Global Insecurity: How Risk Theory Gave Rise to Global Police Militarization

Nicholas S. Bolduc
Indiana University Maurer School of Law, nbolduc@indiana.edu

Follow this and additional works at: https://www.repository.law.indiana.edu/ijgls

Part of the Comparative and Foreign Law Commons, Law Enforcement and Corrections Commons, and the Military, War, and Peace Commons

Recommended Citation
Available at: https://www.repository.law.indiana.edu/ijgls/vol23/iss1/12

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Journal of Global Legal Studies by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
Global Insecurity: How Risk Theory Gave Rise to Global Police Militarization

NICHOLAS S. BOLDUC*

ABSTRACT

Today, across the globe, police agencies are militarizing to confront modern-day threats. This gradual shift towards militarized policing stems from the concept of risk—risk has driven nations to amend their laws so that their law enforcement agencies may militarize to meet whatever risk they face. In the United States, the gradual shift towards militarized police occurred after the crippling of the Posse Comitatus Act in the face of the developing "War on Drugs". However, America is a late development in this trend; the majority of the Western world militarized themselves through the concept of "gendarmes", while the Chinese militarized their police immediately after the Communist Revolution. Moreover, the Chinese militarized police are becoming more relevant today because of the Umbrella Revolution in Hong Kong that threatens the Communist regime.

In the councils of government, we must guard against the acquisition of the unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes.1

* Juris Doctor Candidate, 2016, Indiana University Maurer School of Law; Bachelor's of Science in Criminal Justice summa cum laude, 2013, Eastern Kentucky University. I would like to thank Professor David Delaney for his assistance on this Note. I also would like to thank my parents for their unwavering support.

1. Dwight D. Eisenhower, Farewell Radio and Television Address to the American People (Jan. 17, 1961), in PUB. PAPERS, at 1038 (commonly known as the "Military-Industrial Complex" speech). Eisenhower cautioned the United States about the sharp military growth his tenure witnessed. The speech as a whole mainly concentrates on then-recent developments that could threaten the United States.
INTRODUCTION

After violent riots recently gripped Ferguson, Missouri, politicians and commentators began investigating the alleged militarization of municipal police forces throughout the United States. Many in the United States began wondering how and why this change in policing occurred after waking up each morning to newspapers displaying armor-clad local police officers and militarized vehicles on patrol in Ferguson’s streets. While the American public has just begun investigating and educating itself about this alleged tactical shift in policing, criminologists have long noticed a gradual trend towards militarized policing, beginning primarily in the 1980s. Peter Kraska, a criminologist and student of militarized policing, theorizes that the collapse of the Soviet Union created an opening for increased military involvement with local police offices. The trend towards increased militarized policing, however, is not solely a U.S. phenomenon: the police forces of other nations have similarly come to display militarized policing characteristics and tactics. The issue of police militarization is thus a global one.

One explanation for this gradual shift rests with an everyday concept: risk. Recent scholarship has noted that ours is a globe of “risk societies.” This analysis posits that shifts in how a particular society faces and responds to risk can have profound impacts on that society. Moreover, due to globalization, certain risks confront the entire globe.

2. Protests and violence occurred in Ferguson, Missouri, after the death of Michael Brown, an unarmed African-American teenager, at the hands of a Caucasian police officer.
3. See, e.g., PETER B. KRASKA ET AL., MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM: THE CHANGING ROLES OF THE ARMED FORCES AND THE POLICE (Peter B. Kraska ed., 2001) (discussing different aspects of police “militarization,” including the causes the phenomenon, the emergence of weapon and personnel transfers from military to police, and use of military units in waging the “war on drugs”).
6. See Kraska, Crime Control, supra note 4, at 16 (defining “militarization” as the process society undergoes to organize itself for “the production of violence or the threat thereof”).
7. See ULRICH BECK, RISK SOCIETY (1992) [hereinafter BECK, RISK SOCIETY] (introducing the concept of a “risk society” and arguing that these new risks go beyond typical class or socio-economic barriers). See also ANTHONY GIDDENS, RUNAWAY WORLD (2003) (arguing that, due to globalization, new risks are affecting societies no matter where those societies live or how privileged those societies are).
Every nation subject to globalization now faces issues, including the rise in militarized policing, that follow from a risk society. This Note explores how globalized risk and threat have influenced nations to enact or amend their laws, causing a global shift to militarized policing. Part I explores the concept of a "risk society" and how risk calculation has led to changes in globalized societies. Part II examines the "paramilitary policing juggernaut," which scholars believe led different nations' police forces to shift towards paramilitary policing because of transnational threats each of the nations faced. Part III examines how the U.S. courts and the U.S. Congress have systematically undermined the Posse Comitatus Act, which permitted the gradual shift towards militarized policing within the United States. A discussion applying risk-society theory to this shift in policing demonstrates that the transnational drug distribution threat effectively converted the United States into a world risk society.

