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## Six Amendments – John Paul Stevens (2014)

### Prologue

The (13?) states sign Articles of Confederation. No central government. Like a treaty amongst several sovereigns.

The Constitution forms (“ a more perfect”) the Union, of, by and for the people. Bicameral legislature – equal representation in the senate, proportional representation in the House of representatives.

Article I of The Constitution provides three-fifths of slaves were counted towards population for voting, but slaves were not permitted to vote.

Article V of The Constitution provides for change by way of amendments:-

- (1) By two-thirds of both houses of Congress or
- (2) By two-thirds of the states.

Article V of The Constitution provides for ratification by way of:-

- (1) Legislatures of three-fourths of the states or
- (2) Conventions in three-fourths of the states.

Procedures of Article V successfully employed only eighteen times. The first occasion adopted ten amendments that are known as The Bill Of Rights.

- (1) Religion
- (2) Armed Militia
- (3) Quartering of Soldiers
- (4) Search & Seizure
- (5) Five legal guarantees
- (6) Trial
- (7) Jury trial
- (8) Excessive & Unusual
- (9) People over Constitution

(10) Reserved to States

Then:-

(11) Precludes Federal Over Citizen

(12) Electoral College procedures

(13) Abolish Slavery

(14) Former Slaves Citizenship

(15) Former Slaves right to vote

(16) Federal taxation

(17) People elect Senators

(18) Prohibition of Liquor

(19) Women vote

(20) President's commencement

(21) repeal of Prohibition of Liquor

(22) Two terms sufficient

(23) DC representation

(24) Poll tax abolished in federal elections

(25) Vacancy in Office of Vice-President

(26) Eighteen-year olds vote

(27) Congressional Salary changes prohibited

## Chapter VI - The Second Amendment

Concern that a national standing army might pose a threat to the security of the states led to the adoption of the second amendment.

**But – the USA now has a standing Army (and Navy and Air Force and Marines and ...)**

(1) It applied only to keeping and bearing arms for military purposes and

(2) It imposed no limits on State regulations regarding ownership.

## The Second Amendment – Michael Waldman (2014)

xii “Foggy words and odd locution”; Militias (nowadays National Guard); 2008 “Heller” the right to own a gun for self-defense in the house.

xiii protected the individual’s right to own a gun ... to fulfill the duty to serve in a militia.

12 John Adams “Keep” and “bear” arms, but only in “the common defense”.

15 (1775) Congress drafted the articles of Confederation; legislative, executive, and judicial branches of the government.

22 4 out of 13 protected the right to bear arms; in Pennsylvania’s case “for self-defense”.

33 The mediaeval English misdemeanor of affrighting prohibited carrying a weapon as a threat to others.

34 Framers had no distinction between military arms and civilian arms – they were the same (types of) weapons.

52 Madison introduces “The right of the people to ...”

53 Tenche Cox (paraphrase) “As civil rules may tyrannize, military forces might pervert, people have a right to keep and bear their private arms”

**(heh heh: “We reserve the right to shoot each other”)**

55 Purpose of keeping arms is to avoid having a Standing Army.

56 (1789) House of reps passes Bill Of Rights (17(!) amendments); Senate tightens and modifies.

57 (1792) Jefferson “ratify by  $\frac{3}{4}$  state legislatures, amendments to Constitution”

61 The preamble (to the Second Amendment) is unique (and therefore is critical)

63 databases: search for terms “bear arms” only in terms of militia

67-68 (1819) Gun violence rose; state laws introduced. "Arkansas Doctrine" limits to militia became the standard interpretation. (1840) "defense of the public"

77 (1876) "Cruikshank" Second Amendment applies to Congress, not to any State (ref page 80)

78 (1903) Congress "Dick Act" creates a National Guard

80 (1911) States set gun laws (ref page 77); Sullivan's law lowers suicides but not murders. Supreme Court: Second Amendment does NOT apply to States BUT States can not pass laws inhibiting use of Second Amendment for the Nation.

82 Miller released because 1934 Firearms Act violates the Second Amendment; Supreme Court upheld the 1934

97 (1888-1960) Every law review article concludes that Second Amendment does not guarantee an individual right.

98 The NRA funds and hence biases Law Articles

101 Patrick Henry NOT about arms; "every man to be armed" but is protesting the cost of two levels of government arming men for militia!

110 The Senate (legislative branch?) rejects the judicial appointments

118 (2000) Timothy Emerson. Federal law bans him from owning guns. TE insists his Second Amendment is violated. Justice department "does not extend an individual right to keep and bear arms". (2002) Justice department reverses 70 years; Fed appeals rules against TE but "Constitution confers a right to own a gun"

120 (2008?) "wolves and bears" vs. "crime rate" as justification for individuals owning guns

121 (2008 June) Supreme Court rules that right to bear arms is unrelated to military service

122 Scalia's word-by-word analysis (operative syllable "anal")

125 The context (177x) of arguments was "Militia vs. Army"

127 compare “military arms in the 18<sup>th</sup> century against handguns in the twenty-first”. The Second Amendment is the right of the people of STATES to maintain a well-regulated militia.

130 “... the federal government has ultimate power over the capital’s (DC’s) local laws”

132 Words meanings/context changes. Courts should declare that the meaning is lost

137 (2002) Princeton, Scania and “the school kids” A week later, Sandy Hook; Newton.

143 Most gun law is found in State Statutes; DC is a federal territory. Bill Of Rights incorporated into State legislation piecemeal. By 2008? Only a few provisions, but including the Second Amendment, were not incorporated.

144 (2010) “McDonald” Second Amendment applied to the States. Alito: it is a fundamental right to a working gun in the home.

145 In the first two years after Heller(2008?) federal courts considered 200 cases; gun laws upheld in all but 2 cases. Heller: There is a right, but within limits.

146 Heller: right of self-defence “in hearth and home”

152 The gun groups focused on State Legislatures (which pre-empt city laws); the NRA focused on federal judicial nominees. (2012) 40 States legislatures mirrored the Second Amendment; 8 more states were added. “the right of each citizen to keep and bear arms is fundamental and shall not be infringed”.

156 (2013) 90% of the public support expanded checks; legislation fails because NRA filibusts.

161 (2014) Unlike autos, guns are not registered. Estimate of 270 million guns in the USA. 34% of households hose a gun. 20% of Americans report owning a gun.

