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United States Marine Corps

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Marine Corps University  
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Quantico, Virginia 22134-5068

MASTER OF MILITARY STUDIES

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**Not Fallujah, Not Ferguson, Not Mayberry: Reconciling Community Policing, Police Militarization, and the Trans-National Terror Threat**

SUBMITTED IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF MILITARY STUDIES

**Major Evan E. Taylor, USMC**

AY 15-16

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## Executive Summary

**Title:** Not Fallujah, Not Ferguson, Not Mayberry: Reconciling Community Policing, Police Militarization, and the Trans-National Terror Threat

**Author:** Major Evan E. Taylor, United States Marine Corps

**Thesis:** The argument presented in this paper is that better operational design on the part of police departments will curb “militarization” of the police force, protect their relationship with the community, and still enable patrolman to respond to the ever-expanding array of threats emerging in the modern era.

**Discussion:** The terrorist attack on 11 September, 2001 initiated numerous changes in American law enforcement and military forces. One such change has been the provision of federal funding and acquisition assistance to equip local police with military equipment in anticipation of its use in combating terrorism. The current national dialogue on police militarization primarily focuses on these tangible signs of changes to police forces while neglecting the more important doctrinal implications. Specifically, no nationally agreed upon standard or doctrine exists for a local police force’s responsibilities in combating terrorism. The police have received the equipment and some tactical training with no clear mandate of what to prepare for and where their responsibility for terrorism ends. This, when combined with poor operational design on behalf of a police department addressing its communities needs fosters mistrust and can potentially result in abuse. Given that doctrine and operational design drive the behavior and priorities of organizations, this is both much more dangerous to civil liberties and more likely to undermine the effectiveness of the police in protecting the American people than superficial factors such as possession of military equipment.

**Conclusion:** A national discussion on the future role of law enforcement and military forces must better delineate the roles and responsibilities of these organizations. Civilian leadership must guide the development of operational doctrine for police departments that will reconcile the ideas of community policing with the requirement to respond to extreme violence.

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## *Preface*

The purpose of this paper is to provide a perspective on the militarization of US police in light of the evolving national security threats stemming from globalization. Categorically denouncing any adoption of military equipment, techniques, or philosophy by police based on anecdotal fears instead of a serious survey of the security environment invites disaster by opening our communities to attack by a globally connected network of criminals, terrorists, and possibly even state sponsored espionage or violence. Local Police are part of the larger international picture now. Their integration into the overall strategy without causing undue distress to the liberties or sensibilities of the people is key to a secure United States moving forward.

I would like to thank Dr. John Gordon for his patience as I attempted to narrow down the thesis of this paper, and Dr. Mathew J. Flynn for his assistance in narrowing that thesis. I would also like to thank Lieutenant Colonel Jeffrey Vandaveer, USMC for his support and mentoring during the academic year.

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Finally, I would like to express my sincere thanks and admiration for the men and women who brave wild uncertainty, foul weather, and shifts in public opinion to provide a wide variety of professional policing services in all corners of our wonderful country. Our states, counties, cities, towns, highways and forests owe you a debt of gratitude for your constant attention to a hazardous and thankless job which most of your critics simply could not do.

*From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime. Our nation has been put on notice, we're not immune from attack. We will take defensive measures against terrorism to protect Americans. Today, dozens of federal departments and agencies, **as well as state and local governments**, have responsibilities affecting homeland security.<sup>1</sup> (Emphasis added)*  
–President George W. Bush, 21 September, 2001.

*The images on the news of police wearing helmets and masks, toting assault rifles, and riding in mine-resistant armored vehicles are not isolated incidents—they represent a nationwide trend of police militarization. Federal programs providing surplus military equipment, along with departments' own purchases, have outfitted officers with firepower that is often far beyond what is necessary for their jobs as protectors of their communities. Sending a heavily armed team of officers to perform “normal” police work can dangerously escalate situations that need never have involved violence.<sup>2</sup>*

-American Civil Liberties Union Website, accessed 14 January, 2016.

*Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.<sup>3</sup>*

-US Department of Justice

## **Introduction:**

The events following the shooting of Michael Brown, an African American teenager, on August 9, 2014 in the community of Ferguson, Missouri, ignited an already smoldering debate regarding “police militarization” in the United States. Images of police officers in military-style body armor and bearing military-pattern rifles induced shock and outrage in the American public as the story of civil unrest after the shooting unfolded. Prior to these events, the debate on the militarization of American police had already received some attention by several organizations. The American Civil Liberties Union (ACLU) released a report in June of 2014 calling for numerous limitations on the deployment of Special Weapons And Tactics (SWAT) teams and a restriction on the purchase of “automatic and semi-automatic rifles” under the Federal 1033 program.<sup>4</sup>

A little less than a year later on December 2, 2015, local police in San Bernardino, California, responded to an attack conducted by internationally recruited terrorists armed with explosives and a large arsenal of firearms. The small department of just over 450 officers effectively responded to a trans-national terror threat with duty officers and a local SWAT team.<sup>5</sup> Federal law enforcement responded within hours to assist with the investigation, but the first responders on site were local patrol officers who had only what was in their squad cars to control the incident.

The current national dialogue regarding limiting the militarization of police forces primarily focuses on visible aspects such as equipment, weapons, and interior movement tactics. Certainly, the inappropriate use of any of these is a danger to the civil liberties and lives of American citizens. However, a greater danger exists in the poorly defined doctrine currently governing one of our most important security arms: the local police force. Though the concept of community policing is a commonly referenced ideal, it does not take into effect the numerous security threats now thrust upon our local police by globalization, trans-national crime, terror networks, and the “convergence” of all of these which defines warfare in the information age.<sup>6</sup> The lack of attention by elected officials at local, state, and national levels on the operational design of police agencies attempting to address this wide spectrum of threats is the real heart of the issue. The argument presented in this paper is that better operational design on the part of police departments will curb “militarization” of the police force, protect their relationship with the community, and still enable patrolman to respond to the ever-expanding array of threats emerging in the modern era. This doctrine must be flexible, adaptable, and realistic for local police forces to reconcile the spirit of community policing with emerging requirements from the modern security environment.

