

Why libertarians are joining BLM calls to defund police

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Sometimes, people have a hard time trying to peg the protest politics of Carla Gericke.

As a Republican candidate for the New Hampshire Senate and a “hardcore libertarian,” she has been an outspoken activist against the stay-at-home orders handed down by Gov. Chris Sununu during the COVID-19 pandemic. That’s a position many people may equate with Trump-style conservatism.

At the same time, however, Ms. Gericke has also been a longtime activist against what she sees as the troubling militarization of American police forces, and she’s been mostly supportive of Black Lives Matter efforts to defund the police.

“I am all for taking part of the budget and moving it away from escalating policing, and maybe move it more toward mental health, community development, and that kind of stuff,” says Ms. Gericke, who has run against the powerful Democratic incumbent in her district for the past three election cycles. “That wouldn’t really reduce a line item in terms of the budget and wouldn’t really be shrinking the government, so for me, that isn’t the ideal solution. But I’m willing to say I think that would be a step towards a healthier, more peaceful society.”

She’s gotten hate mail for her efforts from both sides of the political spectrum. But like most libertarians, Ms. Gericke’s principled opposition to what she sees as ever-expanding and far-reaching state powers – especially the lethal power given to police along with their “qualified immunities” from legal accountability – has been a core plank of her political philosophy from the start.

The Republican candidate joined other community activists on the left in 2013 to help lead efforts to keep the city of Concord from purchasing a new Ballistic Engineered Armored Response Counter Attack Truck, or BEARCAT, which city officials said was necessary because of “frequent demonstrations by officially organized groups which have the potential of becoming volatile.”

It is the kind of language she finds chilling. “Concord at the time had had like, two murders in a decade,” she says. “But of course they ended up getting their BEARCAT anyway.”

After what prosecutors have called the police murder of George Floyd in Minneapolis in May, the decades-old movement to defund or even abolish municipal police gained public momentum that few had ever seen before. Rooted primarily in the work of left-wing scholar activists since the 1970s and 1980s, especially women of color such as Angela Davis and Ruth Wilson Gilmore, who helped formulate the concept of the “prison industrial complex” through the

grassroots coalition Critical Resistance, the movement began to describe how the U.S. criminal justice system incarcerates more of its citizens than any other country in the world by far. It argued that, with its massive array of tax-funded prisons and jails, overwhelmingly filled with Black and Latino men, the United States had become one of the world's most violent police states.

“There are a lot of parallels” with libertarian views, says Edward Stringham, president of the American Institute for Economic Research, a libertarian think tank. “In many cases, the police are assigned to do things that they don't have training or capacity to do, even while being trained in a more violent style when dealing with any kind of conflict.”

“At least for me, I don't see any justification for this heavily armed group of people, financed by the taxpayers, to be dealing with situations that are, at most, a \$20 problem for a convenience store,” says Mr. Stringham, alluding to the complaint that ended in what he, too, calls the police murder of Mr. Floyd.

But there are a lot of differences, too, says Tyler Parry, professor of African American and African diaspora studies at the University of Nevada, Las Vegas.

“On the one hand, you do have this strange alliance, or at least a potential alliance between libertarians – ‘classical liberals,’ who do tend to be mostly white men – and a movement like Black Lives Matter, which also calls for the defunding of the heavy hand of militarized police forces.”

Indeed, over 70% of self-identified libertarians are white and 63% percent are male, according to the Cato Institute, a Washington-based libertarian think tank. By contrast, only 5% of libertarians identify as Black and 14% as Latino, the institute found in a 2015 survey with the London-based public opinion data agency YouGov.

“[Although] libertarians and progressives do share a lot, a lot of libertarians are much more willing to be more extreme, and take government defunding to its logical conclusion, rejecting any type of governmental structure, particularly looking at taxation as a form of theft, as well as [being against] the notion that the government can send in armed police forces or military units to essentially force its citizens to comply with its laws and regulations.”

Libertarians often identify with the limited-government philosophies that animate many wings of the Republican Party. They point out that the European traditions of liberal democracy had their early roots in efforts to limit the crown's enormous power to use lethal force in the name of law and order.

As “classical liberals,” many libertarians point out that early thinkers developing ideas of human rights in the 16th and 17th centuries first fought against the criminal justice system. Locating their intellectual roots in the Enlightenment, they often see the first “activists” questioning the scope of government authority, especially the crown's use of torture to exact confessions, its declarations of martial law during peacetime, and rejections of the right to habeas corpus.

“In America, I would say the most basic right we have is to be free from state interference, and certainly state violence, absent a legally sufficient reason,” says Clark Neily, vice president for criminal justice at the Cato Institute.

“When you clothe state actors, particularly police officers, with the incredible power and discretion to choose which laws to enforce and then the power to take somebody’s liberty and even their life, and then give them the equipment with which to do that, it matters tremendously what forms of accountability are available to citizens,” says Mr. Neily, who wrote a recent essay assessing Black Lives Matter protests, titling it “America’s Criminal Justice System Is Rotten to the Core.”

Agents from different components of the Department of Homeland Security are deployed to protect a federal courthouse in Portland, Oregon, on July 5, 2020. Protesters also faced off against city police in Portland.

