



Taming the Police Unions

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For years, scholars of policing — academics who, among other things, study how policing works in society — tended to neglect the role of police unions. Some criminologists may have seen the topic as better suited to scholars of labor relations, while both groups may have tip-toed around a subject that threatened to throw into a bad light generally progressive causes such as collective bargaining and laws providing job security for public employees.

Fortunately, the importance of the subject has combined with scholarly curiosity more recently to sweep aside such reluctance, and numerous studies have come out showing how unionization may relate to police misconduct and use of force.

This week, Christopher Ingraham of *The Washington Post* summarized a range of study findings:

- Per 2006 numbers from the federal Bureau of Justice Statistics, “officers in unionized police forces are more likely to be the subjects of an excessive-force complaint, but more likely to beat the allegations in disciplinary hearings.”
- In Florida, “violent misconduct among sheriff’s officers increased about 40 percent after a state supreme court ruling allowed the offices to unionize.”
- Stephen Rushin, writing in *The Duke Law Journal*, found that making it harder to discipline officers for misconduct was a typical, rather an outlier, demand for unions. “Overall, 156 of the 178 police union contracts examined in this study — around 88 percent — contained at least one provision that could thwart legitimate disciplinary actions against officers engaged in misconduct.”
- The same author, writing in *The University of Pennsylvania Law Review*, found that even ordinary police departments afforded multiple levels of disciplinary appeal, and some combined six or more internal layers of appeal with use of an outside arbitrator, sometimes selected by the union, and armed with power to order reinstatement and back pay. These make a difference. Here is Ingraham, citing a 2017 *Post* investigation: “In Washington, D.C., for instance, 45 percent of the officers fired for misconduct from 2006 to 2017 were rehired on appeal. In Philadelphia, the share is 62 percent. In San Antonio, it’s 70 percent.”
- Police unions have been a key political force in promoting and defending laws that worsen the disciplinary problem, such as laws in New York and California that have worked to bar public disclosure of misconduct records.

- Provisional results from another study in progress “suggest the police unionization happening in the 1950s through the 1980s led to ‘about 60 to 70’ additional civilians killed by police each year. The ‘overwhelming majority’ of those civilians were nonwhite.”

Two years ago, George Mason University economist Alex Tabarrok wrote a pointed account of the obstacles to discipline for misconduct posed by union contracts and related state laws:

In 50 cities and 13 states, for example, union contracts “restrict interrogations by limiting how long an officer can be interrogated, who can interrogate them, the types of questions that can be asked, and when an interrogation can take place.” In Virginia police officers have a right to at least a five-day delay before being interrogated. In Louisiana police officers have up to 30 days during which no questioning is allowed and they cannot be questioned for sustained periods of time or without breaks. In some cities, police officers can only be interrogated during work hours. Regular people do not get these privileges.

It was even worse in Florida, under whose law a department could not even begin questioning an officer suspected of misconduct until it had supplied him with all the evidence it had assembled against him, including names and statements of all complainants and witnesses, all recordings, GPS locator data, and so forth.

As Tabarrok notes,

The key to a good interrogation is that the suspect doesn’t know what the interrogator knows so the suspect can be caught in a lie which unravels their story. ... By knowing what the interrogators know, the suspect can craft a story that fits the known facts — and the time privilege gives them the opportunity to do so.

This is only one of the mechanisms by which police unions and the laws they lobby for can enable the use of excessive force and other misconduct.

Authors of the working paper on Florida sheriffs cited above say unionization “may increase solidarity among officers and thereby strengthen a code of silence that impedes the detection of misconduct.” In many states police unions can even demand that cities first engage in negotiation before adopting policy changes such as new restrictions on the use of force — effectively tying the hands of reformist mayors and councils.

A valuable step that recently won support from Harvard labor law scholar Benjamin Sachs would be to restrict the scope of collective bargaining to economic outcomes, such as wages and benefits, thus excluding both discipline for misconduct on the one hand and policy changes on the other. That’s not a new idea — I remember it coming up as long ago as the 1970s — but it is an excellent and timely one.

A more thoroughgoing libertarian approach — entirely repealing municipalities’s obligation to recognize or bargain with police unions, for example — might be politically out of reach in many states, for now at least.

In the meantime, there is scope for plenty of constructive cross-ideological cooperation aimed at reining in the organizations that have helped bring us to this point.

Walter Olson is a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies and is known for his writing on the American legal system. His books include The Rule of Lawyers, on mass litigation, The Excuse Factory, on lawsuits in the workplace, and most recently Schools for Misrule, on the state of the law schools. His first book, The Litigation Explosion, was one of the most widely discussed general-audience books on law of its time. It led the Washington Post to dub him "intellectual guru of tort reform." Active on social media, he is known as the founder and principal writer of what is generally considered the oldest blog on law as well as one of the most popular, Overlawyered.com. He has advised many public officials from the White House to town councils and in 2015 was named by Gov. Larry Hogan to be co-chair of the Maryland Redistricting Reform Commission, which issued its report recommendations later that year to acclaim across the state.