precipitate arrest,\(^{283}\) and reduced autonomy to decide whether to involve oneself in the criminal legal system.\(^{284}\)

Many federal grant programs are also designed to expand the responsibilities of law enforcement agencies to address pressing social problems. The COPS in Schools grant program, for example, rewarded local governments for installing police officers in largely poor and minority schools.\(^{285}\) Federal officials touted this program as a success, despite evidence that the program resulted in reduced graduation and college enrollment rates for Black and Latinx students.\(^{286}\) But, as we explain below, grant funding also creates indirect incentives for local governments to expand the use of their police agencies at the expense of using other social service providers to solve problem.

3. Grants and Law Enforcement Mission Creep

We have seen that federal grants provide a powerful incentive for local governments to expand the size and responsibilities of their police agencies.\(^{287}\)

\(^{279}\) See Harmon, supra note 91, at 914–15.

\(^{280}\) Id. at 913 (quoting 42 U.S.C. § 3796hh(c)(1)(A)).


\(^{283}\) See Harmon, supra note 91, at 914; Radha Iyengar, Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest Laws, 93 J. PUB. ECON. 85, 85, 88 (2009).

\(^{284}\) Goodmark, supra note 281, at 36–37.

\(^{285}\) Weisburst, supra note 218.

\(^{286}\) See id. at 360–61.

\(^{287}\) See supra notes 210–13 and accompanying text.
This distortionary influence is by design—federal grants are meant to alter local funding decisions in ways that expand the scope of local policing. But mission creep may also be an unexpected consequence of federal grant funding.288 Because local governments often cannot raise taxes, they must pay for needed social services in some other way.289 The availability of grants for police drives a dynamic that expands police responsibilities and weakens local governments’ capacity to provide social services.

a. The Framework

As we explain below, the current landscape of federal grants incentivizes local governments to solve social problems through policing. These grants create a cycle in which police agencies become the most fiscally viable institution to address problems outside their core law enforcement mission. Yet police lack competence for and commitment to these ancillary missions and may abandon them after displacing agencies more competent to address them.

This cycle of police mission creep and social service collapse can be explained in four steps. First, the political economy of local government makes it attractive to use grant-funded police to solve social problems. As scholars and activists have argued, police now perform several functions that other social institutions could perform with greater expertise and lower risk of harm to poor and minority populations.290 For years, however, local governments have faced increased pressure to pay for social welfare programs that were once supported by federal and state governments.291 At the same time, these local governments have been unable to increase revenue because state law often forbids (and local political pressure generally discourages) them from increasing taxes.292

Given these pressures, federal grant programs can contribute to mission creep by simply providing funds for law enforcement agencies only. From 1966 through the Reagan era, the federal government worked through grant programs (among other financing mechanisms) to build city social services across a range of policy areas, including (but not limited to) law enforcement.293 But while

288 See supra note 5 (defining mission creep).
289 See Reynolds, supra note 143.
290 See supra notes 69–71 and accompanying text; Friedman, supra note 44.
292 See Scharff, supra note 143, at 295–96.
293 See JOHN H. MOLLENKOPF, THE CONTESTED CITY 33 (1983) (describing the growth in federal spending from 1955 to 1975 as the federal government became “a ‘banker of government’ for local governments and a wide variety of private, nonprofit social agencies”); CONG. RSCH. SERV., FEDERAL GRANTS TO STATE AND
federal support waned for most social service projects, it increased for law enforcement under Presidents Reagan (who established the original Byrne Justice Assistance Grants) and Clinton (who established COPS grants). Despite these police funding opportunities, federal grant spending on local governments has recently been near historic lows. Furthermore, since the 1980s, federal grants have shifted from supporting city services to focusing primarily on Medicaid. This shift in financial infrastructure leaves one potential social service provider—police departments—far better positioned than others to generate independent funding.

Given these constraints, local governments often do not have the option to use the agency best suited to address a particular social problem—such as mental health, homelessness, or juvenile welfare. Instead, local elected officials face a stark choice. They may try to use a resource-starved social service agency that cannot pursue federal grants—at the potentially career-ending political cost of raising taxes (if state law even affords that option). Or they may have an enterprising police agency step into the policy area and win funding for an “innovative” approach to the social problem. For most officials, expanding the police function will be the best or only option.

Second, this choice throws local governments into a spending cycle that further increases police funding at the expense of other social service agencies. To compete for federal grants, police agencies must be sufficiently well funded to craft a competitive application. This generally requires employing grant

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294 See Harmon, supra note 91, at 882.
295 See supra notes 224–36 and accompanying text.
296 See supra note 293, at 8.
297 See supra notes 292–97 and accompanying text.
298 See supra note 91, at 882.
299 See supra notes 224–36 and accompanying text.
300 See supra note 293, at 8.
writers or spending discretionary funds on outside assistance.301 Beyond this initial investment, an agency may have to be sufficiently funded to demonstrate capacity to use the grant money effectively.302 Moreover, both Byrne JAG Grants and COPS grants have non-supplanting requirements303 prohibiting local governments from using the grants as a substitute for other sources of police funding.304

All these pressures require local governments to spend money on their police to generate money from their police. Because local governments are constrained in raising revenue, these spending increases may come at the expense of social services deemed nonessential.305 The result is a public financing structure requiring local governments to defund the agencies designed to provide a social service so the police agency can win grant funding to provide that same service. To be sure, Byrne JAG grants permit criminal justice spending on agencies other than police departments.306 However, because most related grant programs are earmarked for police agencies, it is unsurprising that these are the institutions


301 See Roth et al., supra note 264; Elkins, supra note 300 (“If you don’t have internal capabilities, hire a grant writer—or find one in the community who might provide services on a pro bono basis.”).

302 See U.S. Dep’t of Just., Community Oriented Policing Servs. (COPS) Office, 2021 Community Policing Programs, Project Narrative Template (on file with authors) (grant application requiring applicants to “detail the capacity of your agency or organization to carry out the proposed plan in the proposed time frame of the project and explain your experience with other similar efforts”); Such requirements apply the principle of development economics that institutions receiving financial assistance must have a sufficient “absorption capacity . . . . to use additional aid without pronounced inefficiency . . . and without induced adverse effects.” François Bourguignon & Mark Sundberg, Absorptive Capacity and Achieving the MDGs, in ADVANCING DEVELOPMENT: CORE THEMES IN GLOBAL ECONOMICS 640, 640 (George Mavrotas & Anthony Shorrocks eds., 2007).


304 Early research showed that, in effect, COPS grants tended to partially supplant local funding. See William N. Evans & Emily G. Owens, COPS and Crime, 91 J. PUB. ECON. 181, 199–200 (2007); Jihong Solomon Zhao, Matthew C. Scheider & Quit Thompson, Funding Community Policing to Reduce Crime: Have COPS Grants Made a Difference?, 2 CRIMINOLOGY & PUB’L POL’Y 7, 9 (2002). Since these studies were published, the COPS Office implemented new monitoring requirements designed to “ensure that grant monitors are consistently assessing supplanting and [ensuring] that CHP funding is supplementing and not replacing state and local funding.” U.S. GOV’T ACCOUNTABILITY OFF., COMMUNITY POLICING HIRING GRANTS: GRANT APPLICATION AND MONITORING PROCESSES COULD BE IMPROVED TO FURTHER ENSURE GRANTEES ADVANCE COMMUNITY POLICING 28 (2013), https://www.gao.gov/products/gao-13-521.

305 See supra note 215 and accompanying text.

with the capacity to make use of Byrne JAG money (as evidenced by the fact that the vast majority of Byrne JAG grants are spent on law enforcement).  

