

Warrior Cops

The Ominous Growth of Paramilitarism in American Police Departments

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Over the past 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 law enforcement.

The 1980s and 1990s have seen marked changes in the number of state and local paramilitary units, in their mission and deployment, and in their tactical armament. According to a recent academic survey, nearly 90 percent of the police departments surveyed in cities with populations over 50,000 had paramilitary units, as did 70 percent of the departments surveyed in communities with populations under 50,000. The Pentagon has been equipping those units with M-16s, armored

personnel carriers, and grenade launchers. The police paramilitary units also conduct training exercises with active duty Army Rangers and Navy SEALs.

State and local police departments are increasingly accepting the military as a model for their behavior and outlook. The sharing of training and technology is producing a shared mindset. The problem is that the mindset of the soldier is simply not appropriate for the civilian police officer. Police officers confront not an “enemy” but individuals who are protected by the Bill of Rights. Confusing the police function with the military function can lead to dangerous and unintended consequences—such as unnecessary shootings and killings.

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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. To get perspective, it will be useful to consider some recent events:

- The U.S. military played a role in the Waco incident. In preparation for their disastrous 1993 raid on the Branch Davidian compound, federal law enforcement agents were trained by Army Special Forces at Fort Hood, Texas. And Delta Force commanders would later advise Attorney General Janet Reno to insert gas into the compound to end the 51-day siege. Waco resulted in the largest number of civilian deaths ever arising from a law enforcement operation.¹
- Between 1995 and 1997 the Department of Defense gave police departments 1.2 million pieces of military hardware, including 73 grenade launchers and 112 armored personnel carriers. The Los Angeles Police Department has acquired 600 Army surplus M-16s. Even small-town police departments are getting into the act. The seven-officer department in Jasper, Florida, is now equipped with fully automatic M-16s.²
- In 1996 President Bill Clinton appointed a military commander, Gen. Barry R. McCaffrey, to oversee enforcement of the federal drug laws as the director of the Office of National Drug Control Policy.³
- Since the mid-1990s U.S. Special Forces have been going after drug dealers in

foreign countries. According to the U.S. Southern Command, American soldiers occupy three radar sites in Colombia to help monitor drug flights. And Navy SEALs have assisted in drug interdiction in the port city of Cap-Haitien, Haiti.⁴

- The U.S. Marine Corps is now patrolling the Mexican border to keep drugs and illegal immigrants out of this country. In 1997 a Marine anti-drug patrol shot and killed 18-year-old Esequiel Hernandez as he was tending his family's herd of goats on private property. The Justice Department settled a wrongful death lawsuit with the Hernandez family for \$1.9 million.⁵
- In 1998 Indiana National Guard Engineering Units razed 42 crack houses in and around the city of Gary. The National Guard has also been deployed in Washington, D.C., to drive drug dealers out of certain locations.⁶
- In 1999 the Pentagon asked President Clinton to appoint a "military leader" for the continental United States in the event of a terrorist attack on American soil. The powers that would be wielded by such a military commander were not made clear.⁷

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 mind-set that the goal is to take out a citizen, it will happen."⁸ 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. Indeed, the debate at the time of the

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founding did not concern the wisdom of limiting the role of the military. The debate was only with respect to whether those constitutional safeguards would prove adequate.¹⁵

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.¹⁶ 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 meddlesome. 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 "Rutherfraud" 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

law enforcement and the military.²⁴

- 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 counterdrug 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 counterdrug 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. Discipline was practically nonexistent, and law enforcement was characterized by an arbitrary, informal process that is sometimes dubbed "curbside justice." Barely trained and equipped, police aimed at regulating rather than preventing crime, which, in the previous century, meant something closer to policing vice and cultural lifestyles.

On the positive side, the early police forces were well integrated into their communities, often solving crimes by simply chatting with people on the street corners. On the negative side, the police were suspicious of and often hostile to strangers and

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immigrants, and, having strong loyalties to the local political machine, they were susceptible to bribery and political influence. Throughout the 19th century police work was considered casual labor, making it difficult for either municipalities or precinct captains to impose any uniform standards on patrolmen. Police did not consider themselves a self-contained body of law officers set apart from the general populace.

