

Backing the Blue: State Government's Resistance to Civil Rights Progress

Brief Overview

This brief identifies issues that perpetuate police violation of civil rights and possible steps the federal government could make to mitigate them.

Abstract

One objective with this brief is to examine how police unions and existing policies in state and local police agencies have allowed police to deny civil rights to citizens. The title is provocative, however the intention is not to vilify the police, as there are many factors working against them, such as an overbearing workload and training that does not prepare them for situations they encounter. States are too entrenched to change all of this on their own and urgent federal action is needed to reform state police practices and provide alternatives to the violence that is all too common today.

The three main objectives are as follows:

1. Identify how police unions and existing policies perpetuate problems.
2. Identify what factors make law enforcement difficult.
3. Explain federal action that can be taken to mitigate this issue.

Key Terms

- Police Union- Union that negotiates better pay and protects the rights of police officers.
- Gypsy Cops - Officers who have found jobs even after exhibiting signs that they might be ill suited for police work. (Williams)

- National Use of Force Data Collection - An FBI program started in 2015 that collects data from state and local agencies on a voluntary basis gathering information like level of force, number of officers involved, number of suspects and their demographics for example.
- Bad Apple - An officer that is found guilty of misconduct and faces legal consequences.
- Types of allegations of misconduct:
 - If a complaint is determined to be “unfounded,” it is deemed a false allegation.
 - If the officer is “exonerated,” it means that the act in question did occur, but it was lawful and within policy.
 - If a complaint is “not sustained,” it means that there was insufficient evidence to determine whether the allegation did or did not occur.
 - If a complaint is “sustained,” it indicates that there was enough evidence to prove that the allegation did occur. (*Policing 101*)

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By achieving these objectives, a framework for an informed and robust discussion on this topic can be facilitated.

Civil rights progress cannot be achieved when citizens fear interacting with a police officer could result in their death. Many of the statistics on police shootings are only available from private organizations, as state police agencies have not prioritized oversight over the nations “18,000 local police departments in the United States” (*Policing 101*). The Federal

government has been making progress with the 2015 creation of the National Use of Force Data Collection program, this program has its shortcomings and with data being collected on a voluntary basis, many problem police departments remain unaffected.

What Entities, Policies and Laws prevent action?

The current system regarding police misconduct is inadequate and allows for dangerous individuals to wield a badge and a gun. Gypsy police officers, and officers who violate policy or laws in general can be difficult to fire after misconduct, “police unions often negotiate rules creating an arbitration process that allows officers to appeal disciplinary actions. In some circumstances, this may result in reinstatement of officers who were fired by the police chief for alleged misconduct” (*Policing 101*).

Two Constitutional amendments impede progress on federal intervention into state policing, the Tenth and Eleventh. “The Tenth Amendment—more specifically, the anti-commandeering doctrine—does limit Congress’s options for implementation. The anti-commandeering doctrine bars federal conscription or circumscription of state power” (Stanford). This means that any attempt by the Federal government to directly intervene in State police agencies will face resistance and be ultimately unsuccessful. The Federal government must then incentivize states some way to go along with new programs, laws, or agencies. “The Eleventh Amendment later came to embody a default presumption that states are generally immune from suit, regardless of the individual plaintiff’s citizenship. Nearly a century after the amendment’s ratification, the Supreme Court held that it also barred citizens from suing their own states in federal court” (Stanford).

Many victims or their families have no choice then but to sue police departments, however this is expensive and likely to fail as court precedents regarding use of force, such as the 1989 case *Graham v. Conner*, shield officers from wrongdoing. Tracking gypsy cops and preventing them from attaining further careers in law enforcement is difficult, “While the FBI and private organizations have amassed some of this data, laws making police disciplinary records secret or semi-secret in all but 12 states have curtailed efforts to collect it” (Stanford). Were these state laws overturned, law enforcement agencies could prevent “bad apples” from entering their ranks.

The Burden Faced by Officers

Many police stations are understaffed, “Since 2013, the total number of working sworn officers has fallen by about 23,000. The number of officers per capita is down even more sharply, from 2.42 per 1,000 residents in 1997 to 2.17 officers per 1,000 in 2016” (Kaste and Mack) this means officers are expected to work longer shifts, cover a wider area, or a combination of the two. This workload increases stress, “organizational culture and workload are the key issues in officer stress. Given that the degree of symptomatology appears to be worsening, management action is required” (Collins and Gibbs) increasing the risk of an adverse interaction.