Part IV discusses how police militarization is a global phenomenon. First, the concept of "gendarmes" will be described, demonstrating how these entities militarize the entire Western world by their similarities to Special Weapons and Tactics teams seen in Anglo-Saxon nations. Next, the People's Republic of China and its police force that responds to large-scale rioting and demonstrations will be examined, followed by a discussion describing how the current threat to China, internal societal dissent, influenced the government's decision to create and use a militarized police force to respond to demonstrations of dissent. Part V provides a snapshot of several proposed legal and philosophical solutions to the police militarization issue that plagues the United States and the world. Finally, this Note will conclude with thoughts regarding the future of militarized policing.

I. RISK—HOW A SIMPLE CONCEPT SHAPES NATIONS TODAY

Risk naturally drives different forces to respond to its appearance. Anthony Giddens characterizes risk as "refer[ring] to hazards that are actively assessed in relation to future possibilities." Societies today view risk through a futuristic lens. Ulrich Beck argues further that risk is how people foresee threats and attempt to control future
consequences; it is a median between security and destruction. Giddens distinguishes between two different forms of risk: external and manufactured. External risks are manifested risks that occur outside a designated area. Manufactured risks, by contrast, are created by a society’s development of knowledge of the world. Thus, manufactured risks are created by the agenda a society has undertaken. As manufactured risks expand, risk calculation becomes a major issue because of society’s need to confront the consequences of its actions. The one prominent force that responds to the risks a society faces is law enforcement. Police, among other societal bodies, do not know what level of threat is involved with particular risks until it is too late to prevent the threat. Therefore, actions that respond to threats and risk are premised on mere guesswork, inferences, and predictions.

Giddens also notes a conundrum that arises frequently in political responses to a given risk. If the government chooses to respond to the risk, it must persuade society that the risk is real. If the risk does not materialize, the response to it is seen as scaremongering. If, however, no action is taken in response and the threat becomes a reality, society views the government as having failed to protect it. Politicians thus face a difficult quandary: do nothing and possibly face critique when a preventable threat manifests itself, or do something and possibly face critique when a threat does not manifest itself, and money, resources, and time are expended for naught.

New risks are both global and local—a product of globalization. Global threats shape national and international action, thus creating a global domino effect. In the context of societal expectations, when the security of a society is violated, the state must take action. By implication, therefore, risks that are global in scope often provoke

13. Id.
14. Id.
15. See id. at 26–28.
16. Cf. id. at 29 (stating how scientists and other government officials often cannot recognize the severity of a risk until after it is too late).
17. Id. at 29.
18. See id. at 29–30. Thus there is an inherent dilemma. On the one hand, if measures such as militarized policing are not undertaken, society may come to see its governing body as failing to protect it from destruction. However, if measures are taken and successful to the point of threat prevention, what evidence exists demonstrating the threat existed and the measures taken were necessary?
19. See Beck, World Risk Society, supra note 8, at 142.
20. See id. at 142–43.
21. Cf. id. at 66 (observing that the state must take action to maintain legitimacy).
globalized action in response.\textsuperscript{22} Of course, risk and threats affect policing, and this effect will be explored in the next section of this Note before shifting to a discussion of two different nations’ legal responses to risk in their societies, as clearly demonstrated through their police’s militarization of attire, tactics, and weaponry.

II. "THE PARAMILITARY POLICING JUGGERNAUT"

The global shift to militarized policing has roiled the United States.\textsuperscript{23} Hill and Beger define militarized police as police who operate as units (rather than as individuals) after seeking and obtaining instruction from military personnel.\textsuperscript{24} This military instruction includes training provided by military servicemen, training regarding the use of "sophisticated weaponry, special apparel, and equipment."\textsuperscript{25} Hill and Beger contend that the global shift towards militarized policing occurred and continues to develop because modern nations must counter certain clandestine results of globalization and because police forces are simply prone to adopt militarized forms of policing.\textsuperscript{26}

Certain clandestine results of globalization involve global threats.\textsuperscript{27} One such issue arises from clandestine transnational actors, defined as "non-state actors who operate across national borders in violation of state laws and who attempt to evade law enforcement."\textsuperscript{28} Because of the large variety of international threats, such as terrorism or transnational drug distribution rings, the United States, among other nations, has shifted to a "crimefare" state, where policing begins to incorporate a distinctively militarized tone to better face and eliminate the defined "enemy."\textsuperscript{29}

\textsuperscript{22} See id.


\textsuperscript{24} Id. at 26; see also JIM FISHER, SWAT MADNESS AND THE MILITARIZATION OF THE AMERICAN POLICE (2010) (documenting many instances of militarized policing in different situations, while also detailing the historical background that drove lawmakers to change the law to permit police militarization).

\textsuperscript{25} Hill & Beger, supra note 23, at 26. Military personnel that provide training include active and retired military servicemen. These personnel have been known to train police forces in the use of automatic assault rifles, full body armor, and other military equipment, such as military transportation vehicles and specialized military weapons and tools. Id.

\textsuperscript{26} Id. at 25.

\textsuperscript{27} See id. at 26–29.