This dynamic is intensified for grant programs providing short-term funds but imposing long-term costs. For example, the COPS hiring grant requires local authorities to increase funding for law enforcement both during the grant and long after it expires. Any grant-funded hires must be “added to [an] agency’s law enforcement budget with state and/or local funds over and above the number of locally funded officer positions that would have existed in the absence of the award.” Because local governments must pay for twenty-five percent of the new hire’s salary, this in effect requires them to increase their police budgets to be eligible for the grant. After the grant period is over, the local government must retain the grant-funded positions for at least twelve months. In the vast majority of states, however, collective bargaining agreements may require governments to cover these salaries for years. Even when local governments do not have such contractual constraints, police can exert powerful political pressure to retain grant-hired officers. Unsurprisingly, COPS grant awards tend to permanently increase the size of recipient agencies.

Given these long-term costs, local governments often make additional social service cuts to cover budget shortfalls after COPS grants expire. The city of Vancouver, Washington, had to slash disability programs, parks, and community services in 2002 to pay for salaries created by an expired COPS grant. In 2000, East Palo Alto cut (and contemplated eliminating) its parks and recreation

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307  See supra note 226; Lane, supra note 204.
308  Our discussion here focuses on COPS grants, but other types of federal transfers also force local governments to spend money on a continuing basis. For example, the Department of Defense’s 1033 Program provides military hardware to local police agencies free of charge. See Harmon, supra note 91, at 924–25. However, these gifts come with the condition that police agencies are required to use the equipment, thus imposing costs in terms of training time and maintenance. See id.
310  See id. Local governments may obtain a waiver of this local match requirement by demonstrating “severe financial distress.” Id. at 10.
311  Id. at 4.
312  See supra notes 144–48 and accompanying text.
department to cover fifteen officer salaries after its COPS grant expired. West Orange, New Jersey, kept its school policing program in place by cutting funding for recreation, the public library, and public works after the expiration of its COPS grant. After its school district’s COPS grant expired in 2013, Anchorage, Alaska, had to spend $3 million annually for its school police officers at a time when the district was cutting educational funding.

Federal grant programs thus resemble the aggressive structural adjustment programs imposed by the International Monetary Fund in the 1990s. To compete for a grant, local authorities must increase their own spending on law enforcement. This forces difficult choices about how to pay for these police increases without raising taxes. The social safety net becomes an attractive target for these cuts. Indeed, when the COPS in Schools program ended in 2005, the COPS Office advised school districts to reallocate money from other budget line items—including technology, supplies, sports, and capital expenditures—to continue covering police salaries.

Third, once local governments receive law enforcement grants, they must rely on their police departments to step into the void created by the social spending cuts made to get the grant. Consistent with Jonathan Simon’s theory of “governing through crime,” scholars have identified a link between increases in law enforcement spending and decreased spending on other social services. The dynamics of grant chasing help explain this phenomenon. To position themselves for grant funding, police agencies are advised to tackle “social problems that have never really been the primary purpose of policing,” including mental health crises and homelessness. Once they obtain these grants, cities

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315 Thaai Walker, Parks to Get a Second Chance in East P.A.: City Seeks a Way to Save Police Force but Not Kill Recreation Program, MERCURY NEWS (Jan. 20, 2000); Carolyne Zinko, East Palo Alto OKs Park Site Lease for YMCA, S.F. CHRONICLE (June 6, 2000) (confirming plan to eliminate parks department was scaled back but cuts were made).
317 See id.
319 See FRENCH-MARCELIN & HINGER, supra note 316.
320 See JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 6 (2007) (arguing that the war on crime displaced intrinsic priorities across a wide range of policy arenas); see also GILMORE, supra note 34 (examining the California prison system’s growth and its displacement of other policy solutions to social problems).
321 See Beck & Goldstein, supra note 8, at 1190.
322 See, e.g., COPS Grant Funding in Fiscal Year 2021, supra note 299. The City of Oakland, for example, once received a $10.7 million COPS grant based on its police chief’s proposal to “hire officers to work on youth violence, human trafficking and juvenile delinquency around four middle schools.” Matthai Kuruvila, Federal Grant Will Pay for 25 Officers, S.F. CHRONICLE (Sept. 29, 2011).
may find their grant-funded police agencies have extra labor capacity, while their social service agencies are understaffed. An expedient response is to double down on the police agency’s commitment to “community policing” by having them address the social problems formerly handled by the defunded social program.

Fourth, this expansion of the police mission may lead to the decline or collapse of the social program transferred to police control. Police officers lack the skillset and motivation of trained social workers, mental health counselors, and other experts whose jobs they replace. They are unlikely to do these jobs well and may be disinclined to do them at all. Because these tasks fall outside the perceived core of their mission, police agencies may abandon them if resources tighten or public attention wanes. Residents may be left with a hollowed out social service agency and nobody to perform the services that agency once provided.

b. Application—The City of Baltimore

A story from Baltimore illustrates how relatively small grant awards may significantly influence the size and scope of a police agency. The city currently spends approximately twenty-six percent of its budget (and $840 per capita) on its police department. Although Baltimore’s police department is (for the time being) formally a state agency, the City Council has political control over its budget (which is funded by city taxpayers), and the mayor has the authority to hire and fire its police commissioner. City officials seemed receptive to calls

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323 See Friedman, supra note 19, at 62.
324 See Egon Bittner, Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police, in THE POTENTIAL FOR REFORM OF CRIMINAL JUSTICE 17, 40 (Herbert Jacob ed., 1974) (“Fearing the role of the nurse or, worse yet, the role of the social worker, the policeman combines resentment against what he has to do day-in-day-out with the necessity of doing it.”); see also ROSA BROOKS, TANGLED UP IN BLUE: POLICING THE AMERICAN CITY 182 (2021) (“Many officers complain about having to serve as social workers, mediating family disputes and dealing with people who mostly need parenting classes, drug rehab, or psychiatric care, not police intervention.”).
327 Bryn Stole, Baltimore Voters to Decide on Taking Back Full Local Control of the City Police Department, BALTIMORE SUN (Apr. 8, 2021), https://www.baltimoresun.com/politics/bs-md-pol-baltimore-police-local-control-20210407-2kre4qjgjvck5fdhksrish06-story.html. The Mayor of Baltimore has had authority over the Baltimore Police Department’s commissioner since 1976, long before the story told here begins. A city
to defund the police during Summer 2020 but committed to increasing police spending in 2022.\textsuperscript{328} Meanwhile, public outcry continues over how much the city spends on its police department relative to its spending on “social programs such as affordable housing, after-school programs, crisis centers and substance abuse treatment.”\textsuperscript{329}

The Baltimore police department is also adept at winning federal grants.\textsuperscript{330} Indeed, the city received some of the largest COPS hiring grants when the program was established in 1994.\textsuperscript{331} A particular battle from that time—over the operation and control of the city’s youth centers—suggests an overlooked connection between this grant funding and the collapse of the city’s other social programs.

As late as the 1980s, the City of Baltimore’s recreation centers were held up “as an example for all aging cities in nurturing the young.”\textsuperscript{332} Over decades, the city had invested in “an extensive network of centers operated by the public recreation department.”\textsuperscript{333} By the 1970s, the city had ninety-three recreation centers, amply funded by the city’s budget and supplemented by a mixture of federal, state, and private funding.\textsuperscript{334} By the 1980s, however, federal and state

\textsuperscript{328} Emily Opilo, \textit{Baltimore Officials Pass Budget with $555 Million in Police Spending Without Amendments}, \textit{Balt. Sun} (June 8, 2021), https://www.baltimoresun.com/politics/bs-md-ci-baltimore-budget-approved-20210608-b3k7bnajadfovloigx7mvq-story.html (reporting that the Fiscal Year 2022 budget “includes a $28 million increase in spending on the Baltimore Police Department to cover employee health insurance and higher pension obligations”).