The initial round of professionalization took place during the Progressive Era with the appearance of early police literature, fraternal organizations, and rudimentary recruitment standards—all of which suggest the emergence of a common occupational self-consciousness. Internal and external pressures forced the depoliticization and restructuring of police departments, which gradually reformed into centralized, depersonalized, hierarchical bureaucracies. To gain control of the rank and file, police chiefs assigned military ranks and insignia to personnel, and some departments required military drills. "Military methods have been adopted and military discipline enforced," wrote Philadelphia police superintendent James Robinson in his department's 1912 annual report.³⁰ A wave of police unionism from 1917 to 1920 was a strong indication that police not only were acquiring a shared occupational outlook but had come to regard policing as a full-time career.

Two events, however, signaled the break-away of police from their communities and into their modern professional enclave. In 1905 the first truly modern state police force was formed in Pennsylvania. Ostensibly created to control crime in rural areas, the Pennsylvania State Police was used mainly in labor disputes, since the state militias and local police (who were more likely to sympathize with strikers) had been ineffective. That centralized organization, under one commander appointed by the governor, recruited members from across the state so that no more than a handful of officers had roots in any single community. This new force was considered so militaristic that the Pennsylvania Federation of

Labor referred to it as "Cossacks." Despite the misgivings of many people, Pennsylvania started a trend. Other states began to emulate Pennsylvania's state police force.

The other significant event was J. Edgar Hoover's directorship of the Federal Bureau of Investigation. By raising standards of training and recruitment, Hoover rescued federal law enforcement from its former state of corruption and mismanagement. Hoover imbued his agents with a moral zeal to fight crime, and in 1935 he opened the National Police Academy, which has exerted tremendous influence on police training generally.³¹ Hoover's FBI acquired a prestige that made it the model police organization.

Elite SWAT Units Created

There is agreement in police literature that the incident that inspired the SWAT concept occurred in 1966. In August of that year a deranged man climbed to the top of the 32-story clock tower at the University of Texas in Austin. For 90 minutes he randomly shot 46 people, killing 15 of them, until two police officers got to the top of the tower and killed him. The Austin episode was so blatant that it "shattered the last myth of safety Americans enjoyed [and] was the final impetus the chiefs of police needed"³² to form their own SWAT teams. Shortly thereafter, the Los Angeles Police Department formed the first SWAT team and, it is said, originated the acronym SWAT to describe its elite force. The Los Angeles SWAT unit acquired national prestige when it was used successfully against the Black Panthers in 1969 and the Symbionese Liberation Army in 1973.

Much like the FBI, the modern SWAT team was born of public fear and the perception by police that crime had reached such proportions and criminals had become so invincible that more armament and more training were needed. SWAT team members have come to consider themselves members of an elite unit with specialized skills and more of a military ethos than the normal police structure. Another striking similarity with the FBI is

that SWAT units have gained their status and legitimacy in the public eye by their performance in a few sensational events.

The earliest SWAT teams consisted of small units that could be called into action to deal with difficult situations, such as incidents involving hostages, barricaded suspects, or hijackers. Early SWAT team members were not unlike regular police officers and were only slightly better equipped.

SWAT Teams Everywhere, Doing Everything

The 1980s and 1990s saw marked changes in the number of permanent SWAT teams across the country, in their mission and deployment, and in their tactical armament. According to a 1997 study of SWAT teams conducted by Peter Kraska and Victor Kappeler of Eastern Kentucky University, nearly 90 percent of the police departments surveyed in cities with populations over 50,000 had paramilitary units, as did 70 percent of the departments surveyed in communities with populations under 50,000.³³ Although the proliferation of those special units was slow in the late 1960s and early 1970s, their numbers took a leap in the mid-1970s, and growth has remained high since the 1980s. In fact, most SWAT teams have been created in the 1980s and 1990s. Towns like Jasper, Lakeland, and Palm Beach, Florida; Lakewood, New Jersey; Chapel Hill, North Carolina; Charlottesville, Virginia; and Harwich, Massachusetts, have SWAT teams. The campus police at the University of Central Florida have a SWAT unit—even though the county SWAT team is available. Kraska refers to the proliferation as the “militarization of Mayberry,” and he is rightly alarmed that the special units are becoming a normal and permanent part of law enforcement agencies.