The stakes for this discussion are high. Providing too much capability and a military posture to local police can certainly result in abuses of power and the erosion of a community's trust. However, if taken too far, the current line of thought on limiting the equipment available to police based solely on its military use and its look will result in a security force unable to match the lethality of potential adversaries who might strike within US borders. The stakeholders on all sides have every reason to be concerned. Many police officers hold strong convictions that military equipment and tactics make their job significantly safer in the face of evolving threats to public safety.<sup>7</sup> On the other hand, civil rights advocates and political leadership both have valid concerns about violating the nation's tradition of limiting the role of a land Army on sovereign US soil. Some common ground between the organizations is essential to enable the police to counter military-like threats on US soil.

This paper begins by detailing the current national discussion on Police Militarization with a review of history, law, and a brief summary of the findings in the Department of Justice (DOJ) report on Ferguson. The second section analyzes the concept of community policing and how misapplication of this concept can lead to poor results. Third, the paper describes the difficulty imposed on local police by the scope of their mission set in an increasingly connected economic, social, and security environment with many challenges not addressed by community policing. The conclusion makes several recommendations for policy makers and raises some follow on questions deserving of further research.

### **Literature Review:**

This study cites both academic articles and government documents regarding community policing to provide context for the last forty years of doctrinal development for the police. Criminal Justice academia provides important perspectives on the employment of Police Forces

through study of national trends and best practices among multiple jurisdictions facing unique demographics and problem sets.<sup>8</sup> The governmental documentation provides insights into the common public perception of what police spend their time doing and how they are supposed to do it.

One of the issues with the concept of community policing is a lack of agreement among justice professionals, academics, and civil rights leaders as to what works, what does not work, and how to prove it.<sup>9</sup> The wide reach of many criminal justice studies exacerbates this problem, since the concept itself advocates pragmatic approaches as far down as the neighborhood level. Mr. Michael Reisig's article is an excellent encapsulation of the work done to refine this concept as it includes social analysis as well as issues faced within police departments with implementing new concepts.

One of the main points that emerges from the discussion on community policing is that what works in a neighborhood in Detroit may not directly translate to success in Milwaukee. Additionally, the concept lacks any concrete guidance beyond "community engagement," leaving the topic open to varied interpretations and even misuse. The DOJ pamphlet on Community policing provides numerous, poorly defined concepts, but lacks academic rigor and fails to place limits any hard limits on what the police must handle on their own.<sup>10</sup> It is left to the community and police leadership to determine the best course of action for their collective safety and prosperity, but what if the local department faces an international threat?

For the topic of police militarization, the paper uses pictures from the internet media to show the public perception of the use of military equipment. Additionally, a report from the American Civil Liberties Union (ACLU), one of the nation's most influential civil rights organizations provides an excellent perspective on the issue of transparency between police and

their civilian leadership. The ACLU report includes detailed research, startling statistics, and presents a compelling case: the arming and training of US police focuses too much on kinetic operations while neglecting training that aids community engagement. The ACLU report aptly represents the extreme opinion that any use of military equipment or tactics by the police is unnecessary and poses an automatic danger to American lives.<sup>11</sup>

The conditions in the town of Ferguson, Missouri, regarding the relationship between the people, the police department, and the elected leadership are of interest to this discussion due to the role they played in accelerating this issue into the forefront of public discourse. The Department Of Justice's report on Ferguson is extremely thorough in describing the conditions present in the town, as well as their effects on the perceptions of the local populace. The malfeasance of the police department is the focus of the report, but this study maintains that the elected officials in charge of that police force are just as culpable, if not more so.

The lack of scholarly research on police militarization is lacking given the attention the topic is receiving in politics and media. This vacuum of analysis endangers both police and citizens because the true character of the issue remains in doubt: too much freedom afforded to the police will lead to abuse, but can we afford to have our first responders minimally equipped in the modern security environment? Even more worrisome is the recent tendency to explain any police misconduct with the catch phrase "police militarization," instead of addressing systemic operational issues with how the police address code and traffic enforcement, crime prevention, and community relations. This paper will focus on the broader aspects of operational design by police and show that preventing the next "Ferguson" will take more than restricting offensive pieces of military equipment.

## **Police Militarization: The public perception**

The national response to the shooting of Michael Brown was completely unpredictable at the time it occurred: A “Black Swan.”<sup>12</sup> It had a huge impact on the national conscience, and in the wake of the event political leaders and police advocates struggled to develop an explanation for what went wrong. The US DOJ released a report citing racial bias and systemic misbehavior on the part of the local police department, but it did not adequately address the culpability of the civilian leaders of the community in shaping that behavior. Though a racial component is certainly present and deserves attention, it is not the whole story.

This study analyzes a larger, more universally applicable problem with police in the United States: poor operational design and the difficulty of developing doctrine for a security force that is supposed to be part of a community but is also capable of effectively responding to extreme violence. Operational design is driven directly by civilian leadership through a strategic vision of how given assets are employed to address problems. The leadership of the subordinate security arm develops measures of effectiveness to gauge progress with respect to those strategic goals and provide feedback on how the strategy is working. For police forces, appropriate measures of effectiveness could include a reduction in drug activity, violent crime, or even community surveys indicating the sense of security of the people. Therefore, engagement with the civilian leadership by security leaders is the most essential aspect of limiting the activity of the police.

This section will first address why the American public has such a vested interest in the limitations of its security forces. Next, a discussion of the factors limiting military and police power within the US is included to better establish just what is protecting the American populace. Finally, the paper will frame the current national dialogue on police militarization by

providing facts regarding the equipment provided by the federal government and analyzing the public discourse and perception of police militarization.

The American tradition of distrust towards standing security forces is rooted in the text of the United States Constitution. The Constitution gives the Congress of the United States the power to “raise an Army,” as opposed to the language of “maintain a Navy.” This distinction highlights the fears of the authors of the constitution: a Navy by definition cannot act on domestic soil as a tool of oppression. Also, the President serves as the Commander in Chief of the armed forces, but the Congress’ control of the fiscal life of the country provides a check against his power.<sup>13</sup> If the president wishes to use the military for a purpose in which legislative branch disagrees, Congress can refuse to grant resources supporting the operation. Note that nothing in the US Constitution itself actually prohibits the use of the Army domestically.

