

If you think "it can't happen here," click the pictures. P.S. That's the California State Capitol in the background of the 1st pic

CATO: The Ominous Growth of Paramilitarism in American Police Departments

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Introduction

One of the most alarming side effects of the federal government's war on drugs is the militarization of law enforcement in America. There are two aspects to the militarization phenomenon. First, the American tradition of civil-military separation is breaking down as Congress assigns more and more law enforcement responsibilities to the armed forces. Second, state and local police officers are increasingly emulating the war-fighting tactics of soldiers. Most Americans are unaware of the militarization phenomenon simply because it has been creeping along imperceptibly for many years. ...

[...]

What is clear — and disquieting — is that the lines that have traditionally separated the military mission from the police mission are getting badly blurred. Over the last 20 years Congress has encouraged the U.S. military to supply intelligence, equipment, and training to civilian police. That encouragement has spawned a culture of paramilitarism in American police departments. By virtue of their training and specialized armament, state and local police officers are adopting the tactics and mindset of their military mentors. The problem is that the actions and values of the police officer are distinctly different from those of the warrior. The job of a police officer is to keep the peace, but not by just any means. Police officers are expected to apprehend suspected law breakers while adhering to constitutional procedures. They are expected to use minimum force and to deliver suspects to a court of law. The soldier, on the other hand, is an instrument of war. In boot camp, recruits are trained to inflict maximum damage on enemy personnel. Confusing the police function with the military function can have dangerous consequences. As



Albuquerque police chief Jerry Glavin has noted, "If [cops] have a mindset that the goal is to take out a citizen, it will happen."⁸



The lines that have traditionally separated the military mission from the police mission are getting badly blurred. Paramilitarism threatens civil liberties, constitutional norms, and the well-being of all citizens. Thus, the use of paramilitary tactics in everyday police work should alarm people of goodwill from across the political spectrum.

This paper will examine the militarization of law enforcement at the local level, with particular emphasis on SWAT (Special Weapons and Tactics) units. The paper will conclude that the special skills of SWAT personnel and their military armaments are necessary only in extraordinary circumstances.

The deployment of such units should therefore be infrequent. More generally, Congress should recognize that soldiers and police officers perform different functions. Federal lawmakers should discourage the culture of paramilitarism in police departments by keeping the military out of civilian law enforcement.

A Brief History of the Relationship between the Military and Civilian Law Enforcement

The use of British troops to enforce unpopular laws in the American colonies helped to convince the colonists that King George III and Parliament were intent on establishing tyranny.⁹

The Declaration of Independence specifically refers to those practices, castigating King George for "quartering large Bodies of Armed Troops among us" and for "protecting [soldiers], by mock Trial, from Punishment, for any Murders which they should commit on the Inhabitants of these States." The colonists complained that the king "has kept among us, in Times of peace, Standing Armies, without the consent of our Legislatures. He has affected to render the Military independent of, and superior to, the Civil Power."

After the Revolutionary War, Americans were determined to protect themselves against the threat of an overbearing military. The Founders inserted several safeguards into the Constitution to ensure that the civilian powers of the new republic would remain distinct from, and superior to, the military:

The Congress shall have Power . . . To declare War . . . To raise and support Armies . . . To make Rules for the Government and Regulation of the land and Naval Forces . . . To provide for organizing, arming, and disciplining, the Militia. ¹⁰

No State shall, without the consent of Congress, . . . keep Troops, or Ships of War in time of Peace, . . . or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. ¹¹

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States. ¹²

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. ¹³

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law. ¹⁴

It is important to emphasize that those provisions were not considered controversial.³ The debate was only with respect to whether those constitutional safeguards would prove adequate. ¹⁵

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During the Civil War period the principle of civil-military separation broke down. President Abraham Lincoln suspended the writ of habeas corpus, and citizens were arrested and tried before military tribunals.

After the Civil War, Congress imposed martial law in the rebel states. And to shield the military's reconstruction policies from constitutional challenges, Congress barred the Supreme Court from jurisdiction over federal appellate court rulings involving postwar reconstruction controversies.¹⁷

The Army enforced an array of laws in the South and, not surprisingly, became politically meddling. In several states the Army interfered with local elections and state political machinery. Such interference during the presidential election of 1876 provoked a political firestorm.¹⁸

The Democratic candidate, Samuel J. Tilden, won the popular vote while the Republican candidate, Rutherford B. Hayes, garnered more electoral votes. The Republican victory was tainted by accusations that federal troops had stuffed the ballot box in a few southern states to favor Hayes. Negotiations between the political parties ensued and a compromise was reached. The Democrats agreed to concede the election to "Rutherford" Hayes (as disgruntled partisans nicknamed him) on the condition that federal troops be withdrawn from the South.¹⁹

The Republicans agreed.