**Does “Americans” include foreigners-living-in-the-USA? Does “report” indicate that many fail to report ownership?**

162 Johns Hopkins: Homicide rate in the USA is seven times the combined rate of 22 other high-income countries.

171 When the militias evaporated, so did the original meaning of the Second Amendment.

172 “Our system has evolved to give Supreme Court ultimate authority over ...”, “The court’s current five-vote majority – all chosen by republican presidents, even as democrats have won most recent presidential elections ...”

**If I understand this, there are two parties in the USA – Democrats and Republicans. Whoever wins the Presidential race gets to fill any vacancies in the Supreme Court (nine? judges). Supreme Court judges rule for life, so the composition of the Supreme Court (and hence major decisions) can lag several generations behind the ruling party.**

## The Second Amendment – Bogus (2001)

### Bogus (2001)

1            2<sup>nd</sup> is addressed 3 time 1876, 1886, 1939 (Miller 1894?) and on each occasion held that “right to bear arms only within the militia”

**So, no right to bear arms except in the militia, correct?**

“Militia” as in Article I Section 8 “Collective Rights” model. Spitzer: 1887-1960 Law review articles all endorsed collective rights.

2            Dodds Bill (ban interstate mail orders to those under 18 years of age) fails after NRA’s “quiet” campaign.

3            (1965) Sprecher’s essay. First non-student urging individual rights; argues for more uniform laws; “rebel against oppressive government” is an anachronism. By the end of the decade, 3 cases for individual rights, 22 for collective rights

5            2<sup>nd</sup> is derives from English Declaration of Rights 1689 but this is a poor interpretation. EDR was about WHO could regulate the right to bear arms, not WHETHER people had the right to bear arms. 1989 Levinson for individual rights and insurrection theory. NRA promotes more essays on “individual rights” so that in 1990s 58 for Individual Right and 29 for Collective Right.

8            Amar, Astyne, write, but miss the point.

9            Levy and Tribe are confusing (confused?)

10          Following Littleton Colorado, Tribe & Amar write that no right is absolute, gun controls are constitutionally permissible.

**At this point it seems that everyone can have a gun unless just cause for denial is shown.**

11          Levinson, Amar, Alstyne, Levy and Tribe are read because of what they are, rather than what they write. (It is their image rather than their content)

13          Wills: Standard Modelers (Individual Right) are badly reading and misinterpreting 18<sup>th</sup> century literature.

14 Bogus: It is all about Madison's tug-of-war between Congress and the Slave States.

## Spitzer

16 It was all about "militia", not "individuals"

17 After the war 1812, the federal government relies on a regular army. National Guard formed in 20<sup>th</sup> century. The 2<sup>nd</sup> is not endorsed by the 14<sup>th</sup>, and therefore is limited to federal action.

20 (gun ownership) practical necessity did not, and does not, equal constitutional protection. Citizen Militia Membership was always limited. "Universal" Citizen Militia service and the right to keep and bear arms is not, and never has been, like "free speech", "religious freedom" or "right to counsel", since arms-bearing was only for white males in a certain age range. Wild animals and predator protection is not in the 2<sup>nd</sup>. It belongs to British Common law and to Modern Criminal law, it does not belong to Constitutional law.

22 Militia to be used to suppress, not cause, insurrection. One cannot carry out a right of revolution against the government while simultaneously claiming protection (2<sup>nd</sup>) from that same government.

23 Levinson claims "vigilante rights" the same as "ballot box rights".

26 Harp article (1960) is badly flawed.

27 Petason: 2<sup>nd</sup> was designed to prevent the federal government from disarming the state militias, not to grant rights to an individual.

28-29 Halbrook via Howard(1866) general individual rights across a spectrum. To argue that the 14<sup>th</sup> supports individual rights is to suggest that the 2<sup>nd</sup> does not support individual rights.

31 (The South, 1866) thousands of former Confederate soldiers allowed to return home and keep their arms. Waite (1874?): 2<sup>nd</sup> means "shall not be infringed by Congress"

32 800+ Law reviews are student and suspect.

**I take this to imply that while the students are bright, they are still students, and the goal is to demonstrate that you can get something published, make footnotes, citations; and that an esoteric or provocative topic has a good chance of being published, damn the accuracy!**

## Bellesisles

51 Madison: The states have neglected the militia, therefore the federals must organize the militia.

53 Massachusetts State rights(1780) "The people have the right to keep and bear arms for the common defence"

## James Madison's Failed Amendments - John Buescher

(James Madison's Failed Amendments \_  
Teachinghistory.org.htm)

James Madison proposed 12 amendments to the Constitution, but only 10 were approved. What were the two that were not?

Anti-Federalists voiced strong objections to The Constitution, especially criticizing the strength it invested in the national government and its lack of explicit protections for the rights of individuals. Politicians in several states were able to secure their states' ratification of the Constitution only with the promise that it would be almost immediately amended.

In 1789, James Madison proposed 19 amendments. The Senate trimmed these down to 12, which were approved by Congress and sent out to the states by President Washington in October, 1789.

The states ratified 10 amendments to the Constitution, now referred to as the Bill of Rights. The first two of the original 12 did not become law.

(1) Members of the House would continue to represent small constituencies even as the general population grew, small enough that Representatives would not be too far removed from the concerns of citizens. ... the total number of members of the House of Representatives is set by federal statute (currently at 435).

(2) Congress could vote for a raise but it would only apply from the beginning of the next Congress. ... this amendment, first proposed in 1789, became the 27th amendment in 1992.

## Why Police Encounters Escalate - Ryan McMaken

(Too Many Laws Why Police Encounters Escalate \_ Mises Wire.htm)

The debate over the shooting of Philando Castile has ignited the debate over the way the police, generally speaking, often enforce petty, small-time offenses with often overwhelming force. In the case of Castile, the controversy hinges partially on whether or not Castile was being detained as a suspect in a real crime (such as armed robbery), or if he was being [stopped](#) and [harassed for a small-time non-violent infraction](#) such as drug possession or a broken tail light.

People instinctively know there is a real difference between the situations. Moreover, it is a safe assumption that **in the case of armed robbery, someone has actually requested the services of the police, while it is extremely unlikely that any citizen complained about, or was harmed by, a broken tail light or the possession of marijuana.** If it proves to be true that Castile was, in fact, stopped for a small-time infraction, then the escalation to a situation in which Castile was shot dead can be shown to be all the more unnecessary and needlessly violent.