\textsuperscript{28} Id. at 27 (quoting Peter Andreas, Redrawing the Line: Borders and Security in the Twenty-First Century, 28 INT’L SEC. 78, 78–79 (2003)).

\textsuperscript{29} See id.
The treatment of all clandestine transnational actors as national security threats further shifts police forces to militarization.\textsuperscript{30} Because risks and threats stemming from international drug distribution or organized crime typically pass under the radar, nations, including the United States, designate these risks as national security threats. By categorizing such risks as threatening the nation's security as a whole, military intervention and increased interaction with local law enforcement is legitimized.\textsuperscript{31} Indeed, any implication of national security allows monetary and other resources to be made available to combat the threat; thus, many issues are expressed as national security concerns because politicians speculate that increased military involvement will solve the problems.\textsuperscript{32}

However, police are also prone to militarize themselves.\textsuperscript{33} Every agency is militarized in some capacity,\textsuperscript{34} and because federal funding and equipment programs are readily available for law enforcement agencies to combat clandestine threats, local agencies all over the United States have gradually shifted to a militarized policing approach.\textsuperscript{35} Because of these clandestine transnational threats and the natural inclination of police agencies to militarize, Special Weapons and Tactics (SWAT) teams have spread throughout the United States and other Western nations.\textsuperscript{36} These teams specialize in responding to atypical and dangerous situations such as riots and hostage-taking, scenarios the standard neighborhood beat cop would not typically

\textsuperscript{30} Id. at 28.
\textsuperscript{31} See id. at 28; see also Ronald D. Crelinsten, The Discourse and Practice of Counter-Terrorism in Liberal Democracies, 25 AUST. J. POLIT. HIST. 389, 398. Crelinsten observes that the state vis-à-vis the military is looking for a "new enemy" after the Soviet collapse, permitting military intervention.
\textsuperscript{32} See JAMES E. BAKER, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES 14 (2007).
\textsuperscript{33} See Hill & Beger, supra note 23, at 30 (stating that the police are gravitating toward militarizing themselves for several reasons, including as a reactionary measure to being advised to adopt more nonthreatening "community policing" tactics; a self-interested response to funding opportunities; and a hyper-masculine aesthetic and "warrior-mindset" that is favored by today's police).
\textsuperscript{34} See Peter B. Kraska, Militarization and Policing—Its Relevance to 21st Century Police, 1 POLICING 501, 503 (2007) [hereinafter Kraska Policing]. Kraska states that the real issue is to what extent each police force is militarized. See id.
\textsuperscript{35} See generally FISHER, supra note 24, at 109–28. Here, Fisher articulates the changes seen in small-town law enforcement. Many small agencies reaped the benefits of federal funding and supply programs. For example, the Richland County, South Carolina sheriff's office paid only $2,000 for a surplus M11 3A2 APC, which can carry multiple SWAT officers in a large vehicle complete with a high-caliber machine gun. Id. at 112.
\textsuperscript{36} See generally id.
encounter.\textsuperscript{37} May and Headley note that the specialized, combat-like situations for which SWAT officers are called in sharpen the paramilitary character of SWAT-style policing because SWAT officers respond to situations involving battle-like conditions or weaponry.\textsuperscript{38} After being trained for combat situations by active-duty Navy SEALS and other Special Forces soldiers—along with being fully outfitted with goggles, Kevlar helmets, and automatic weapons commonly seen with military forces—police officers who participate in SWAT calls resemble soldiers in many ways when rushing into conflict.\textsuperscript{39}

Commentators have also noted that SWAT teams are no longer solely confined to situations such hostage crises or sieges. Many police departments have begun to utilize their SWAT teams in other ways, such as executing routine search warrants.\textsuperscript{40} According to Fisher, most police departments use SWAT teams in the middle of the night against private residences because this approach theoretically minimizes the threat of violent resistance.\textsuperscript{41} Finally, contrary to popular misconception, militaristic policing and SWAT usage is not confined to urban areas: many rural or less-populated municipalities also possess specialized policing units that use militaristic tactics and weaponry just as their urban counterparts do.\textsuperscript{42} For example, although a local county had already equipped itself with a paramilitary policing unit, a public university's campus police department came to possess a militarized policing team in addition.\textsuperscript{43} A change in policing has indeed taken place within the United States.\textsuperscript{44}

