



Written by [Joe Wolverton, II, J.D.](#) on February 8, 2014

## Militarized Police: The Standing Army the Founders Warned About

Cops storm a house wearing masks covering their faces, dressed in military special forces-style black uniforms and battle helmets. They bust down the door using a battering ram, then rush the occupants, seizing and breaking one camera and preventing another from recording the remarkable scene.



What was the heinous and violent crime of which the intended target of the raid was charged? Murder? Rape?

Credit card fraud.

This is the incredible, incomprehensible story told by Radley Balko in an op-ed published February 4 in the *Washington Post*.

Balko [includes a video](#) of the incident and the aftermath in his story. If you are concerned about the militarization of American law enforcement, watch this video and pass it around.

Regarding the police department's response, Balko explains:

Finally, note that police department officials say they “do not have a written policy governing how search warrants are executed.” That’s inexcusable. Most police departments do. But whether or not they’re governed by a formal policy, the use of these kinds of tactics for nonviolent crimes like credit card fraud is hardly unusual, and it’s happening more often, not less. I’ve reported on jurisdictions where all felony search warrants are now served with a SWAT team. At least one federal appeals court has now ruled that under the Fourth Amendment, there’s nothing unreasonable about using a SWAT team to perform regulatory inspections. To be fair, two others have ruled that such tactics are not reasonable. But it’s concerning that this would even be up for debate. We have plenty of discussion and analysis about when searches are appropriate. We also need to start talking about how.

Steadily and speedily, the force of the militarized police is denying citizens the protections of fundamental civil liberties afforded us by the Bill of Rights. While there remain legions of law enforcement officers devoted to protecting and serving their fellow citizens, the federal government’s proffer of powerful, free or almost free, weapons, vehicles, gear, and tactical training is making the allure of becoming an unofficial branch of the armed forces irresistible.

To his credit, Balko turns to the experience of our Founding Fathers with armed and aggressive enforcers of “the law” to inform our own understanding of the rising threat of a militarized police. As Public Affairs Books, the publisher of Balko’s *Rise of the Warrior Cop* book, explains:

The American approach to law enforcement was forged by the experience of revolution. Emerging as they did from the shadow of British rule, the country’s founders would likely have viewed police, as they exist today, as a standing army, and therefore a threat to liberty. Even so, excessive force



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and disregard for the Bill of Rights have become epidemic in today's world. According to civil liberties reporter Radley Balko, these are all symptoms of a generation-long shift to increasingly aggressive, militaristic, and arguably unconstitutional policing—one that would have shocked the conscience of America's founders.

During the Virginia ratifying convention, James Madison described a standing army as the "greatest mischief that can happen." His colleague and fellow delegate to the Constitutional Convention of 1787, George Mason put a finer point on it:

No man has a greater regard for the military gentlemen than I have. I admire their intrepidity, perseverance, and valor. But when once a standing army is established in any country, the people lose their liberty. When, against a regular and disciplined army, yeomanry are the only defence [sic], — yeomanry, unskilful and unarmed, — what chance is there for preserving freedom? Give me leave to recur to the page of history, to warn you of your present danger. Recollect the history of most nations of the world. What havoc, desolation, and destruction, have been perpetrated by standing armies!

In *The Federalist*, No. 29, Alexander Hamilton echoes not only Mason's warning against a standing army, but his solution to the threat, as well.

If circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist.

In commenting on Blackstone's *Commentaries*, founding era jurist St. George Tucker [speaks as if he foresaw our day](#) and the fatal combination of an increasingly militarized police force and the disarmament of civilians:

Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

The connection between this professional, civilian standing army and the attack on the right of the people to keep and bear arms has been recognized by contemporary liberty-minded scholars, as well.

In his essay, "The Right to Keep and Bear Arms under the Second and Fourteenth Amendments: The Framers' Intent and Supreme Court Jurisprudence," Stephen Halbrook writes:

Noah Webster, the influential federalist whose name still appears on dictionaries, stated: "Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed... ." *Pamphlets on the Constitution of the United States* 56 (P. Ford ed. 1888).

In a similar treatise, Joyce Malcolm, a historian specializing in 17th century English constitutional history, makes the same point:

Where does this leave the American Second Amendment, with its reference to a well-regulated militia necessary to the security of a free state, and its insistence that the right of the people to keep and bear arms shall not be infringed? I would argue that the Second Amendment mirrors



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English belief in the individual's right to be armed, the importance of that right to the preservation of liberty, and the preference for a militia over a standing army.

In an essay published in the *Wall Street Journal* last August, Radley Balko presented chilling and convincing evidence of the blurring of the line between cop and soldier:

Driven by martial rhetoric and the availability of military-style equipment — from bayonets and M-16 rifles to armored personnel carriers — American police forces have often adopted a mind-set previously reserved for the battlefield. The war on drugs and, more recently, post-9/11 antiterrorism efforts have created a new figure on the U.S. scene: the warrior cop — armed to the teeth, ready to deal harshly with targeted wrongdoers, and a growing threat to familiar American liberties.

Balko rightly connects the menace of the martial police with the decline in liberty and a disintegration of legal boundaries between sheriffs and generals:

Americans have long been wary of using the military for domestic policing. Concerns about potential abuse date back to the creation of the Constitution, when the founders worried about standing armies and the intimidation of the people at large by an overzealous executive, who might choose to follow the unhappy precedents set by Europe's emperors and monarchs.

Given the critical role played by sheriffs in the protection of constitutionally guaranteed liberty, it is dismaying to read story after story describing the eager acceptance — and occasionally the full-time petitioning — of military materiel by county lawmen.

If the threat of the police becoming a standing army of the sort our forefathers believed to be "[inconsistent with liberty](#)" is to be diffused, Americans must not only exercise their right to demand that police recognize their responsibility to abide by the law rather than break it, but we must also fiercely resist every attempt to abridge our right to keep and bear arms while keeping ourselves ready to defend that right against all enemies.

*Photo of Seattle Police SWAT team: AP Images*

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