But, of course, we don't need the Castile case to prove our point. Every day, people are stopped and detained by police for what should be regarded as peaceful non-criminal activities. But those situations often escalate to tense confrontations, and even in some cases to violent interactions.

It doesn't have to be this way.

## Police Didn't Always Patrol Areas Looking for People to Arrest

Modern policing is largely a nineteenth-century invention, and prior to modern urban police forces, state agents were generally called in to deal only with episodes of general social unrest.

Prior to the age of the modern police patrol in English-speaking countries, state agents — often a sheriff-like official — were used primarily to compel named defendants to appear in court when another citizen had made a complaint in court against that person, usually to demand restitution for some wrong inflicted. **It wasn't until the twentieth century that police agents routinely patrolled an area looking for places to intervene.** In the United States, for example, as [Jack Greene notes](#), "the American police service was originally cast as a reactive force, not as a preventive of interdicting force. ... **America's police were to provide assistance on request, not to proactively intervene in the lives of the community.**"

In England, the tradition of legal action only beginning in response to a private complaint is very old, and law enforcement agents were expected to act only in response to court orders. [Michael Giuliano writes](#):

Since early medieval England, long before the Norman invasion of England, criminal actions had been instituted by aggrieved private parties. They were primarily settled by compensation or restitution, and not imprisonment, capital punishment, or even the blood-feud that was common in much of Europe.

For most offenses, specific civil fines and compensation were established. ... The affirmative role of the victim or next of kin initiated the legal process. Particularly heinous offenses requiring more than "mere" intentional homicide, were often excluded from the realm of compensatory remedy. As process, judges were appointed to preside over the courts and enforce the decisions made by the assembled freemen of a district. Policing and law bore elements of democracy.

This reliance on a private restitution-based model continued into the late nineteenth century, and was hotly defended by many of the English on the presumption that a shift to "public" prosecutions — prosecution initiated by the state itself — would lead to a destruction of English civil liberties. Giuliano continues:

The formal transition from private to public prosecution in England did not occur until 1879 and years passed before it could be implemented in practice. The English gentry had long been suspicious of both a public prosecution system and a professional police force.

Indeed, the private initiation of criminal prosecution in England was a curiosity to visitors. Among them was the French jurist Charles Cottu, who like many was unaware of the "traditional arguments of English gentlemen against a constabulary and state prosecution," according to legal historian Douglas Hay. Those Englishmen **believed, in Hay's characterization, that the power of prosecutorial institutions could lead to a "political police serving the Crown."** This opposition to public prosecution has been cast by law professor Bruce P. Smith as an example of old England's "national commitment to civil liberties."

Obviously, today, we see few traces of a legal system that even resembles the **English Common Law system that relied on there being an actual victim for a crime to have taken place.** Today, police actively patrol neighborhoods looking for potential offenders even if no one has requested the "service."

In response, this has led to some observers to suggest that the police should function instead on a "[fire department model](#)" in which police respond only to actual complaints, rather than seek out "offenders" on their own.

Certainly, this could potentially be a step in the right direction, but the larger problem lies in the fact that not only can arrests and prosecutions be initiated in the absence of any complaint or victim, but the list of offenses for which a person can be arrested and imprisoned has grown disastrously long.

## Every Police Encounter Is an Opportunity for Arrest and Criminal Prosecution

Dealing with violent crime constitutes only a small minority of what police deal with on a daily basis. [For example](#), in 2014, out of 11,205,833 arrests made nationwide (in the US), 498,666 arrests were for violent crimes and 1,553,980 arrests were for property crime.

That means **82 percent of arrests were made for something other than violent crime or property crime.**

Moreover, many of these non-violent offenses — such as drug use, liquor violations, carrying an illegal knife, or other infractions that should be regarded as small-time offenses can result in serious jail time or prison time, as well as steep fines and lost earnings.

**I have often wondered what happens after a youngster is picked up off the street and jailed until a court date. (he) doesn't show up for work, job is given to someone else, doesn't pay rent, landlord turfs all personal effects and re-rents. Kid gets out of jail and finds No Job, No Home, No Possessions, ...**

For instance, the highly publicized [death of Eric Garner](#) at the hands of police officers was a conflict precipitated by the sale of untaxed cigarettes by Garner. The police officers who killed Freddie Gray in custody in Baltimore later claimed the arrest was necessary because Gray [possessed a knife](#) that violated city ordinances.

And then there are the countless cases of non-criminals who have been stopped, searched, arrested and imprisoned for petty drug offenses such as possession.

Indeed, police departments spend an immense amount of time and resources on these non-violent offenses. In their book, *The Challenge of Crime*, Henry Ruth and Kevin Reitz [observe](#):

[W]e do know that the effort to stem the tide of illicit drugs has been massive — and expensive. On the local level, 93 percent of county police agencies and 82 percent of all municipal agencies with more than one hundred police officers contained a full-time drug enforcement unit, as did about 60 percent of the state police agencies, and almost 70 percent of all sheriffs' departments. New York City alone in 1997 reported over 2,500 police officers dedicated to drug units and task forces. More than 90 percent of all these police agencies received money and property forfeited by drug sellers for use in law enforcement operations. ...

State and local police made about 1.6 million arrests for drug abuse violations in 2000, four-fifths of them for drug possession. ... And in 1998, drug offenders were 35 percent of all felons convicted in state courts.

In *Gangs and Gang Crime*, Michael Newton Reports: "In 1987, drug offenses produced 7.4 percent of all American arrests, nearly doubling to 13.1 percent by 2005."

As Ruth and Reitz note, there are financial incentives to police agencies to pursue drug offenders. The nature of drug offenses also gives the police more reason to make arrests in general. As explained by Lawrence Travis in *Introduction to Criminal Justice*:

With increased emphasis on drug crimes, agents and agencies of the justice system have uncovered offenses that have been present for years. Because drug offenses have gone unreported in the past, Zeisel (1982) noted that they present an almost limitless supply of business for the police. Changing public perceptions of the seriousness of drug offenses has supported increased drug enforcement efforts.

