The Ferguson Challenge to the Libertarians

AUG 22, 2014Mike Konczal

Many people are pointing to the police violence unfolding in Ferguson, Missouri as part of a "libertarian moment." Dave Weigel of Slate writes "Liberals are up in arms about police militarization. Libertarians are saying: What took you so long?" Tim Carney of the Washington Examiner notes that the events in Ferguson bolster the claim that we are experiencing a libertarian moment because "libertarianism's warnings today ring truer than ever."

It will be a great thing if the horror of what is going on builds a broader coalition for putting the excess of the carceral [*def.* prison] state in check. But I also think that Ferguson presents a problem for libertarian theory about this situation in particular and the state in general. Their argument is a public choice-like story in which the federal government is the main villain. But this will only tell a partial story, and probably not even the most important one. And, as the deeper story of the town is told, the disturbing economics of the city look similar to what the right thinks is the ideal state. Let's take these in turn.

Bottom-Up Militarization

People on the right are telling a story where the problems of the police are primarily driven by the federal government. As Rand Paul said: "Not surprisingly, big government has been at the heart of the problem." Big government here is strictly a federal phenomenon though, one where "Washington has incentivized the militarization of local police precincts." Paul Ryan's comment on Ferguson is telling: "But in all of these things, local control, local government, local authorities who have the jurisdiction, who have the expertise, who are actually there are the people who should be in the lead." (h/t Digby) The culprits in these criticisms are usually programs, accelerated after the start of the War on Terror, that give military surplus to local police.

But rather than just a top-down phenomenon of centralized, federal bureaucrats, the police violence we see is just as much a bottom-up, locally-driven affair. "Militarized" police equipment didn't shoot Michael Brown, or kill Eric Garner in a chokehold. And aggressive police reactions to protests haven't required extensive military equipment over the past 40 years.

As Tamara Nopper and Mariame Kaba note in the pages of Jacobin, the idea that there is suddenly a "militarized" police force here betrays that the militarization began in the 1960s in response to the urban crisis. And even though militarized dollars have flowed to all parts of the country, it is in black urban areas where the equipment has been deployed in an aggressive manner by local authorities. And militarization isn't just about equipment, but about the broader framework of mass incarceration and zero-tolerance, order-maintenance policing.

You can see the consequences of this through simple polls. As Dorian Warren notes, "Because for black Americans, what Sen. Paul disparages as 'big government' is actually the government we trust most…blacks are the least likely [racial and economic group] to trust their local governments." Though these military equipment programs, which give away all kinds of odd things, are a serious problem and should be curtailed, they should be placed within the context of a criminal justice system that is punitive towards minorities and is among the most expansive in the world.

This has political consequences. Democrats have been weak on criminal justice issues. But for several years Blue Dog Democrats, lead by Jim Webb, have pushed for reform. But Webb's big bill to bring together non-binding suggestions for reform, the National Criminal Justice Commission Act, wasn't blocked by centrist Democrats. It was blocked by libertarians and conservatives. Most Republicans, including Tom Coburn and Rand Paul, voted against it on the basis of "states' rights." Commentators on the right found the arguments dubious and scandalous, but this will become more and more of an issue if the problem is just one of the federal government.

The Right-Wing Dream City

If you are a libertarian, you probably have two core principles when it comes to how the government carries out its duties. The first is that people should pay taxes in direct proportion to how much they benefit from government services. The government is like another business, and to the extent it can provide public-like goods the market will not, people should pay only as much as they benefit from them. Taxes should essentially be the individual's price of "purchasing" a government service.

You also probably want as much of what the government does to be privatized as possible. Government services provided by private firms use the profit motive to seek out efficiencies and innovation to provide the best service possible. But even if it doesn't, the right's public choice theory tells us that private agents will do a better job tending to services because of the essential impulse of the public state to corruption.

So what do we see in Ferguson? It's becoming clear that there's a deep connection between an out-of-control criminal justice system and debt peonage [*def.* slavery]. As Vox reports, "court fees and fines are the second largest source of funds for the city; $2.6 million was collected in 2013 alone."

These fines that come from small infractions will grow rapidly when people can't afford to pay them immediately, much less hire lawyers to handle the complicated procedures. So you have a large population with warrants and debts living in a city that functions as a modern debtors' prison. This leads to people functioning as second-class citizens in their own communities. And

as [Jelani Cobb notes](#) in the New Yorker, this debtor status keeps many citizens of Ferguson off the streets, not protesting or acting as political agents.

How did we get here? As Sarah Stillman noted in [a blockbuster New Yorker story](#), this is referred to as an "offender-funded" justice system, one that aims to "to shift the financial burden of probation directly onto probationers." How? "Often, this means charging petty offenders—such as those with traffic debts—for a government service that was once provided for free."

As Stillman notes, this process has grown alongside state-level efforts to privatize probation and other incarceration alternatives by replacing them with for-profit companies. (Missouri is one of many states that does this.) There are significant worries that this privatized probation industry has severe corruption and abuse problems. Crucially, their incentive is less rehabilitation or judging actual threats to the public, and more to keep people in a permanent debt peonage. The state, in turn, gets funded without having to raise any general taxes.

Having people who "use" the criminal justice system pay for it strikes me as pretty close to the libertarian vision of how taxes should function. And having state power executed by private, profit-seeking entities is the logical outcome of how they think services should function. I'm sure that a libertarian would say that they are against *this* kind of outcome, though it's not clear to me how taxation and services along these lines couldn't do anything other than lead to punitive outcomes. (Perhaps people versed in public choice theory should apply it to what happens when you put public choice theories into practice.)

This is yet another way in which the growth of market society is wedded to the growth of a carceral state. But thinking through this issue can lead you to interesting places. If you think that this offender-funded system is unfair because the poor don't have the ability to pay for it, you are basically 90% of the way to an argument for progressive taxation. And if you think private parties using coercive power invites abuse, abuses that should be checked by basic mechanisms of democratic accountability, you are also pretty close to an argument for the modern, professionalized, administrative state. Welcome to the team.