The first sanctioned, uniformed law enforcement agencies in the US did not appear until the late 19th century in major cities. Previous to the emergence of professional law enforcement, the US Army was the primary tool for the executive branch to quell disorder, ensure the integrity of federal institutions such as polling stations, and provide security for the frontier. After the American Civil War, the US Army stationed forces in the former Confederate states to maintain order and ensure security for the newly liberated slaves. The *Posse Comitatus Act* appeared in response to calls for the removal of federal troops from this role. This historical sequence runs counter to the widely held belief that the US Constitution forbids the use of the US military in domestic operations, and is the source of many myths regarding the ability to employ the US military domestically.<sup>14</sup>

The *Posse Comitatus Act*, as amended numerous times during the twentieth century, does not actually prevent the use of military forces for domestic operations. As long as the President

of the United States (POTUS) orders the military to conduct the operation with the permission of congress, it is perfectly legal. Through its responsibility to craft and pass law, the US Congress exercises additional, more meaningful control through the assignment of responsibilities via statute and limitation of resources. The responsibilities assigned by law to a service dictate its doctrine which directly informs training and the endowment of knowledge, skills, and attitudes on service personnel.<sup>15</sup>

Law enforcement typically serves as an extension of the executive branch of government much like the military. In most local jurisdictions the popularly elected executive (mayor, governor, etc.) appoints and directs the chief or commissioner of police. A legislative body is responsible for budgetary matters and exercises similar control over police as the US Congress exerts over the military. Police power is further limited, though after the fact of any tactical action, by the judiciary which rules on the legality of police conduct and in civil suit cases is able to punish offenses by the police through monetary damages and court orders as appropriate. However, none of this is helpful if the police or military forces unnecessarily kill a citizen due to poor doctrine or employment of resources. A US citizen's protection against police misconduct is therefore very similar to his protection from the military. The structure and training of the organization, informed by doctrine written in response to civilian policy, is a far more effective check against a security force than any written law. In the event of police misconduct, the citizen has the ability to hold his elected official accountable for their charges or to seek redress of grievances through the courts. This highlights the critical role elected civilian leadership plays in protecting a populace from its security force by dictating policy, closely monitoring resource allocation, and informing the doctrine of the organization.<sup>16</sup>

This is not to say that the public should not be concerned about the pace and volume of military equipment acquisition by local law enforcement. According to a report from the Executive Office of the President, “the federal government provided nearly \$18 billion dollars in funds and resources to support programs that provide equipment and tactical resources to state and local LEAs (Law Enforcement Agencies).<sup>17</sup>” This monetary and material aid provides training, equipment, office supplies, and many other items to include weapons through various programs. One such program is the 1033 program in which DOD provides property on loan to LEAs. This aid is extremely beneficial to small police departments and provides access to training and life-saving equipment that would otherwise not be available.

The current national focus is on a very small part of this aid; only four percent of the funding provided in 2013 went to “controlled property.<sup>18</sup>” However, since the beginning of the 1033 program in 1997, this has translated to “92,442 small arms, 44,275 night vision devices, 5,235 high mobility multi-purpose wheeled vehicles (HMMWVs), 617 mine resistant ambush protected vehicles and 616 aircraft (sic).<sup>19</sup>” The 1033 program makes sense from many perspectives especially considering the efficiencies gained in terms of standardizing maintenance and training for all of this equipment between departments and agencies.

In our modern era of active shooter responses and so-called “lone-wolf” terror attacks, the possession of some military style equipment by local police is a critical requirement for public safety. The weapons and capabilities available to trans-national criminal organizations make local security forces without some of this equipment incapable of preventing and effectively responding to these kinds of attacks, especially since involvement in a domestic scenario by even a state’s National Guard forces requires approval from the governor of the state. Night vision devices have numerous legitimate uses outside of kinetic operations to include

search and rescue. The utility of light all-terrain military vehicles to a rural department is difficult to deny. With fifty one law enforcement officers feloniously killed in the line of duty in 2014 (89% higher than the twenty seven in 2013), police departments have ample motivation to acquire protective equipment as criminals acquire increasingly lethal weaponry.<sup>20</sup> If a department or agency can show civilian leadership that a legitimate requirement for military equipment exists, then limiting their access to that equipment does not make sense unless the civilian leadership clearly identifies that activity as being within the purview of the military only. In that case, the civilian leadership must then provide a vehicle for the responsive employment of military forces to fulfill that requirement in order to fulfill their duty to provide security to their constituency.

Unfortunately, the process by which these requirements are registered and validated is broken. One of the most disturbing revelations in the report from the Executive Office of the President is that training on the safe, law enforcement specific use and the corresponding civil rights ramifications of the provided military equipment was not a requirement for receipt of the equipment. Additionally, the report identified issues regarding the process by which the departments provided justification for this equipment. Most disturbingly, the programs allowed the departments to request equipment outside the local government's budget process, thereby removing the ability of the legislature to limit the resources and set policies for the appropriate use of these resources by their security force.<sup>21</sup>

The shock experienced by many Americans at the pictures and video coming out of Ferguson, Missouri, in the wake of the shooting of Michael Brown in August of 2014 was in reaction to a clearly inappropriate use of much of this equipment. The protestors were not carrying arms openly. Though equipment such as shields and helmets (Appendix A, Figure 1)

are critical for officer safety and allow police to effectively arrest violent rioters, precision rifles (Appendix A, Figure 2) are of questionable utility when attempting to de-escalate a riot. The armored truck in the same picture is defensible as a casualty evacuation vehicle or even as an observation platform, but even if a shooting threat had been present the employment of a marksman on the roof of a vehicle shows poor tactics and an obvious lack of clearly stated policy. The use of raid gear and rifles (Appendix A, Figure 3) in the presence of unarmed protestors is a similarly questionable use of military equipment, and exposes a department to extremely unflattering portrayals in the media (Appendix A, Figure 4). The common theme in all of these pictures is that they can create barriers between the police and the community they serve.

