



Who Watches the Watchmen? How Police Militarization Has Subverted the Constitution

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Introduction

“If I was in Antwon’s shoes, I would have run. It’s out of fear.”

- Raemon Prunty, *Friend of Antwon Rose*

In June 2018, East Pittsburgh police officer Michael Rosfeld shot and killed 17-year-old Antwon Rose II as he ran from the car the newly sworn in officer had recently stopped. Rosfeld had pulled the silver Chevrolet Cruze over because it matched the description of a vehicle that was suspected of being involved in a reported shooting just moment earlier. As Rosfeld questioned the driver of the vehicle, the two other occupants of the car ran from the scene. As captured on a camera phone video taken of the incident, Rosfeld then drew his weapon and fired three shots into the back of one of the occupants that was running away. It turned out to be Mr. Rose, who was pronounced dead at UPMC McKeesport hospital a short time later. The driver of the car Officer Rosfeld stopped was never charged, and now a traumatized community was left to deal with a dead young boy and the officer responsible for killing him.

The shooting of Antwon Rose ignited protests that rocked the city both immediately after the incident and during the trial of Officer Rosfeld. The officer was eventually found not guilty of all charges related to the shooting. As I followed the reports and the aftermath of the trial, I was curious about the policies that guide how police respond to crime or perceived threats to public safety. I wondered how the police could be held accountable for their actions as public servants, and what rights citizens have when interacting with law enforcement. Then, I began to think about that term: public servant. I wanted to consider whether the police were still viewed as public servants or as an invading force. If an officer felt he or she was a part of the community they served, would it change how they behaved in a given situation? What would happen if the members of a community viewed the police as allies instead of an invading force? Instead of police wearing the most intimidating gear, behaving aggressively, and constantly exerting force to control a situation, what would happen if a police officer looked to de-escalate a situation and treat the citizens with whom they interacted as neighbors instead of suspects? Finally, as I discovered more about the current state of policing in Pittsburgh and America, I was struck with the final and most important question; where do we go from here?

Rationale

Taylor Allderdice High School educates around 1,600 demographically diverse students and is located in the historically Jewish community of Squirrel Hill in Pittsburgh, Pennsylvania. As the engineering magnet for Pittsburgh Public Schools, Allderdice takes in students from nearly every neighborhood in Pittsburgh, a city that is a collage-like collection of distinct neighborhoods with different histories and populations. Therefore, students will come to the table with vastly different opinions of and experiences with the police. Students will also have varying degrees of familiarity with police militarization, but all have seen or talked with a police officer at least once in their lives. Teaching students about police militarization is crucial because they will have to continue to face the impact of a militarized police force throughout their lives and will also be responsible for keeping police accountable.

Objectives

1. Comprehend, analyze, and interpret the Declaration of Independence and the United States Constitution to provide a foundation in understanding a citizen's rights when it comes to law enforcement and policing.
2. Identify, discuss, and write about policy makers, court rulings, and police actions that have led to the current state of militarization in law enforcement.
3. Engage students with stories of police violence that result as a symptom of the warrior cop mindset.
4. Connect young people with community resources that will allow them to engage civically as well as in the oversight of their police department.

Content Background

The founders of the United States enshrined the Third, Fourth, and Fifth Amendments in our Constitution because they were deeply concerned about the power of government agents to infringe on our freedoms. Americans valued precedents such as the Castle Doctrine, they feared a standing army that enforced civilian laws, and they questioned the wisdom of allowing the state to seize property without a properly obtained warrant. These philosophies were long respected until the fervor and zealotry of the War on Drugs gripped the nation. Laws drafted by policymakers and decisions made by the Supreme Court initiated a trend towards militarization and warrior policing, in both the city of Pittsburgh and nationally. Police officers trained in military tactics and equipped with military weapons now roam our streets; a fate the Third Amendment had hoped to protect against. No knock raids occur regularly, in clear defiance of the original intent of the Castle Doctrine and Fourth Amendment. The Fifth Amendment is ignored as civil asset forfeiture incentivizes the state to seize personal property. Recently, prominent voices have started countering drug war rhetoric, pushing for accountability and procedural justice in our police departments, and suggesting a switch to a guardian mindset. Meanwhile, our democracy hangs on by a thread.

The Foundations of Freedom

“One of the most essential branches of English liberty is the freedom of one’s house. A man’s house is his castle.”

– James Otis, on the Writs of Assistance, 1761

The fear of troops being quartered in colonists’ homes manifested itself in the form of the Third Amendment, which states that, without the consent of the owner, “no soldier shall, in time of peace be quartered in any house.” It may seem trivial at first, but with the oppression of British rule still fresh in their minds, Americans were hesitant to accept standing armies roaming around American communities during times of peace. Although the Founders did eventually agree a standing army was necessary, they did not want that body enforcing laws against American citizens.¹ There were few challenges to the Third Amendment’s powers, an exception being the Cushing Doctrine, named after US Attorney General Caleb Cushing. It gave US marshals the ability to call up military forces to help them enforce federal law, without explicit authorization from Congress or the President.² However, shortly after the backroom deal that saw Rutherford B. Hayes elected President in 1876, the Posse Comitatus Act was passed as an amendment to an Army appropriations bill. The Act ensured that only Congress or the President could give approval to use troops as an enforcement mechanism for federal law. This reassured Americans that when they were walking the streets, it would feel like a community not a war zone.