[Peter] Kraska observed that with drug offenders, police "can seek actively to detect drug crimes, as opposed to violent and property crimes, for which they have little choice but to react to complaints." Thus, the volume of drug offenders entering the justice system is more a product of police activity than is that of violent or property offenders..

**Political pressure to treat drug offenses more seriously, coupled with giving incentives such as profit from seizing the property of drug offenders, spurs more aggressive police action."**

In other words, rather than react to complaints about violent crime or property crime, drug enforcement provides the police with nearly limitless opportunities to search, question, and arrest suspects for any number of offenses related to drugs. Moreover, if the police attempt to stop and search a person, and the person becomes uncooperative, police may then be able to justify an arrest for "resisting arrest" or similar offense even if no drugs are found.

Arrests in turn then bolster [a police officer's career](#), even though little time has been spent on investigating violent crime or recovering stolen property.

The results of this emphasis among law enforcers can be seen in the incarceration data. Erinn Herbermann and Thomas Bonczar [report that](#), of the 3,910,647 adults on probation in the US at the end of 2013, 25 percent (approximately 977,662 people) had a drug charge as their most serious offense.

[According to](#) the Justice Policy Institute: "approximately one-quarter of those people held in U.S. prisons or jails have been convicted of a drug offense. The United States incarcerates more people for drug offenses than any other country. With an estimated 6.8 million Americans struggling with drug abuse or dependence, the growth of the prison population continues to be driven largely by incarceration for drug offenses."

Consequently, more than one-fifth of prisoners ([21 percent](#)) in state prisons are held due to drug violations, while more than half (55 percent) of prisoners in federal prisons are held due to drug violations. This does not include offenders in county jails for shorter non-prison sentences.

## **The Effects of an Expansive Criminal Code on Police-Suspect Interactions**

The effects of these trends should be predictable.

Imagine, for example, a world in which the only offenses that brought significant jail terms or large fines were violent criminal acts and property crimes. Obviously, in this case, the range of action open to the police would be greatly reduced, and citizens stopped by the police would have little to worry about in terms of stiff jail sentences.

The possession of a switchblade or a certain type of cigarette would be of little concern to either the police or the suspect. Even if policymakers could not bring themselves to legalize these activities but only de-criminalize them, the stakes would be much lower in police-citizen interactions when citizens fear only a citation and fine instead of prison time for any offense that does not involve thievery, fraud, violence, or destruction of property.

**When suspects know they are unlikely to be arrested or face a serious criminal charge, they are unlikely to panic and resist the police in a way that may lead to escalation of violence.**

Moreover, given the relative rarity of real crime versus mere drug offenses and other small-time violations, police would be forced to concentrate their efforts on violent crime and property instead.

After all, given the reality of scarce resources for any endeavor, [including policing](#), the opportunity cost of pursuing drug offenses leads to fewer police resources being devoted to recovering stolen property and pursuing violent criminals.

Contrary to un-serious and absurd claims that the police "enforce all laws," police use their discretion all the time as to what laws to enforce and which to not enforce. **Those laws that are enforced are often laws that can lead to profit for the police department** — such as drug laws which leads to asset forfeiture — **or laws that can make for easy arrests** — such as loitering and other small time laws — which improve a police officers' arrest record.

If we want to be serious about scaling back the degree to which police interactions with the public can lead to violent escalations, we must first scale back the number of offenses that can lead to serious fines and imprisonment for members of the public, while shifting the concentration of police efforts to violent crime and property crime. The emphasis must return to crimes that have actual victims and which are reported by citizens looking for stolen property and violent criminals. Not only will this increase the value of policing, but will also improve relations with most of the public while reducing the footprint of the state in the lives of ordinary people.

In a press conference Monday, Dallas Police Chief David Brown admitted that the American propensity for sending the police to deal with every minor social problem has failed:

“We’re asking cops to do too much in this country” said Brown.

“Every societal failure, we put it off on the cops to solve” said Brown. He listed mental health, drug addiction, loose dogs, failing schools as problems the public expects ‘cops to solve.’

“Seventy percent of the African American community is being raised by single women, let’s give it to the cops to solve that as well” said Brown. “Policing was never meant to solve all those problems.”

Brown is right.

In America today, the **police are used as a general agency to intervene in nearly any unpleasant situation that may arise**. It has become a sign of the times to see a headline like this one: "Mom calls 911 over son's video-game habit." In this case, the police were actually dispatched to solve the woman's problem — free of charge. According to [NBC news](#): "Two officers who responded to the house persuaded the child to obey his mother."

Then, there was the case of the woman [who called 911](#) because Burger King got her order wrong.

Cases like these are extreme, of course, and largely serve as click bait for readers looking for the outrage of the day. Nevertheless, they are reminders that very little of what the police do in modern America involves the prevention and punishment of violent crime or property crime.

This is a modern innovation, and in the past, the police, the courts, and armed law enforcement agents in general were designed to address primarily violent crime and property crime. In their book *Introduction to Criminal Justice*, Joseph Senna and Larry Siegel write:

Police are expected to perform many civic duties that in earlier times were the responsibility of every citizen: keeping the peace, performing emergency medical care, and dealing with civil emergencies. Today, we leave those tasks to the police. Although most of us agree that a neighborhood brawl must be broken up, that the homeless family must be found shelter, or the drunk taken safely home, few of us want to jump personally into the fray: we'd rather "call the cops."

John Dempsey and Linda Forst agree, [noting](#):

We might agree with [Senna and Siegel]. They say that the police role has become that of a social handywoman or handyman called to handle social problems that citizens wish would just go away.

The data suggests that they are right. In research on calls to police and police activities, we find that most of what leads to calls to the police involves something other than criminal activity.

Dempsey and Forst continue:

"[I]n a classic study of patrol activities in a city of 400,000, John Webster found that providing social service functions and performing administrative tasks accounted for 55 percent of police officers' time and 57 percent of their calls. Activities involving crime fighting took only 17 percent of patrol time and amounted to about 16 percent of the calls to the police. Robert Lilly found that of 18,000 calls to a Kentucky police department made during a four-month period, 60 percent were for information, and 13 percent concerned traffic problems. **Less than 3 percent were about violent crime, and approximately 2 percent were about theft.**

In the Police Services Study (PSS), a survey of 26,000 calls to police in 24 different police departments in 60 neighborhoods, researchers found that only 19 percent of calls involved the report of a criminal activity.