Under the Military Cooperation with Law Enforcement Officials Act, Congress directed the military to make equipment and facilities available to civilian police in the anti-drug effort. As a result, police departments began to

acquire more sophisticated tactical equipment: automatic weapons with laser sights and sound suppressors, surveillance equipment such as Laser Bugs that can detect sounds inside a building by bouncing a laser beam off a window, pinhole cameras, flash and noise grenades, rubber bullets, bullet-proof apparel, battering rams, and more. The Boone County Sheriff’s office in Indiana has acquired an amphibious armored personnel carrier.³⁴ In Fresno, California, the SWAT unit has access to two helicopters equipped with night vision goggles and an armored personnel carrier with a turret.³⁵ According to Cal Black, a former SWAT commander for the FBI, “The equipment SWAT teams use today is many times more sophisticated than it was when I began in SWAT in the 1970s. . . . Because of this high-tech equipment, the ability of SWAT teams has increased dramatically.”³⁶

The National Institute of Justice report on the DOJ-DOD technology “partnership” boasted a number of high-tech items that SWAT teams now have at their disposal. Included among the showcase military technologies deemed applicable to law enforcement were “inconspicuous systems that can detect from more than 30 feet away weapons with little or no metal content as well as those made of metal.”³⁷ Other items in the pipeline include “a gas-launched, wireless, electric stun projectile”; a “vehicular laser surveillance and dazzler system”; “pyrotechnic devices such as flash-bang grenades [and] smoke grenades”; instruments of “crowd control”; mobile, even hand-held, systems to locate gunfire; and tagging equipment to locate, identify, and monitor the “movement of individuals, vehicles and containers.”³⁸ Special body armor and helmets are also under consideration. Nick Pastore, former police chief in New Haven, Connecticut, says: “I was offered tanks, bazookas, anything I wanted. . . . I turned it all down because it feeds a mind-set that you’re not a police officer serving a community, you’re a soldier at war.”³⁹

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An even more disturbing development reported in the Kraska-Kappeler study, however, is the growing tendency of police departments to use SWAT units in *routine* policing activity. The Fresno SWAT unit, for example, sends its 40-person team, with full military dress and gear, into the inner city “war zone” to deal with problems of drugs, gangs, and crime. One survey respondent described his department’s use of SWAT teams in the following way:

We’re into saturation patrols in hot spots. We do a lot of our work with the SWAT unit because we have bigger guns. We send out two, two-to-four-men cars, *we look for minor violations* and do jump-outs, either on people on the street or automobiles. After we jump-out the second car provides periphery cover with an ostentatious display of weaponry. We’re sending a clear message: if the shootings don’t stop, we’ll shoot someone.⁴⁰

A midwestern community with a population of 75,000 sends out patrols dressed in tactical uniform in a military personnel carrier. The armored vehicle, according to the SWAT commander, stops “suspicious vehicles and people. We stop anything that moves. We’ll sometimes even surround suspicious homes and bring out the MP5s (machine gun pistols).”⁴¹

Unfortunately, it is likely that the number of SWAT “patrols” will rise in the future. In their survey, when Kraska and Kappeler asked the question, Is your department using the tactical operations unit as a proactive patrol unit to aid high crime areas? 107 departments indicated that they were. Sixty-one percent of all respondents thought it was a good idea. In fact, 63 percent of the departments in that survey agreed that SWAT units “play an important role in community policing strategies.”⁴² According to *Police* magazine, “Police officers working in patrol vehicles, dressed in urban tactical gear and armed with automatic weapons are here—and they’re here to stay.”⁴³