Perhaps the most influential aspect of British common law that America inherited is the Castle Doctrine.³ As defined by Radley Balko, the author of *Rise of the Warrior Cop: The Militarization of America’s Police Forces*, the Castle Doctrine is inspired by a sentiment that the home is a place of “refuge, peace, and sanctuary.” In other words, that “a man’s home is his castle.” Essentially the Castle Doctrine guaranteed that in order for government agents to gain access to a home they needed to knock, announce and identify themselves, state their purpose, and give the occupants the opportunity to let them in peacefully.⁴ These requirements were based on very real concerns about abuse. The occupants of the home needed to know if those wishing to enter had the authority to do so. If the government agents did not properly identify themselves, the occupants would have no idea whether the person at their door was an officer of the law or a stranger ready and willing to do them harm. When the time came to ratify the Constitution and Bill of Rights then, the Castle Doctrine fundamentally motivated the language of the Fourth Amendment. The protections against unreasonable search and seizure, and the assurance that warrants were only issued if they had probable cause, were supported by Oath or affirmation, particularly describing the place to be searched, and the person or things to be seized gave Americans a sense that indeed their home was their castle.

Americans were also deeply concerned about the state’s ability to seize private property, and then use it as they saw fit. The Fifth Amendment sought to check this overreach by laying out guarantees that no person “shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.” If the state was afforded power to seize property under false or weak pretense, it was easy to see how quickly it would incentivize behaviors for the government to find a reason, any reason, to act on that power. The Fifth Amendment gave Americans assurance that their lives, liberty, and property would remain theirs unless the state found a credible reason to take it away and then proved that reason in court.

Early Policing in America and Pittsburgh

“The citizen expects police officers to have the wisdom of Solomon, the courage of David, the strength of Samson, the patience of Job, the leadership of Moses, the kindness of the Good Samaritan, the strategical training of Alexander, the faith of Daniel, the diplomacy of Lincoln, the tolerance of the Carpenter of Nazareth, and, finally, an intimate knowledge of every branch of the natural, biological, and social sciences. If he had all of these, he might be a good policeman.”

- August Vollmer

The police forces that currently patrol American streets would have been inconceivable to citizens and politicians alike at the founding of the nation. Before independence, most colonial towns were largely homogeneous societies that relied on shunning and informal justice such as public shaming to police the populace. As time passed and cities grew, various methods of policing sprang up in different regions of the country. In the more culturally diverse North, night watch patrols kept an eye out for drunks and other low level offenders, while steering clear of attempting to control mobs and rioters.⁵ The City of Pittsburgh reflected this trend in early policing. On March 4th, 1816 an Act of Assembly established Pittsburgh as a city and provided for a night watch. The duties of the night watch included maintaining city street lamps and alerting the city, with a population of around 10,000, of any fires.⁶ Slave patrols became the dominant form of policing in the still agrarian South. These patrols were tasked with returning escaped slaves to their masters. In the rugged West, vigilantism and reliance on private police forces such as the Pinkertons left much to be desired in the way of procedurally just law enforcement. As time passed, and countries such as Britain attempted to create their own police forces, it became obvious that America needed a standard to hold its police to as well.

In 1846, the first modern police department was formed in the United States.⁷ The still relevant fear by Americans of soldiers on the streets meant that these early police forces were unarmed and did not wear uniforms. Police were forced to live in the wards they patrolled and were nominated by ward leaders to then be appointed by the mayor. Commanders also had more discretion to enforce the law according to the individual circumstances of the community.⁸ In 1857, Pittsburgh established its police department under the direction of Robert Hague as the Chief of Police, who oversaw members known as officers.⁹ Pittsburgh police had made some efforts to professionalize early on. Officers were forced to submit formal applications backed by oath or affirmation, and the Chief reported directly to the Mayor.¹⁰ However, to pretend these early systems were wholly effective would be a delusion. Police received no formal training, they were often quick to act violently, crime was nearly unaffected, and the job itself had become a patronage position. Progress had been made since founding the country, but as America moved into the 20th century, the time for professionalism in policing had come.

The man most credited with championing the professionalism movement within policing was August Vollmer.¹¹ In his time as chief of police from 1905 to 1932 in Berkeley, California he focused on creating a “modern police organization: a centralized, authoritarian, bureaucracy focusing on crime control.” Vollmer began the use of many aspects of policing we find commonplace today; the use of squad cars, police radios and lie detector tests to name a few. Alongside many other departments across the country, Pittsburgh also began modernizing its police force around this time but at a seemingly slow rate. In 1907, the City of Pittsburgh incorporated the City of Allegheny to push the population of Pittsburgh to around 500,000.¹² This led to changing crime trends and demands for officers. Perhaps the most significant change of the time came when

the department discontinued its use of horses in 1924, and instead began using model T's as squad cars.¹³ Professionalism was slow to come to Pittsburgh though, and it would take until 1950 for the city to introduce formal recruit training.¹⁴ The gains made through professionalism came at a cost. Police departments became insulated from political accountability with the loss of the patronage system. Cops interacted less with citizens as they no longer walked their beats, and instead stayed in squad cars. The only time officers spoke to citizens was when a crime was being reported or when police were questioning a suspect. The practices led to a widening disconnect between the police and those they were supposed to be protecting.

