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How Police Became a Standing Army

By John Payne

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On July 15, the Wisconsin Department of Natural Resources (DNR) sent 13 law-enforcement officers to execute a paramilitary raid on a no-kill animal shelter in Kenosha. The crime? The shelter was harboring a fawn that had been abandoned by its mother and named Giggles by shelter volunteers. The shelter intended to turn the animal over to a wildlife reserve the next day, but that was not good enough for the DNR. Wisconsin law forbids the possession of wildlife, so DNR sent the heavily armed team to capture and euthanize Giggles.

Eleven days later and less than 100 miles away, staff at a nursing home in the Chicago suburb of Park Forest called paramedics after 95-year-old World War II veteran John Wrana, suffering from a delusional episode, refused medical treatment. The paramedics in turn called the police, which further agitated Wrana, who threatened them with his cane and a knife. The police responded by shooting Wrana with stun guns and bean bags fired from a shotgun. Wrana died from internal bleeding shortly thereafter.

A generation ago, it is unlikely that either of these situations would have elicited such a violent response from law enforcement. But over the last 40 years, police have moved steadily towards increasing levels of force and militarization with little regard for the situation. Journalist Radley Balko has been documenting this phenomenon for nearly a decade, and in *Rise of the Warrior Cop* he explains how America has been transformed into a country where police conduct something on the order of 50,000 SWAT raids a year.

Balko starts with the provocative proposition that police as we know them in modern America are unconstitutional. “The Founders and their contemporaries would probably have seen even the early-nineteenth-century police forces as a standing army, and a particularly odious one at that,” Balko writes. “Just before the American Revolution, it wasn’t the stationing of British troops in the colonies that irked patriots in Boston and Virginia; it was the England’s decision to use the troops for everyday law enforcement.”

Balko links that decision to the oft forgotten Third Amendment, which forbids the quartering of troops in Americans’ homes against their will during peacetime. The Third Amendment is rarely litigated, and the Supreme Court has never heard a case primarily concerning the amendment, but Balko argues that it was included in the Bill of Rights out of a larger concern that a standing army could be used for the purposes of enforcing the law. “The actual quartering of British troops in the private homes of colonists was rare...It was the predictable fallout from positioning soldiers trained for warfare on city streets, among the civilian populace, and using them to enforce law and maintain order that enraged colonists.”

Balko calls this “more robust expression of the threat that standing armies pose to free societies” the “Symbolic Third Amendment.” He spends the vast majority of the book documenting how that concern has been whittled away by overeager cops, deferential judges, and politicians seeking to bolster their law and order credentials.

During Prohibition, some particularly zealous drys such as Henry Ford encouraged the federal government to use the military enforce the ill-conceived law. But the country repealed Prohibition before direct militarization of law enforcement—“the use of the standing military for domestic policing”—was ever seriously considered.

The trend towards police militarization did not begin in earnest until the 1960s, when law enforcement struggled with civil unrest and cracked down on the drugs associated with political dissidents and the counterculture. It also crept in subtly through “indirect militarization,” when domestic law enforcement agencies “take on more and more characteristics of an army.” That phenomenon can largely be traced to longtime Los Angeles Chief of Police Daryl Gates, who founded America’s first SWAT team.

Gates saw the weaknesses in the department’s response to the Watts Riots and a shootout with a sniper shortly thereafter. In his autobiography, Gates writes that he would have to “devise another method for dealing with snipers or barricaded criminals other than our usual indiscriminate shooting.” He formed an elite unit he called D-Platoon and arranged for them to train with Marines from Camp Pendleton at the Universal Studios lot.

The SWAT team was deployed for the first time in December 1969 to raid the Los Angeles headquarters of the Black Panthers. The operation did not go as planned. The team attempted to enter via the backdoor, which was blocked by a pile of dirt from an escape tunnel the Panthers had dug. That blew the officers’ cover and forced them to approach the front door, behind which the heavily-armed Panthers sat waiting. The Panthers opened fire and drove the SWAT team out of the building, beginning a three-hour standoff in which over 5,000 rounds of ammunition were fired.

