



Stop-and-Frisk: How Government Creates Problems, Then Makes Them Worse

Two recent law-enforcement decisions  illustrate yet again that when government sets out to solve a problem it created, things get much worse.

This week, Attorney General Eric Holder announced that the Justice Department will keep nonviolent small-scale drug sellers who have no links to criminal organizations from getting caught in the mandatory-minimum-sentence trap. Under current law, judges must impose a mandatory minimum prison term for defendants convicted of selling more than a specified quantity of illegal drugs.

With prison populations and costs mushrooming — America has more people behind bars than any other country in the world — Holder has instructed U.S. attorneys to evade the mandatory-minimum law by not specifying drug quantities when they charge qualifying suspects. He also wants alternatives to prison pursued where possible. While it's good news that some people who would have faced long prison sentences now will not, we nevertheless should be concerned whenever the executive branch unilaterally declares it will write its own law.

The other decision, this one from a court, criticized New York City's stop-and-frisk policy, under which the police can stop, pat down, and question anyone on the street who arouses suspicion, a highly subjective criterion indeed. Federal District Judge Shira Scheindlin ruled that the New York Police Department carries out the policy in a manner that violates the Fourth Amendment rights of blacks and Hispanics. The judge specified the ways that the city could fix the policy and appointed a monitor to keep an eye on the police.

In both matters, horrendous policies are to be tweaked to make them less egregious. But this won't be satisfactory. New York police will still have the arbitrary power to stop people walking down the street, and the federal judges will still put some people away with long mandatory prison terms regardless of the particulars of their cases.

In other words, deeply flawed policies can't be tweaked enough to make them acceptable. Stop-and-frisk and mandatory minimums should be abolished.

Yet even this would fall short of what's needed. The problems purportedly addressed by stop-and-frisk and mandatory minimums are of the government's own making. Thus, if we got to the root, the "need" for these bad policies would disappear.

Stop-and-frisk is largely aimed at finding youths who are carrying guns and drugs. Mandatory minimums are directed at drug sellers. It's not hard to see what is at the root: drug prohibition. When government declares (certain) drugs illegal, those drugs don't disappear; instead they move to the black market, which tends to be dominated by people skilled in the use of violence. Because the trade is illegal and the courts are off-limits for dispute resolution, contracts and turf will be protected by force. Those who operate on the street will find it wise to be armed.

So, as a result of prohibition and its attendant violence-prone black market, in some parts of town a percentage of young men will likely be walking around with guns and drugs. Seeing this, politicians and law-enforcement bureaucrats turn to stop-and-frisk and mandatory minimum sentences. But the only



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real solution is to repeal prohibition. There's no need for intrusive police tactics or prison terms.

In a free society, government has no business telling us what we can and can't ingest or inject. Before drug prohibition, America had no drug problem. It's prohibition that created the problem, just as alcohol prohibition gave America organized crime on a large scale. As we've seen, when government tries to ban drugs, it creates bigger problems by putting drugs in the streets and gangs in control.

Ask yourself why after so many decades of apparent failure — drugs are plentiful, accessible, and inexpensive — prohibition persists, as if spending more taxpayer dollars or coming up with some new law-enforcement gimmick will bring success. Maybe prohibition has not failed at all. Maybe the purpose is simply to spend the money and expand law enforcement. Maybe all the moralizing is simply a ruse.

And maybe what Thomas Paine said about wars also applies to the war on drugs: "a bystander, not blinded by prejudice nor warped by interest, would declare that taxes were not raised to carry on wars, but that wars were raised to carry on taxes."

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