The Army's machinations in the South also set the stage for a landmark piece of legislation, the Posse Comitatus Act.²⁰

The one-sentence law provided, "Whoever, except in cases and under such circumstances expressly authorized by the Constitution or by Act of Congress, willfully uses any part of the Army as a posse comitatus or otherwise to execute the laws shall be fined no more than \$10,000 or imprisoned not more than two years, or both."²¹

Southern Democrats proposed the Posse Comitatus bill in an effort to get Congress to reaffirm, by law, the principle of civil-military separation. President Hayes signed that bill into law in June 1878. Federal troops have occasionally played a role in quelling civil disorder — without prior congressional authorization — in spite of the plain terms of the Posse Comitatus Act. The U.S. Army, for example, was used to restore order in industrial disputes in the late 19th and early 20th century. Except for the illegal occupation of the Coeur d'Alene mining region in Idaho in 1899-1901, army troops were used by presidents to accomplish specific and temporary objectives — after which they were immediately withdrawn.²²

Federal troops and federalized National Guardsmen were called upon to enforce the desegregation of schools in Little Rock, Arkansas, in 1957; in Oxford, Mississippi, in 1962; and in Selma, Alabama, in 1963.

Over the past 20 years there has been a dramatic expansion of the role of the military in law enforcement activity. In 1981 Congress passed the Military Cooperation with Law Enforcement Officials Act.²³

That law amended the Posse Comitatus Act insofar as it authorized the military to "assist" civilian police in the enforcement of drug laws. The act encouraged the military to (a) make available equipment, military bases, and research facilities to federal, state, and local police; (b) train and advise civilian police on the use of the equipment; and (c) assist law enforcement personnel in keeping drugs from entering the country. The act also authorized the military to share information acquired during military operations with civilian law enforcement agencies.

As the drug war escalated throughout the 1980s, the military was drawn further and further into the prohibition effort by a series of executive and congressional initiatives: In 1986 President Ronald Reagan issued a National Decision Security Directive designating drugs as an official threat to "national security," which encouraged a tight-knit relationship between civilian [police and the military].⁴

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In 1987 Congress set up an administrative apparatus to facilitate transactions between civilian law enforcement officials and the military. For example, a special office with an 800 number was established to handle inquiries by police officials regarding acquisition of military hardware.²⁵

In 1988 Congress directed the National Guard to assist law enforcement agencies in counter-drug operations. Today National Guard units in all 50 states fly across America's landscape in dark green helicopters, wearing camouflage uniforms and armed with machine guns, in search of marijuana fields.²⁶

In 1989 President George Bush created six regional joint task forces (JTFs) within the Department of Defense.

Those task forces are charged with coordinating the activities of the military and police agencies in the drug war, including joint training of military units and civilian police. JTFs can be called on by civilian law enforcement agencies in counter-drug cases when police feel the need for military reinforcement.²⁷

In 1994 the Department of Justice and the Department of Defense signed a memorandum of understanding, which has enabled the military to transfer technology to state and local police departments. Civilian officers now have at their disposal an array of high-tech military items previously reserved for use during wartime.²⁸

All of those measures have resulted in the militarization of a wide range of activity in the United States that had been previously considered the domain of civilian law enforcement. As one reporter has observed, "Not since federal troops were deployed to the former Confederate states during Reconstruction has the U.S. military been so intimately involved in civilian law enforcement."²⁹

The Militarization of the Police Department

Not only is the military directly involved in law enforcement; police departments are increasingly emulating the tactics of the armed forces in their everyday activities. This aspect of the militarization phenomenon has gone largely unnoticed.

The Early American Police Force

In one sense, the paramilitarism in today's police departments is a consequence of the increasing professionalism of police in the 20th century. Professionalism essentially grants a monopoly of specialized knowledge, training, and practice to certain groups in exchange for a commitment to a public service ideal. While that may sound desirable for law enforcement officers, the effects of professionalism have, in many respects, been negative. Over the last century police departments have evolved into increasingly centralized, authoritarian, autonomous, and militarized bureaucracies, which has led to their isolation from the citizenry.

Early police departments were anything but professional. Officers were basically political appointees, with ties to ward bosses. Officers also had strong cultural roots in the neighborhoods they patrolled. Police work was more akin to social work, as jails provided overnight lodging and soup kitchens for tramps, lost children, and other destitute individuals.

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