



Will Privatization of Law Enforcement End Armed Violence Between Police, Protesters?

As flames of armed violence between police and protesters engulf more and more of the country, people of all political persuasions are beginning to search for solutions to the seemingly endless strife.

One proposal is to privatize police power. This is certainly not a new idea, but it is one that is percolating back to the surface of public discourse in the days since several law-enforcement officers were killed in Dallas.



Privatizing the police, simply stated, means to return to the people the power of law enforcement, taking it from the government. As the situation stands today, almost all police power is possessed exclusively by some government entity — local, county, state, or federal.

Some concerned citizens are beginning to question the probity of having the police be the servants of the government, rather than of the people.

There is historical precedent for the privatization of law enforcement.

As with so many other questions of the proper locus of power, our Founding Fathers rejected the idea that great power should be placed in the hands of government, at any level.

Hence, it should not be surprising that the Constitution grants no authority to the federal government to participate in law enforcement.

Even state constitutions at the time of the ratification of the federal Constitution did not contain provisions granting police power to the government. Most of these constitutions plainly set out the universally accepted policy that law enforcement was, as one writer explained, “a universal duty that each person owed to the community, rather than a power of the government.”

Constitutions drafted or in force at the time of the Founding mention law enforcement and the state together only insofar as the latter is explicitly excluded from encroaching upon the people’s natural right to execute the former.

In an article published in the *Seton Hall Constitutional Law Journal*, constitutional attorney and former federal prosecutor Roger Roots rehearses a forgotten aspect of American history regarding the role of the people in the carrying out of law-enforcement duties and how those duties came to be regarded as governmental rather than public responsibilities. Roots writes:

Law enforcement in the Founders’ time was a duty of every citizen. Citizens were expected to be armed and equipped to chase suspects on foot, on horse, or with wagon whenever summoned. And when called upon to enforce the laws of the state, citizens were to respond “not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities [were] convenient and at hand.” Any person could act in the capacity of a constable without being one, and



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when summoned by a law enforcement officer, a private person became a temporary member of the police department. The law also presumed that any person acting in his public capacity as an officer was rightfully appointed.

Laws in virtually every state still require citizens to aid in capturing escaped prisoners, arresting criminal suspects, and executing legal process. The duty of citizens to enforce the law was and is a constitutional one. Many early state constitutions purported to bind citizens into a universal obligation to perform law enforcement functions, yet evinced no mention of any state power to carry out those same functions. But the law enforcement duties of the citizenry are now a long-forgotten remnant of the Framers' era. By the 1960s, only twelve percent of the public claimed to have ever personally acted to combat crime.

The Founders could not have envisioned "police" officers as we know them today. The term "police" had a slightly different meaning at the time of the Founding. It was generally used as a verb and meant to watch over or monitor the public health and safety. In Louisiana, "police juries" were local governing bodies similar to county boards in other states.

Only in the mid-nineteenth century did the term "police" begin to take on the persona of a uniformed state law enforcer. The term first crept into Supreme Court jurisprudence even later.

Prior to the 1850s, rugged individualism and self-reliance were the touchstones of American law, culture, and industry. Although a puritan cultural and legal ethic pervaded their society, Americans had great toleration for victimless misconduct. Traffic disputes were resolved through personal negotiation and common law tort principles, rather than driver licenses and armed police patrol. Agents of the state did not exist for the protection of the individual citizen. The night watch of early American cities concerned itself primarily with the danger of fire, and watchmen were often afraid to enter some of the most notorious neighborhoods of cities like Boston.

At the time of Tocqueville's observations (in the 1830s), "the means available to the authorities for the discovery of crimes and arrest of criminals [were] few," yet Tocqueville doubted "whether in any other country crime so seldom escapes punishment." Citizens handled most crimes informally, forming committees to catch criminals and hand them over to the courts. Private mobs in early America dealt with larger threats to public safety and welfare, such as houses of ill fame. Nothing struck a European traveler in America, wrote Tocqueville, more than the absence of government in the streets.

Roots' article on this subject is heavily footnoted and anyone interested in a more thorough treatment of the subject of the consolidation by government of all police power is encouraged to read the piece in its entirety.

How, then, given the history of private law enforcement at the time of the Founding and before, did government come to control almost all such duties in our own time?

For much the same reason that government usurps any power naturally belonging to the people: power!

Bruce Benson is a professor at Florida State University and the author of the book *To Serve and Protect: Privatization and Community in Criminal Justice*. In this commendable analysis of the accumulation by government of law-enforcement obligations traditionally held by the community, Benson explains that government began interfering in law enforcement as a means of assuring that any fines owed by convicted criminals were paid into the coffers of government rather than to the victims of the crime, as had been the case traditionally for hundreds of years.



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Moreover, government craved control of the administration of justice as it provided an opportunity to dole out and deny favors to those in or out of the favor of the rulers. This enabled corrupt officials to control how much power was exercised over the public and by whom. Included in this pilfered prerogative, of course, is the power to exalt one's cronies by excusing their crimes.

There are those, of course, who would argue that while it may be true that, historically, much of the enforcement of laws in America was handled by the people in communities, times are different now and we have had publicly funded police for too long to go back.

In reality, however, according to the figures collected by Bruce Benson, there are today approximately three times as many private security personnel than government police forces employed in the United States today.

In fact, the railroads in Canada and the United States are secured by a private police force.

With that in mind, imagine the solutions to the problems of police brutality and brutality against police that American entrepreneurs could create if they were not prevented from doing so by government's zealous protection of its monopoly control of law enforcement.

While the foregoing does not answer all the critical questions created by the crescendo of armed confrontation between police and the public, the idea of privatization of police deserves to be among the proposals being considered to restore law and order to the United States.



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