



The Conservative Case for Policing Reforms

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Key Points

- Conservative support for law enforcement should come with the same scrutiny that attends all governmental functions.
- The police play a crucial role in society and perform some of the most important of governmental functions; ensuring they do so effectively and efficiently while preserving liberty is vital to a free society.
- Policing reform is an ongoing process that conservatives need not shy away from for fear of being viewed as anti-law enforcement.

Executive Summary

The role of the police in a free society is that of protection—protection of rights and liberty as well as safety and peace. The police are a part of the communities they serve as well as a part of the government in that particular jurisdiction. Conservative support for law enforcement is founded in the conservative adherence to rule of law, but should not come without the same scrutiny that should attend all governmental functions.

Conservative reforms retain deference to the traditions and customs of law enforcement, while seeking to improve it in at least three areas; liberty, public safety, and police/community relations. They are methodical, and carefully thought-out changes that seek a particular improvement.

Some recommended areas for reform include:

- **Militarization:** Our police have undergone significant militarization in the past few decades. Returning our civilian police to the role of police officer and away from the role of a soldier will benefit the relationship between the police and their communities.
- **Place in the community:** The community is a part of the policing process, and the police are an integral part of the community. The community should retain a strong voice in how it is policed.
- **Hiring and training:** Best practices in hiring and training police officers, including standards of fitness, are needed to ensure the outcomes we want from our police officers. Highly skilled, physically fit officers have a broader range of options in dealing with situations where force might be necessary, and they tend to be more confident in their own security in general interactions with the public.
- **Lawmaking:** Lawmakers at every level of government are responsible in many ways for how our police officers interact with the public, and police discretion is vital to their ability to perform their job effectively. But the choices given to them must all be ones we are willing to accept should they choose to exercise them.

Conservatives do not have to shed their reverence for law enforcement or the men and women who perform this honorable profession in order to propose meaningful reforms to return policing to its proper role and to improve the institution without tearing it down.

The Role of the Police in a Free Society

When discussion arises of reforming an institution as integral to the core functions of government as law enforcement, conservatives should engage the issue thoughtfully. Reasons for examining and improving the institution are to be found in the constitutional view of government in general and in policing specifically. Even

continued

though law enforcement is a core function of government, it is necessary to limit its scope and activities in order to preserve liberty.

The role of government in a free society is anchored in securing the rights of its citizens: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed” ([Declaration of Independence](#)). How to secure these rights and what that looks like in practice, especially when it comes to public safety, has engendered much debate. Benjamin Franklin, in a quote inscribed on the Statue of Liberty, leaned toward the side of liberty: “They that can give up essential liberty to obtain a little safety deserve neither liberty nor safety.” John Stuart Mill leaned more toward safety: “It is one of the undisputed functions of government to take precautions against crime before it has been committed, as well as to detect and punish it afterwards” (Mill, 81). The challenge is that government retains an almost unlimited capacity for force to secure these rights *and* function in a law enforcement or crime-responsive capacity—force that can and should be used to secure liberty, but also force that can easily be used for oppression. This means that scrutiny of government power and the prudence in adopting institutional changes (Kirk, 20), particularly relating to law enforcement and its use of force, are necessary components of conservatism and securing liberty.

In his classic essay on the role of government and law in a free society, Frederic Bastiat observed, “If this is true, then nothing can be more evident than this: The law is the organization of the natural right of self-defense. It is the substitution of a common force for individual, disparate forces. This common force is to do only what the individual forces have a natural and lawful right to do; protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all” (Bastiat, 3). This comprehensive explanation of the role of government places the role of the enforcers of its laws, the police, in its proper context.

The police represent perhaps the most complex institution in our free society. Representing both the community and the government, police officers are expected to be an intimate part of our communities at a level that few would

tolerate from any other form of government intrusion, yet they remain the most intrusive arm of the government itself. Any shift in the complex balance between the role of our police and their relations with the community, such as the departure of our police as members of the community and intruding instead as purely government officials, is quickly felt at a visceral level.