Limiting the SWAT Mission to Bona Fide Emergencies

The relatively recent phenomenon of special, commando-type units within civilian law enforcement agencies is occurring on both sides of the Atlantic. The British counterpart to the SWAT team in America is the Police Support Unit (PSU). In 1993 the *British Journal of Criminology* published opposing views on British paramilitarism by P. A. J. Waddington and Anthony Jefferson. Both scholars agreed that public order policing in Britain by PSUs was becoming paramilitaristic, but they could not agree on a precise definition of “paramilitarism.” While Jefferson defined paramilitarism as “the application of quasi-military training, equipment, philosophy and organization to questions of policing,” Waddington confined paramilitarism to police methods of riot control, namely, “the coordination and integration of all officers deployed as squads under centralised command and control.”⁴⁴ A third scholar, Alice Hills, has sought the middle ground, rounding off the differences by looking at paramilitary forces of other countries, such as the French Gendarmerie, the Italian Carabinieri, the Frontier Guards in Finland, Civil Defense Units in Saudi Arabia, and the National Security Guards in India. By Hills’s reckoning, paramilitarism should “be defined in terms of function . . . and relationships; of the police to the military and to the state, as well as to the legal system and style of political process.”⁴⁵ In general, however, as has been the case in this country, British studies have largely “neglected . . . the relationship of the police to the other uniformed services, particularly the army, in the late twentieth century.”⁴⁶

What is disturbing is that under *any* of the definitions offered by the British analysts, American SWAT teams can be regarded as paramilitary units. The institutional cooperation between civilian law enforcement and the military has emerged under the direct political sponsorship of elected leaders in the national legislature and the presidency. In 1981 Congress diluted the Posse Comitatus

Act—a law that was designed to keep the military out of civilian affairs—in order to give the military an active role in the war on drugs, and that role has been expanded by subsequent congressional action and by the support of presidents of both political parties. The military–law enforcement connection is now a basic assumption within the federal government, and it receives enthusiastic support in government literature. For example, in a 1997 National Institute of Justice report on the transfer of military technology to civilian police departments, the Joint Program Steering Group explained the “convergence in the technology needs of the law enforcement and military communities” as due to their “common missions.” In the military’s newest “peacekeeping” role abroad, it is obliged—much as civilian police—to be “highly discreet when applying force,” given the “greater presence of members of the media or other civilians who are observing, if not recording, the situation.”⁴⁷ Moreover, the military’s enemy abroad has begun to resemble law enforcement’s enemy at home: “Law officers today confront threats that have more and more military aspects” due to the changed “nature of criminals and their crimes.”⁴⁸

With widespread political sanction, the military is now encouraged to share training, equipment, technology—and, most subtle, mentality—with state and local civilian police. SWAT team members undergo rigorous training similar to that given military special operations units. Training, as one study has noted, “may seem to be a purely technical exercise, [but] it actually plays a central role in paramilitary subculture”⁴⁹ and moreover reinforces “the importance of feeling and thinking as a team.”⁵⁰ The research of Kraska and Kappeler revealed that SWAT units are often trained alongside, or with the support of, military special forces personnel. Of 459 SWAT teams across the country, 46 percent acquired their initial training from “police officers with special operations experience in the military,” and 43 percent with “active-duty military experts in special operations.”⁵¹ Almost 46 percent

currently conducted training exercises with “active-duty military experts in special operations.”⁵² Twenty-three respondents to the survey indicated that they trained with either Navy SEALs or Army Rangers.⁵³ One respondent went into greater detail:

We’ve had special forces folks who have come right out of the jungles of Central and South America. . . . All branches of military service are involved in providing training to law enforcement. U.S. Marshals act as liaisons between the police and military to set up the training—our go-between. They have an arrangement with the military through JTF-6 [Joint Task Force 6]. . . . I just received a piece of paper from a four-star general who tells us he’s concerned about the type of training we’re getting. We’ve had teams of Navy Seals and Army Rangers come here and teach us everything. We just have to use our judgment and exclude the information like: “at this point we bring in the mortars and blow the place up.”⁵⁴