As the 1960's loomed, America dabbled in what was one of the founder's greatest fears, direct militarization, defined by Radley Balko as, "the use of the standing military for domestic policing." The Militia Act of 1903 had taken what was left of state militias after the Spanish-American war and converted them into the National Guard. In 1932, Herbert Hoover ordered the US Army, led by Gen. Douglas MacArthur and Maj. George S. Patton, to disperse a group of protesting World War I veterans. Then came Little Rock in 1957, where President Dwight Eisenhower ordered the 101st Airborne Division to escort a group of black students to Central High School after the school was forced to integrate after *Brown v. Board of Education*. Although America had used direct militarization, it was used sparingly, with a clear understanding of the significance of the action taken. The insidiousness of indirect militarization however, proved to be the bigger threat. Soon, America's police forces would begin appearing more like the standing army of soldiers on the streets the founders had originally feared, and these soldiers would have a new war to fight.

The War on Drugs and the Rise of Militarization

"He moves through Harlem, therefore, like an occupying soldier in a bitterly hostile country; which is precisely what, and where, he is, and is the reason he walks in two's and three's."

- James Baldwin, *Fifth Avenue, Uptown*

When analyzing how American law enforcement got so militarized, it is important to understand that the system is complex and has been built over decades, through decisions both large and small. When Richard Nixon made his speech on June 17th, 1971, in which he decried drug abuse as "public enemy number one" and asked for emergency powers and funding to "wage an all out offensive," he unofficially began the War on Drugs. Nixon's adoption of the military model and the language of war encouraged the crime-fighting function of police work, which according to the researcher Peter Kraska "promotes a warlike approach to crime and drug problems." The most troubling aspects of this approach were a sharp rise in the formation and use of SWAT teams, paramilitary style no-knock raids, and incentivizing property seizure through civil asset forfeiture. By looking at these three major pillars, we can come to understand how policymakers, judges, and the public all played a role in turning our police into soldiers.

SWAT and Paramilitary Policing

Wars need soldiers, and if the War on Drugs was going to be fought on American streets, only a specialized force could handle such a task. The riots in the Watts neighborhood of Los Angeles in 1965 and the UT Austin shooting in 1966 proved that tactics of policing at the time were not quite capable of diffusing large-scale riots or urban snipers effectively. That is where inspector Daryl Gates of the LAPD stepped in. Gates researched military and guerilla tactics and, without sanction, had officers in the department trained by former military personnel. When newly sworn in Chief Thomas Reddin created a unit called Tactical Operations Planning, he

knew Gates was the man to put in charge. Gates famously attempted to name the new unit he was training SWAT, standing for Special Weapons Attack Teams.¹⁵ Deeming the word “attack” perhaps a little too unpalatable to the public Gates decided on Special Weapons and Tactics. Today, SWAT teams are also identified as Special Response Teams (SRT) or Emergency Response Units (ERU), but their functions remain the same. To be considered a police paramilitary unit they must train and function as a military special operations team with a strict command structure, threaten to use legitimate state authority and force, and employ military garb and equipment.¹⁶ These units have acquired their equipment and training from decisions made by policymakers.

In 1968, Lyndon Johnson created the Bureau of Narcotics and Dangerous Drugs (BNDD), the first federal agency that was given the job of enforcing federal drug laws.¹⁷ In that same year, the Omnibus crime bill established the Law Enforcement Assistance Administration (LEAA). This agency proved fundamental to the spread of military tactics and equipment to state and local agencies through its funding apparatus. The first SWAT raid took place in 1969 on the Black Panther Party for Self-Defense’s Los Angeles headquarters. The incident was almost a disaster, requiring Gates to call in the use of a grenade launcher before the Black Panthers eventually surrendered. Four Black Panthers and four LAPD officers were wounded, yet somehow no one was killed. The raid was deemed a success as six Panthers were arrested and jailed.¹⁸ Gates had taken extreme caution in attempting to use the grenade launcher, going so far as to call Washington for approval. His actions stand in contrast with how police would readily use military equipment in the decades to come. As police departments from around the country took notice of the Black Panther raid and the tactics used, they began to crave their very own version of SWAT.

In 1970, Thomas Dodd of Connecticut sponsored the Omnibus Narcotics Bill, a version of which would become the Controlled Substances Act. The bill gave sweeping powers to enforce drug prohibition federally through the commerce clause, which gave Congress the power to regulate interstate commerce.¹⁹ President Richard Nixon signed the bill into law on July 9, 1970. Nixon would fund his War on Drugs through the LEAA, and would create a new agency to carry out his orders. Myles Ambrose, a man known for his aggressive style of drug enforcement, headed the Office of Drug Abuse Law Enforcement (ODALE) created by Nixon.²⁰ When ODALE expired in 1973, the office became the Drug Enforcement Agency (DEA) that we know today. Ambrose was a believer in paramilitary style policing, and under his guidance ODALE would be at the forefront of expanding the role of SWAT teams in routine policing. There was only one SWAT team in the United States in 1970, but by 1975 that number had reached approximately 500.²¹ This proliferation of paramilitary units corresponded with little oversight, as evidenced by the city of Pittsburgh’s efforts. Official information about when SWAT was officially established in Pittsburgh is unavailable, along with public information about police actions during the critical decades of the sixties, seventies, and eighties. Only in 1997 would official data start to become available about the Pittsburgh Police. The lack of oversight and accountability in Pittsburgh and nationally, and the expanded use of paramilitary policing led to countless examples of botched raids and dead civilians, perhaps none more famous than the raid of Dirk Dickenson’s home in Humboldt County, California. Backlash from many of these raids led to what would be a reprieve in the spread of SWAT teams under President Jimmy Carter, but in the 1980’s paramilitary policing would receive its biggest boost.