It is no mystery that law enforcement officers would find strong support in the conservative community given the conservative view of the role of government. Police officers serve as the fundamental role of government’s first response in interacting with citizens. Protecting the rights and freedoms of the citizens requires more than words on paper; it requires men and women with the authority to use force in the furtherance of this governmental function. Where order is established through laws governing certain behaviors that would encroach on the rights of others, the individuals’ rights are protected not by the words themselves, but by the person who swears an oath to uphold those laws. The words are useful later in a court of law, but they provide no value at the time of a police confrontation without the enforcement ability of an officer.

Calls to review and reform policing should be a normal function of the conservative movement to keep government effective and efficient and within the constraints of the Constitution.

The requisite authority to use force is wholly concentrated in our police officers. No other part of our government has the lawful authority to use force against a citizen not yet convicted of any crime.

This authority includes the use of deadly force in certain situations. The unpacking of police officers from their communities is difficult and not desirable, and the view of legitimacy of the police by their communities is essential to their role. Policing scholars George Kelling and James Stuart observe that, “assuming the function of the police is to support and deepen the inherent self-governing capacity of neighborhoods, which in turn permits self-defense against crime and disorder, the priority of police in highly troubled neighborhoods must be not only to gain authorization for police action, but also to help develop the community’s capacity for self-defense” (Kelling & Stuart, 474). The role of the police officer within the community is integral to both the community and effective policing, ideally deriving authority from both the community they serve and the government they represent.

Because of the unique authority to use force in furtherance of securing citizens’ liberty, policing must be a function of the state, as law enforcement carries out its role seeking to fulfill society’s rightful desires that it be a part of the communities it protects. Any effort to force the membership of police officers to be completely in the government

or completely in the community would result in the loss of liberty. The role of the police officer as an arm of the government as well as a member of the community allows and requires the continuous scrutiny of policing, and reform when necessary. Thus it is not anti-police to hold the view that the only part of our government given the authority to use force against the people is deserving of the same—or even higher—level of scrutiny and review as the rest of the government. Calls to review and reform policing need not be a one-time event, but should be a normal function of the conservative movement in order to keep government effective and efficient and within the constraints of the Constitution.

What Conservative Policing Reform Is Not

Conservative policing reform is not a reflexive response to historical antipathy toward authority in general or the police in particular. Such a non-conservative approach seeks to dissolve the institution entirely or morph it into something completely unrecognizable from its current form through centralization or other measures ([Dutta](#)). Lacking animus toward both authority and the police, conservatives are well-positioned to reform policing and should do so deliberately with specific expectations for the outcomes such reforms pursued.

Ideally, any recommendation for policing reform should have the goal of an improvement in any or all of three areas: liberty, public safety, and the relationship of the police with the public. A decline in any of these three areas is generally unacceptable in any circumstance, and any scenario where it occurs must be carefully evaluated and vigorously debated.

The conservative affinity for tradition requires that an institution as embedded in our society as law enforcement receives due deference to its own traditions and customs where possible, making changes in a deliberate way with a deliberate goal (Kirk, 18). A return to prior models of policing, in uniforms or equipment for example, should not be merely based on nostalgia but should instead advance the cause of liberty, public safety, or community relations. Conservative reform is not reflexive; it is deliberate and methodical in its approach to the institution, even where the desired changes are significant in scope.

When the arm of government directly responsible for the protection of rights and liberty begins to view itself not as a public servant but rather as a military force amidst potential enemies, the danger to a free society is abundantly clear.

A Call to Reform: The Dangers of Militarization

The police are not the military—not in form, function, or goals. There is a hard line between a civilian police force and our national military forces, and any blurring of these two vital but distinctly different roles of government is to be avoided.