\textsuperscript{37} See David A. May & James E. Headley, Reasonable Use of Force by Police 60 (2008).
\textsuperscript{38} See id.
\textsuperscript{39} See Fisher, supra note 24, at 13.
\textsuperscript{40} See id. at 13–14 (stating that 75 percent of the nation’s drug raids involve no-knock, forced-entry drug searches); see also Matthew T. DeMichele & Peter B. Kraska, Community Policing in Battle Garb: A Paradox or Coherent Strategy?, in Militarizing the American Criminal Justice System: The Changing Roles of the Armed Forces and the Police 82, 89 (Peter B. Kraska, ed., 2001). When asked, a former commissioner of New York City Police Department stated that whenever a suspect may be armed and dangerous, the department would use specialized units. Fisher, supra note 24, at 14. This practice then became common to all warrant executions. Id.
\textsuperscript{41} See Fisher, supra note 24, at 13.
\textsuperscript{42} See id. at 109–110. Scholars found that approximately 70% of police departments in towns with a population between 25,000 and 50,000 people possessed militarized police teams. Id. at 110. Even in towns that do not possess such capabilities, officers combine and participate with other, similarly situated officers in militarized policing teams that respond to situations in multiple jurisdictions. Id.
\textsuperscript{43} See id. The University of Central Florida possesses this capability.
\textsuperscript{44} This Note will later concentrate on policing throughout the world. See infra Part IV.
Against this background of risk theory and the preliminary causal factors of police militarization within the United States, this Note now turns to an examination of the shift in United States law, both statutory and decisional, which has permitted this gradual shift to militarized law enforcement. The Note then begins a cursory exploration of risk-society theory, as explained in the preceding section, to determine whether Giddens' and Beck's theory holds when applied to the United States and its current situation regarding paramilitary policing and risk.

III. PARAMILITARY POLICING AND THE POSSE COMITATUS ACT

A. A Brief History of the Posse Comitatus Act

During the late colonial period of American history, Great Britain controlled its American colonies by subjecting them to military order. The Boston Massacre and the subsequent British occupation preceding the war for independence illustrate this proposition, and led to an outright animosity toward the concept of militarized policing. Due to this militaristic policing order, many documents of the revolutionary period contain strong warnings against military intrusion into civilian life. These documents include the Declaration of Independence, the Articles of Confederation, and the Constitution. Kealy notes that Constitutional Convention delegates debated extensively over whether a strong central army was necessary to protect the new Union.  

45. See generally Sandra Eismann-Harpen, Comment, Rambo Cop: Is He a Soldier Under the Third Amendment?, 41 N. KY. L. REV. 119, 123 (2014). Eismann-Harpen presents a lively analysis regarding the Third Amendment and how the protection against the quartering of soldiers could be applied to ordinary police officers due to the militaristic shift in policing within the United States.


47. See THE DECLARATION OF INDEPENDENCE (U.S. 1776). Several of the grievances against King George in this document include: He [King George] has kept among us, in times of peace, Standing Armies without the consent of our legislatures. He has affected to render the Military independent of and superior to the Civil power. . . . For Quartering large bodies of armed troops among us: . . . . He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of cruelty & perfidy scarcely paralleled in the most barbarous ages, . . . . (emphasis added).

48. See ARTICLES OF CONFEDERATION of 1781, art. VI, para. 4, which states: No vessels of war shall be kept up in time of peace, by any [S]tate, except such number only, as shall be deemed necessary by the [U]nited [S]tates, in [C]ongress assembled, . . . . nor shall any body of forces be kept up, by any [S]tate, in time of peace, . . . .

49. See generally U.S. CONST. (providing limitations on the intrusive powers of the military).

50. See Kealy, supra note 46, at 391.
Eventually, the Convention resolved to create such an army. However, the delegates imposed several limitations on the army’s power. Specifically, the military was only to take up arms to neutralize local insurrections when they arose. Moreover, Congress further limited the military’s domestic role by deciding to use local militias to quell any tense or violent situations that civilians could not control themselves. Kealy contends that this limit clearly articulated Congress’s intent to exclude the use of the military from all domestic law enforcement matters, instead allowing the local militia and civilians to intervene as much as possible.

However, the years directly preceding the Civil War exhibited an application of policing orders completely inconsistent with the early Congress’s intent, as the standing military began to drift into domestic law enforcement matters. Soldiers participated personally in law enforcement and, if local authorities remained superior to the military force, such forces executed local law. After the Civil War and throughout Reconstruction, Congress placed the former Confederate states under martial law, using the United States Army exclusively as police officers. Thus, local crimes such as moonshining and cattle rustling came under military control and jurisdiction.

As the United States approached the end of the nineteenth century, the presidential election of 1876 ushered in more than the end of Reconstruction. After a dispute regarding electoral votes arose in several states, Congress decided the presidency. In a quid pro quo bargain, eventual winner Rutherford B. Hayes acceded to the Southern states’ demand that federal military troops cease their enforcement of local law and be removed from their territories. Thus, Hayes ended the military’s reign over local law enforcement in the former Confederacy as well as in other areas. Congress then enacted the primary statute which historically barred the military’s involvement in domestic law enforcement: the Posse Comitatus Act.