\textsuperscript{331} See \textit{infra} notes 339–41 and accompanying text.

\textsuperscript{332} Robert Guy Matthews, \textit{City Recreation Program Has Faded Fast; Once Hailed, Agency Loses Staff, Centers; More Cuts Looming}, \textit{Balt. Sun}, May 27, 1997, at 1B.


grant funding for recreation programs had largely evaporated.\textsuperscript{335} For cities like Baltimore struggling with population loss and a deteriorating economy, funding for recreational programs became a burden.\textsuperscript{336} By the 1990s, the city had closed some recreation centers in predominately black neighborhoods of Baltimore and cut staff and programming in the remaining centers.\textsuperscript{337}

As federal funds for recreation were drying up, grants for law enforcement were becoming ample. In 1994, the Department of Justice’s COPS Office was established with $8.8 billion in initial funding.\textsuperscript{338} Baltimore was an early beneficiary of this program, receiving one of the largest early grants ($5.2 million).\textsuperscript{339} Over the next few years, Baltimore received a total of more than $12 million in COPS grants to hire 250 new police officers.\textsuperscript{340} The city had to pay for seventy-five percent of these salaries through the grant period and commit to paying their full salaries for one year thereafter.\textsuperscript{341}

The year it hired the first wave of grant-funded officers, the Baltimore Police Department launched an ambitious effort to revive its Police Athletic League (PAL).\textsuperscript{342} This program was funded through grants and donations—with the crucial exception that it was staffed by salaried police officers.\textsuperscript{343} That year, the City of Baltimore cut $2.86 million from the Recreation and Parks Department’s budget.\textsuperscript{344}

By the following year (1996), thirty officers were assigned full-time to PAL,\textsuperscript{345} and the program had become “cash-rich because of state and federal

\textsuperscript{335} Bustad & Andrews, supra note 333, at 243.
\textsuperscript{336} Id.
\textsuperscript{338} ROTH ET AL., supra note 264, at 41.
\textsuperscript{339} See Peter Hermann, Federal Grant to Help Police in Baltimore, BALTIMORE SUN, Dec. 20, 1994, at 19A (reporting that Baltimore received a $5.2 million COPS hiring grant to hire seventy-six new officers).
\textsuperscript{340} Peter Hermann & Gerard Shields, COPS Windfall Becoming a Burden: City Has to Cover Costs of Officers Coming off the Federal Payroll, BALTIMORE SUN, May 31, 1999, at 1A.
\textsuperscript{341} See id.
\textsuperscript{343} See Peter Hermann, Police Recreation Program Blooms as the City’s Fades; PAL’s Success Leads to Criticism of Efforts of Parks Department, BALTIMORE SUN, July 1, 1996, at 1A.
\textsuperscript{344} See Robert Guy Matthews, Recreation’s Future in City Under Debate, Baltimore Budget Cuts Shift Burden to Leagues Police Run for Children; Some Play Specialists Object; ‘They Are Cops. They Do Law Enforcement,’ Counselor Complains, BALTIMORE SUN, Nov. 25, 1996, at 1B.
\textsuperscript{345} See Hermann, supra note 343, at 1A.
grants.”346 Meanwhile, the City of Baltimore cut the Recreation and Parks Department’s proposed budget by $1 million “as the mayor and City Council scrambled to balance the city’s budget.”347 The city closed eleven of its recreation centers and transferred them to PAL.348 The remaining city recreation centers fell into disrepair, with holes in their ceilings and broken-down equipment.349

The Police Athletic League’s reach continued to expand. In 1997, after cutting its Recreation and Parks budget by an additional $5.4 million, the City of Baltimore closed ten additional recreation centers and transferred their control to PAL.350 By 1998, PAL operated twenty-nine centers, at a cost to the City of $5.7 million in police salaries,351 while federal grants and private support provided an additional $2.3 million for operations.352 At its high point, the police department had up to eighty-eight full-time officers assigned to PAL.353 While experts, city staff, and volunteers criticized the city for shifting responsibilities from trained youth experts to police,354 parents and kids preferred the well-equipped PAL centers to the deteriorating city centers.355

In 1999, Baltimore’s first wave of COPS grants ended, leaving the city scrambling to cover the full cost of the new officers’ salaries.356 Baltimore’s budget director estimated that retaining the 250 officers hired through federal grants would cost $11.2 million in the next year and grow to $19 million in

346 Robert Guy Matthews, Youth Program Woes Spur Study; Recreation Centers Face Budget Crunch, BALT. SUN, Nov. 12, 1996, at 1B.
347 Hermann, supra note 343, at 1A.
348 See id.
349 See Robert Guy Matthews, Recreation Centers Struggling to Serve Children in an Atmosphere of Disrepair; Roofs Leak, Equipment and Money Are Scarce, BALT. SUN, Nov. 18, 1996, at 3B [hereinafter Matthews, Recreation Centers Struggling]; Matthews, supra note 346, at 1B.
350 See Robert Guy Matthews, Schmoke to Give Police Athletic League Control of 10 More City Recreation Centers; Change in Baltimore Goes into Effect Oct. 1, BALT. SUN, Aug. 7, 1997, at 4B.
352 See id.
353 See Peter Hermann & Gerard Shields, Report Calls for Police Changes; Past Strategies Condemned for Raising Violence, Suspicion; ‘Justification for Lost Faith,’ BALT. SUN, Apr. 4, 2000, at 1A.
354 See Matthews, supra note 332, at 1B (“N]ational recreation experts say that Baltimore is putting its muscle behind the wrong team.”); Matthews, supra note 350, at 4B (quoting recreation volunteer describing the transfer of a West Baltimore recreation center to PAL as “one of the worst mistakes they can possibly make”); Matthews, supra note 344, at 1B.
355 See Matthews, Recreation Centers Struggling, supra note 349, at 3B (“‘What I’m hearing is that more community groups are asking for a PAL center,’ said 6th District Councilman Edward L. Reisinger, who heads the recreation and parks subcommittee.”).
356 See Hermann & Shields, supra note 340, at 1A.
2003. To cover this shortfall, the Baltimore Police Department laid off civilian workers and moved sworn officers into those desk jobs. To save overtime, the police department shut at least one of its stations to the public for part of the day. Meanwhile, the city continued to apply for—and receive—federal COPS grants to hire new officers whose salaries the city would have to fully cover in a few years’ time.

As the city was grappling with this grant-fueled budget crisis, the Baltimore Police Department substantially reduced its commitment to the Police Athletic League. In early 2000, the police handed over eight of its twenty-four PAL centers to a private community service organization (after initially proposing to close the centers). In January 2001, the outgoing Clinton administration gave the Baltimore Police Department a $28.8 million COPS grant to hire two hundred new police officers as well as eighteen civilian coordinators for its remaining PAL centers. The police department nevertheless removed all its officers from PAL centers. By 2002, a city official described the Police Athletic League as “desperate for funds.” In 2003, the nonprofit corporation that had been running the PAL Centers ran out of money, and the city required the police department to fully assume control of the centers.

By 2009, “[Baltimore’s] PAL Centers, once heralded as a national model by the White House, fell into disrepair.” The city closed two PAL centers and transferred two others to the school system. The remaining centers were transferred back to the Recreation and Parks Department, thus ending the police department’s involvement.