Kraska differentiates between the terms “militarization,” the actual preparation for war, and “militarism,” the adoption of cultural values that support war (207). Some of the aspects of militarization observed in our modern police forces include the adoption and use of military equipment such as military-style weapons, uniforms, and vehicles. All of these outward symbols of militarization are highly visible, both to the community and to the police within the agencies that adopt them. The move toward militarization can affect the perception of the public as to the role of the police, and even the perception of the police as to their role within the community. The increase not only in number but in frequency of use of SWAT teams, during the same period that the term

“community policing” was being used almost universally among police departments, is evidence that the lines between the civilian police and the military have become increasingly blurred, potentially to the detriment of a free society (Kraska, 211, 212).

Political declarations of war on every new or old societal ill can create confusion. The War on Crime, War on Drugs, War on Poverty, and War on Terror are but a few of the “wars” publicly declared in the past several decades. The overt and public description of what were and always will be civilian policing issues in terms reserved for the military and its unique function can cause a shift in how the police view themselves, the public, and their relationship to the community (Kraska, 210). When the arm of government directly responsible for the protection of rights and liberty and its members begin to view themselves not as public servants in that vein, but rather as a military force amidst potential enemies, the danger to a free society should be abundantly clear.

Conservative adherence to the original intent of the Constitution is often used as a cornerstone of conservative philosophy. This philosophy is often cited when it comes to the judiciary, whose role it is to interpret the Constitution that guides much of our criminal justice system in general, and, in particular, policing functions such as use of force, interrogations, and search and seizure.

The *Posse Comitatus* Act of the Reconstruction era was originally the distinct line between the military and the civilian policing worlds, prohibiting the use of the military for law enforcement purposes in reaction to the federal troops in the Southern states after the Civil War (Nevitt, 122). However, the concept reaches even further back into our history to a time when British troops occupied colonial America. Resentment is evident in the Declaration of Independence, which lists as one of the prompting grievances for our parting ways with England that the king “has kept among us, in times of peace, Standing Armies without the Consent of our legislatures” (National Archives). Conservative departure from this historical concept of military use is evidenced in changes to the *Posse Comitatus* Act by Congress in the 1980s allowing more and not fewer interactions between civilian police and the military as a consequence of the drug war, resulting in passage of the Military Cooperation with Civilian Law Enforcement Agencies Act of 1981 (Nevitt, 140).

This act lessened some of the barriers to military involvement in domestic law enforcement and paved the way for the 1033 program created by the 1997 National Defense Authorization Act, which allows transfer of military weapons and equipment to civilian law enforcement for use in law enforcement roles (Glod). Aside from the optics that civilian police officers with military uniforms and equipment can create, the sharing of military surveillance and intelligence capabilities is a real concern for the preservation of privacy afforded by the Fourth Amendment.

As military equipment becomes commonplace in our police forces, and military surveillance and intelligence tactics become acceptable to the agencies using them without scrutiny from the public, the line between the military and the police becomes more and more blurred. At some point, we risk losing the line completely, and with it, the civil liberties afforded by the Constitution. Maintaining a clear demarcation between our civilian police and our military requires vigilance, and the danger of the militarization of our police is compounded by incrementalism that hides it in plain sight.

A Local Issue

The style of policing, hiring requirements, and policing priorities are reflective of the jurisdictions being policed and are rightfully a local issue. As members of the community, the police and the manner of policing change from locality to locality. This is part of the dual nature of the police and establishes them as a part of their communities. Where reforms are needed on a broad basis, they should be addressed at the state level, but local control of the police

should include an ongoing process of evaluation and policy revision where necessary, making the need for such sweeping changes at higher levels infrequent.

Where a disconnect between the police and the community becomes irreparable, a layered approach to intervention is entirely possible without resorting immediately to the highest governmental body for resolution. Local municipal policing occurs within the overlapping jurisdiction of a county in most states, and then within the state. Crime rates are different in each city and county, as are demographics, local customs, values, and quality of life expectations. The more removed from a locality the proposed fix is, the more generalized it will be. The difficulty in identifying such broad remedies that might be proposed at the federal, and sometimes even the state level, is enormous.