The US military trains and equips its personnel to defeat an enemy's military force. To this end, the military seeks to become as lethal as possible to identified enemies while protecting the neutral populace of countries it operates in. The US military overseas is an outside force, will remain an outside force, and will eventually leave. By contrast, a police force receives funding and derives its authority from the community it serves. In this dynamic, cooperation and engagement between the public and police are essential to the success of both. Criminals are typically other members of the community, with familial and social ties in the community. Most important to this discussion, even wayward members (except in the most heinous cases) will eventually return to the community. An adversarial relationship between police and criminals is certainly expected and even desirable in many cases. However, if the police and the community they serve allow this relationship to devolve to the level of two irreconcilable wills, the sides become enemies.<sup>22</sup> In this situation, the presence of military equipment coupled with a lack of cogent doctrine governing its use will likely exacerbate the divide as seen in Ferguson.

Regardless of whether individual officers train to use them, weapons in an armory or vehicles on a lot mean nothing next to a police department allowed to use the people they protect as a source of revenue. The lack of regulation and loss of control of an armed security force by civilian leadership enabled the true manifestation of all the American people rightfully fear from their security forces. The equipment is a disturbing veneer that hides the more sinister core issue: wanton, wide spread civil rights abuses not only enabled but encouraged by elected government officials, perpetrated by a police force using poorly conceived measures of effectiveness and measures of performance.

### **Community Policing: The (almost) ideal doctrine**

In addition to the national dialogue on PM, the events in Ferguson brought the concept of community policing into the forefront of public discourse as an alternate path to a militarized police force. Community policing is the closest thing to doctrine currently available to the local law enforcement community which identifies how a police force should relate to the population it serves. In theory, it represents an ideal in which citizens and their security services cooperate to enhance the standard of living in a given area.

This section begins with a definition of community policing, a short history of community policing, and a discussion of two commonly recognized philosophies of community policing. Second, an analysis of poor operational design on the part of the Ferguson Police Department will show that what the public currently calls police militarization is really a failure of elected civilian officials to correctly employ their security services, and not a failure of the community policing Model. The section will close with a discussion of the numerous shortcomings of community policing to present a complete doctrine to address contemporary security threats.

Community policing is a model that calls for police and citizen cooperation. As stated by Criminal Justice academia: “Instead of playing a passive role, citizens are invited to partner with police to improve neighborhood conditions.”<sup>23</sup> From this base concept, two distinct philosophies on how to execute the concept evolved. The first emphasizes tight enforcement of low-level offenses in order to prevent more dangerous criminal behavior. The second approach attempts to strengthen neighborhood social processes to combat factors perceived to further criminal behavior such as poverty, racial tensions, etc.

Community policing emerged as a theory in response to calls for reform following numerous police abuses in the 1960s. The theory encourages partnering between the police and community leaders to improve living conditions for residents.<sup>24</sup> The increasing size of American cities has the effect of distancing the voter from his executive representation. For example, Robert Anderson Van Wyck presided as mayor in 1900 over a city of approximately 3,430,202 persons.<sup>25</sup> Allowing that each of these persons would have a varying degree of access to the mayor even through their representatives, they are certainly closer in degrees of separation than a modern citizen of New York. Mayor Bill de Blasio must rely much more on lower elected officials and especially appointed representatives of government to effectively represent the 8,491,079 current New Yorkers.<sup>26</sup>

The first of the disparate approaches, low level enforcement, is rooted in the “broken windows theory.” This highly controversial concept maintains that low level criminal behavior such as public drunkenness, prostitution, and vandalism leads to a deterioration of neighborhood order. The visible and moral effects of this rampant lawlessness then result in an increase of more dangerous crime such as robbery, rape, and murder as the citizens in that neighborhood believe that lawlessness prevails. In the 1982 article that introduced the term into the discourse,

Kelling and Wilson use the narrative corollary that a building with one broken window that goes unrepaired typically has no windows left after a period of time.<sup>27</sup>

It is important to note that Kelling and Wilson in their original article made the important distinction between the appearance of order and an actual drop in crime. Indeed, the article asks arguably the single most perplexing question in public policing policy: “how can a neighborhood be “safer” when the crime rate has not gone down-in fact, may have gone up?”<sup>28</sup> The “Broken Windows” argument has been the subject of considerable debate since its publication, owing mostly to its basis in a narrative rather than true empirical science and the difficulty in establishing stalwart proof of its efficacy.<sup>29</sup> The debate centers on the question of whether social disorganization directly influences crime, or if more context is required.<sup>30</sup>

The second approach, also known as problem oriented policing, is the practice of police officers pairing with citizens to address specific neighborhood problems. Officers down to the beat level receive training in problem solving strategies and are encouraged to contact citizens outside the context of a search or arrest.<sup>31</sup> A salient criticism of this model is that it has the potential to take police officers out of their primary responsibility of law enforcement and place them in the role of a social worker. An immediate and glaring disadvantage is that individual police officers, by design, have limited authority to effect certain changes to a community. For example, a police officer does not have the authority to permanently confiscate property even if that property is demonstrably a nuisance to a person or their neighbors.

This paper maintains that neither approach to community policing is desirable. Instead, the success of a democracy, and by extension its police force, depends on the application of security doctrine in enforcing policy set by the civilian leadership. None of the currently posited theories for employment of police can succeed unless the chosen concept supports the

public's vision for the future of their community as expressed through elected leadership. The DOJ report of the investigation conducted by the Federal Bureau of Investigation (FBI) into the events leading up to the shooting of Michael Brown on 9 August, 2014 and the subsequent civil unrest highlights how poor civilian policy drives dysfunctional operational design by a security service.

This paper's analysis treats the shooting of Michael Brown as a catalyst for the subsequent unrest regardless of the outcome of the investigation of that shooting. In other words, the operational design of the police prior to August 9, 2014, is a separate issue from police reaction to unrest following the shooting. The racial aspects of the DOJ report are certainly an important element to understanding the dynamic within Ferguson, but this paper intentionally will not discuss it. A police department allowed to operate in the manner described in the DOJ report is going to foster community distrust regardless of the demographics present. Moreover, the racial bias of police procedure is an indicator of a poor understanding of the environment, which results directly in poor operational design.