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357 See id.
358 See id. (reporting that the Baltimore Police Chief proposed civilian layoffs to cover officers hired by COPS grants); Peter Hermann, Police Station Shut to Public Part of Day; City Staffing Shortage Leads Commander to Act in Northeastern District; ‘Save a Little Overtime’: Union Leader Questions Move, but Says Officers Needed More on Street, BALT. SUN, Aug. 7, 1999, at 1B (confirming layoffs).
359 See Hermann, supra note 358, at 1B.
360 See Hermann & Shields, supra note 340, at 1A.
361 See Mark Ribbing, O’Malley Announces Plans to Pare Down Police, BALT. SUN, Apr. 13, 2000, at 4B; Tim Craig, Daniel Says 9 PAL Sites Will Be Shut, BALT. SUN, Feb. 9, 2000, at 1B.
362 See Peter Hermann, $28 Million in Grants OK’d, BALT. SUN, Jan. 19, 2001, at 1A.
363 See Allison Klein, Baltimore Residents Protest Elimination of Some Libraries, Neighborhood Centers; Shrinking Population, Budget Constraints Noted, BALT. SUN, Mar. 11, 2001, at 5B.
365 See Del Quentin Wilber, City Police Taking Over PAL Rec. Center Operations; O’Malley Says Residents Will Notice No Changes, BALT. SUN, May 1, 2003, at 2B.
This cycle left Baltimore residents with fewer recreation options than they had before the police department’s foray into youth recreation. Unlike the recreation centers they replaced, PAL centers did not provide services such as day care, senior programs, or “classes on health care and nutrition for adults.” And even as the Recreation and Parks Department was taking back control of the PAL centers, its budget was being cut. One of the recreation department’s own centers was shuttered, and seven of its employees were laid off.

Many factors could explain the rise and fall of Baltimore’s Police Athletic League. At a macro level, two scholars recently argued that the program was “a particular form of neoliberal intervention within urban communities.” At the level of institutional politics, a police commissioner founded Baltimore’s Police Athletic League as one of his signature programs, and the program was likely overstaffed relative to the city’s public safety needs. The program was then ended under a mayor who was openly skeptical about using police resources for youth recreation.

These explanations, however, do not account for the financial dynamics that catalyzed the Baltimore Police Department’s expansion into youth recreation—at the expense of the agency that had the primary mandate to provide youth recreation. Scholars have identified a statistically significant correlation between the share of a municipal budget that goes to parks and the share that goes to police services, while a strong predictor of how much money city agencies receive in a given year is the amount received the previous year. As such, it is worth considering how the status quo in Baltimore was disrupted so that within

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369 See Matthews, supra note 332, at 1B.
370 See Annie Linskey, Pitching for Recreation; Mayor Takes to Neighborhood to Explain What Survived Budget Cuts, BALT. SUN, June 25, 2009, at 3A.
371 See id.
372 See Annie Linskey, City Plans to Lay Off 27; Proposal for Furloughs, Job Cuts to Be Presented to Spending Panel Today, BALT. SUN, Sept. 23, 2009, at 3A.
374 See Del Quentin Wilber, City Police Taking Over PAL Rec Center Operations; O’Malley Says Residents Will Notice No Changes, BALT. SUN, May 1, 2003, at 2B.
375 See Hermann & Shields, supra note 353, at 1A.
376 See Mark Ribbing, O’Malley Announces Plans to Pare Down Police Athletic League; 18 Centers to Keep Officers; Eight to Go Up for Bid, BALT. SUN, Apr. 13, 2000, at 4B (“‘Recreation should not be the exclusive [domain] of the police,’ O’Malley said. ‘They have enough hard work to do.’” (alteration in original)).
377 See Jihong Zhao, Ling Ren & Nicholas P. Lovrich, Budgetary Support for Police Services in U.S. Municipalities: Comparing Political Culture, Socioeconomic Characteristics and Incrementalism as Rival Explanations for Budget Share Allocation to Police, 38 J. CRIM. JUST. 266, 272–73 (2010). This correlation is minor, however, in comparison to the share of budget going to fire expenditures. See id. at 273.
378 See id. at 269.
a few short years, Baltimore’s police took resources and responsibilities from the city’s recreation department and then shed the responsibilities.

The influx of federal grants to the Baltimore Police Department helps explain this disruption. To get a COPS grant, the city had to increase police spending to cover its twenty-five percent share of the new officers’ salaries while complying with the grant’s non-supplanting requirement. These cuts came at the expense of the Recreation and Parks Department. Then, the grants created an extra supply of police labor which allowed the department to step into the void created by the recreation department cuts. By assuming this responsibility, the police department was able to generate even more federal money to support its “community policing” strategy. However, youth recreation remained ancillary to the defining function of its police department. This left the Police Athletic League vulnerable to cuts when the city faced increased financial pressure—resulting in part from chasing more grant money for new police hires.

B. Legal Financial Obligations (LFOs)

The story that drew public and scholarly attention to the pathologies of fines and fees is now familiar. In 2015, the Department of Justice found that the City of Ferguson, Missouri used its police department to collect fines and fees as a source of revenue. 379 City officials “budget[ed] for sizable increases in municipal fines and fees each year” and pressured the Ferguson Police Department “to deliver [on] those revenue increases.” 380 In response, the predominantly white police department aggressively enforced the city’s municipal code through investigative stops and arrests of the city’s predominantly Black population. 381 The result, concluded the Department of Justice, was “a pattern of stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment; infringement on free expression, as well as retaliation for protected expression, in violation of the First Amendment; and excessive force in violation of the Fourth Amendment.” 382 As Jeffrey Fagan and Elliot Ash concluded, Ferguson thus

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380 Id.
381 Id.
382 Id. at 2–3. These practices, the report found, “severely damaged the relationship between African Americans and the Ferguson Police Department long before” the police killing of Michael Brown, which prompted the Department of Justice’s investigation. Id. at 79.
“cloak[ed] its taxing power in the exercise of police power by functionally equating the power of taxation with the power to punish.”

Ferguson is not unique. Criminal legal systems in the United States widely use legal financial obligations (LFOs)—including court fees, criminal fines, restitution orders, civil forfeitures, and other monetary extractions—as a source of revenue. This fee-for-service financing is a reversion to a premodern model of criminal justice. Through the nineteenth-century, public prosecutors and sheriffs in the United States relied on fees to cover their salaries and budgets. By the 1930s, however, virtually all public prosecutors at the federal, state, and local levels were compensated through taxpayer-funded salaries. A primary reason for this innovation was the recognition that the older system incentivized prosecutors to bring trivial charges for low-level offenses, while neglecting serious crimes. The movement toward taxpayer-funded salaries was thus part of a legitimating project to professionalize, and instill trust in the motives of, public prosecutors. In recent decades, however, this trend appears to have reversed, as LFOs have metastasized in number and monetary burdens. These burdens are disproportionately borne by poor and minority residents, who become targets for traffic stops and citations for low-level offenses.
The pathologies inherent in such revenue-focused policing are well documented. For example, asset forfeiture laws motivate police officers to patrol and stop southbound traffic, where traffickers are likely to be carrying cash that police can seize; stops conducted on northbound traffic, by contrast, will be more likely to yield only drugs, which must be destroyed. More seriously, the pursuit of fines and fees incentivizes police officers to aggressively stop and harass citizens to generate revenue. Empirical scholarship confirms that Black people are more likely to be targeted for this type of aggressive policing, while municipalities relying on fines and fees have lower clearance rates for violent and property crimes.

These distortionary effects are not simply the result of a misguided policing strategy. They are also products of budgetary constraints and, to a degree, federal policy interventions. Just as poor towns use prisons to subsidize their economies, they use policing as a source of revenue. In many high-poverty jurisdictions,
payments of LFOs are a significant portion of the revenue collected by county and municipal governments. One analysis recently identified more than six hundred jurisdictions nationwide where fees and fines account for more than ten percent of general fund revenues. These jurisdictions are largely concentrated in rural, high-poverty areas lacking other significant sources of tax revenue. In extreme cases, these jurisdictions fund nearly their entire budget through fines. Thus, LFOs are used not just to fund police departments but also to subsidize entire municipal governments.