Appropriations are one mechanism for prioritizing how policing is done. With policing being a core function of government, it should be funded in accordance with its importance, and the public should expect effectiveness and efficiency in the delivery of this service. Changes in policy can impact expenses, and the jurisdiction incurring these costs is in the best position to make decisions on budgeting within its borders.

Support for policing reforms is not inconsistent with traditional conservative support for the police.

Differentiating between that which should be mandated by the state and that which should be left to the local governments is largely debatable. Hiring and even training standards aid a locality in shaping the police agency of the jurisdiction and are a key part of the integration of the police into a particular community. However, the establishment of minimum levels of hiring and training can be left to the states, driven by evidence-based best practices. State-level training mandates provide a vehicle for ongoing reform as they address issues relating to all police officers in the state, while local policy changes provide for the individualized policing of communities that differ from each other in large or small ways.

Hiring, Training, and Fitness Standards

Changing policies and laws is a fundamental tool for any public reform effort, and policing is not much different than any governmental function in that regard. However, policing is also very reliant on the individual officer for the outcome of any interaction between the police and the public. Different officers can have very different outcomes for the same situation. Because the individual officer is going to affect the outcome of any interaction, best practices in the hiring, training, and fitness standards applied to police officers will, in turn, affect the quality of policing a community receives.

The job of a police officer requires infrequent physical activity, but those infrequent occurrences can require very intense physical activity with life or death consequences. Because the instances of intense or protracted physical activity are rare, the level of fitness required to perform them is not enhanced as a matter of simply performing the job itself the way someone who operates a jackhammer or hangs sheet-rock might be able to, and police work itself may have an adverse effect on physical fitness ([Bonneau and Brown, 3-4](#)).

Fit officers are more likely to feel a sense of security in their dealings with the public, a key factor in their decision to use force and at what level ([Petersen, 1](#)). What an officer chooses to do in any situation is a result of this officer's personality, capabilities, equipment, perception of threat, fear, and other factors. Finding best practices in hiring officers, training them, and maintaining and evaluating their fitness levels is a way to reform policing by improving the quality of the individual officers placed into these positions. This reform alone can change policing even within the current structure by changing the officers' use-of-force decision-making calculus.

The Supreme Court's decision in *Graham v. Connor* established the "objectively reasonable" standard for force used by the police ([Graham v. Connor](#)). The individual officer plays a large role in how that standard is examined. An officer who is out of shape, quickly exhausted, with little skill in defensive tactics can more easily justify an escalation of force in a situation given all of the factors present, even the ones he or she brings to the encounter in the form of their competencies or weaknesses.

With *Graham v. Connor* remaining the standard for the examination of use of force by the police, the individual officer who is on the scene is an unknown variable in predicting the outcome of the event, but raising the standards for hiring, training, and maintaining fitness can help make the outcome more consistent or at least raise the expectation of what is reasonable from the officer. Changing the Supreme Court's decision in a future case regarding use of force may or may not ever occur, but changing the officers involved in those situations while applying the existing standard can change the outcomes.

Holding the Lawmakers to Account

When an officer behaves badly in the eyes of the public, something modern media and technology allow to be viewed nearly in real time in many cases, it is important to examine the situation thoroughly. Conservative adherence to the rule of law requires that the scenario be examined from such a perspective. The first question to ask is whether the officer acted within the bounds of the law. If the officer did not, then the responsibility for the action lies with the

officer. However, if the action is repulsive to the viewer, but objectively within the bounds of the law, then it is the policy itself that may need changing.