The DOJ report on the Ferguson Police Department opens with an introduction broken into five sections. After opening with "Racial Bias," the headings are "Focus on Generating Revenue," "Police Practices," "Municipal Court Practices," and "Community Distrust."<sup>32</sup> In the report, the "Community Distrust" portion primarily references actions after the shooting of Michael Brown and is not relevant to this discussion. The other three are endemic of a security force given poor guidance and too much latitude.

The Ferguson Police Department, like many small and large municipal departments in the United States, collects large sums of money in fines for code enforcement violations within its jurisdiction.<sup>33</sup> Fines placed into law by a legislative body are certainly a legitimate method for

detering low level criminal behavior such as traffic violations. However, the dialogue between the civilian leadership of Ferguson and the police to increase fine collection to increase the city budget is a clear attempt to circumvent the legal process for levying taxes.<sup>34</sup> This also has the effect of separating the police from the community by taking security personnel away from their primary obligation to protect the populace, and is a clear failure of the civilian leadership to regulate its security force. Note the difference between this exploitative philosophy and that of focusing on solving community problems through partnering.

Directly tied to and complicit in this failure is the circumvention of the judicial branch in the structure of Ferguson's city government. The Ferguson Police Chief is directly responsible for the conduct of the municipal court, blurring the lines between executive and judicial branches.<sup>35</sup> No check was in place to prevent coordination between the chief of police and the financial director from coordinating to increase revenue by code enforcement.<sup>36</sup> Operational design relies on methods of effectiveness to gauge the efficacy of the policies enacted by a higher authority. Given poorly considered measures of effectiveness, the activities of the police department proved predictably counterproductive.

The use of low-density resources such as so called "less lethal" weapons and specialized units such as canine officers is another providence of operational design that requires attention from civilian policy. The "Police Practices" portion of the DOJ report specifically addresses abuses in the use of electronic control weapons (TASER) and canine assets in inappropriate circumstances, and cites this as a major factor in community distrust of the police department.<sup>37</sup> The appropriate use of these assets is well within the purview of correct operational design, and abuse by a police department of these assets should result in intervention by executive authorities. Canine units, TASER control devices, patrol rifles, armored vehicles, and riot

control agents all have legitimate applications for law enforcement use. When no clear policy exists for their employment or that policy lacks the attention of civilian executive authority, the possibility of abuse by individual police officers increases due to the volatile and uncertain nature of their job environment.

When Officer Darren Wilson fatally shot Michael Brown on 9 August, it simply did not matter whether the shooting was justified in terms of the beliefs of the community and the resulting narrative. The poor employment of the police department and lack of community engagement by civilian leadership offered the perfect catalyst for a narrative that indicted Officer Wilson and by extension the entire Ferguson Police Department. The response of the people of Ferguson is less important than understanding that the activity or at least perceived activity of the police set the conditions for what followed.

The immediate response to the local security crisis made the Ferguson Police Department, undermanned but over-equipped to handle the situation, the national poster child for police militarization. The already gaping chasm between the community and police department took center stage as the beleaguered police department desperately attempted to establish order. In a familiar scene, an unarmed but angry group of people with cellular technology fixed the attention of an entire nation on the long-term failure of a civilian government to maintain the legitimacy of its security apparatus.<sup>38</sup> Rifles, armored vehicles, canine units, and other expensive, advanced police technologies failed to rescue the day and served only to exacerbate the issue. The people of Ferguson had assumed the role of one of Clausewitz's wrestlers, and on the other side was the police.<sup>39</sup>

The rifles, body armor, and tactics that appeared so shocking on television were merely the visible aspect of a much larger issue. In another setting with different context, this military

equipment wielded by correctly trained police officers may have saved lives. The televised activities of the department and allegations of racism assumed center stage. To prevent events such as these in the future, the base causes of poor police operational design as led by unaccountable and criminally negligent civilian government should be addressed, not the equipment.

A correct operational design by a police force should start by framing the interconnected system of problems currently facing their community, a process known in the military as mission analysis.<sup>40</sup> During this initial portion of the design process process, issues with racial tensions, perceptions of police bias, and shortfalls in social programs within the community are all open for discussion and get captured as part of the problem set. Issues identified during mission analysis inform decisions such as the correct employment of equipment, the posture of security forces in specific areas, and key personalities within communities for engagement by the police. The police force further benefits from this process because problems outside their mandate or specialty will be identified and the correct resources applied to that problem.

Specific to the Ferguson example, the perception of unfair fine enforcement was due in part from the police being both the agency issuing fines and in charge of the court which enforces the fines.<sup>41</sup> Changing the structure of the government is not the prerogative of the police, and advocacy for this particular grievance should be directed at the legislative branch. This example highlights how a police force or municipal government can use design to identify how outside forces are negatively affecting their mission, enabling a more informed conversation on community safety and prosperity.

There are police departments employing good operational design and taking advantage of a “whole of government” approach to security and neighborhood stability. Police do not and

should not have control over economic development, neighborhood sanitation, education, or health care, all of which are critical aspects to alleviating poverty. Programs such as the Drug Abatement Response Team (D.A.R.T.) in Jacksonville, Florida combine the authorities and resources of social services, law enforcement, fire fighters, and other city agencies to address neighborhoods with chronic drug involvement.<sup>42</sup> This is an example of good strategic guidance by a city government informing effective operational to address the broad spectrum of urban issues. As US cities grow in size and diversity, this sort of approach must become the norm. The recent decision by the Ferguson, Missouri city council to adopt the terms proscribed by the DOJ is a victory in the sense that the decision does address the racial and revenue building problems with the police force.<sup>43</sup> However, how many other communities in the US will use Ferguson as an example and reform the operational design of their police forces is still in question.