Ronald Reagan advanced militarization by increasing how involved the military was with civilian law enforcement. In 1981, the Military Cooperation with Law Enforcement Act was added as an amendment to the Posse Comitatus Act. It would open up access of military level intelligence, bases, equipment, and training to local and state law enforcement agencies.²² National Security Decision Directive 221 labeled drugs as a national security threat, leading to the involvement of the CIA, State Department, and military “in the planning

and execution of large counter-narcotics operations”.²³ The National Defense Appropriation Act for Fiscal Year 1987 funded the National Guard’s full participation in local law enforcement, with the most impactful result being increased access to National Guard aircraft.²⁴ Last but certainly not least, the 1987 policy that established an office in the Pentagon to distribute military equipment to local law enforcement ensured that America’s police would not only dress and act like the military, but have the same weapons as them too. By the end of the Reagan era, the drug war became a full-blown conflagration. George H.W. Bush and his drug czar William Bennett could easily be overlooked when considering the decade. However, their support for the Byrne grants instituted by the 1988 crime bill meant they helped send billions of dollars to local departments in a way LEAA never could.²⁵ This aided in the expansion of more joint task forces between the military and police to enforce drug laws. All of these policies had led to a 939% increase in SWAT team call outs from 1980 to 1995.²⁶ These trends would continue into the nineties and beyond.

The beginning of the 1990’s saw policy makers continue to increase the militarization of police by literally enlisting the military to help with domestic law enforcement. In 1989, the budget for the program that utilized the National Guard had \$40 million budgeted for drug interdiction. By 1992, that number had climbed to \$237 million.²⁷ Due to this massive increase in funding, by the end of 1992 the National Guard had assisted in almost 20,000 arrests and had over 1,200 raids on buildings without a search warrant.²⁸ The most lasting effect of these efforts was the fact that every day citizens were desensitized to the military participating in civilian law enforcement.

Bill Clinton moved into the White House in January of 1993, but a less militaristic approach to policing did not follow, despite the hopes of many. Clinton continued the cooperation between the military and civilian law enforcement with the approval of the Department of Justice and Department of Defense Joint Technology Program in 1993 and the National Defense Authorization Security Act of 1997. These programs facilitated the transfer of military equipment such as flash bang grenades, stun guns, and sound cannons to local law enforcement. They also created what is known as the 1033 program, which would further help in the distribution of millions of dollars of military equipment. So much so, that between 1997 and 1999, \$727 million worth of equipment, such as helicopters and grenade launchers, was doled out to local police departments.²⁹ Clinton also worked to infuse agencies with former military personnel by subsidizing police departments for hiring returning veterans through the “troops to cops” program. Clinton hired a veteran himself when he selected Barry McCaffrey as his drug czar. McCaffrey was a retired general. Clinton even found a way to turn a new idea to reign in militarization, community policing, into a program that would support it. The Community Oriented Policing Services (COPS) program was intended to help departments hire more officers to implement community policing, an idea that focuses on building connections with citizens and catering law enforcement to the specific needs of each locality. Departments certainly hired more officers. The problem was that no one really had a clear definition of what community policing meant. So much so, that two out of every three departments in the country viewed using SWAT as an actual community policing strategy.³⁰ Therefore, departments got more officers who were trained and equipped like soldiers, instead of officers focused on de-escalation and conflict resolution. In 1980, there were approximately 3,000 paramilitary raids in the United States. In 1995, the number had reached around 30,000.³¹ It was clear that a militarized police presence was becoming more and more common in American neighborhoods.

Since the turn of the century, most drug policy in the United States has been guided by the Department of Homeland Security (DHS) and motivated by the War on Terrorism. George W. Bush and his drug czar, John Walters, exploited the fear in the aftermath of the 9/11 attacks to further militarize the police. In the ten years after September 11th, 2001, DHS pumped \$34 billion in anti-terror grants to local law enforcement agencies.³²

The department paired the funds with little to no oversight of how they were spent or what was done with the equipment after it was purchased. As of 2007, an estimated 45,000 SWAT team deployments were conducted each year.³³ Then, in 2009, Barack Obama and his drug czar Michael Botticelli oversaw an unprecedented \$2 billion infusion of funds into the Byrne grant program.³⁴ Obama also increased 1033 funding, as well as immigration, opioid, and medical marijuana raids. It would be hard to argue against using SWAT for terrorist or hostage situations, but these specialized units are used to execute search and arrest warrants 66% of the time.³⁵ Therefore, Americans regularly see SWAT teams enforcing no-knock raids on citizens suspected of non-violent crimes. It is clear now that the Third Amendment has been subverted as police who are dressed and equipped like soldiers roam our streets. However, it is also critical to understand the no-knock raid as it represents SWAT's primary enforcement mechanism and presents a unique danger to the Fourth Amendment.

The No-Knock Raid

The primary purpose of a no-knock raid is typically to collect evidence from a private residence. Law enforcement can ignore the knock and announce rule, and SWAT teams often employ tactics such as using battering rams and flash bang grenades as they enter a residence. However, the dynamic nature of these entries often creates conditions that place both police and citizens in volatile and dangerous situations.³⁶ There have been of 275 instances of botched SWAT raids on private residences,³⁷ and all of this could have been avoided had the Supreme Court made different decisions throughout the War on Drugs.