Part of the reason we hear so little about the lack of law enforcement activities among police is because the police themselves prefer to portray themselves as spending most of their time hunting down "bad guys." This isn't the reality, but as George Kirkham [observed](#):

The police have historically overemphasized their role as crime fighters and played down their more common work as keepers of the peace and providers of social services, simply because our society proffers rewards for the former (crime fighting) but cares little for the latter (peacekeeping and providing services).

Nevertheless, as research by Matthew Hickman and Brian Reaves [has shown](#), a sizable amount of police agency time and resources goes to non-crime-related activities including animal control, search and rescue, school crossing services, emergency medical services, civil defense, fire services, "crime prevention education," and underwater recovery operations. Police are also used for parking enforcement, traffic direction, and commercial vehicle enforcement.

Police have become a general agency for dealing with minor neighborhood disputes such as unkempt lawns, and children playing "unsupervised" [on their own property](#). One might call the police if a family member [refuses to take his medication](#), or if a [family member is suicidal](#) but no threat to the community. These activities have no connection to "crime fighting."

Nevertheless, residents have become acquainted to calling the police on even the most benign activities, such as the case of a suburban man who called the police because a neighbor's father was "suspiciously" walking through the neighborhood. Too lazy (or cowardly) to approach the man — a slow-moving grandfather who gave no indication of being violent — and ask him what he was up to, the "vigilant" citizen [called the police instead](#).

### **Heavily Armed, Taxpayer-Funded Arbitrators**

Given that police services are generally fully subsidized by taxpayers, this is to be expected.

Since calling the police requires no financial obligation on the part of the caller, calling the police on neighbors or others in the community — including non-criminals — offers a low-cost means to intimidate or hassle others at nearly-zero cost to the one calling 911.

But, as history has shown, this is not the only way to handle disputes. As recounted by Michael Giuliano [here](#), the use of government sanctions against a neighbor once required a demonstration in court that the offender had inflicted damages against the alleged victim. Obviously, this sort of due process could be costly and time consuming. So, why go through all that trouble when numerous calls for the police might frighten one's adversary enough to obviate the need for court action? The fact that these police services are "free" contributes to their widespread over-utilization. As with any subsidized activity, you'll get far more of it than if the service were not subsidized.

In all of these cases, though, the problem does not necessarily lie with wishing to call in a third party that might act as a mediator or arbitrator. Calling in a third party is often prudent. The problem here lies with the fact that **these services are all expected to be at someone else's expense, and handled by people with guns as the very first step in resolving the situation.**

### What If Other Industries Were Like Police Services?

Imagine if the same standards were applied to other industries. In the case of health care, for example, if the public expected the same model as employed in policing, people would be regularly calling in to demand house calls from medical personal for every broken bone or abrasion. In practice, though, rides to the hospital in an ambulance are costly, and patients are expected to bear at least some of the cost of medical services. Similar conditions apply in non-police search and rescue operations in which the victim often receives a bill in the mail after being rescued from some wilderness misadventure.

With policing, however, there is no cost at all to demanding armed police show up to confront an elderly man walking down the street. One can do it repeatedly at no charge to the one making accusations.

One can only guess what health care costs would look like were ambulance services performed on a similar model. Obviously, if these services were provided for free, the utilization of ambulances and paramedics would quickly outstrip the supply, thus drawing services away from more serious injuries and driving up the cost of the response to far more pressing emergencies. After all, scarcity does not disappear because policymakers have decided something should be free.

The same is true of police services. Every minute that a police officer spends searching someone for marijuana possession is a minute not available for recovering stolen property or locating violent criminals.

Moreover, the incessant usage of police for everything from animal control to medical services means **government agents trained in armed confrontations with criminals will be continually brought into situations that do not warrant such a response.** Often, an unarmed expert with actual training in dealing with the mentally ill or the homeless is a far wiser approach. When police are used the way they are, we should not be surprised if these situations then escalate into violence.

No matter how poor a fit the police may be for a given situation, though, the fact that police services are mostly paid for by someone else provides an incentive for their continued use in a myriad of situations.

### **A Modest Proposal: Partial Privatization**

The answer to this situation is privatization. In a world where police can be used to address every minor complaint, there will be no incentive on the part of the public to limit the use of police services to true emergencies and criminal behavior. If those who use police services were expected to pay for the service, however, we would quickly find a reduction in the habit of calling the police for services unrelated to crime. Moreover, a reduction in police services in these cases would also open up markets for private firms to **address these issues at lower cost and with less threat of deadly force.**

**I am unsure. There is a strong possibility that private companies will scrape the barrel to obtain low-cost employees rather than those with psychiatric degrees to walk the streets.**

Naturally, opponents of privatization will complain that privatization will lead to only big corporations and rich people being able to benefit from crime prevention services. As Murray Rothbard and Tate Fegley have shown (see [here](#), [here](#), and [here](#)), this is an unconvincing argument.

In the spirit of compromise, however, let's begin with baby steps and limit taxpayer-provided police services to criminal activities only. Even better, [let's limit them to real violent crime](#) and [property crime](#), and not to non-crimes such as drug offenses and "crimes" such as carrying knives and selling loose cigarettes.

For now, "crime prevention" would still remain "free." If, however, you want to call in people with guns to get your son off the Xbox, you can pay a private firm for that.

One of the most successful ideological movements waged by government agencies in recent decades has been the so-called [Broken Windows theory](#) of policing. Popularized in the 1980s by George Kelling, the theory states that if minor violations are ignored — such as the breaking of a window on private property — then those small infractions will act as a signal to others in the community that more serious crimes can be committed with impunity.

In political and policing circles, this theory became immensely popular during the 1990s and persists today, although repeated demonstrations of the forceful and deadly methods used by police to address small-time infractions has prompted many to ask if coming down hard on every little thing is really the best way to police a neighborhood.

**“Coming down hard” is not the same as dealing with a broken window. The local cop on the beat used to be able to give a clip under the ear to steer kids away from danger and harm.**

While Kelling successfully reinvigorated the idea, the Broken Windows theory in the 1980s, was not new or novel. It was simply the latest manifestation of what has also been termed "community policing" and "order maintenance" policing.

At their core, these ideas taken together depend on the idea that police interactions with community members should be expanded well beyond criminal activities while giving police officers more discretion over what laws to enforce, and when.