This is not to suggest however, that reliance on LFOs is exclusively a problem for rural jurisdictions. To be sure, most local governments do not rely on police-driven legal financial obligations as a significant funding source. But the use of LFOs appears to have serious and racialized distributional impacts even in these cities. As Ferguson illustrates, LFOs are more likely to be collected in cities that have high Black populations and low Black political representation.

While budgetary shortfalls may be the principal driver of revenue-oriented policing, federal policies also incentivize it in at least two ways.

First, some federal grants incentivize police agencies to impose LFOs to signal their productivity. Specifically, the National Highway Safety Administration (NHSTA) awards states over $600 million in grants that subsidize ticket writing. While the agency does not impose ticket quotas as a grant condition, it indirectly incentivizes aggressive ticketing as a matter of institutional design. The agency requires that at least forty percent of a grant

(identifying states for which fines constitute a substantial percentage of revenue and explaining that “[s]ome . . . local governments collect up to 80%–90% of their general revenues from fines and forfeitures”).

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398 Maciag, supra note 397.
399 See id.
400 See id.; Graham & Makowsky, supra note 215, at 313–14.
401 See Maciag, supra note 397. For example, several towns in Louisiana fund more than eighty percent of their budget through fines. Id.
402 See Graham & Makowsky, supra note 215, at 326; Maciag, supra note 397.
403 See Maciag, supra note 397.
404 See Sances & You, supra note 395, at 1090.
406 McIntire & Keller, supra note 405.
award be used by a state’s local political subdivisions. The NHSTA further requires states to adopt and report “quantifiable” performance metrics as a grant condition.

Ticket stops—brief, easily increased, and easily counted—are an attractive metric. It is therefore no surprise that at least twenty states evaluate police performance based on their number of traffic stops per hour. This creates downstream pressure on local police agencies to generate tickets in order to satisfy state reporting obligations. In Windsor, Virginia, for example, the Chief of Police advised officers that they were “required to write a minimum of two tickets per hour while on grant time” (i.e., grant-funded patrols) “and there [was] zero tolerance” for deviating from this minimum. The result of these pressures was a “culture of quotas” in Windsor that resulted in the high-profile pepper-spraying of a Black and Latino Army lieutenant. Thus, federal grants contribute to the ticket-writing pressures that contribute to the troubling number of police killings during traffic stops.

Second, federal law incentivizes local police agencies to aggressively seize assets by permitting them to keep assets seized in connection with federal crimes. Under the federal Equitable Sharing Program, local police departments can keep up to eighty percent of the assets seized in investigations of federal offenses in which they assist. The Equitable Sharing Program has resulted in the distribution of billions of dollars to local police agencies. This

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407 23 C.F.R. § 1300 App’x C(a).
408 Id. § 1300.11(c)(1).
409 McIntire & Keller, supra note 405.
410 Id.
411 Id.
412 See Kirkpatrick et al., supra note 394.
415 As of 2015, “more than $4.5 billion had been shared through the Equitable Sharing Program.” See Harmon, supra note 91, at 930. Professor Harmon reported this figure based on the U.S. Department of Justice’s prior edition of its Guide to Equitable Sharing. See id. 930 n.241 (citing U.S. Dep’t of Just., Asset Forfeiture & Money Laundering Section, Guide to Equitable Sharing for State and Local Law Enforcement Agencies 1 (2009)). Since the publication of Professor Harmon’s article, the Department of Justice appears to have stopped reporting the amount shared through the equitable sharing program. See 2018 Guide to Equitable Sharing, supra note 414.
provides police departments with an additional source of revenue beyond the reach of local control—even in jurisdictions that limit the ability of police departments to retain assets seized in connection with state offenses.\footnote{Harmon, supra note 91, at 929–30; see also Knepper et al., supra note 413, at 46 (highlighting the amount of revenue that state and local law enforcements have gained through equitable sharing in certain years).} Thus, the Equitable Sharing Program “enables law enforcement agencies to circumvent their own state’s forfeiture laws in favor of forfeiting property under federal forfeiture laws, which earn a D- for being some of the worst in the country.”\footnote{Knepper et al., supra note 413, at 46. In 2015, the Department of Justice prohibited most federal “adoptions” of state and local forfeitures that occurred without the cooperation of federal officials. See id.; Press Release, Dept of Just., Attorney General Prohibits Federal Agency Adoptions of Assets Seized by State and Local Law Enforcement Agencies Except Where Needed to Protect Public Safety (Jan. 16, 2015) (available at https://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-adoptions-assets-seized-state-and-local-law). In 2017, however, Attorney General Jeff Sessions repealed this policy and allowed for such forfeitures. See Office of the Att’Y Gen., U.S. Dep’t of Just., Order No. 3946-2017, Federal Forfeiture of Property Seized by State and Local Law Enforcement Agencies (2017); U.S. Dep’t of Just., Money Laundering and Asset Recovery Section, Asset Forfeiture Policy Manual 45 (2021), https://www.justice.gov/criminal-afmls/file/839521/download.}

Enabling law enforcement to generate legal financial obligations exerts a distortive effect not only on policy but also on governance. Revenue-oriented policing can free law enforcement officials from local and state accountability in several ways.

First, LFOs reduce the financial leverage elected officials wield over police departments.\footnote{Colgan, supra note 392, at 23.} By enabling local police agencies to keep assets seized in connection with federal investigations, the federal forfeiture program frees agencies from local efforts to hold them accountable through budgetary control.\footnote{See supra notes 255–86 and accompanying text.} For example, Harmon suggests that if a local government were to lay off police officers as part of a defunding strategy, the police department could use assets obtained through equitable sharing to buy invasive technologies and pay overtime so that overall police impact in communities would remain stable.\footnote{Harmon, supra note 230, at 537.} LFOs could thus frustrate activist-led defunding efforts. Most states also have civil forfeiture programs, permitting local police agencies to permanently retain the cash and property they seize.\footnote{Knepper, et al., supra note 414, at 34–36.} These further circumscribe local governments’ ability to use the power of the purse to control police agencies.
Second, and more troublingly, revenue-oriented policing may align the interests of local officials and police agencies at the expense of the public. Given their budgetary constraints, local governments are powerfully incentivized to rely on extortionate policing to balance their budgets. And there is considerable evidence that local officials do in fact encourage this type of policing. Sometimes this dynamic is explicit, as the Department of Justice found to be the case in Ferguson, Missouri. Similarly, the mayor of Edmundson, Missouri, chided the police department for a disappointing downturn in traffic tickets and reminded the department that these tickets “add to the revenue on which the [P.D.] budget is established and will directly affect pay adjustments at budget time.” Empirical research bolsters these anecdotes, showing that local authorities and police departments coordinate when it comes to revenue generation. One study found that police departments issue more tickets in higher dollar amounts in municipalities with lower property tax revenue. Moreover, departments are more likely to issue tickets after voters reject a property tax increase. And at the county level, officials collaborate with sheriffs’ offices to finance the construction of jails through court fees and other legal financial obligations.

Local officials often evade state efforts to regulate their reliance on LFOs as a source of revenue. For example, many states limit the amount of fine-generated revenue that localities may collect. However, these limits often go unenforced and localities regularly exceed them. Moreover, some revenue-dependent towns circumvent state caps on fines by shifting their enforcement toward ordinances not covered under the cap. Similarly, some states have sought to limit the revenue localities can collect through asset forfeiture, only to have local police departments seize assets under a federal equitable sharing program.