In the 5-4 Supreme Court decision in *Ker v. California*, Justice Tom Clark coined the term "exigent circumstances" and codified common law exceptions to the knock and announce rule. Police could forego the knock and announce rule if they felt doing so would result in the suspect destroying evidence. Police could also claim exigent circumstances if they believed knocking would jeopardize their safety. After the Supreme Court's decision in *Ker*, New York Governor Nelson Rockefeller wanted police to have the ability to get a special warrant authorizing them to ignore the knock and announce requirement, known as a no-knock warrant.³⁸ The Governor got what he wanted, if only for a short time, but no-knock raids had now been legitimized and would soon be used all too often.

The primary enforcement mechanism used by Nixon's ODALE was the no-knock search warrant, and these warrants were to be served by trained SWAT teams. With the increase in SWAT came an increase in their use of no-knock search warrants. From 1967 to 1971 only four no-knock search warrants were carried out. During the first seven months of ODALE's existence there had been more than 100.³⁹ The reality was that teams of militarized police were regularly and violently forcing their way into the homes of citizens merely suspected of nonviolent crimes, without announcing their purpose or authority. It's hard to imagine the founders being anything but horrified by this proposition.

The reshuffling of the Supreme Court in the seventies set the stage for the laundry list of decisions they would make in the eighties. These decisions would effectively do away with the Fourth Amendment and the Exclusionary Rule that held that evidence collected in an illegal search could not be used at trial. First was *US v. Leon*, where the Court ruled that if an officer inadvertently violated the Fourth Amendment in a search, but was acting "in good faith," the exclusionary rule no longer applied. The Court's decision in *Segura v US* soon after meant that the police could break into a citizen's home without a warrant, then put the search on hold until a warrant was acquired. The police could do this because, according to the Court, the police had yet to begin searching, even after breaking in. Then came *Nix v Williams*, in which the Court first mentioned the idea of "inevitable discovery". They decided that if police would have likely found evidence during a legal search

then it did not matter if the search was actually illegal.⁴⁰ The final hammer blow of the decade came in *Florida v. Riley*. The case hinged on the Open Fields Doctrine, which was based on a previous decision that ruled law enforcement could trespass on private property without a warrant to search for crimes.⁴¹ In the case, the Court ruled that it was not a violation of a person's Fourth Amendment rights for the police to fly a helicopter low enough to spy on private citizens without a warrant. It was clear that by the end of the decade you could now violate a person's Fourth Amendment rights even if you didn't acquire a warrant, but it didn't get any better when law enforcement actually sought a judge's permission.

No-knock and forced entry raids were to be kept in check through the discretion of judges issuing the warrants. However, tactics such as magistrate shopping ensured that securing a no-knock warrant was almost guaranteed in any situation. To add to the problem, the Supreme Court's rulings throughout the 1990's and 2000's helped to fully entrench the no-knock raid in policing. Decisions in *Wilson v. Arkansas*, *Richards v. Wisconsin*, and *US v. Ramirez* led some states to begin conducting no knock raids in any drug investigation.⁴² The opinions gave police the right to ignore a magistrate's ruling against using a no-knock raid and gave law enforcement discretion to forego the announcement requirement based on a mere "reasonable suspicion" that exigent circumstances had been met.⁴³ The 2003 unanimous decision in *US v. Banks* ruled that fifteen to twenty seconds was sufficient time to wait after knocking before entering into a private residence. Meanwhile, the 6-3 decision in *Hudson v. Michigan* in 2006 ensured that even when the police conducted an illegal no-knock raid, and illegally obtained evidence, that evidence could still be used in court. Then came the deathblow of *Kentucky v. King*. In an 8-1 vote, the justices ruled that officers could forcibly enter a home without a warrant even if exigent circumstances existed because the police created them.

No-knock raids have been used by large enforcement for decades, in communities both large and small. Pittsburgh officers participated in close to 3,000 no-knock raids in 2017⁴⁴, so the problem is not going away. The founders would be appalled to know that government agents so readily ignore the Castle Doctrine. They would be even more disturbed to know that when police do break down a citizen's door without knocking and announcing, afterwards they would be able to take that citizen's personal property and use it to fund their future operations. However, the practice of civil asset forfeiture allows police departments to do just that.

Civil Asset Forfeiture

Ronald Reagan supported so many policies to advance the aims of police militarization in the eighties it is almost hard to keep track of all he did. Reagan's cultural conservatism was hell bent on taking on crime and drugs as a moral imperative. Drug addicts were simply bad people who had to be locked away. It was also ironic that Reagan, forever the hero of so-called limited government, would oversee a massive expansion of the federal role in local law enforcement. He would do this primarily by supporting and expanding the use of civil asset forfeiture. Today, civil asset forfeiture essentially gives the government authority to seize property it believes is sufficiently connected to criminal activity.⁴⁵ Law enforcement does not even need to prove a crime was committed in court in order to seize property, thus expressly going against the Fifth Amendment's guarantee of due process.