---

51. See U.S. CONST. art. I, § 8, cls. 12-16.
52. See Kealy, supra note 46, at 391.
53. See First Militia Act of 1792, ch. 28 § 2, 1 Stat. 264.
54. Kealy, supra note 46, at 392.
55. See id. at 393.
56. See id.
57. Id. Kealy also documents how the military would integrate themselves into Southern legislatures and affect local politics. Id.
58. See id. at 394.
59. 18 U.S.C. § 1385 (West 2015). The Act provides: Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a
The short, substantive, plain text of the Posse Comitatus Act leaves little room for debate regarding Congress’s clear intention for the standing military to play only a limited role within the domestic law enforcement arena. Kealy inferred that, preceding the enactment of the Posse Comitatus Act, Congress likely felt that civilians’ legal control over their territory would soon be eroded by increased military interference. Thus, Congress passed the Act, reaffirming the Founders’ vision of a limited military intrusion into civilian life. In years past, the Act prohibited military intervention in all but a few law enforcement affairs. In fact, the Posse Comitatus Act was so successful that, due to the complete lack of the Act’s invocation throughout multiple decades of history, one court pointedly noted that the Act was “all-but-forgotten” in American legal history. Recently, however, the courts and Congress have actively carved out various exceptions to the Act, thereby leading America to the dramatic increase of paramilitary policing noted today.

B. The Posse Comitatus Act—A Crippled Statute

Commencing in the 1970s, both Congress and the courts actively eroded the Posse Comitatus Act. First, throughout the decades, the courts decided a variety of cases which cumulatively led to the disintegration of the Act’s effectiveness. *United States v. Red Feather* provides an excellent illustration of this erosion. In *Red Feather*, the United States charged multiple criminal defendants with interfering with law enforcement officers lawfully engaged in the performance of their duties. Red Feather, one of the defendants, contended that the

posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.


61. See Kealy, supra note 46, at 394.


64. Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—Shall be fined under this title or imprisoned not more than five years, or both. *Id.* at 918 (citing 18 U.S.C. § 231(a)(3) (1971)).
government agents involved were not lawfully performing their duties because they were violating the Act. The defendants claimed that military involvement in the situation, which included the law enforcement agents' use of specialized military equipment and senior military experts' observation regarding whether the military needed to be called in, constituted a violation of the Act. After extensively reviewing the history of the Act's passage, the court ruled that no such violation occurred. Reasoning that Congress intended that the Act would halt the military's direct interference with civilian law enforcement duties, so long as the military involvement in civilian law enforcement remained indirect or passive in a scenario, no violation of the Posse Comitatus Act occurs. Thus, donations of military equipment, supplies, and expertise may be made to local law enforcement without violating the Act.

The active-passive distinction articulated in Red Feather was upheld in a later case, United States v. Hartley. In Hartley, the United States convicted two defendants of illegally importing marijuana into the United States. The defendants appealed their convictions, arguing that the Air Force played too active a role in their capture. The court,

65. The agents included members of the Federal Bureau of Investigation, the United States Marshals Service, and military personnel. See Red Feather, 392 F. Supp. at 919.
66. See id. at 920.
67. See id. at 921.
68. See id. at 921–24.
69. See id. The court stated: "Activities which constitute an active role in direct law enforcement are: arrest; seizure of evidence; search of a person; search of a building; investigation of crime; interviewing witnesses; pursuit of an escaped civilian prisoner; search of an area for a suspect and other like activities." Id. at 925.
70. Id. at 925. The court also listed several military interventions in civilian law enforcement that constitute passive assistance: aerial photographic reconnaissance military personnel under orders to report on the necessity for military intervention; preparation of contingency plans to be used if military intervention is ordered; advice or recommendations given to civilian law enforcement officers by military personnel on tactics or logistics; presence of military personnel to deliver military material, equipment or supplies, to train local law enforcement officials on the proper use and care of such material or equipment, and to maintain such materiel or equipment; aerial photographic reconnaissance flights and other like activities. Id.
71. United States v. Hartley, 796 F.2d 112 (5th Cir. 1986) (holding that the exclusionary rule is not proper when no military personnel directly participated in the interdiction of the defendants' aircraft or arrest).
72. See id. at 113.
73. See id. The defendants sought reversal, arguing that the district court should have suppressed inculpatory evidence seized in violation of the Posse Comitatus Act. Id. A United States Customs agent flew with Air Force personnel who were engaged in a training operation. Id. By regulation, the Air Force permitted this travel so long as the aircraft possessed space for the extra person. Id. While engaged in this training exercise, military personnel alerted Customs of an unidentified flying object. Id. The Customs agent
however, affirmed both convictions, finding that this indirect assistance to law enforcement was not of the active kind prohibited by the Act.\textsuperscript{74} Other circuits subsequently developed the active-passive line in their cases, holding that an arrest by National Guardsmen, acting under a state governor’s order, does not violate the Posse Comitatus Act\textsuperscript{75} and that the Act does not apply to the Coast Guard when it makes an arrest at sea.\textsuperscript{76}

These holdings indicate that the active-passive distinction severely undermined the Posse Comitatus Act by permitting military intervention in civilian law enforcement in subtle fashions. When the military may assist police until it reaches the far outer limit of active intervention (e.g. actively engaging common criminals while acting as law enforcement), the Posse Comitatus Act is inherently crippled.