The political pathologies of LFO-oriented policing thus run in two directions. On one hand, police agencies can use revenue from civil forfeitures

422 See supra notes 255–86 and accompanying text.
424 Harris et al., supra note 395, at 456 (quoting leaked memo).
425 See Shoub et al., supra note 395, at 836 (surveying research).
427 Id.
429 See Graham & Makowsky, supra note 215, at 313.
430 See id.; Maciag, supra note 397.
431 See Maciag, supra note 397.
432 See Harmon, supra note 91, at 955–56.
to escape the democratic oversight that inheres in legislative budgeting. On the other, local officials can use their budgetary leverage to pressure police to generate LFO revenue without raising taxes. For police agencies and local officials, LFOs are win-win. The poor and powerless lose.

C. Indirect Constraints and the Expansion of Police Functions

This Part has described a web of government programs and policies that shape funding and use of police through positive incentives. These indirect constraints complement the direct constraints exerted by mandates and prohibitions. As we have seen, indirect constraints have influence beyond pressuring local governments to fund law enforcement at a high level. They also create distortionary incentives that shape how local governments use their police departments. In two significant ways, these problems parallel those created by the legal constraints we previously identified.

First, indirect constraints incentivize local governments to rely on police agencies to perform functions that could be better performed by social service agencies and community stakeholders, or not at all. Federal grant programs sometimes expressly seek to expand the police mission. But these grant programs also contribute to mission creep through the budgetary dynamics illustrated by the fate of Baltimore’s recreation program. This account helps explain how and why local governments default to criminal solutions to address social problems. Authorization to generate LFOs further distorts policy by channeling police toward extortionate policing at the expense of addressing violent crime. There is mounting evidence that local government spending on police tends to increase as tax revenue shrinks. Crime rates do not explain this trend, since they appear to have little correlation to police spending patterns. Tellingly, however, increases in police spending tend to correlate with reduced spending on other social programs. The pressures federal grants and other financial incentives place on local governments can incentivize them to pursue a criminal justice approach to social problems, even when it is not the most effective or equitable solution.
indirect constraints place on local authorities to fund law enforcement at the expense of social welfare programs help account for this relationship.

Second, grants and LFOs allow police agencies to circumvent oversight by local government funders. Because local governments operate under significant fiscal constraints, they are often happy to allow police agencies to operate as revenue-generating enterprises. This allows police to appeal for grants to fund priorities that local officials may not share. While local officials can reject many of these grants, budgetary pressures may prevent them from doing so. Police agencies may further circumvent state and local government oversight by relying on LFOs to independently generate revenue. In some cases, local governments may become so dependent on these funds that they will be unable to serve as a meaningful check on the agencies they are meant to control.

These two distortions may be compounded by indirect constraints imposed by private institutions. For example, to protect their coffers from budget-breaking legal judgments, local governments may need to cater to priorities of private companies and nonprofit municipal risk pools that provide indemnification insurance. Specifically elected officials in Culver City, California, recently faced political pressure to reduce funding for the City’s police department. In response, the City Manager advised that the city’s insurance broker warned that reduced police funding could “result in the City’s inability to obtain insurance coverage.” The insurance broker also purportedly cautioned against reorganizing the city’s public safety infrastructure so that non-sworn personnel could respond to some 911 calls. Moreover, the insurance broker reportedly informed the city that “insurance carriers across the country are seriously concerned with steps being taken to realign public safety resources.” We are grateful to Noah Zatz for drawing our attention to this effort and the city’s response.

And still another possible source of private pressure is introduced by many cities’ dependence on the bond market to cover the costs of ballooning police...

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442 Cf. John Rappaport, How Private Insurers Regulate Public Police, 130 HARV. L. REV. 1539, 1573 (2017) (cataloguing the ways in which private insurance companies regulate the policies and conduct of the police agencies they indemnify).

443 Specifically elected officials in Culver City, California, recently faced political pressure to reduce funding for the City’s police department. In response, the City Manager advised that the city’s insurance broker warned that reduced police funding could “result in the City’s inability to obtain insurance coverage.” CULVER CITY, STAFF REPORT, FILE # 21-369 (2020) (hereinafter CULVER CITY REPORT), https://culvercityaction.files.wordpress.com/2021/01/staffreport.pdf (reporting the City Manager’s findings with respect to a public safety review). The insurance broker also purportedly cautioned against reorganizing the city’s public safety infrastructure so that non-sworn personnel could respond to some 911 calls. Id. Moreover, the insurance broker reportedly informed the city that “insurance carriers across the country are seriously concerned with steps being taken to realign public safety resources.” Id. We are grateful to Noah Zatz for drawing our attention to this effort and the city’s response.

444 See, e.g., Kari Paul, How Target, Google, Bank of America and Microsoft Quietly Fund Police Through Private Donations, GUARDIAN (June 18, 2020, 4:12 PM), https://www.theguardian.com/us-news/2020/jun/18/po...
The dynamics of these private, indirect constraints and their impact on the scale and role of police agencies are important problems for further research.

IV. BUDGETARY DISTORTIONS AND THE ROLE OF POLICE AGENCIES

In our examination of the funding of local police agencies, we have focused on the web of state constraints and federal and state incentives that distort the local budgeting process. This distortion is an important contributor to the “catchall” model of policing in the United States. Legal mandates to maintain or expand law enforcement funding and personnel led local leaders to allocate increasing responsibilities to police agencies. Revenue potential—through grants, fines, fees, and forfeitures—incentivized local officials to pursue new initiatives through police agencies rather than other departments or services. Taken together, these mandates and incentives impede the defunding movement’s hopes of using the budget process to shrink and reorient policing. Indeed, budgetary distortions contributed to the historic expansion of law enforcement functions in the first place.

This Part considers the consequences of this budgetary structure. We make three points. First, the structure of police budgeting reverses the relationship between function and funding required for policy rationality. Second, this reversal limits the democratic accountability of police agencies to residents by steering policy choices about police function into the budgetary forum. Third, reform advocates should direct their defunding efforts toward reducing budgetary distortion of policy and expanding the local accountability of police agencies.

A. Budget Distortions and the Relationship Between Funding and Function

The funding of police agencies is rife with budgetary distortions that channel the discretion of local officials. In turn, these budgetary distortions have helped expand the duties and responsibilities of police agencies. This channeling effect reverses the traditional presumption about the rational relationship between function and funding. While policy choices about the role of government agencies should determine their funding, funding mandates and incentives too often drive definitions of the police function and distort the functions of other local departments and services.

This is not to deny that police agencies have long occupied a unique role in local administration. Indeed, when the need arises, local officials and residents frequently look to police agencies to solve their problems. In the nineteenth century, police and sheriff’s offices were useful tools for local political machines—not only for “monitoring” the polls but also as sources of political patronage.446 Local residents also looked to police agencies to provide all sorts of social services, from lodging “tramps” and recovering missing children in the late-nineteenth century to traffic enforcement and pedestrian safety in the early-twentieth.447 And if the social service functions of police agencies expanded during the wars on drugs and crime in the latter half of the twentieth century, that expansion was possible because of support at the local level. Local officials were among the first to embrace the “broken windows” theory that directed police agencies to pursue order-maintenances strategies and expand misdemeanor arrests,448 even before the Clinton administration promoted the strategy nationwide.449 And, by some accounts, this effort was initially supported by local residents, even in the minority communities that would bear the brunt of this enforcement strategy.450

Yet, to say that the steady expansion of police function was responsive to local demands does not entirely explain why local officials assigned these functions to police rather than other agencies. Here, the unique structure for budgeting police agencies informs a path-dependent account. During their formative era, large police departments were useful to local bosses in securing political power and directing financial rewards to favored constituencies. Political rivals at the state level responded by regulating police through funding and personnel mandates.451 These ensured that police maintained a sizable institutional presence, even in eras when crimes rates were falling. Even in their early decades, reformers complained that much police activity was tangential to their core “crime fighting” function.452 But given their institutional capacity, it was convenient and even fiscally necessary to task police agencies with additional responsibilities as new problems arose. In other words, by insulating

446 See, e.g., Fogelson, supra note 162; Lane, supra note 204, at 160.
447 See supra notes 207–08 and accompanying text.
451 See supra notes 160–72 and accompanying text.
452 See, e.g., Walker, supra note 208, at 83.
police agencies from the normal budgeting process, state laws also ensured their expansive role in local governance.