In the late seventies, Robert Blakey came up with an idea of how the government could seize the assets of those caught up in the drug war. Blakey's idea was that once even a single member of a criminal organization was convicted of a crime, prosecutors could seek to obtain everything that criminal enterprise spent and earned.⁴⁶ Law enforcement would soon put these Racketeering Influenced and Corrupt Organizations (RICO) laws to use. The 1982 crime bill expanded asset forfeiture by lowering the standard of confiscation to a mere

“suspicion” of having been used in a crime. Not to mention the added use of substitute assets, which essentially allowed the government to estimate how much money had been made from the drug trade and then seize that amount from suspects. The 1984 Omnibus crime bill was next and authorized law enforcement involved with federal drug investigations to share in any assets the case might produce. There was now incentive to increase enforcement of drug laws and raids on homes because each raid represented a potential source of revenue. This truth is reflected in the data. In 1985, the Justice Department’s forfeiture fund was valued at \$27 million. By 1991, the amount had ballooned to \$644 million.⁴⁷ By 2014, departments alone received nearly \$4.5 billion in forfeiture proceeds.⁴⁸ In Allegheny County, home to Pittsburgh, agencies seized nearly \$4.3 million of assets from citizens in 2012.⁴⁹ To add even more fuel to the fire, local and state efforts to curb civil forfeiture have been undercut by the federal government’s practice of equitable sharing. In 2013, the DOJ shared payouts amounting to \$643 million with local agencies.⁵⁰

Since civil forfeiture requires fewer procedural barriers than criminal or administrative forfeiture, departments use the practice when a criminal conviction is not necessary. After seizing assets in this manner, law enforcement then faces very few regulations and accountability on how the funds are spent.⁵¹ All of this begs the question, what are departments spending all this money on? The answer is whatever they want. From more military style equipment and training, to travel and entertainment expenses, law enforcement is free to spend the assets they have seized as they see fit.

Demilitarizing Our Police

“People are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do . . . The public confers legitimacy only on those they believe are acting in procedurally just ways.”

- From the *Final Report of the President’s Task Force on 21st Century Policing*

After considering the proliferation of SWAT teams, no-knock raids, and civil asset forfeiture it is clear that the subversion of the Third, Fourth, and Fifth Amendments is now complete. The Castle Doctrine has been effectively dismantled. Local, state, and federal law enforcement departments have been trained by military personnel and are using military weapons in no-knock raids. These departments use military jargon to describe their operations and use military titles. Police officers can legally create their own justification for raiding the homes of citizens who have been merely suspected of crimes. Most of the property officers confiscate from suspects can then be used to fund future missions. Judges fail to exercise their discretion and police officers are essentially given carte blanche to police as aggressively as they want. Few municipalities have the proper oversight mechanisms to ensure accountability. Politicians continue to run on tough on crime policy proposals and incentivize police militarization through both their words and budget proposals. The reality of police militarization is frightening, and yet this reality has been pieced together, bit by bit, over more than 50 years. The process of militarizing our police was a slow build. Dismantling the apparatus will take just as long. However, there are concrete steps that governments and citizens can take to hold law enforcement accountable and begin the demilitarization of America’s cops.

Community Control of Law Enforcement

The Pittsburgh Police Department came under intense scrutiny in the 1990’s. The Department of Justice began looking into patterns of reported abuse by the city’s police force after the case of Jonny Gammage, an African

American man who died of asphyxiation after being pulled over for driving erratically. The case garnered media attention and was the spark that ignited new accountability; Pittsburgh entered into the first federal consent decree in 1997 and formed the Civilian Police Review Board (CPRB). The board was tasked with listening to citizen complaints and then making recommendations about officer discipline. Across the country, there are over 200 similar entities charged with oversight of law enforcement agencies.⁵² Pittsburgh Police were also forced to institute an “early warning system” that would track officers who used force excessively, undergo diversity and communication training, and scale back use of tactics such as strip searches. This mirrors trends in other cities, where local police departments lacked sufficient data collection for decades and were unable or unwilling to identify instances of misconduct. Instituting a review board and data tracking can lead to significant transparency and accountability. However, it is imperative that these oversight agencies are independent and have the power to hire and fire officers, determine disciplinary action in cases of misconduct, set and enforce department policies, and retain subpoena power to be effective in their mission.⁵³

When the consent decree expired in 2002, Pittsburgh was an example of progressive policing and inspired other departments across the country to adopt similar oversight.⁵⁴ However, with the lack of a consent decree, and with a review board only able to make recommendations regarding discipline to the Mayor and Chief of Police, Pittsburgh Police fell back into troubling patterns of abuse and excessive use of force while also displaying militarized tactics. In 2009, Pittsburghers attempted to take to the streets to protest the G 20 summit that was meeting in the city that year. Police employed military equipment and riot gear on the streets despite the fact that no large scale acts of violence occurred. The 2010 case of Jordan Miles involved an 18-year-old honor student who had been beaten viciously after police claimed they mistook his bottle of Mountain Dew for a gun. Soon after that, the 2014 shooting of Leon Ford ignited activism and community protests. Ford was paralyzed from the waist down after an incident in which police jumped into his vehicle and shot him five times after he began moving away from a routine traffic stop. Police were involved in so many instances of abuse, that between 2010 and 2015, the city paid out a staggering \$4.9 million on lawsuits against the police.⁵⁵ In 2017 alone, 617 allegations of police misconduct were filed to the CPRB. 302 of those complaints were for either conduct unbecoming of an officer or misconduct toward the public, while 41 were for use of force violations and 21 were for warrantless searches and seizures.⁵⁶ In that same year, only 67 total disciplinary actions were taken because of the complaints. The most common disciplinary action taken was an oral reprimand.⁵⁷ All of this goes to show that in order for oversight to be effective, community control of law enforcement needs to be independent and needs to retain actual disciplinary power. Otherwise, police will continue to avoid accountability for their militaristic misconduct and abuse. If the community’s efforts to hold police accountable fail, which they have in many cities across the country, the only hope citizens have is for the police to hold themselves to a higher standard. In many departments, commanders are placing a higher priority on community policing and procedural justice to change from warriors to guardians.

