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Following Ferguson, Congress Revisits Its Own Role In Police Militarization

With U.S. police departments putting their military-grade hand-me-downs to use in places like Ferguson, Missouri, lawmakers are rethinking the laws that have made this possible.

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WASHINGTON — A flurry of policy discussions is focusing on the level of force and military-style weaponry used by local police in response to ongoing public demonstrations in Ferguson, Missouri.

Even as deep political, racial and socioeconomic divisions are now emerging around the Aug. 9 police shooting of 18-year-old Michael Brown, images of law enforcement's reaction to subsequent protests have startled broad swathes of the U.S. public, including lawmakers. Particular scrutiny is being given to a series of federal programs — through the Departments of Defense, Justice and Homeland Security — that have directly facilitated the use of these armaments and tactics.

“The key issue is whether these programs are creating incentives for local and state law enforcement to use unnecessarily heavy-handed tactics and equipment in their operations,” Maria McFarland, deputy U.S. program director at Human Rights Watch, told MintPress News.

“International human rights standards require that law enforcement use force only when necessary and to the extent necessary to do their jobs. While there may be some situations in which law enforcement might need military-style gear, the concern is that they may be using such equipment even when they don't need to.”

McFarland says her office is encouraging U.S. officials to closely examine a series of federal programs aimed at arming local law enforcement with military gear. She says officials need to ensure that these programs are not inadvertently pushing police personnel to use more force or behave in a more intimidating manner than necessary.

Similar concerns have galvanized support from liberal, centrist and conservative members of Congress for potential changes to a law that, since the mid-1990s, has provided local U.S. police forces with surplus military equipment. The initiative, overseen by the Department of Defense and known as the “1033 program,” originally came about in order to support law enforcement personnel in the fight against drug gangs and potential terrorist attacks.

Since it began in 1997, 1033 has been responsible for handing over more than \$5 billion in weaponry, armored vehicles, drones and aircraft to local law enforcement, according to the program’s website. Momentum has increased significantly under President Barack Obama, particularly given the withdrawals from both Iraq and Afghanistan. Last year alone 1033 transferred materiel worth nearly a half-billion dollars.

While 1033 had generally received little mainstream coverage, that has changed following around-the-clock news coverage of protests and the police response in Ferguson in recent days. During attempts to contain public protests in the aftermath of the shooting of Michael Brown, police in Ferguson have used high-powered weapons, teargas, “flash-bang” grenades, body armor and even armored vehicles of types commonly used by the U.S. military during wartime situations. (The New York Times on Tuesday published extensive new details of the military hardware being used by law enforcement across the country.)

“After seeing the outrageous overreaction to the protests in Ferguson, Democracy for America’s one million members across the country are calling on Congress to reform the 1033 program and stop the flow of military weapons and hardware to local police,” Charles Chamberlain, the executive director of Democracy for America, a progressive advocacy group, told MintPress.

The group says that while many progressives today would support scrapping the 1033 program altogether, its focus is on ending the flow of military armaments to local police departments. New legislative proposals, for instance, would institute reforms to the program by allowing non-conflict-related military supplies to go to police forces, but would halt the flow of wartime weaponry.

“Placing the weapons and tactics of war in the hands of local law enforcement puts innocent lives at risks, sows distrust between the police and the communities they serve, and undermines our Constitutional rights,” Chamberlain said. “In America, there is simply no reason for the cops patrolling our blocks to be sporting the same weaponry and armaments we’ve seen on the battlefields of Iraq and Afghanistan.”

Bipartisan review

The 1033 program is perhaps the primary, but not sole, federal program channeling high-powered hardware to local law enforcement. Related materiel streams are coming

from the Department of Homeland Security and the Department of Justice. Yet each of these will likely come under heavy scrutiny in coming months.

On Monday, President Obama, back in Washington on an unusual break from a two-week vacation, indicated his support for such a reappraisal.

“One of the great things about the United States has been our ability to maintain a distinction between our military and domestic law enforcement,” Obama told the press. “That helps preserve our civil liberties. That helps ensure that the military is accountable to civilian direction. And that has to be preserved.”

In the aftermath of the attacks of Sept. 11, 2001, new concern arose over whether local law enforcement forces were prepared to deal with a potential terrorist attack on U.S. soil. The president noted that some of this has been useful, pointing to new police communications capabilities that can effectively operate during a disaster, or safety equipment that can allow personnel to respond to a chemical attack.