### **The Local Terror Threat: The Death of Community Policing?**

The terror attacks of September 11, 2001 and the trans-national threat they represented opened an entirely new front for the local police officer. With the US Army confined to its home bases without Presidential order, the beat cop became in the minds of many Americans a front line soldier in the defense against a terrifying new existential threat. To equip them, the federal government continued to funnel increasing amounts of equipment and training dollars to local departments, expanding their mission to face an uncertain enemy. As weapons and equipment in use by the US military expanded due to operational needs in Iraq and Afghanistan, the pool of equipment available to local departments also expanded.

The myriad of federal law enforcement and security agencies are separate from this discussion because of their mandate to address trans-national threats. The FBI's website

advertises: “Spies. Terrorists. Hackers. Pedophiles. Mobsters. Gang leaders and serial killers. We investigate them all, and many more besides.(sic)”<sup>44</sup> The jurisdiction and daily activities of federal agencies do not bring them into daily contact with most neighborhoods so the community policing model does not apply to them.

Trans-national terrorist groups are a class of criminals that police can comfortably consider “enemies.” They come from outside the community to do harm by attacking civilians. Terror groups have two major advantages over local departments. First, they operate in many cases with absolute surprise since a local department lacks the assets to detect them in many cases. Second, they are a military-like threat which asymmetrically attacks a target defended by law enforcement. The United States has historically enjoyed isolation from the rest of world due to its east and west borders being large oceans, but this advantage is eroding in the face of globalization and advanced forms of international travel. How to simultaneously maintain the security and civil rights of the American people in spite of this threat is a key point of debate. A correctly articulated doctrine for the security force closest to the population, based in the fundamentals of community policing but recognizing the requirement to deter terror threats will go a long way towards solving this issue.

If local police are conducting operations based in community policing, a surprise attack by a terror group will catch them dispersed throughout the community, equipped with light weapons and in a mental mode to interact rather than attack. The responding officers, now in the middle of a “three block war,” must pivot from non-kinetic operations to stopping extreme violence.<sup>45</sup> Militarization of equipment and tactics to respond to these types of terrorist situations is not only essential for officer safety, but also to ensure they are able to defeat the attackers.

The alternative to equipping and training police for this mission is the acceptance of standing military units on American soil, a prospect much less palatable.

The primary issue with this advance in capability for the police is that it has not corresponded with cogent doctrine for its application beyond specific tactical considerations regarding response to an active shooter scenario. Executive order 13688, issued by President Obama in response to calls for limiting the equipment available to local law enforcement, primarily focuses on what the agencies cannot have in terms of equipment provided by the Federal government. The executive order is an excellent starting place as it mandates training for officers receiving special equipment from federal programs. It also calls for transparency between community leadership and police departments in the acquisition of special equipment, a major step in ensuring future communities are not surprised by the capabilities of their police force.<sup>46</sup>

The shortfall of the executive order is that it fails to address the true issues leading to the breakdown in civil order in Ferguson. It does nothing to clarify how its call for community policing, constitutional policing, or community input and impact protocols reconcile with the requirement to combat a trans-national terror threat from a squad car if necessary.<sup>47</sup> The executive order mandates training in the effective use of special equipment, but makes no mention of things like language training or money for on-call translators to assist police officers in navigating their increasingly globalized communities.<sup>48</sup> Protecting American communities from trans-national threats is the providence of the Federal government, and local police need to know where their role begins and ends in this fight so they do not have to prepare for every possible scenario with growing piles of expensive military equipment. In summary, the order addresses the symptoms but not the disease. A bigger conversation including the legislative and

judicial branches of federal, state, and local governments is required to re-define the roles and responsibilities of the separate security arms of the US government and take the conversation above camouflage uniforms and helmets to what exactly the responsibility of a local police force is with regard to terror threats and how this differs from the military.<sup>49</sup>

## **Conclusion**

It is true that nothing occurring in the community of Ferguson before or after the shooting of Michael Brown represents a terror threat. However, police militarization neither caused the death of Michael Brown nor the social unrest that resulted. The bullets that tragically killed Michael Brown issued from the duty weapon of a basic patrol officer responding to a radio call.<sup>50</sup> The subsequent response to the social unrest though aggravated in some cases by the posture of the police forces and pictures of their equipment did not kill one single protestor. The chasm between the police and the citizens of that community resulted from ill-conceived police practices, bad city management, and ill-considered tactical employment. None of this has anything to do with police forces possessing rifles, helmets, or receiving training in safely clearing a contested structure. By contrast, how many more innocent civilians would have died at the hands of the San Bernardino shooters had the responding patrol officers not been adequately equipped?

This and other questions regarding the training and equipping of police forces deserve further study and scholarly debate. The body of case studies showing the necessity of local (non-Federal) first responders to have advanced training and military style equipment includes the bombing of the Alfred P. Murray building in Oklahoma City, Oklahoma on April 19, 1995, both the 1993 and 2001 attacks against the World Trade Center, and the Boston Marathon Bombing on April 13, 2013. These case studies have numerous differences, but one striking similarity: the

first government officials on scene saving lives were city and county first responders. Where is the balance between a well-equipped security force and an over-equipped second land army?

Police acquisition of military equipment is not the antithesis of community policing, nor does it spell the end of the community-oriented department. The two concepts can be reconciled, and the civilian leadership must guide study and discussion of the deterrence of emerging trans-national threats to ensure the police, federal law enforcement, and the military are equipped to handle their assigned responsibilities. America's police officers are capable of training to foster healthy communities and kill/capture true enemies of the United States and her people if they receive cogent guidance as to what their responsibility is.

Some militarization of the police force is inevitable if the expectation that they respond to military threats such as terrorist attacks on US soil remains. This development need not mean the end of civil liberties if the police design their operations to address threats to their community instead of treating the community as a threat. An operational design which begins by framing community problems within the context of civil rights, applicable law, officer safety, and the numerous other considerations relevant to this discussion will lead to effective restraints on police use of force and specialized equipment as one of its outcomes. Moreover, as the community changes, the same process will ensure that the police and other civil services change along with it and continue to provide for the people's needs.