Procedural Justice

On December 18th, 2014, President Barack Obama issued Executive Order 13684 “in order to identify the best means to provide an effective partnership between law enforcement and local communities that reduces crime and increases trust”.⁵⁸ Obama was hardly the first person that attempted to identify the best ways communities and police could learn to see each other as allies instead of enemy combatants. Proponents of community policing such as Louis Radelet and Robert Trojanowicz supported actions by police that “emphasized community empowerment, cultivating constructive relationships with disenfranchised groups, and establishing partnerships between the public and police”.⁵⁹ Police chiefs around the country had at times embraced this idea. Jerry Wilson in DC in the sixties, Pierce Brooks in the seventies in Colorado, and Norm

Stamper in the eighties in San Diego all experimented with the idea to varying degrees of success. In recent times, Pittsburgh has started embracing aspects of the model that could help address issues of militarization and the warrior mindset within the department, but expectations should be realistic and framed in an understanding that systemic issues exist that limit the impact of reform in this way.

The very first recommendation from Obama's task force focused on warrior policing. It encouraged departments to embrace a guardian mindset and to adopt procedural justice principles to increase trust and legitimacy. The task force understood that "the public confers legitimacy only on those they believe are acting in procedurally just ways". That meant to ensure procedural justice departments had to treat citizens with respect in both words and actions, give individuals voice in encounters, be neutral and transparent in decision-making, and ensure the public felt their motives were trustworthy.⁶⁰ If an officer approached a scene, the principle of procedural justice would guide that officer to change their thinking about the encounter from "can I do this?" to "should I do this?" which could lead to less violent outcomes.⁶¹ Procedural justice is not just applied externally in how officers treat the public, but also internally in the way the department functions administratively.⁶² A department committed to internal procedural justice is dedicated to the idea of community policing, building partnerships, and organizational transformation.⁶³ This leads to another of the task force's recommendations that encourages police to invest in the community policing model. That meant police should make an effort to participate in nonenforcement events and create a diverse workforce that reflects the community. Pittsburgh presents an interesting example in studying the effectiveness of these ideas. As we have seen, Pittsburgh has its share of problems with warrior policing and militarization. However, the department has also shown willingness for reform at times.

In 2015, Pittsburgh was chosen as one of six pilot sites for the National Initiative for Building Community Trust and Justice.⁶⁴ The initiative identifies three pillars of building trust that are procedural justice, implicit bias, and reconciliation. This means that all Pittsburgh officers are receiving training in procedural justice principles and how to implement them, have undergone implicit bias training, and are required to participate in community events such as listening sessions.⁶⁵ The initiative also identified the need for enhanced training on de-escalation.⁶⁶ The data on the department will be compiled after six years into a final report to reveal the efficacy of the practices. It is encouraging that other cities across the country are also a part of the initiative, but it remains to be seen how the reforms will impact policies such as civil asset forfeiture or the use of no-knock raids. A heavy dose of skepticism should remain about how successful reform will be locally until changes also happen at the federal level.

Reformers should also proceed with caution because police militarization has escalated over decades and has advanced through the decisions of policymakers, judges, and individual chiefs and police officers. It has led to the subversion of our constitution and was advanced in the zealotry of the War on Drugs. These revelations indicate that one woman in the White House or one police chief in Pittsburgh cannot solve the problems of militarization and drug war policy. Rather, it is incumbent upon each one of us to begin the work of repairing the Constitution and reigning in the police. Decriminalization of marijuana and ending the demonization of substance abuse disorder by funding treatment facilities and harm reduction sites is a good first step to ending the War on Drugs. However, lawmakers and judges must put a stop to policies such as civil asset forfeiture, no knock raids, and stop and frisk. SWAT teams must exhibit restraint and only act in extreme cases with the utmost regard for the symbolism behind the Third Amendment. Police misconduct must result in accountability for responsible commanders and officers. Communities and police departments must try, as difficult as it may be, to mend old wounds and embrace cooperation. Individual cops must be dedicated to ethical behavior and transparency and end the glorification of violence within departments. The challenge is

daunting, but our peace officers are the public face of our laws and ideals. We must demand they be held to a higher moral and legal standard or else face the continued degradation of our democracy.

Teaching Strategies

Teachers should pull readings based on their judgment from the bibliography to cover with students, as well as requiring that students read all of the selections from the student reading list. In order to engage with the background information students will participate in a range of activities, limited only by the teacher's discretion. Teachers should strive to include traditional lectures, close readings, gallery walks, think-pair-share activities, small group and whole class discussions, town hall style question and answer sessions with guests, argumentative writing opportunities, and a process drama.