Where the groups differ

But for scholars of color like Professor Parry, a consistent libertarian position is often rooted in privilege. Those promoting laissez-faire economics, light-touch government regulations, and a bare minimal police state tend to already have their built-in competitive advantages and see almost all rungs of society in terms of robust competition.

“My own assumption in terms of where libertarians may go wrong is that I think many people see it as a movement of predominantly white males, and that they already have many of the privileges within society, so they have an assumption that the government is not necessary in directing their lives,” he says. “Whereas I think Black people or people of color who are protesting against governmental police forces, they do still recognize that some system of government needs to remain in place for the protection of people, but in an equal and respectful fashion.”

In fact, as many scholars have pointed out, Black voters as a whole tend to be far more pragmatic and moderate than white liberals, and make up a small part of the progressive wing of the Democratic party. Black voters overwhelmingly chose Hillary Clinton in 2016 primaries, and then overwhelmingly backed former Vice President Joe Biden at a moment when his candidacy was teetering on collapse.

“The protest movements of the civil rights era were largely in response to what they conceived of as unjust governmental structures,” Professor Parry says. “So I think maybe the distinction here is that, on the one hand, you will probably find libertarians and even Marxist activists in some form of agreement that police forces can reflect the tyranny of an unlawful government. But at the same time, the agenda and the goals of what ultimately replaces that government might be very different.”

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Still, amid the current Black Lives Matter protests, a number of progressives, libertarians, and even some religious conservatives have joined forces to oppose the “qualified immunity” that courts, including the Supreme Court, have granted police officers. In the decades since judges introduced this legal doctrine through their rulings, shielding officers from being held personally liable for violating certain constitutional rights or using excessive force, qualified immunity has drawn fire from groups across the political spectrum.

In a legal campaign to take on qualified immunity over two years ago, the Cato Institute worked to build a “cross ideological bridge” to combat the legally entrenched doctrine, says Mr. Neily.

And one of his proudest accomplishments, he says, was to put together an amicus brief for the Supreme Court that included a diverse array of groups, from the NAACP and American Civil Liberties Union on the left to the Alliance Defending Freedom and Americans for Prosperity Foundation on the right.

“A rash of high-profile, sanction free incidents of police misconduct has sent Americans to the streets in protest,” these groups contend together. “[Qualified] immunity shields a wide range of official misconduct. The diversity of the signatories reflects how qualified immunity abets and exacerbates the violation of constitutional rights of every sort.”

Private security forces?

Libertarian thinkers don’t often use the term “defund the police” like their left-leaning counterparts do, however. And Mr. Stringham at the American Institute for Economic Research is part of an ideological subsection of libertarians who argue that much of the work of police departments today would be better served by localized private security.

“If you look around the country in various jurisdictions, you can see plenty of alternatives to government police,” says Mr. Stringham, noting a topic he explores in his book “Private Governance.” “Universities like Harvard, Duke, and MIT each have fully deputized private police forces.”

“And in general, I would say that’s going to create incentives for those police to be acting on the behalf of the students,” he says. “Whereas, if you have government police, there’s that disconnect where they can pursue an agenda which is independent of the well-being of the population.”

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Like many libertarians across the country, he sees powerful police unions as an obstacle to fiscal and structural reforms that could unburden taxpayers and incentivize police to make “serve and protect” more than a clichéd slogan.

Yet others, like Mr. Neily, worry about outsourcing police work to private entities.

“I’m very uncomfortable with the idea of trying to privatize the core function of the police, which is to act as an agent of the state to ensure that necessary laws really are obeyed,” he says. “That would necessarily entail at least the potential use of violence, as well as the exercise of substantial discretion.”

“You still have to have some understanding of the legitimate functions of a criminal justice system run by government entities,” Mr. Neily continues. “And that is, to prevent and when necessary punish conduct that threatens the very fabric of civil society.”

“It feels like progress”

As a libertarian activist and president emeritus of the Free State Project in New Hampshire, Ms. Gericke, too, has long fought for transparency and accountability in municipal police forces.

“I do think there is definitely a lot of overlap with these more liberal groups,” says Ms. Gericke, who grew up under the apartheid regime in South Africa and thus remains suspicious of government power. “And one of the problems all of us see, in part, is this notion of ‘law and

order.’ ... It is the fearmongering from the war on drugs. And it is, I believe, partly the institutionalized racism inherent in the prison system – the whole school-to-prison pipeline we can so easily see.”

More recently, Ms. Gericke joined with the ACLU and New Hampshire news organizations to demand the public release of the names of police officers who have been accused of misconduct, known as the “Laurie List.” New Hampshire law exempts this list from the state’s existing freedom-of-information laws.

Last year a state judge ordered the release of the list, which includes the names of some 260 cops, but Republican Governor Sununu and law enforcement officials appealed the ruling at the time. In the past month, however, each appears to be rethinking this opposition, and the governor announced the formation of a commission to recommend reforms “to enhance transparency, accountability, and community relations in law enforcement.”

As Ms. Gericke woos voters in her district – her campaign slogan is “Protecting the smallest minority, the individual ... YOU!” – she has been heartened to see police accountability finally become a national issue supported by an array of political perspectives.

“As a libertarian and as someone who’s worked against the expanding police state for such a long time, it’s sort of a ‘let’s see if it happens’ kind of thing,” she says. “But at least it feels like progress.”