The continued professionalization and education of local police is essential to success in deterring or stopping the trans-national terror threat. These men and women require equipment, procedures, and most importantly doctrine never before considered for law enforcement use due to the constantly evolving threats facing American citizens domestically. The blank check approach has come full circle since the attacks against the World Trade Center when a fear

induced reaction to the attacks caused the federal government to spend billions to arm the nation's local police without sufficient thought as to what they really needed. The danger today is that the same fear of our own police strips necessary lifesaving equipment from the professionals trying to keep fellow citizens safe from a constantly growing array of threats, or that the inability to coherently define the roles of our security forces destroys the fabric of our society by producing another land army oriented against the citizenry. The only way to ensure that police remain focused on the safety of the community is strategic guidance from elected civilian officials translated into a coherent and effective operational design that balance community engagement with preparation for a myriad of nightmare scenarios.

### **Further Research**

Perhaps it is time to consider whether one qualified professional is capable of doing both the job of a military member and a police officer in the modern security environment. In 2012, the federal government provided \$111 million to law enforcement agencies to assist them in hiring veterans of the US military.<sup>51</sup> The wide spread practice of former military members seeking employment as law enforcement is certainly positive, but should the former active duty members remain as reservists or National Guard? Though reserve experience and training dollars for individual officers benefit small departments, does it make sense to take them off the line as police and place them back in a military status? Is there a danger that under stress this member will revert to their military training if the officer did not receive correct law enforcement training to solve their current problem?

The role of the National Guard is another area deserving of further study. The employment of National Guard units for overseas contingencies has eclipsed their traditional mission over the last decade. Could the National Guard assume some roles at the state level such

as controlling civil disturbance and large scale counter-terror operations to take some of the pressure off the police department? Moving some of the kinetic capability to the National Guard would place the more lethal capabilities under the direction of the state governor, and could prevent some of the abuses by S.W.A.T. teams alleged by the ACLU in their report.<sup>52</sup>

Finally, the question of how the public perceives utilization of military equipment is in need of scholarly attention. The question is as nuanced as the equipment available and the context present in each individual community. Public opinion is capricious, but the general trends present in local communities are critical pieces of information for informed decision making within city governments and police departments. Additionally, the modern public perception of the US military when employed domestically on various categories of missions is a topic with virtually no academic background.

## End Notes

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<sup>1</sup> “Transcript of President Bush’s Address, 21 September, 2001.” Retrieved from the CNN US website on 20 January, 2016. <http://edition.cnn.com/2001/US/09/20/gen.bush.transcript/>

<sup>2</sup> “Police Militarization.” American Civil Liberties Union website. Accessed 14 January, 2016. <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/police-militarization>

<sup>3</sup> U.S. Department of Justice, *Community Policing Defined*, (Washington, DC: Office of Community Oriented Policing Services, 2012, revised 2014), 2. <http://ric-zai-inc.com/Publications/cops-p157-pub.pdf>

<sup>4</sup> American Civil Liberties Union, *War Comes Home: The Excessive Militarization of American Policing* (New York: ACLU Foundation, 2014), 43-44.

<sup>5</sup> “Police Divisions,” City of San Bernardino web site, accessed 20 January, 2016.

[https://www.ci.sanbernardino.ca.us/cityhall/police\\_department/about\\_sbpd/the\\_divisions/default.asp](https://www.ci.sanbernardino.ca.us/cityhall/police_department/about_sbpd/the_divisions/default.asp)

<sup>6</sup> Frank G. Hoffman, "Hybrid Warfare and Challenges," *Joint Force Quarterly* No. 52, (2009 1<sup>st</sup> Quarter 2009): 34.

<sup>7</sup> Brimo, Eric M. "An Exploration of the Experiences of Members of Law Enforcement Tactical Teams," (Order No. 3549455, Capella University, 2012), 74.

<http://search.proquest.com/docview/1284156318?accountid=14746>.

<sup>8</sup> Michael D. Reisig, "Community and Problem-Oriented Policing." *Crime & Justice* 39, (September 2010), 2. *Criminal Justice Abstracts with Full Text*, EBSCOhost (accessed November 3, 2015), 1-3.

<sup>9</sup> *Ibid*, 3.

<sup>10</sup> U.S. Department of Justice, *Community Policing Defined*, (Washington, DC: Office of Community Oriented Policing Services, 2012, revised 2014). <http://ric-zai-inc.com/Publications/cops-p157-pub.pdf>

<sup>11</sup> Carl von Clausewitz, *On War*, eds. Michael Howard and Peter Paret, trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1984), 89.

<sup>12</sup> Nicholas Nassim Taleb, *The Black Swan*, (New York: Random House, 2007), xvii-xxii. This event was a Black Swan. According to Taleb, Black Swans are events that are unpredictable, have a massive impact, and people will concoct explanations of how they should have been predicted even if they could not.

<sup>13</sup> Thomas Jefferson, *The Declaration of Independence*, (Reproduced in Washington, D.C.: Cato Institute, 2004), 24.

<sup>14</sup> Gary Felicetti and John Luce, "The Posse Comitatus Act: Liberation from the Lawyers," *Parameters* 34, (Autumn, 2004): 96-101.

<http://search.proquest.com/docview/198172656?accountid=14746>. Mr. Felicetti and Mr. Luce deliver an interesting view on the history of *Posse Comitatus* in their article. According to their argument, Southern Democrats pushed the law past a reluctant President in order to gain back control of reconstruction in the south. Specifically, they argue this measure to remove federal troops was a ploy to enable gerrymandering by white southerners at polling stations which were at the time protected by Union Soldiers. This argument is outside the scope of this paper. However, the fact that US Army employment on domestic soil was commonplace previous to 1945 debunks the common myth that there is some sort of constitutional protection specifically against the employment of the Army on US soil. This is important for context on the current

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debate and helps to explain why the lines between law enforcement and the military can still appear legally fuzzy.

<sup>15</sup> Gary Fellicetti and John Luce, *The Posse Comitatus Act: Liberation from the Lawyers. Parameters*, 95-99.

<sup>16</sup> U.S. Department of Justice, *Investigation of the Ferguson Police Department*, (Washington, DC: Civil Rights Division, 4 March, 2015), 1-15.