Officers also respond to calls concerning mentally ill individuals that they are not trained or equipped to deal with. In addition, many members of the public display open distaste for the police and in some areas, police agencies are being outright abolished. Officers must also be ready to respond to potentially life-threatening situations at any time since police are often targeted by criminals. As seen in the now ongoing trial of Derek Chauvin, the officer accused of murdering George Floyd on May 25, 2020, a common defense for officers accused of

misconduct is that they were following their training, which can be valid in some circumstances, however this emphasizes the need to better train officers so they can handle situations without escalating force unnecessarily.

Federal Action That Must Be Taken

A solid foundation for better policing could be built if the federal government created and incentivized states to follow national standards for training police officers since state and local agencies may not have the resources or interest in providing this. The city of Camden, New Jersey is a prime model that could be replicated since they dismantled the city police department and relied on community policing “the new police were trained in de-escalation techniques, given body cameras and held to account by an 18-page use-of-force policy that expressly defines reasonable force in the line of duty and requires officers to intervene when their colleagues violate the policy” (Fowler). Perhaps the Camden model of policing is the most effective for some cities, but other methods for smaller and larger departments alike could be found if all police departments sent their use of force data to the FBI for analysis.

The Brennan Center has many policy recommendations that include many of the suggestions listed, and advocates for victims of police misconduct. The federal government must encourage the use of and provide resources for body cameras for police officers in uniform, along with incentivizing states to encourage police agencies to send data to the National Use of Force Data Collection program. The information gained from this program is vital to improve policing methods, policies and training standards in America, and the federal government must cooperate with states to ensure they are sending as much data as they can. The creation of a database like the REAL ID system for officers who have been fired or who have sustained allegations of misconduct would improve the quality of policing by reducing repeat offenders

from attaining law enforcement positions. This will be tough to achieve given the nature of many state laws protecting these individuals. The National Crime Information Center, NCIC, could be utilized for this or the National Use of Force Data Collection program. Ending the War on Drugs would also improve policing due to the nature of many police interactions being drug related. More federal resources can be allocated to mental health and drug rehabilitation facilities, alternate agencies or programs that assist the mentally ill and those addicted to drugs. These measures could avoid the police and court system and provide an alternate path for these individuals to receive assistance.

Implications

Without national change to the way policing in America is conducted and held accountable, public trust in police will remain elusive. Change is also needed to ensure “bad apples” and “gypsy cops” are removed from law enforcement positions. Many people, especially minorities, live in fear of the police and this is unacceptable. Law enforcement agencies must work together to ensure their officers are well trained and accepted by their community to ensure public order is maintained. Nationwide protests about police reform show there is strong public support for reform, and the federal government has the capability to make that reform a reality, if it can work with state and local agencies that are in dire need of it.

Police have many factors making their job more difficult than many others, however the authority they wield can have severe consequences for those they wrongfully search, arrest, shoot, and/or interact with. For example, a 2013 CNN report found that Florida police have stopped Earl Sampson 258 times between 2009 and 2013, 56 of those were arrests for trespassing at his workplace (Zarella). Additionally, in 2014 Brandon Watson was charged by police after they executed a no-knock warrant on his house and he fired once at officers, the police had

responded to the wrong address and a jury not only found him innocent of reckless handling of a firearm but that the police were disorganized and provided no clear answers for their wrongdoings (Fox). These are just two examples of black men being the victims of police misconduct, and there are countless other stories similar or worse. Without federal intervention, more cases like this will appear and further erode public faith and trust in policing.

Conclusion

The Federal government has many tools at its disposal to improve policing in America. Although there is no “silver bullet” that can fix the way police interact with the public, there are steps that can be taken to enact positive change at the community level. If local agencies utilize federal training resources already available and contribute data to the National Use of Force Data Collection, then nationwide change in policing can occur. Avenues for further research include deciding if Federal action will be accepted by the states or will existing Supreme Court decisions and state laws prevent national reform? Also deciding if State governments can be trusted to improve policing with elected officials being so heavily lobbied by police unions. Finally, should local governments create new agencies to respond to calls for emergencies regarding mental health, the mentally ill, and/or people with drug addictions?

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