Police officers enforce the laws they are given; they act within the boundaries of those policies. Discretion is a necessary tool for police officers in their daily work, but if the bounds for that discretion include options that are unacceptable to the public, then the policy should be reconsidered. This is not an anti-police position by any examination and is more consistent with a conservative reverence for the rule of law. Proper support of law enforcement includes providing our police officers with good policies. It is unfair to enact poor policies, of which there are many, and then blame the strict *application* by a police officer by calling it an *abuse* when there is righteous outrage by the community. When legislation provides officers with tools that have broad discretion, such as civil asset forfeiture or the ability to make custodial arrests even for a fine-only offense, *indiscretion* at some point is nearly inevitable. It is entirely possible to give officers the discretion necessary to do their jobs effectively while limiting the scope of that discretion to only options that are both acceptable to society and respectful of individual rights through careful policy construction.

Using the police as a revenue-generating branch of government will affect the relationship of the police and the community for better or worse. A reliance on fines in the form of traffic citations, for example, requires frequent traffic stops by police officers. A traffic stop is inherently a negative contact, always relating to an accusation of a law violation, even when conducted at the highest level of professionalism. A citation is always unwanted by the driver, with many issued for reasons that the driver is unable to see the public safety value in, largely because there is none. Traffic accidents are not caused by expired registration stickers, loud mufflers, or emissions levels higher than allowed by law.

Conversely, the traffic stop itself is dangerous, often more so than the alleged violation of the driver. An officer often must occupy a portion of the roadway with his or her vehicle, walk out into traffic, approach a vehicle of unknown potential danger, make contact with the driver, and a variety of other elevated risk activities in order to issue a citation allegedly in the interest of traffic safety. This is an argument not based on logic and contrary to any risk management principle we might consider. Properly appropriating funds for law enforcement is a debate worth having and might result in relieving the burden of self-funding through citations for police agencies, allowing them to focus on actual public safety activities instead and reserving the fine for the punitive purposes it should be intended for without consideration or prioritization of revenue generation.

Lawmakers must be held to account by the public when their policies create the abuse the public revolts against and not the individual actions of a police officer. Conservatives must also be comfortable with confronting situations where it is indeed the poor actions of an individual officer and not a policy that caused the abuse, and demand that the officer be held to account. The ability of the public to witness police actions through the prevalence of video and audio recording capabilities has led many to question long-standing police practices, the observation of those actions sometimes proving repulsive in the public's eye. This is a good development and a catalyst for improvements that can only strengthen the relationship between the police and their communities.

Conclusion

Many of the areas cited as potential reform areas for policing require more research in order to provide constructive changes. Policing is far too important for experimentation without a basis for implanting change, the failure of such experiments having the potential to be catastrophic. Where limited initiatives show promise, such as the Law Enforcement Assisted Diversion program in Seattle, which places police officers at the front end of established diversion programs, an expansion of the policy is more predictable and can more easily be embraced by conservative thinkers ([Petersen, 4](#)).

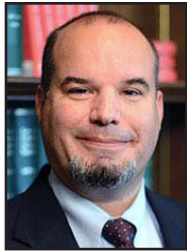
The use or overuse of militarized equipment and tactics has received academic attention, but how the trend is reversed is less clear and certainly worthy of examination. The areas of hiring, training, and fitness for police officers remain subjects worthy of deeper research, as does the impact on this area of policy such as affirmative action or preference for veterans.

Support for policing reforms is not inconsistent with traditional conservative support for the police. Support for the police *demand*s continuous examination of policing practices in order to provide policies, training, and equipment to support their role in our society. It also demands adherence to our core principles, even when it comes to our police officers. To do any less is outside the realm of conservatism. As Bastiat warned, “When the law and morality contradict each other, the citizen has the cruel alternative of losing his moral sense or losing his respect for the law” (Bastiat, 7).

As agents of the government charged with the protection of rights and the preservation of order in civil society, the police are deserving of such support through continuous development of best practices in policing combined with conscientious policy making from our legislators, municipal leaders, and police executives, as demanded by our communities. ★

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Randy is passionate about law enforcement and criminal justice policy issues and is pursuing a doctorate degree in management in homeland security. His research specialties include the militarization of law enforcement, police training, and police-assisted diversion programs. Randy holds a B.S. in legal studies and an M.S. in justice administration and crime management from Bellevue University.

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