The emergence of funding incentives in the late-twentieth century exacerbated this dynamic. Police agencies became a valuable source of revenue. Deindustrialization and white flight eroded many city tax bases, while tax revolts limited property tax rates. Still, states protected police budgets. As federal aid for housing, infrastructure, and social services ebbed, federal law enforcement grants and forfeiture programs picked up some of this slack. Fines and fees collected by law enforcement became more vital. Police were diverted into social welfare programs and drug, public order, and warrant enforcement. The new police revenue sources account for much of the increase in local law enforcement spending during this era. And for localities struggling to balance the books, even small additions to revenue were worth pursuing. Revenue needs explain these shifts in function.

These effects of police funding on police function add a new layer to existing explanations of the expansion of both with respect to police agencies. Traditional explanations tend to focus first on why police functions expanded, often by looking at the demand by local residents, social conflicts based on class and race, or institutional inertia in the bureaucratic administration of local governments. In turn, explanations for the growth of police funding generally center on the developments that increased the burden of those functions, such as the increasing prevalence of automobiles in the early-twentieth century. But our account suggests that the opposite is true as well—policy choices about the role of police agencies are responses to funding mandates and incentives.

Thus, the steady expansion of police functions may be due in part to the unique funding structure surrounding police agencies. The fiscal environment may also explain why alternatives to policing are so rarely considered, even at the local level where the impact of policing is most apparent. Residents look to local officials to address problems in their community. Budgetary considerations then lead local officials to turn to police agencies. Even if alternatives to policing or police agencies are available, local officials are likely to follow the incentive

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454 See supra notes 288–93 and accompanying text.
455 See supra notes 397–402 and accompanying text.
456 See supra notes 437–41 and accompanying text.
458 See Bordua & Haurek, supra note 212.
structure that exists. If so, the overarching role of police agencies and the consequences of relying on policing often go unexamined.

Of course, these choices are entirely rational. With limited ability to raise revenue or run deficits, local officials should be seeking ways to stretch taxpayer dollars. Given their limited discretion over law enforcement budgets, local officials wisely ensure that police agency functions justify their funding levels. Indeed, local officials may hope that the savings accrued from their reliance on police agencies could be redirected to other services. Yet, the rationality of these choices are themselves the result of a funding structure distorted by state mandates and federal and state incentives. And these distortionary effects are likely to be strong in the poorest communities, where social services are most needed and the negative impacts of policing are greatest.

B. Budget Distortions and Political Accountability

Budgetary distortions affect not only the funding of police agencies but also their functions, relative to those of other local departments. Both erode the political accountability of police agencies at the local level. Police agencies are insulated from the authority of local officials by funding protections and their ability to generate revenue. In turn, budgetary considerations take precedence over local political demands in determining the role and function of police agencies. Despite the power that usually accompanies the purse, local responsibility to fund police agencies does not directly translate into police accountability to local majorities. Indeed, the participation of local residents is more likely to be excluded precisely because policing policies are so often made through the budgetary process.

The United States is unusual in organizing and governing policing at the local level. Yet—as we have argued in a previous work—some strong considerations militate in favor of local governance over policing. Some of these are generic advantages of local control. Those concerned about policy efficacy reason that local control allows different communities to tailor their law enforcement response to their specific needs and contexts. For those concerned about efficiency, responsibility to fund policing should incentivize

459 See supra Part II.A.
461 See O’Rourke, Su & Binder, supra note 1, at 1400–01.
localities to carefully assess the cost of addressing local problems through police agencies in comparison to other departments or services. But there are also considerations peculiar to policing. Given the deadly force that police agencies are authorized to wield, local control best ensures that they serve the communities they police. The continuing legacy of race discrimination in criminal justice intensifies this concern. Both crime and criminal justice most heavily impact Black Americans living in cities. Police are most numerous in cities with large Black populations. Since Black voting strength is also greatest in these cities, local control of policing would best distribute power over policing to those most affected by it.

Yet, as scholars of local democracy have recognized, neither decentralization nor local control ensures political accountability. Much depends on the ability of residents to channel their interests through local officials, which in turn depends on the process by which policy choices are made. Do residents have the ability to set the local agenda? Is the forum in which policy choices are made open to their participation? Are the interests and voices of all residents weighed equally in the decision-making process? Meaningful democratic participation is often undermined by the structural organization of local governments. There are also many reasons why local police agencies in particular seem to be insulated from political accountability at the local level—from the political influence of law enforcement unions to the structural entrenchment of police agencies. In addition to all of this, we argue, budgetary distortions play a similar role.

First, budgetary distortions mean that choices of police functions and priorities are more likely to be made on the basis of budgetary considerations rather than local political demands. As a result, local community views about the role of policing may be excluded from the agenda. Local officials may conclude that needs to balance the books and comply with funding mandates force certain choices. Conversely, local officials who oppose reform efforts for

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465 See id. at 286–87.
466 See, e.g., Michael Menzer, We Decide!: Theories and Cases in Participatory Democracy 11 (2018).
470 See, e.g., O’Rourke, Su & Binder, supra note 1, at 1343.
other reasons can more easily rebuff local demands by arguing, perhaps
disingenuously, that these alternatives would be economically unfeasible. In
either case, funding concerns allow local officials to foreclose consideration of
the role of police altogether. From this perspective, the steady expansion of
police functions may reflect not the interests of local residents but instead the
fiscal constraints and incentives facing local governments.

Second, the budgetary process is a forum uniquely insulated from resident
participation. Balancing a municipal or county budget is often considered to be
a complicated and technical affair best left to professional judgement. Indeed,
responsiveness to resident demands is often blamed for leading cities into fiscal
distress or municipal bankruptcy. As a result, it is often believed that
budgeting is one of the few areas where local officials need to make tough
choices in spite of constituent demands. But if budgeting is where policy choices
about the functions of police agencies are made, citizens will have little input
into, or even awareness of, these policy decisions.

Third, budgetary distortions incentivize local officials to favor certain
constituents in making policies about the role of police agencies. Social theories
of policing have long focused on the conflict between different interest groups
within a locality. History shows that police policies tend to favor the interests of
local elites—whites over Blacks, businesses over residents, middle- and upper-
class neighborhoods over those disadvantaged by poverty. But budgetary
distortions reinforce these hierarchies of influence. Tackling homelessness, drug
abuse, or mental health through social services may mean increasing taxes.
Because of fiscal incentives, addressing those same problems through policing
allows local officials to please the propertied by keeping taxes lower. And, there
is recent evidence that real property owners see expenditures on policing as
securing their investments.