Because of their close collaboration with the military, SWAT units are taking on the warrior mentality of our military’s special forces. SWAT team organization resembles that of a special combat unit, with a commander, a tactical team leader, a scout, a rear guard or “defenseman,” a marksman (sniper), a spotter, a gasman, and paramedics. Moreover, SWAT teams, like military special forces, are elite units: Their rigorous team training; high-tech armament; and “battle dress uniforms,” consisting of lace-up combat boots, full body armor, Kevlar helmets, and goggles with “ninja” style hoods, reinforce their elitism within law enforcement agencies. One commander—who disapproved of proactive SWAT policing and turned down requests from team members to dress in black battle dress uniforms while on patrol—nevertheless

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understood its attraction to team members: "I can't blame them, we're a very elite unit, they just want to be distinguishable."⁵⁵

The so-called war on drugs and other martial metaphors are turning high-crime areas into "war zones," citizens into potential enemies, and police officers into soldiers. Preparing the ground for the 1994 technology transfer agreement between the Department of Defense and the Department of Justice, Attorney General Reno addressed the defense and intelligence community. In her speech, Reno compared the drug war to the Cold War, and the armed and dangerous enemies abroad to those at home:

So let me welcome you to the kind of war our police fight every day. And let me challenge you to turn your skills that served us so well in the Cold War to helping us with the war we're now fighting daily in the streets of our towns and cities across the Nation.⁵⁶

The martial rhetoric can be found in both political parties. Bill McCollum (R-Fla.), chairman of the Subcommittee on Crime of the House Judiciary Committee, has criticized the Clinton administration for not waging the war on drugs aggressively enough: "The drug crisis is a top—if not the top—national security threat facing our nation today . . . [the Clinton] administration's clear unwillingness to wage an all-out drug war cannot go unchallenged."⁵⁷ In the current political climate, anyone who does not support an escalation of the drug war is condemned for being "soft on crime."⁵⁸

Departmental SWAT teams have accepted the military as a model for their behavior and outlook, which is distinctly impersonal and elitist; American streets are viewed as the "front" and American citizens as the "enemy." The sharing of training and technology by the military and law enforcement agencies has produced a shared mindset, and the mindset of the warrior is simply not appropriate for the civilian police officer

charged with enforcing the law. The soldier confronts an enemy in a life-or-death situation. The soldier learns to use lethal force on the enemy, both uniformed and civilian, irrespective of age or gender. The soldier must sometimes follow orders unthinkingly, acts in concert with his comrades, and initiates violence on command. That mentality, with which new recruits are strenuously indoctrinated in boot camp, can be a matter of survival to the soldier and the nation at war.

The civilian law enforcement officer, on the other hand, confronts not an "enemy" but individuals who, like him, are both subject to the nation's laws and protected by the Bill of Rights. Although the police officer can use force in life-threatening situations, the Constitution and numerous Supreme Court rulings have circumscribed the police officer's direct use of force, as well as his power of search and seizure.⁵⁹ In terms of violence, the police officer's role is—or should be—purely reactive. When a police officer begins to think like a soldier, tragic consequences—such as the loss of innocent life at Waco—will result.

After some controversial SWAT shootings spawned several wrongful death lawsuits against the police department of Albuquerque, New Mexico, the city hired Professor Sam Walker of the University of Nebraska to study its departmental practices. According to Walker: "The rate of killings by the police was just off the charts. . . . They had an organizational culture that led them to escalate situations upward rather than de-escalating."⁶⁰ The city of Albuquerque subsequently hired a new police chief and dismantled its SWAT unit.

