



Where Are Libertarians on Police Reform? Right Where We've Always Been.

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After the killing of George Floyd by a Minneapolis police officer, America is finally embracing police reform. As is so often the case in matters of personal freedom, libertarians were here long before mainstream political counterparts and fought a frequently lonely battle against abusive government power. Now, just as they did with same-sex relationships, drug reform, and the ongoing battle against the surveillance state, people across the political spectrum seem ready to concede that a little more freedom could be a good thing. If the effort succeeds, we may not get the credit—newly converted reformers are *already* trying to separate the cause from its long-time promoters—but at least we'll live in a better world.

"Where are the libertarians?" is such a knee-jerk cry after incidents of police brutality that it's safe to assume that it's a matter of bad faith rather than of ignorance. Having left the issue on the back burner for so long, some people don't want to admit that we were there ahead of them. Unfortunately, when it comes to police misconduct, we've been *way* ahead of them.

"Of the three political alternatives, a free economy, a mixed economy, a totalitarian state, only one provides the economic, political, and cultural context in which systematic police brutality cannot be a problem: a free society," wrote Reason founder Lanny Friedlander in a very '60s-ish 1969 essay. "The police of a free society, engaging in retaliatory force only, enforcing laws of a defensive nature only, would be bound by the same laws they enforced, and would stand fully accountable for their actions."

Going beyond window-dressing, libertarians favor minimizing opportunities for police to act against the public and making any interactions as non-confrontational as possible.

In 1971, the fledgling Libertarian Party (L.P.) called for "the repeal of all 'crimes without victims' now incorporated in federal and state laws," such as the prohibitions on drug use that have driven so much of the escalation in aggressive police tactics. The same platform declared itself opposed to "so-called 'no-knock laws'" of the sort that got Breonna Taylor killed by cops this year when they crashed through her door at night, unannounced, looking for illegal drugs.

In cases of police misconduct, libertarians favor holding government agencies and their employees accountable for their actions.

"We support full restitution for all loss suffered by persons arrested, indicted, tried, imprisoned, or otherwise injured in the course of criminal proceedings against them which do not result in

their conviction," the L.P. proposed in 1976. "Law enforcement agencies should be liable for this restitution unless malfeasance of the officials involved is proven, in which case they should be personally liable."

That police agencies too often foster abusive conduct was no secret to libertarians long before the Minneapolis Police Department failed to implement reforms that might have saved George Floyd's life.

"When a rookie Houston patrolman named Alan Nichols did the unthinkable and reported three fellow officers for the vicious beating of a black prisoner, police internal-affairs investigators tried to have him fired, the chief publicly reprimanded him, and other police ostracized him," Glenn Garvin wrote in *Inquiry*, a Cato Institute publication, in 1979 coverage of violent and racially charged policing in Texas.

"Civil libertarians need to recognize that federal prosecution of law-enforcement officers who use excessive force often provides the only check on such unrestrained state power," Dirk G. Roggeveen urged in the pages of *Reason* as Americans reacted to the 1991 police beating of Rodney King.

Through these years, police not only misbehaved but also came to act like an occupying army lording it over a hostile populace.

Seattle's "police force has spied on local political activists for more than 20 years," Roxanne Park warned in *Inquiry* in 1978. "The intelligence abuses discovered in Seattle are 'typical examples' of the practices of urban police departments."

"Over the last 25 years, America has seen a disturbing militarization of its civilian law enforcement, along with a dramatic and unsettling rise in the use of paramilitary police units (most commonly called Special Weapons and Tactics, or SWAT) for routine police work," Radley Balko cautioned for the Cato Institute in 2006. He expanded his argument in his 2013 book, *Rise of the Warrior Cop*.

Now, after decades of manifestos, journalism, research, and advocacy, America seems to agree with libertarians. "Americans by a 2-to-1 margin are more troubled by the actions of police in the killing of George Floyd than by violence at some protests," the *Wall Street Journal* reports from survey results. That just *may* result in policy changes.

Michigan Rep. Justin Amash, the only Libertarian in Congress, literally wrote the bill that would eliminate qualified immunity, the legal doctrine that makes it so difficult to hold police accountable for their bad behavior unless courts in the same jurisdiction have already ruled that such conduct is wrong.

If Congress doesn't rise to the occasion, the Supreme Court could. Associate Justices Clarence Thomas and Sonia Sotomayor both look eager to revisit the mess the court created when it invented qualified immunity.

No-knock raids, which so often end in tragedy when police kick-in the wrong door, or when suddenly awakened residents try to defend against intruders, are also getting a second look. Louisville, Kentucky is considering banning such warrants, a half-century after the Libertarian Party proposed exactly that.

City council members in Minneapolis are even talking about disbanding the police department amidst a national, though ill-defined, movement to "defund police." Whether or not that's an improvement depends on what comes next. Retaining harsh enforcement by another name will continue the abuses, the intrusiveness, and the disproportionate use of state violence against disfavored communities under nothing more than different branding.

Maybe that's why it's taken so long for people to seriously consider police reform, and why they're so resistant to giving libertarians credit on the issue. *Real* change requires not just dropping the word "police" but reducing the opportunity for government agents to use violence against the public. That means fewer laws to be enforced and less intrusive enforcement of those laws. That's a hard pill to swallow for ideologues who are committed to forcing people to do what they don't want to do, or to forcibly stopping them from exercising their own preferences.

Libertarians should be happy that Americans are ready to discuss police reform. But we'll have to see if the country is actually prepared for less policing.