Indeed, the effect of budgetary distortion on local political accountability
may be even more pernicious than earlier efforts to insulate police agencies from
local political accountability because its influence is largely hidden from view.
State takeovers of big city police departments in the nineteenth century stripped
local control over police agencies. But those efforts also triggered a political

Politics 98 (2017).
472 See, e.g., Bruce C. Johnson, Taking Care of Labor: The Police in American Politics, 3 Theory & Soc.
89, 104–06 (1976); Harring, supra note 170, at 15–17.
473 See Beck & Goldstein, supra note 8, at 1196–99; Simon, supra note 8, at 167–68, 186–204.
474 See supra notes 160–64 and accompanying text.
backlash that eventually led to the widespread adoption of “home rule” amendments intended to insulate localities from state control. Progressive efforts to “professionalize” police agencies in the early-twentieth century also sought to insulate policing from the local political process. But complaints that law enforcement officials were too detached from the communities they policed eventually inspired efforts to restore community-oriented policing. In contrast, budgetary decision-making occurs away from public notice, and the structural constraints on that process imposed by state law and federal programs are even less visible.

In short, budgetary distortions also distort the political relationship between local governments and their residents. Local residents continue to bear the primary burden of funding their police agencies. But funding mandates and fiscal incentives mean that funding decisions are insulated from local political accountability.

C. Addressing Budgetary Distortions

Given the degree to which funding distortions have defined the role of policing, it makes sense that reformers are now targeting police budgets and the budgeting process. Indeed, the relationship between funding and function is more intertwined than defunding advocates have acknowledged. States have long sought to constrain the local budgeting process to set the priorities for policing. The federal government has also used grants and forfeitures to incentivize the allocation of local law enforcement resources. Further, local governments have steered policing activity in pursuit of fines and fees when local finances are tight, and states impose limits on their revenue raising capacity. If reformers seek to reverse the misallocation of local resources to police agencies, then they also need to address the budgetary distortions that structure local funding decisions.

At the most basic level, reformers will need to address the funding mandates that constrain local budgeting discretion. This certainly includes the recent wave of anti-defunding bills, which prohibit localities from shifting law enforcement resources to other local departments and services. Indeed, our analysis here suggests that anti-defunding laws are even more problematic than they may first
These laws not only foreclose contemporary reform efforts but also constrain local budgeting decisions. In addition, they also lock in the effects of budgetary distortions of the past. If, as we have argued, funding mandates and revenue incentives led to the expansion of police functions beyond core law enforcement responsibilities, then anti-defunding bills ensure that those choices cannot be reconsidered.

Aside from the recent wave of anti-defunding bills, reform advocates should also turn their attention to the web of existing constraints that limit when and where law enforcement budgets can be reduced. Local responsibility to fund police agencies does not directly translate into local control over their budgets. As a result, appealing to local officials may not be effective without also addressing constraints imposed by state law. This is not to say that progress cannot be made on the budgeting front. Even within existing constraints, localities have some discretion over the funding of police agencies. But the options available for reimagining public safety may be limited if existing state mandates remain or expand.

At the same time, reformers need to turn their attention to the budgetary incentives that have turned police agencies into revenue generators. Police are particularly appealing investments for local officials because, unlike other agencies, they can offset their costs through grants, fines, fees, and forfeiture. Until these incentives are removed, the cold calculus of fiscal politics will take precedence. Even local officials eager to reexamine the role of police agencies must cope with adverse budgetary consequences.

Addressing budgetary incentives, however, is not necessarily a matter of removing these revenue sources altogether. After all, local communities are swayed by these revenue sources because of need. Rather, a better approach may be to rethink how support might be provided to local government without distorting local decision on police functions. Federal grant programs, for example, might provide funding to local governments to address issues rather than funding particular agencies. This allows local governments to experiment with different ways of achieving those ends.

Fines and fees should be assessed not as revenue sources but as particularly regressive tools for incentivizing enforcement, internalizing costs, or deterring antisocial behavior. The downsides of the fee-for-service model of policing have long been recognized. Arguably taxes, supported by additional local taxing authority, should once again be favored.
The goal, then, should be to reduce or eliminate the budgetary distortions now shaping police funding. The aim should be to enhance local discretion over—and local accountability for—police functions. Likely only some localities will decide to reallocate existing police functions to other departments or agencies, as defunding advocates urge. But if such decisions are made without fiscal distortion, there is a better chance that alternatives to policing will be fully considered.

Addressing budgetary distortion is all the more important as the debate over police agencies has once again turned to their funding. Both sides should understand how the resolution of funding disputes in the past may have unduly influenced the function of police agencies. In doing so, they might better recognize how the resolution of today’s debates may have unintended repercussions long after the political fights that prompted them have passed.

CONCLUSION

Recent proposals to “defund” police reflect the convergence of many concerns. One concern is the dim prospect of meaningful reform of police departments, as police violence and racial discrimination have persisted, despite several waves of protest. This persistence is partly attributable to police agencies’ political strength and insulation from democratic control. Defunding is appealing as a Gordian solution, sanctioning police agencies by legislative fiat. Complete defunding offers a means to the visionary goal of abolishing violent enforcement of law altogether. Partial defunding serves the more modest aim of reasserting local control over police agencies that have long resisted and even scorned democratic oversight.

A second concern is the scale of policing. Police budgets increased throughout the war on crime (albeit not to the same degree as corrections budgets) even as crime rates declined. Greater police capacity is one reason for increases in stops and arrests, swollen inmate populations, and crippling fees and fines. Police capacity also appears to be an effect of racial discrimination, as levels of Black population and segregation are predictors of police budgets.

A third concern is the trade-off between police budgets and other priorities. Rising spending on police and corrections coincided with the contraction of welfare and public spending on education and social services. Thus, investment in law enforcement was part of a broader neoliberal shift from a welfare state to a carceral state, transferring “responsibility” for the social costs of inequality
onto the least advantaged. “Defunding” signifies a determination to recommit to social welfare.

This Article has revealed impediments to defunding police—but also imperatives to reform the mechanisms of police funding.

Barriers to defunding police are similar to those impeding both incremental and radical reform. Local governments have responsibility to fund police but in practice have little governing authority over them. Recent state laws threatening to sanction localities that defund police simply make explicit the underlying legal distribution of authority that already constrains localities from doing so. Localities are largely constrained to retain and pay police as determined by the state. Federal and state grants, fines, fees, and forfeitures interact with state spending mandates to operate as ratchets. Grants incentivize officials to add staffing, while state law and collective bargaining agreements restrict the ability of local government to later shed these fiscal liabilities when the money runs out. Grants, fines, fees, and forfeitures likewise require police staffing to pursue.

All these sources distort policy and subvert local democracy by determining how police will be used, often drawing them away from investigation and prevention of violent crime. The difficulty of decreasing police budgets further distorts policy by incentivizing local government to allocate other policy domains to police.

Thus, the problem with police budgets is not simply that they are too large, but why they are so large. They are determined not by social need, nor by local democratic choice, but by a dysfunctional budgetary process that distorts policy and precludes democratic accountability.

The growth in police staffing and funding during the war on crime was no accident: it is what enterprising politicians at every level of government sold and voters bought. But local electorates now wishing to unwind those decisions cannot easily do so. Rational decisions of different actors at different times combined to produce this paralysis. Long ago, state-level actors pursued partisan advantage by regulating how local police agencies are funded, while abjuring responsibility for funding them. Police unions sought and achieved collective bargaining agreements and state-level protections that further deprived local populations of meaningful control over police budgets. Federal officials used short-term grants to incentivize hiring union-protected police—often to perform nonpolice functions—leaving local governments to cover the long-term costs. When the bills came due, resource-starved local governments and police agencies helped themselves to legal financial obligations. Together, these
decisions have set an agenda before the public with no good options. Before society can hope to determine the scale and role of policing, it will need to fundamentally change how it funds police.