The tiny town of Dinuba, California (population 15,000), created a SWAT unit in the spring of 1997. A few months later an innocent man, Ramon Gallardo, was killed by the SWAT team when it raided his home looking for one of his teenage sons. The SWAT unit rushed into the Gallardo household at 7 a.m. wearing hoods and masks, yelling "search warrant." Gallardo and his wife were awakened by the ruckus, but before they could

determine what was happening, Ramon was shot 15 times.⁶¹

A police brutality lawsuit was later brought against the city. At trial, the police said they had to shoot in self-defense because Gallardo had grabbed a knife. Gallardo's wife testified that the knife on the scene did not belong to her husband and alleged that the police had planted it there to legitimize the shooting. The jury awarded the Gallardo family \$12.5 million. Because the whopping verdict exceeded the small town's insurance coverage, the city is now in financial straits. After Gallardo's killing, the city fathers of Dinuba disbanded the SWAT unit and gave its military equipment to another police department.⁶²

Some local jurisdictions may wish to retain SWAT units for the special skills they possess, but the deployment of such units should be limited to *extraordinary* circumstances—such as a hostage situation. If a SWAT unit is created (or retained), the need for that unit should be assessed annually by locally elected officials. Policymakers must be especially wary of “mission creep” and guard against it. Inactive SWAT teams have a strong incentive to expand their original “emergency” mission into more routine policing activities to justify their existence. In recent years, city officials in Dallas and Seattle have curtailed the activity of their SWAT units, taking them off drug raids and suicide calls. Other cities should follow their lead by curtailing the SWAT mission—or even dismantling the entire unit as was done in Albuquerque and Dinuba.

Conclusion

The militarization of law enforcement in America is a deeply disturbing development. Police officers are not supposed to be warriors. The job of a police officer is to keep the peace while adhering to constitutional procedures. Soldiers, on the other hand, consider enemy personnel human targets. Confusing the police function with

the military function can lead to dangerous and unintended consequences—such as unnecessary shootings and killings.

The proliferation of SWAT teams is particularly worrisome because such units are rarely needed. SWAT teams are created to deal with emergency situations that are beyond the capacity of the ordinary street cop. But, as time passes, inactive SWAT units tend to jettison their original, limited mission for more routine policing activities. Local jurisdictions should carefully assess the need for SWAT units and guard against the danger of mission creep. SWAT teams do possess specialized skills, but they should only be deployed on those extraordinary occasions when their skills are necessary—such as a hostage situation.

More generally, Congress should recognize that federal policies have contributed to the culture of paramilitarism that currently pervades many local police departments. Federal lawmakers should discourage paramilitarism by restoring the traditional American principle of civil-military separation embodied in the Posse Comitatus Act. The Military Cooperation with Law Enforcement Officials Act created a dangerous loophole in the Posse Comitatus Act. That loophole should be closed immediately. Congress should also abolish all military-civilian law enforcement joint task forces and see to it that all military hardware loaned, given, or sold to law enforcement agencies is destroyed or returned. Armored personnel carriers and machine guns, should not be a part of everyday law enforcement in a free society.

Notes

1. See Lee Hancock, “ATF Official Defends Raid Planning,” *Dallas Morning News*, March 27, 1993, p. 25A; and Janet Reno, Statement, *Hearing on Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas, before the House Committee on the Judiciary*, 103d Cong., 1st sess., 1993 (Washington: Government Printing Office, 1995), p. 15. For a thorough account of what took place at Waco, see David B. Kopel and Paul H. Blackman, *No More Wacos* (Amherst, N.Y.: Prometheus, 1997).