<sup>17</sup> Executive Office of the President, *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, (Washington, DC: Executive Office of the President, December 2014), 3.

[https://www.whitehouse.gov/sites/default/files/docs/federal\\_support\\_for\\_local\\_law\\_enforcement\\_equipment\\_acquisition.pdf](https://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf)

<sup>18</sup> Executive Office of the President, *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, 3. “Controlled property” for the purposes of the report is any “property listed on the Department of State Munitions Control List or Department of Commerce Control List.

<sup>19</sup> *Ibid*, 8.

<sup>20</sup> “FBI Releases 2014 Preliminary Statistics for Law Enforcement Officers Killed in the Line of Duty,” The Federal Bureau of Investigation, last modified 11 May, 2015, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2014-preliminary-statistics-for-law-enforcement-officers-killed-in-the-line-of-duty>

<sup>21</sup> Executive Office of the President, *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, 3-5.

<sup>22</sup> Carl von Clausewitz, *On War*, 75. American Civil Liberties Union, *War Comes Home: The Excessive Militarization of American Policing*, 3, 45. The ACLU report makes several references to the police viewing citizens as an enemy, but the pages named are the two most direct.

<sup>23</sup> Michael D. Reisig. "Community and Problem-Oriented Policing," 2.

<sup>24</sup> *Ibid*, 2.

<sup>25</sup> “Population of the 100 Largest Urban Places, 1900,” US Census Bureau, Posted 15 June, 1998. Accessed 19 January 2016.

<https://www.census.gov/population/www/documentation/twps0027/tab13.txt>

<sup>26</sup> “Current Population Estimates,” Department of City Planning, City of New York. Accessed 19 January, 2016. Numbers current for July 2014.

<http://www.nyc.gov/html/dcp/html/census/popcur.shtml>

<sup>27</sup> George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety,” *The Atlantic* (March 1982): 5-6,

<http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>

<sup>28</sup> *Ibid*, 3.

<sup>29</sup> Nicholas Nassim Taleb, *The Black Swan*, 63-84.

<sup>30</sup> Michael D. Reisig. "Community and Problem-Oriented Policing," 3.

<sup>31</sup> *Ibid*, 3.

<sup>32</sup> U.S. Department of Justice. *Investigation of the Ferguson Police Department*. Washington, DC: Civil Rights Division, 4 March, 2015, 1-5.

<sup>33</sup> *Ibid*, 9.

<sup>34</sup> *Ibid*, 9-15.

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- <sup>35</sup> Ibid, 8.
- <sup>36</sup> Ibid, 10.
- <sup>37</sup> Ibid, 28-33.
- <sup>38</sup> Andy Bain, Bryan K. Robinson, and Jim Conser, "Perceptions of Policing: Improving Communication in Local Communities," *International Journal of Police Science and Management* 16, no. 4 (Winter 2014): 268-269. International Security and Counter Terrorism Reference Center, EBSCOhost.
- <sup>39</sup> Carl von Clausewitz, *On War*, 75.
- <sup>40</sup> Joint Staff, J-7 Joint and Coalition Warfighting, *Planner's Handbook for Operational Design*, (Suffolk, VA: Joint Staff, October 7, 2011), VII-1-VII-6. This paper uses exclusively joint definitions and language to discuss design for the sake of simplicity.
- <sup>41</sup> U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 3.
- <sup>42</sup> "Drug Abatement Response Team." City of Jacksonville Web Site. Accessed 20 January, 2016. [http://www.coj.net/departments/regulatory-compliance/municipal-code-compliance/drug-abatement-response-team-\(dart\).aspx](http://www.coj.net/departments/regulatory-compliance/municipal-code-compliance/drug-abatement-response-team-(dart).aspx).
- <sup>43</sup> J. Weston Phippen, "The End of Discriminatory Policing in Ferguson?" *The Atlantic*, March 16, 2016. <http://www.theatlantic.com/national/archive/2016/03/ferguson-discriminatory-policing/473982/>
- <sup>44</sup> "What We Investigate," Federal Bureau of Investigation home page, Accessed 20 January, 2016. <https://www.fbi.gov/>
- <sup>45</sup> Charles C. Krulak, "The Strategic Corporal: Leadership in the Three Block War," *Marines Magazine* January (1999). [http://www.au.af.mil/au/awc/awcgate/usmc/strategic\\_corporal.htm](http://www.au.af.mil/au/awc/awcgate/usmc/strategic_corporal.htm)
- <sup>46</sup> Law Enforcement Equipment Working Group. *Recommendations Pursuant to Executive Order 13688 Federal Support for Local Law Enforcement Equipment Acquisition*. (Washington, DC: Law Enforcement Equipment Working Group, May 2015), 17-35.
- <sup>47</sup> Ibid, 19.
- <sup>48</sup> Ibid, 20-22.
- <sup>49</sup> Ibid, 13.
- <sup>50</sup> Authors note: Some readers may object to the author's use of the word "tragically" in this context. It is the author's position that any loss of life resulting from encounters between police and citizens is a tragedy for all involved to include the police officer, whether or not the use of force was justified.
- <sup>51</sup> "Vets to Cops: Bridging the Gap Between Law Enforcement and Military Veterans," COPS website, Accessed 23 January, 2016. <http://cops.usdoj.gov/html/dispatch/06-2012/vets-to-cops.asp>
- <sup>52</sup> American Civil Liberties Union, *War Comes Home: The Excessive Militarization of American Policing*, 33-40.

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Figure 1



Source: [http://www.huffingtonpost.com/2014/08/13/ferguson-photos\\_n\\_5674573.html](http://www.huffingtonpost.com/2014/08/13/ferguson-photos_n_5674573.html)

Figure 2



Source: <http://www.people.com/article/ferguson-protests-michael-brown-barrack-obama-video>

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Figure 3



Source: <http://www.policestateusa.com/2014/ferguson-missouri-riots/>

Figure 4



Source: <http://www.deathandtaxesmag.com/230273/ferguson-police-stockpile-riot-gear-in-preparation-for-more-protests/>