Gallery Walk

Engaging students in meaningful small group discussions will be critical in the unit. One possible way to promote cooperative learning would be to involve students in a gallery walk about the topic of police militarization. It is up to the teacher to determine about six prompts related to the unit topic and they then place them throughout the room. Small groups of students will then spend time at each station answering the prompts. The groups record their responses for other groups to see. After each group has visited each station, the teacher will bring the class together to review responses and discuss. The teacher could ask questions such as: What freedoms are guaranteed to Americans by the Bill of Rights? When you think of a police officer, what do you see? In what type of situations are SWAT teams necessary and unnecessary? The objective of the assignment is to begin thinking more deeply about the various topics that will be covered in the unit, therefore this activity should take place at an early stage.

Argumentative Essay

Improving students' argumentative writing is both a district and departmental goal, so this will serve as the Performance Task, and should take place before moving into the final phase of the unit that concerns ideas for reform and the process drama. A high priority should be placed on involving students in the research process and in the basic claim-evidence-commentary structure of argumentation. They should also be dedicated to exploring multiple perspectives and considering counter arguments to their argument.

There can be multiple prompts for the essay depending on the teacher's judgment. Perhaps the students can argue whether they believe a Supreme Court case stayed true to the founder's original intent. One could encourage the students to consider whether a certain police raid was warranted and successful, and if not, offer a plausible alternative for a better outcome given what we know now. The teacher could even propose students argue about the theme of *Ghost Boys* and how it relates to the modern debate around police violence.

Example Essay Prompt

Choose one of the following police raids to research: the Dirk Dickenson raid in Humboldt County, the MOVE bombing in Philadelphia, or the raid on the Black Panther Party Headquarters in Los Angeles. Write an argument that determines whether or not the police raid violated the constitutional rights of the citizens

involved. Find at least two primary source documents to use as the background content for your essay. Remember to use the claim-evidence-commentary structure for your argument, and be sure to include a paragraph that contains a refutation of a potential counterclaim. Your essay will be graded using the district's argumentative essay rubric.

Process Drama

The Performance Based Assessment for the unit will be a process drama centered on both the Rose case and the G-20 protests that took place in Pittsburgh in 2009. With large classes, two groups of students can participate, with one group taking the Rose case and one taking the G-20 protests. Students will then be tasked with following through on a review board's investigation into the police response. Roles will be given to each student, which will include some students acting as witnesses, members of the review board, or even as the officers involved. Cases will be presented and those on the board will have to make final recommendations based on the facts presented and the laws and policies guiding procedure. Students will be assessed on their preparation for the day of the performance and on their ability to argue about key facts surrounding the cases presented.

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Kraska, Peter B., and Louis J. Cubellis. "Militarizing Mayberry and Beyond: Making Sense of American Paramilitary Policing." *Justice Quarterly* 14, no. 4 (1997): 607-29. Examines the proliferation of military training and equipment to small law enforcement agencies across the United States. Reveals important data about no-knock raids and use of SWAT teams.

Altenburger, Christine. "The Pittsburgh Bureau of Police: Some Historical Highlights." January 1966, 19-37. <https://journals.psu.edu/wph/article/viewFile/2781/2613>. This journal article provides a concise and informative early history of Pittsburgh's police forces.

Final Report of the President's Task Force on 21st Century Policing. U.S. Department of Justice, Office of Community Oriented Policing Services, 2015. The report is the product of an Executive Order by President Barack Obama. The recommendations made by the task force represent many of today's most widely supported policing reforms.

Student Reading List

Baldwin, James. *Fifth Avenue, Uptown*. Perfection Learning Corporation, 1990. This piece originally appeared in *Esquire* and is a gripping image of poverty and life in a neighborhood harassed by the police and deprived of justice. Baldwin's words are eerily relevant almost 60 years later.

Rhodes, Jewell Parker. *Ghost Boys*. Little, Brown, 2019. An award-winning story about a middle school boy gunned down by a police

officer. The set-up closely mirrors the shooting of Antwon Rose and gives students the opportunity to make connections to instances of police violence, both real and imagined, through time.

“The Constitution of the United States of America.” *National Constitution Center*, constitutioncenter.org/interactive-constitution#. The foundational text of the unit, the United States Constitution will serve as the frame and lens through which students understand police militarization and how it threatens our democracy.

Williams, Rachel Marie-Crane. *Blue & Black: Stories of Policing and Violence*. 2012. Visually stunning and true depictions of police violence give students a glimpse of the impact on both individuals and communities.

Appendix

Reading Informational Texts

CC.1.2.11–12.G Integrate and evaluate multiple sources of information presented in different media or formats (e.g., visually, quantitatively) as well as in words in order to address a question or solve a problem.

CC.1.2.11–12.H Analyze seminal texts based upon reasoning, premises, purposes, and arguments.

CC.1.2.11–12.I Analyze foundational U.S. and world documents of historical, political, and literary significance for their themes, purposes, and rhetorical features.

Writing

CC.1.4.11–12.G Write arguments to support claims in an analysis of substantive topics.

CC.1.4.11–12.S Draw evidence from literary or informational texts to support analysis, reflection, and research, applying grade-level reading standards for literature and literary nonfiction.

Speaking and Listening

CC.1.5.11–12.A Initiate and participate effectively in a range of collaborative discussions on grade-level topics, texts, and issues, building on others’ ideas and expressing their own clearly and persuasively.

CC.1.5.11–12.D Present information, findings, and supporting evidence, conveying a clear and distinct perspective; organization, development, substance, and style are appropriate to purpose, audience, and task.

Endnotes

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41. Ibid., 173.
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