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2. See Timothy Egan, "Soldiers of the Drug War Remain on Duty," *New York Times*, March 1, 1999, p. A1; "Wilson Praises LAPD Acquisition of 600 Army Surplus Assault Rifles," *Los Angeles Times*, September 17, 1997, p. A18; and "Gearing Up," *60 Minutes*, December 21, 1997, transcript.
3. "Clinton Picks General to Lead War on Drugs," *New York Times*, January 24, 1996, p. A15. General McCaffrey retired from the Army after the Senate approved his appointment.
4. See Dana Priest and Douglas Farah, "U.S. Force Training Troops in Colombia," *Washington Post*, May 25, 1998, p. A1; and "U.S. Military Fights Drugs in Haiti," Reuters News Service, May 15, 1997.
5. See Sam Howe Verhovek, "In Marine's Killing of Teen-Ager, Town Mourns and Wonders Why," *New York Times*, June 29, 1997, p. A1; and William Branigin, "Questions on Military Role Fighting Drugs Ricochet from a Deadly Shot," *Washington Post*, June 22, 1997, p. A3.
6. "Drug House Razed with Federal Money," *New York Times*, January 19, 1998; and Bill Miller, "Nuisance Law Claims Its First Success," *Washington Post*, June 2, 1999, p. B1.
7. See William J. Broad and Judith Miller, "Pentagon Seeks Command for Emergencies in the U.S.," *New York Times*, January 28, 1999, p. A19. Andrew Krepinevich, executive director of the Center for Strategic and Budgetary Assessment, believes the federal government will establish a "Homeland Defense Command," with a four-star general at its head within two years. See *The McLaughlin Group*, April 3, 1999, transcript.
8. Quoted in Egan.
9. For additional background, see John Phillip, *In Defiance of the Law: The Standing-Army Controversy, the Two Constitutions, and the Coming of the American Revolution* (Chapel Hill: University of North Carolina Press, 1981).
10. Article I, section 8.
11. Article I, section 10.
12. Article II, section 2. For a fuller discussion of the war power under the U.S. Constitution, see Louis Fisher, *Presidential War Power* (Lawrence: University Press of Kansas, 1995).
13. Amendment II. For a fuller discussion of the history of the Second Amendment, see Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right* (Oakland, Calif.: Independent Institute, 1994); and Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge, Mass.: Harvard University Press, 1994).
14. Amendment III.
15. Thomas Jefferson, for example, wanted an explicit protection against standing armies. See Letter to James Madison, December 20, 1787, in *Jefferson Writings* (New York: Library of America, 1984), p. 914.
16. See William H. Rehnquist, *All the Laws But One* (New York: Knopf, 1998), pp. 59-74.
17. See David Engdahl, "Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders," *Iowa Law Review* 57 (1971): 58.
18. See generally Jerry M. Cooper, "Federal Military Intervention in Domestic Disorders" in *The United States Military under the Constitution of the United States, 1789-1989*, ed. Richard H. Kohn (New York: New York University Press, 1991).
19. See Jeffrey Rogers Hummel, *Emancipating Slaves, Enslaving Free Men: A History of the American Civil War* (Chicago: Open Court, 1996), pp. 320-21.
20. The term "posse comitatus" is defined as a "group of people acting under authority of police or sheriff and engaged in searching for a criminal or in making an arrest." *Black's Law Dictionary* (St. Paul: West, 1983), p. 606. "In ancient Rome, governmental officials were permitted to have retainers accompany and protect them on their travels throughout the Empire. This practice was known as 'comitatus.' In medieval England, the sheriff could require the assistance of able-bodied men in the county over the age of fifteen in suppressing small insurrections and capturing fugitives. This civilian force was called the 'posse comitatus,' deriving its name from the old Roman practice." Note, "Fourth Amendment and Posse Comitatus Act Restrictions on Military Involvement in Civil Law Enforcement," *George Washington Law Review* 54 (1986): 406 (citations omitted).
21. 18 U.S.C. § 1385. In 1956 the act was updated to include the Air Force, and a DOD directive added the Navy and the Marine Corps. See Richter Moore Jr., "Posse Comitatus Revisited: The Use of the Military as Civil Law Enforcement," *Journal of Criminal Justice* 15 (1987): 376.
When Sen. Charles Grassley (R-Iowa) discovered that an active duty Army colonel was serving at the Federal Bureau of Investigation as deputy chief of a counterterrorism unit, he asked the Justice Department for an explanation. Assistant Attorney General Andrew Fois replied that the colonel was not "directly" involved in law enforcement activity. See Benjamin Wittes, "A Posse Comitatus Crusade," *Legal Times*, September 1,