The rise of new risks beginning in the late 1960s and continuing through the 1980s may explain the judiciary’s dismantling of the Act. An enormous amount of social strife took shape during this time, as anti-Vietnam War protests, racial riots, and general societal unrest and upheaval destabilized the public.\textsuperscript{77} Fisher, along with others, traces the supposed need for police militarization to this time period, citing the year 1968 as the beginning of the movement.\textsuperscript{78} In 1967, the Los Angeles Police Department created the United States’ first paramilitary police response unit.\textsuperscript{79} This unit won widespread public and political support for engaging in a high-profile shootout with the Black Panthers on December 9, 1969.\textsuperscript{80} Other similar units began to form shortly thereafter.\textsuperscript{81}

told his office of the other aircraft and its landing location, the both defendants were soon arrested and the evidence was seized. See id. at 113-14. At no time did the Air Force stop its training exercise. Id. at 113.

\textsuperscript{74} Id. at 114 (quoting Red Feather, 392 F. Supp. at 925). The Fifth Circuit also held that, even if the Posse Comitatus Act had been violated, the remedy was not suppression. Id. at 115 (citing United States v. Wolffs, 594 F.2d 77 (5th Cir. 1979)).

\textsuperscript{75} See, e.g., Gilbert v. United States, 165 F.3d 470 (6th Cir. 1999).

\textsuperscript{76} See United States v. Chaparro-Almeida, 679 F.2d 423 (5th Cir. 1982).

\textsuperscript{77} See Fisher, supra note 24, at 3.

\textsuperscript{78} Id.

\textsuperscript{79} Id. Interestingly, the name for this specialized paramilitary police unit originally was the “Special Weapons and Attack Team.” Id. Apparently Los Angeles politicians did not approve of this harsh, provocative name, and the name was soon changed to the familiar “Special Weapons and Tactics Team.” Id. However, Radley Balko, among other scholars, observed this name change was merely “cosmetic” and that no real change occurred regarding the team’s tactics and mission. Radley Balko, The Militarization of America’s Police Forces, 11 CATO’S LETTER 1, 3 (2013), available at http://object.cato.org/sites/cato.org/files/pubs/pdf/catosletter-v11n4.pdf.

\textsuperscript{80} See Balko, supra note 79, at 3.

\textsuperscript{81} See Fisher, supra note 24, at 3. However, this team was heavily scrutinized for their showdown with the Symbionese Liberation Army. Id. at 4. This shootout involved
However, beginning in the 1970s, the United States began facing an issue that continues to plague it to this very day: illicit narcotics. President Richard Nixon commenced the modern War on Drugs at this time. Ten years later, President Ronald Reagan continued Nixon's mission by statutorily undermining the Posse Comitatus Act. Two statutes signed into law in this period illustrate the trend: the Comprehensive Drug Prevention and Control Act of 1970 and the Military Cooperation with Law Enforcement Officials Act. The latter permitted the military to share information regarding illegal drugs that was collected during normal military operations with civilian law enforcement officials, thus placing the military in an integral role in domestic law enforcement. Finally, the National Defense Authorization Act erased any residual effect the Posse Comitatus Act might still have had.

The National Defense Authorization Act statutorily permitted the transfer of Department of Defense property to local law enforcement agencies. This statute, under what is now colloquially known as the "1033 program," allows civilian police to obtain surplus military equipment at no or minimal cost. Scholars trace this program's effect as the primary driving force behind the supply of military equipment to local police. When local law enforcement carries out missions using extensive Kevlar body armor, appears in armored personnel carriers...
suitable for Middle Eastern warzones, and raids homes armed with assault rifles, I argue that the distinction between the standing military and local law enforcement is largely destroyed. 91 Indeed, the 1033 program boasts that it has transferred over five billion dollars in surplus military equipment, including $980 million in military equipment in 2014 alone. 92 More than 8,000 law enforcement agencies enrolled in the program and collected items ranging from office supplies to heavy armaments. 93 Clearly, this program has influenced the rise of today's policing system, but as with every government program, there is a catalyst. Once again, the catalyst is the rise of illicit drugs in America, and this concept must now be explored in relation to the concept of risk and the world risk society.

C. Transnational Narcotics Distribution Rings

In the 1970s, the United States commenced its “War on Drugs” under the Nixon administration. 94 Throughout his tenure, Nixon presided over police actions against illicit narcotics which included militaristic tactics such as no-knock raids on private areas that were conducted throughout the nation. 95 Nixon began this movement against illicit drugs because he saw narcotics as a substantial threat due to the extensive amount of drug addiction plaguing returning Vietnam servicemen. 96 Although the system was eventually repealed in 1974, it later made a comeback. 97 Moreover, Nixon also began facilitating