Gates eventually asked Los Angeles Mayor Sam Yorty to request permission from the Department of Defense to fire a grenade into the building. Balko notes that this story is remarkable not because police used a grenade launcher in a city setting but because of “the procedures, the caution, and the trepidation that went into procuring the grenade launcher. About twenty years later, the Pentagon would begin giving away millions of pieces of military equipment to police departments across the country for everyday use—including plenty of grenade launchers.”

Miraculously, the raid on the Panther compound ended without any fatalities. Despite the tactical failure of the operation, it was a major media coup and brought a great deal of attention to the idea of SWAT.

The perceived success of the Los Angeles SWAT team in the Panther raid and in a shootout with the Symbionese Liberation Army in 1974 led to swift proliferation of SWAT teams in major cities across America, totaling 500 by 1975. These teams were originally staffed by elite specialists who trained to negotiate and de-escalate potentially violent situations whenever possible. But as the teams increased in number and spread into smaller cities, departments began staffing them with officers who participated in the SWAT team part-time and cut back on training that did not involve the use of force.

Heavily armed terrorist groups and hostage situations are not nearly as common as television would lead us to believe, so departments began deploying their SWAT teams for more routine work. As Balko puts it, “just about every decent-sized city police department was armed with a hammer. And the drug war would ensure there were always plenty of nails around for pounding.”

For instance, the drug war turned very literal in the summer of 1983, when drug czar Carlton Turner and California attorney general John Van de Kamp called in the National Guard to eradicate marijuana in Humboldt County. The federal government sent helicopters and even U-2 spy planes to spot pot plants in the Northern California forests, and officers enforcing the eradication program went from house to house, kicking in doors and searching the residences without warrants.

Meanwhile, the courts used the drug war to chip away at the protection that warrants once gave to Americans’ Fourth Amendment right to be secure in their persons and houses from unreasonable search and seizure. When serving a warrant, law-enforcement officers were traditionally required to knock and announce themselves and give residents time to allow them entry before the police could resort to breaking down the door. But in the 2003 decision *United States v. Banks*, the Supreme Court ruled that the primary concern should not be the amount of time residents would reasonably need to answer the door, but how much time it might take for them to start disposing of the evidence of drugs. That ruling effectively gave police the power to serve every drug warrant as if they were taking down Pablo Escobar.

With essentially no judicial checks on their behavior, the number of SWAT teams and raids continued to grow. By 2005, approximately 80 percent of towns with a population between 25,000 and 50,000 people employed their own SWAT team. Even seemingly innocuous federal

bureaucracies such as the Department of Education, the Department of Health and Human Services, and the Consumer Product Safety Commission had created their own tactical teams.

Given the number of SWAT raids executed every year, tragedies like the ones described at the beginning of this review are now inevitable. But Balko offers some suggestions for how to reverse the trend towards militarization and return SWAT teams to their limited role of responding to inherently violent situations.

Many of Balko's policy recommendations are almost as infuriating as the problems he identifies—not because they are wrong but because they are such obvious safeguards that it is difficult to fathom how they are not already in place. For instance, Balko suggests that SWAT teams should not be used for regulatory inspections. Police departments should also record any raids they conduct and document how many involve diversionary devices, such as flash-bang grenades, and what evidence is found, then make that information available to the public.

“If these tactics are going to be used against the public,” Balko writes, “the public at the very least deserves to know how often they're used, why they're used, how often things go wrong, and what sort of results the tactics are getting.” We would not tolerate this sort of opacity from a city utility company, yet it is the norm for bureaucracies that have the power to break into our homes with automatic weapons.

The biggest reform Balko proposes is ending the drug war, which he thinks will never completely happen. That may be true, but it is surprising that he does not mention the 2012 legalization of marijuana in Colorado and Washington, which may set off a potentially rapid trend towards legalization elsewhere. Such a massive policy change could conceivably herald a thorough rethinking of drug policy as a whole in the not-so-distant future.

The later chapters of the book contain a large amount of material that Balko published previously in magazines or online, and, although the content is just as strong, the narrative becomes choppy. The subject of the book is so immense, and many of the individual stories so compelling, that Balko could easily have written a book twice as long.

That is, of course, praise disguised as criticism. *Rise of the Warrior Cop* diagnoses a grave threat to our constitutional rights. If Americans still possess the wisdom of our Founders, we will heed Balko's warning and turn back our drift towards a police state.