- 1997, p. 8.
22. Cooper, pp. 129–35.
23. 10 U.S.C. §§ 371–74.
24. See Keith B. Richburg, “Reagan Order Defines Drug Trade as Security Threat,” *Washington Post*, June 8, 1986.
25. Kopel and Blackman, p. 341.
26. See Ted Galen Carpenter and R. Channing Rouse, “Perilous Panacea: The Military in the Drug War,” *Cato Institute Policy Analysis* no. 128, February 15, 1990.
27. Kopel and Blackman, p. 341.
28. U.S. Department of Justice and U.S. Department of Defense, *Department of Justice and Department of Defense Joint Technology Program: Second Anniversary Report* (Washington: U.S. Department of Justice, February 1997), pp. 8–18.
29. David C. Morrison, “Police Action,” *National Journal*, February 1, 1992, p. 267. See also Jim McGee, “Military Seeks Balance in Delicate Mission: The Drug War,” *Washington Post*, November 29, 1996, p. A1.
30. Quoted in Sam Walker, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington, Mass.: Lexington Books, 1977), p. 63.
31. *Ibid.*, pp. 151–60
32. Robert Snow, *SWAT Teams: Explosive Face-Offs with America's Deadliest Criminals* (New York: Plenum, 1996), p. 7.
33. Peter Kraska and Victor Kappeler, “Militarizing American Police: The Rise and Normalization of Paramilitary Units,” *Social Problems* 44 (1997): 5–6.
34. Egan
35. *Ibid.*
36. Quoted in Robert Snow, “The Birth and Evolution of the SWAT Unit,” *Police* 21 (1997): 24.
37. U.S. Department of Justice and U.S. Department of Defense, p. 9.
38. *Ibid.*, pp. 11–18.
39. Quoted in Egan.
40. Quoted in Kraska and Kappeler, p. 10 (emphasis added).
41. Quoted in *ibid.*
42. Quoted in *ibid.*, p. 13.
43. Cited in *ibid.*, p. 9.
44. Quoted in Alice Hills, “Militant Tendencies: 'Paramilitarism' in the British Police,” *British Journal of Criminology* 35 (1995): 450–51.
45. *Ibid.*, p. 457.
46. *Ibid.*, p. 451.
47. U.S. Department of Justice and U.S. Department of Defense, pp. 1, 5.
48. *Ibid.*, pp. 5–6.
49. Kraska and Kappeler, p. 11.
50. Peter Kraska, “Enjoying Militarism: Political/Personal Dilemmas in Studying U.S. Police Paramilitary Units,” *Justice Quarterly* 13 (1996): 417.
51. Kraska and Kappeler, p. 11.
52. *Ibid.*
53. *Ibid.*
54. Quoted in *ibid.*, p. 12.
55. Quoted in *ibid.*, p. 11.
56. Quoted in “Technology Transfer From Defense: Concealed Weapon Detection,” *National Institute of Justice Journal*, no. 229 (August 1995): 35.
57. Bill McCollum, “Waving the White Flag in Drug War?” *Washington Times*, March 10, 1998, p. A17.
58. Lieutenant Steve Lagere, who heads the SWAT team in Meriden, Connecticut, says: “We ought to be looking at some other options. . . . It's politically incorrect to say that as a cop. You really can't discuss it much here, because people will think you're soft on drugs. But I don't see crack use going up or down, no matter what we've tried to do.” Quoted in Egan.
59. See, for example, *Tennessee v. Garner*, 471 U.S. 1 (1985); and *Wilson v. Arkansas*, 514 U.S. 927 (1995).
60. Quoted in Egan.
61. See Mark Arax, “Small Farm Town's SWAT Team Leaves a Costly Legacy,” *Los Angeles Times*, April 5, 1999, p. A1.
62. *Ibid.*

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