91. See id. at 13.
93. Id.
94. Balko, supra note 79, at 3.
95. See id. According to Balko, Nixon adopted this policy to abrogate the usual “knock-and-announce” rule based on the idea of a young United States Senate aide. Id.
96. See Susan Stuart, War as Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs, 36 S. Ill. U. L.J. 1, 7-8 (2011). Nixon stated, “America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.” President Richard Nixon, Remarks About an Intensified Program for Drug Abuse Prevention and Control (June 17, 1971), http://www.presidency.ucsb.edu/ws/index.php?pid=3047. For a detailed account of Vietnam drug use, see Daniel Chang, Military Drug Use in the Literature of the Vietnam War (Dec. 20, 2014) (unpublished manuscript) (on file with Harvard University), http://nrs.harvard.edu/urn-3:HUL.InstRepos:8965621. Chang states that drug use became so prevalent, the United States Armed Forces were threatened. Id. at 2-3. Studies indicated that approximately 80% of soldiers tried marijuana while 34% tried heroin while serving. Id. at 3. This evidence demonstrates how drug dependency, especially dependency that affected a war, would be seen as a threat. Soldiers would return home hooked on drugs and constitute a new danger.
97. Balko, supra note 79, at 3.
paramilitary policing by being the first president to describe narcotics as a threat to the national security of the United States.98

Paramilitary policing became a policy point during Ronald Reagan's tenure. For example, passage of the Military Cooperation with Civilian Law Enforcement Act in 1981 permitted the use of the military to assist law enforcement and consequently blurred the line between the military and police in confronting the drug smuggling problem.99 This statute began the mixing of military and police,100 but the transnational drug threat remained. On President George H. W. Bush's inauguration, a more intensive drug interdiction effort began, using both the military and local law enforcement.101 For example, Bush created and appointed the United States' first drug "czar" to control the Office of National Drug Control Policy.102 Raphael F. Perl observes that another significant piece of Bush's early antidrug policies was to "encourage increased levels of Andean nation military involvement in counter-narcotics operations" and "provide for enhanced US military support to host nation counter-narcotics forces."103 Because of the wealth of drugs coming from Latin America, the proposal focused on improving the military and law enforcement features of Latin American nations by supplying, training, and funding these units to combat drugs within their nations.104 Thus, while the United States militarized its police forces because of the transnational drug distribution threat, nations outside of the United States militarized their police forces because of the United States' effort to combat the drug threat.

Applying Giddens's and Beck's theory of risk and the risk society, the United States and its local law enforcement system appears to have undergone militarization because of the risks presented by the

98. See Stuart, supra note 96, at 5; c.f. BAKER, supra note 32, at 14. By declaring transnational drugs (or drugs generally) a threat to national security, the military could begin involving itself in drug interdiction. Baker posits that anything could be classified as a matter of national security and that many legislators frame issues in this way to gain military or Defense Department assistance. See id. at 14–15.


100. See 10 U.S.C. § 375.

101. See generally Stuart, supra note 96, at 10–11 (discussing President Bush's rhetoric and its effect on the War on Drugs).


104. See id.
transnational drug trade. First, the military naturally needed a task to complete, some new threat to U.S. society that had to be conquered after the conclusion of the Cold War.\(^{105}\) Without the threat of nuclear war with the Soviet Union, and later Russia, looming, U.S. society was actively attempting to break away from the issue that plagued it since the Iron Curtain fell.\(^{106}\)

The United States believed that the transnational drug trade constituted a risk, a danger that could cause trouble to its citizens in the present and the future.\(^{107}\) The drugs being transported into the United States from abroad manifested a new external risk,\(^{108}\) one being orchestrated by clandestine transnational actors over whom no government really possessed any control.\(^{109}\) The threat of "spillover violence" also followed the transnational drug trade.\(^{110}\) These fears led to the gradual evolution from a warfare state, one that was actively engaged in the Vietnam War (among other Cold War conflicts internationally), to a "crimefare" state.\(^{111}\) Law enforcement became increasingly integrated with the military under presidential and congressional policies.\(^{112}\) Thus, narcotics were addressed as a national security matter, permitting the inclusion of the military—in technology, equipment, and expertise in local law enforcement actions.\(^{113}\)

---

105. See Kraska, Crime Control, supra note 4, at 16, 18.

106. Cf. GIDDENS, supra note 7, at 22 ("[r]isk presumes a society that actively tries to break away from its past").

107. Cf. id. ("[r]isk refers to hazards that are actively assessed in relation to future possibilities").

108. Cf. id. at 26 ("[e]xternal risk is risk experienced as coming from the outside, from the fixities of tradition or nature").


110. See John Burnett, 'Spillover' Violence From Mexico: Trickle or Flood?, NPR (Aug. 7, 2012, 3:29 PM), available at http://www.npr.org/2011/07/06/137445310/spillover-violence-from-mexico-a-trickle-or-flood. According to this article, the federal government describes "spillover violence" as drug-related violence that targets innocent civilians or law enforcement on U.S. soil. However, some citizens believe this description is too narrow, describing it as trafficker-on-trafficker violence in the United States that originates with Mexican organized crime.