Still, Obama said, the events in Ferguson have underscored that a retooling may be necessary.

“I think it’s probably useful for us to review how the funding has gone, how local law enforcement has used grant dollars, to make sure that what they’re purchasing is stuff that they actually need,” the president said, “because there is a big difference between our military and our local law enforcement and we don’t want those lines blurred. That would be contrary to our traditions.”

He also pointed to “bipartisan interest in reexamining some of those programs.”

Indeed, although lawmakers are currently out of Washington, there has already been significant rhetoric, and pledges of action, from across the political spectrum. “We need to de-militarize this situation,” Missouri Sen. Claire McCaskill (D) said last week. “[T]his kind of response by the police has become the problem instead of the solution.”

In a widely read article likewise titled “We Must Demilitarize the Police,” Republican Senator Rand Paul of Kentucky noted that “there should be a difference between a police response and a military response” in law enforcement.

Paul’s response is built around broader conservative fears of government overreach, a logic that has brought along both notable libertarian and conservative voices here in Washington. In his article, Paul points to similar concerns coming from such Washington mainstays as the Cato Institute and the Heritage Foundation.

Secretary of Defense Chuck Hagel has not yet ordered a review of the 1033 program, but a Pentagon spokesperson said Tuesday that the secretary “has been mindful of the public debate” and was given a report on the program Tuesday morning.

The spokesperson, Rear Admiral John Kirby, also noted in a press conference that “many, many law enforcement agencies have benefited from [1033]. In fact, many citizens of many towns and cities all over the country have benefited from it.” But, he continued, “how and where and under what circumstances the equipment actually gets used is up to the local law enforcement agencies to determine.”

Nonetheless, with widespread calls for congressional hearings into the Ferguson situation, the most likely opportunity lawmakers will have to weigh in on the federal government’s role in police militarization will be during discussion on the federal government’s annual defense spending bill, the National Defense Authorization Act (NDAA), of which the 1033 program is a part.

On Friday, Michigan Sen. Carl Levin (D), the chair of the powerful Senate Armed Services Committee, indicated his strong support for such discussions during NDAA debate.

“Congress established this program out of real concern that local law enforcement agencies were literally outgunned by drug criminals. We intended this equipment to keep police officers and their communities safe from heavily armed drug gangs and terrorist incidents,” Levin said. “[W]e will review this program to determine if equipment provided by the Defense Department is being used as intended.”

As yet, it is unclear what changes could eventually be made to the 1033 program, or how much appetite there will be at the time for any such reforms. Multiple lawmakers have raised concerns around the increasing militarization of law enforcement in the past, and there will likely be several proposals made in coming weeks, particularly after members of Congress return to Washington in early September.

Among the foremost such proposals will be coming from Georgia Rep. Hank Johnson (D). According to media reports, Johnson will introduce new legislation next month that would allow a neutered form of the 1033 program to continue to operate.

While non-lethal military supplies — office supplies, for instance — would be able to continue to flow to local police forces, most lethal weaponry would not. This would include weapons “not generally recognized as particularly suitable for law enforcement purposes,” as well as aircraft, tactical vehicles, flash-bang grenades and other items.

Furthering the drug war

Johnson’s proposal would also strip the 1033 program of a key motivator — the drug war. Instead, materiel transfers would be largely for purposes of counterterrorism activities. This is a notable change, particularly given the currently fast-changing policy views on the overall impact of the decades-long “war on drugs.”

In June, the American Civil Liberties Union released a detailed study on the militarization of U.S. police forces. It suggested that the overriding use of new paramilitary capabilities on the part of U.S. law enforcement appears to be in the service of the drug war. The group also found that around a third of the supposedly surplus military gear being transferred was actually new.

Looking at more than 800 SWAT operations by 20 agencies during 2011-12, the ACLU researchers found that nearly two-thirds of these actions involved drug searches. Further, the overwhelming majority of these operations involved searches of private residences — hardly the types of emergency situations for which SWAT and military-type armaments are necessary, or designed.

In an obvious echo of the situation in Ferguson, such patterns have had a particularly strong impact on communities of color, further frustrating many minorities who already complain of feeling discriminated against by law enforcement. The incidents studied “revealed stark, often extreme, racial disparities in the use of SWAT locally,” the report states.

Using federal funds, the ACLU concludes, local law enforcement agencies have “amassed military arsenals.”

“But these arsenals are by no means free of cost for communities,” it warns. “Instead, the use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties.”