## Two Views: Community Policing vs. Limited Policing

Community policing and order maintenance policing have long been in tension with competing views of policing in which the police should be more limited in their role and focused more on serious and violent crime.

Not surprisingly, as police agencies took shape for the first time in the United States in the nineteenth century, many Americans took the view that policing should be limited in scope.

In his essay "Community Policing in the United States," [Jack Greene notes](#) that "the American police service was originally cast as a reactive force, not as a preventive of interdicting force ... America's police were to provide assistance on request, not to proactively intervene in the lives of the community." ([See more](#) from Greene on four different policing models.)

It was recognized that more police power and more police discretion to initiate interactions with the public would lead to corruption. The coercive and monopolistic power that comes with government policing brings the ability to demand compliance and resources from the public for personal advantage, and the advantage of state institutions. The best safeguard, early skeptics of policing concluded, was to carefully limit police power.

It did not take long for the skeptics to be proven right.

Greene continues:

The police of the late 19th and early 20th century were unlikely to be seen as extension of "the community." More often, they were viewed by citizens as extension of corrupt politicians or as criminal enterprises. While charged with enforcing the laws, the early American police were not often lawful — the law was neither a means nor an ends for the police. Rather, the law was often selectively invoked for political, administrative or corrupt purposes.

Not surprisingly, many reformers attempted to reduce police corruption then by seeking "to control in detailed ways the actions of the police." Reformers suspected that police who were given discretion to enforce a wide variety of laws according to their own judgment were more prone to use the law enforcement system for personal purposes, whether for outright extortion, or to improve one's own career prospects.

The reformers were successful, to a certain extent, at pushing through a more "professional" model of policing in the twentieth century. The new model of professionalism put distance between police officers and the community. The community was engaged for purposes of crime fighting, and police focused on emphasizing their role in combating dangerous criminals. It's not a coincidence that this new model of professionalism manifests itself by the middle of the twentieth century in popular culture through fictional characters like Joe Friday of the long-running *Dragnet* franchise about the Los Angeles police department. Friday is distant from the community, professional, straitlaced, efficient, and interested only in facts.

Reformers sought to professionalize the police as part of an effort to distance the police from the political machinery of the time, thinking this would reduce police corruption. This may have been helpful, although the corrupting nature of law enforcement monopolies continued, as one might expect.

The problem of police corruption was hardly solved in the decades following these initial reforms. Greene continues:

Early studies of the American police in the 1950s and 1960s did not necessarily support a benign view of the public law enforcement or of its agents. More often, the police were found: to use excessive violence toward personal ends; to punish non-respect with arrest; to be socially and politically cynical; and to be rooted in local customs and traditions, despite years of reform efforts. Later studies in the 1970s suggested that the preventive capacity of the police was largely mythical, that rapid response was largely ineffective, and that detective work was largely overrated, generally by detectives themselves."

Calls for a more explicit return to "community policing" came in the 1960s and 1970s with significant increases in street crime and social unrest in the United States. It was thought that if the police would engage the community in a variety of ways beyond mere crime fighting, then this would defuse racial tensions and other socio-economic conflicts apparent within urban communities.

Thus, by the early 1980s, when Kelling and James Q. Wilson wrote [this influential essay](#) in *The Atlantic* explaining the basics of the Broken Windows theory, they were able to portray community policing as something new that might address the failures of older models of policing.

## **Broken Windows Theory Has Often Been Abused and Misapplied**

It's important to note, though, that the vision of Kelling and Wilson was not the crude model of policing that is used today under the label of the Broken Windows theory. (What is used today is often a hybrid of the Broken Windows model and the "zero-tolerance" model.)

Kelling had always advocated a soft approach to policing in which arrests and summonses were only one tool of many employed by the police. In Kelling's vision, effective community policing had to be done on foot, and the police officer relied largely on his personality and his relationships with the community to maintain order. The officer was in no position to use overwhelming force against community members or retreat into an armored vehicle. Kelling writes:

An officer on foot cannot separate himself from the street people; if he is approached, only his uniform and his personality can help him manage whatever is about to happen. And he can never be certain what that will be — a request for directions, a plea for help, an angry denunciation, a teasing remark, a confused babble, a threatening gesture.

The philosophy of order maintenance employed by Kelling rested on the idea that frequent use of violence on the part of the officer (i.e., "tasing" and arresting members of the community) would be counter to the entire point of community policing and order maintenance.

Modern policing done in the name of the Broken Windows theory, however, relies largely on summonses, citations, arrests, and physical violence to enforce laws against any number of minor infractions including carrying knives, selling loose cigarettes, smoking a joint, jaywalking, and other "offenses" that should be regarded as completely non-criminal.

**In spite of Kelling's original intentions, Broken-  
Windows-style policing has come to mean rigid and  
aggressive enforcement of small-time violations.**

What Kelling might consider "abuse" is now often the norm, when it comes to the practical application of the theory. In fact, the Broken Windows theory in many communities has been used to justify legal regimes built largely on extracting large amounts of resources from working class and lower class neighborhoods in the form of fines, court fees, and other legal costs.

In Ferguson, Missouri, for example, where a jaywalking intervention led to the shooting death of Michael Brown, it was revealed that the city of Ferguson was in the habit of [issuing unusually large numbers of citations](#) and [fines](#) for non-violent violations. The city then arrested citizens who did not pay the fines, putting them in what are effectively debtors prisons.

This tactic has been used elsewhere as well. In a [recent Frontline analysis](#), the author noted similar practices have been employed in Newark, New Jersey where so-called "blue summonses" have been liberally issued throughout the community.

## **Broken-Windows Theory As an Excuse for More Heavy- Handed Policing**

This, however, is what we would expect from a police force that enjoys immunity, monopoly powers, and is far more heavily armed than the general population. Why engage in the Kelling model of community policing when it is far more lucrative — and requires far less patience and risk — to simply arrest or open fire upon anyone who shows "disrespect"?

In both the Ferguson and Newark cases, the Broken Windows model was been used to justify more citations and arrests, but, as the *Frontline* report notes: "the frequent stops and citations made people mistrust the police, and much less likely to cooperate when officers were investigating serious crimes."

Enforcement of small-times crimes thus may harm police efforts to catch *serious* criminals. Nor does enforcement of low-level offenses mean that people likely to commit serious crime are even being targeted. In the case of Newark, for example, large percentages of summonses were going to people who were "in their 50s or 60s or maybe even older."

People over fifty are not the people committing serious crimes. But, older residents have been easy targets for police, so it is they who receive the citations.

This disconnect between real crime and petty offenses is not sufficient to dissuade police officers and police departments from continuing to crack down on small-time offenders. After all, there are career incentives for making large numbers of arrests and issuing large numbers of citations. In the case of Newark, **"officers who racked up summonses were chosen for plum assignments" while officers also targeted the easier-to-victimize populations such as the elderly, disabled, and mentally ill.**

Trends like these have long been shaped by police department policy which rewards police officers who take a harsh stance against minor offenses, while police to focus on more serious crime are less often rewarded. Police Historian [David Simon writes](#):

How do you reward cops? Two ways: promotion and cash. That's what rewards a cop. If you want to pay overtime pay for having police fill the jails with loitering arrests or simple drug possession or failure to yield, if you want to spend your municipal treasure rewarding that, well the cop who's going to court 7 or 8 days a month — and court is always overtime pay — you're going to damn near double your salary every month.

On the other hand, the guy who actually goes to his post and investigates who's burglarizing the homes, at the end of the month maybe he's made one arrest. It may be the right arrest and one that makes his post safer, but he's going to court one day and he's out in two hours. So you fail to reward the cop who actually does police work.

Naturally, local governments also have a lot to gain from demanding fines and payments for court costs from defendants.

## Does It Reduce Serious Crime?

Politicians have long embraced the Broken Windows theory and assumed that order-maintenance policing reduces all types of crime. The evidence does not warrant such an assumption.

In *Policing in America*, Larry Gaines and Victor Kappeler [conclude flatly](#) "there is little proof that order maintenance policing impacts serious violent crime," although there is evidence that it reduces the incidence of lesser offenses.

The theory nevertheless remains popular. The poster child for the Broken Windows theory is usually presented as New York City where many have noted a significant improvement in crime during the 1990s. This is then credited to the aggressive enforcement of laws against a variety of minor offenses. Ignored, of course, is the fact that New York experienced historic levels of economic growth during this period and that [crime nationwide declined significantly over the same period](#). Numerous large cities throughout the United States during this period experienced similar trends in the absence of similar police policies.

In [an article](#) in the *American Journal of Sociology*, Robert Sampson and Stephen Raudenbush deny there is a proven link between "public disorder" and crime. ("Public disorder" includes activities such as vagrancy, prostitution, drinking in public, and drug selling.) The authors conclude socio-demographic issues and physical neighborhood characteristics are far more important to the equation: "Attacking public disorder through tough police tactics may thus be a politically popular but perhaps analytically weak strategy to reduce crime."

Some of the confusion over the effectiveness of community policing stems from inexact use of definitions of crime. If one defines drug selling and prostitution as "crimes" then harsh penalties against those "crimes" will tend to lessen them. On the other hand, if one limits the definition of "crime" to violence, theft, destruction of property and other acts with a specific identifiable victim — as one should — then we find it much more difficult to connect public disorder to real crime.

In evaluating the success of community policing, one must also evaluate the side effects of more aggressive enforcement. Police shootings, violent confrontations and civil unrest must all also be factored into claims that community policing has improved conditions within a community. There is also evidence that incarcerating people for small infractions makes them [more likely to commit](#) crimes later. Because incarceration can have long term effects on one's ability to earn a living through legal means, researcher Michael Mueller-Smith [concluded](#) "incarceration led to increased criminality for inmates after re-entry."

## **Community Policing Is More About Politics than Crime Reduction**

By mentioning politics in their conclusions, Sampson and Raudenbush may have hit on the true reason for the popularity of the Broken Windows theory. Although it has not been shown to reduce serious crime, the theory remains politically popular and allows politicians to claim they are being active in punishing and preventing crime.

Even Kelling admitted that order maintenance policing often cannot be shown to reduce crime, but it remains valuable, in Kelling's view, for other reasons. The key, Kelling notes, lies in the fact that a neighborhood can be "'safer' when the crime rate has not gone down." This is because when the Broken Windows theory is employed, people will often feel safer in spite of the reality. Now, *feeling* safer is not the same thing as *being* safer, but the claim is that order maintenance policing is important because it improves "quality of life" and *perceptions* of the community.

At this point then, Kelling — and backers of the Broken Windows theory in general — have been reduced to admitting that when used for order maintenance, police are really quality-of-life agents and not crime fighters at all.

Faced with this, then, **we must ask ourselves if the same people who are trained to capture rapists and murders with deadly weapons need to be the same people who shoo away aging drunks who engage in public drinking.**

There is good reason to suspect the private sector could easily provide these services. As Murray Rothbard has noted, order maintenance at the street level is low-hanging fruit as far as private-sector security goes, with merchants and other community members highly motivated to pool private resources to keep the streets clear of people who impede commerce and restrict use of public spaces.

Indeed, this sort of order maintenance can be — and has been — accomplished quite easily in privately-owned public spaces such as common areas of housing developments and multifamily housing complexes, shopping malls, parking lots, amusement parks, downtown plazas, outdoor food courts, and similar areas.

This sort of security is carried out daily by private security worldwide. (See Tate Fegley on this topic, as well.) Moreover, these neighborhood-controlled agents would be answerable to the local owners and residents, and not to centralized political machines, police chiefs, or other government agents who stand to benefit personally from aggressive enforcement.

The reason we see so little of this in practice, though, is the fact that the public sector has already crowded out the private sector in matters of order maintenance. Since one can easily access (at least in theory) taxpayer-subsidized police services via 911, there is an enormous incentive to rely on "free" police services, even if those services are more likely to bring the possibility of violence, abuse, or unreliable service. Why employ private agents to tell drug dealers to find some other street corner when the police will show up (eventually) and do it for free?

## Community Policing Expands State Power and Discretion

Early critics of police agencies were right when they immediately identified the downside of active community policing: It gives police agents wide discretion to take action against the general population, while increasing opportunities for coercive intervention in the lives of private citizens. A police force that is encouraged and empowered to intervene in any number of non-violent activities by citizens is also a police force that has wide leeway to extort, threaten, arrest, and assault private citizens over any number of small-time "transgressions" that don't rise to the level of crime.

Many "fixes" have been offered for the problem of police corruption and abuse. As early reformers knew, though, the only truly reliable way to reduce corruption and needlessly violent police interactions is to *reduce police discretion* and to reduce the number and scope of laws that police are called upon to enforce. "Community policing" or "order maintenance" are really just another way of describing a large expansion of police power.

So long as police forces enjoy monopoly powers, and are subject to political, rather than market control, the only way to minimize the potential for police abuse is to minimize their legal reach.

If Americans as a society want government police who will be tasked with finding murderers and rapists, they also need to understand that these tasks do not necessitate a police force that spends its days citing local residents for broken tail lights and drinking a beer in public.

Giving police wide latitude to be aggressive against the population in the name of order maintenance, on the other hand, is likely to breed resentment, suspicion, and obstacles to enforcing laws against more serious crimes. It's time to admit that the Broken Windows theory is failed and the answer lies in limiting police powers, not in expanding them.

## Basic facts about the Bill of Rights - Holly Munson

(FAQ Basic facts about the Bill of Rights.htm)

Many of the rights and liberties Americans cherish—such as speech, religion, and the right to fair trial—were not enumerated in the original Constitution drafted in Philadelphia Convention in 1787, but were included in the first 10 amendments, known as the Bill of Rights. How much do you know about this founding document? Check out these handy FAQs to learn all about it.

## **What is the Bill of Rights?**

The Bill of Rights is the first 10 amendments to the United States Constitution. These amendments guarantee essential rights and civil liberties, such as the right to free speech and the right to a fair trial, as well as reserving rights to the people and the states.

As a distinct historical document, drafted separately from the seven articles that form the body of the Constitution, the Bill of Rights has its own fascinating story. But ever since the first 10 amendments were ratified in 1791, the Bill of Rights has also been an integral part of the Constitution.

## **How many original copies of the Bill of Rights exist? Where are they?**

Congress commissioned 14 official copies of the Bill of Rights—one for the federal government and one for each of the original 13 states, which President George Washington dispatched to the states to consider for ratification.

Today, most of these original copies reside at the archives of their respective states. The federal government's copy is on display at the National Archives and Records Administration in Washington, D.C.—alongside the original, handwritten copies of the U.S. Constitution and the Declaration of Independence.

Four states are missing their copies—Georgia, Maryland, New York, and Pennsylvania. Two unidentified copies are known to have survived; one is in the Library of Congress, and the other is in the collection of The New York Public Library, which is the copy that will be displayed at the National Constitution Center.

North Carolina's copy of the Bill of Rights was missing for nearly 140 years after being stolen by a Union soldier during the Civil War. The National Constitution Center played a key role in the recovery of the document in 2003, including assisting in an FBI sting operation.

## **Why wasn't the Bill of Rights included in the original Constitution?**

Toward the end of the Constitutional Convention in 1787, George Mason, a delegate from Virginia, proposed adding a bill of rights, which would, he argued, give great quiet to the people" and "might be prepared in a few hours."

Though it might be surprising today, the state delegations unanimously rejected Mason's proposal. Some delegates reasoned that a federal bill of rights was unnecessary because most state constitutions already included some form of guaranteed rights; others said that outlining certain rights would imply that those were the only rights reserved to the people. However, historian Richard Beeman, a Trustee of the National Constitution Center, has pointed out a much more prosaic reason the delegates were so skeptical: They had spent four arduous months of contentious debate in a hot, stuffy room, and were anxious to avoid anything that would prolong the convention. They wanted to go home, so they took a pass. A bill of rights was overruled.

The Constitution was signed by 39 delegates on September 17, 1787, at the Pennsylvania State House, now known as Independence Hall, in Philadelphia. Three delegates were present but refused to sign, in part because of the absence of a bill of rights: George Mason, Edmund Randolph, and Elbridge Gerry.

After the convention, the absence of a bill of rights emerged as a central part of the ratification debates. Anti-Federalists, who opposed ratification, viewed its absence as a fatal flaw. Several states ratified the Constitution on the condition that a bill of rights would be promptly added, and many even offered suggestions for what to include.

Pauline Maier, author of *Ratification: The People Debate the Constitution, 1787–1788*, noted of these proponents of a bill of rights:

“Without their determined opposition, the first ten amendments would not have become a part of the Constitution for later generations to transform into a powerful instrument for the defense of American freedom. ... Their example might well be their greatest gift to posterity.”

### **Who wrote the Bill of Rights?**

After the Constitution was ratified in 1788, James Madison, who had already helped draft much of the original Constitution, took up the task of drafting a bill of rights. Madison largely drew from the Virginia Declaration of Rights, which was primarily written by George Mason in 1776 two months before the Declaration of Independence; he also drew from amendments suggested by state ratifying conventions.

Madison drafted 19 amendments, which he proposed to Congress on June 8, 1789. The House of Representatives narrowed those down to 17; then the Senate, with the approval of the House, narrowed them down to 12. These 12 were approved on September 25, 1789 and sent to the states for ratification.

### **When was the Bill of Rights ratified?**

The 10 amendments that are now known as the Bill of Rights were ratified on December 15, 1791, thus becoming a part of the Constitution.

The first two amendments in the 12 that Congress proposed to the states were rejected: The first dealt with apportioning representation in the House of Representatives; the second prevented members of Congress from voting to change their pay until the next session of Congress. This original “Second Amendment” was finally added to the Constitution as the 27th Amendment, more than 200 years later.

Bill of Rights Day is observed on December 15 each year, as called for by a joint resolution of Congress approved by President Franklin D. Roosevelt in 1941.

### **Where was the Bill of Rights written?**

The Bill of Rights was drafted in New York City, where the federal government was operating out of Federal Hall in 1789. (The Declaration of Independence and the original, Constitution were written and signed in Philadelphia.)

### **Why is the Bill of Rights so important?**

The Bill of Rights represents the first step that “We the People” took in amending the Constitution “in Order to form a more perfect Union.” The original Constitution was a remarkable achievement, establishing a revolutionary structure of government that put power in the hands of the people. The Bill of Rights built on that foundation, protecting our most cherished American freedoms, including freedom of speech, religion, assembly, and due process of law. For more than two centuries—as we have exercised, restricted, expanded, tested, and debated those freedoms—the Bill of Rights has shaped and been shaped by what it means to be American.

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