111. Id.

112. See id. at 27, 29.

113. See Drug Trafficking Violence in Mexico: Implications for the United States Before the S. Caucus on Int'l Narcotics Control, 111th Cong. (2010) (testimony of Kevin L. Perkins, Assistant Director, Criminal Investigative Division, and Anthony P. Placido, Assistant Administrator for Intelligence), http://www.fbi.gov/news/testimony/drug-trafficking-violence-in-mexico-implications-for-the-united-states (testifying that transnational drug threat continues to pervade American society today, especially over the porous southwestern border, and that violence follows the drug trade, primarily as a spillover from drug trade); cf. GIDDENS, supra note 7, at 27 (regarding "external risk").
Examining this evidence, I argue that, not only did the United States become a risk society, it also became a "world risk society." Because of the nature of the international drug distribution risk, involving nonstate actors who affected multiple nation-states, this new risk constituted one that was local and global simultaneously.114 This hazard shaped global action115 because the United States provided funding and training for Latin American governments to suppress and destroy the drug trade that was originating in their nations in much the same fashion that the United States trained them to combat the Communist threat earlier in the century.116 For example, Perl indicates that the United States provided an increasing amount of military aid to three Latin American nations over the course of four years,117 while also stating that, in these nations, United States military personnel provided training for police in areas such as "small unit tactics, leadership, and airmobile and riverine operations."118 Clearly, global action was prompted by this domestic issue, converting the United States into a "world risk society."119

IV. WORLD RISK SOCIETY AS GLOBAL PHENOMENON

The militarization of a nation's police forces does not confine itself to purely one or a handful of nations, but rather constitutes a global phenomenon. The concept of the "gendarmerie" illustrates this primary point. Lutterbeck defines "gendarmerie" as a term "usually applied to police forces which have certain military characteristics and some degree of military capability even though strictly speaking they are not part of the armed forces."120 Originally developed in France, many other European nations soon adopted these forces. Nations primarily tasked gendarmes with maintaining order throughout their territories.121

114. Cf. Beck, World Risk Society, supra note 8, at 142 (showcasing how certain distinctions can become fluid, such as the boundary between work and non-work).
115. See id. at 142-43.
116. See Perl, supra note 103, at 128-29.
117. Id. at 129. The particular nations are Bolivia, Colombia, and Peru. In 1988, the United States transferred only $400,000 to Bolivia in military aid; by 1989, the United States increased its military financing to almost $5,500,000. Id. Disturbingly, the United States expected to provide an estimated $40,000,000 in military aid to Bolivia in 1990. Id.
118. Id. at 130.
120. Lutterbeck, supra note 5, at 47.
121. See id.; see also, e.g., Peter Andrade, World Police & Paramilitary Forces 67-68 (1985). Andrade observes that the French gendarmerie formed in the 1300s under the
J. Waddington observes that gendarmes are completely paramilitary, tasked with dealing with particularly difficult internal security situations. To accomplish these ends, gendarmes possess stronger weaponry than common police officers in their respective nations. Moreover, the fact that European governments typically organize these elite peacekeeping forces under their respective defense ministries further blurs the distinction between intrastate policing and the military.

One particular example of the gendarmerie concept is the Spanish Guardia Civil, which played an instrumental role in Francisco Franco's campaign against political dissent throughout his reign. Today, the Guardia Civil functions as an elite counterterrorist and antidissent vehicle of the government, directing efforts against the Euskadi Ta Askatasuna (ETA), for example.

While Lutterbeck states that nations such as the United States and United Kingdom differ from the European gendarmerie model, clearly the distinction is minute. While the United States and other Anglo-Saxon nations do not possess centralized police or a centralized paramilitary response unit per se, the 1033 program and loosening of the Posse Comitatus Act allows for an easy comparison between the two models' militarized tactics, history, response purposes, and weaponry, especially when considering the SWAT teams that pervade local law enforcement. Thus, one could broadly observe that all Western nations lean on their paramilitary policing capabilities to combat risk and threats and have so for quite some time now. However, the global police

monarchy and was tasked with enforcing military law throughout France. See id. at 67. Napoleon Bonaparte greatly expanded this force's use by developing an internal security network. See id. Today, one part of the French gendarmerie responds to city officials if civil unrest occurs. Id. at 68.


123. Lutterbeck, supra note 5, at 47. Lutterbeck states that gendarmes utilize armored cars, small airplanes, helicopters, and light infantry weapons; gendarmes also have participated in various wars and other extraterritorial conflicts. See id. France's gendarmerie fought in all of France's major wars. See id.

124. See id.

125. Id. at 49. The ETA is a Basque separatist organization that seeks an independent nation for its members and other Basques in Spain. ETA, ENCYCLOPAEDIA BRITANNICA, http://www.britannica.com/topic/ETA (last visited Dec. 21, 2014). This group conducted bombings and other attacks in Spain throughout the 20th century. Id.

126. B. Loveday, Government and Accountability of the Police, in POLICING ACROSS THE WORLD: ISSUES FOR THE TWENTY-FIRST CENTURY, supra note 117, at 132, 142. Loveday describes America's police forces as "fragmented" because of the Framers' intent to separate arms of societal control from the government as much as possible. Id. This view also comports with the original purpose of the Posse Comitatus Act as its founding principle was to ensure the military did not involve itself with local police affairs, thus continuing the trend of decentralization. See 18 U.S.C. § 1385.
militarization shift has not only confined itself to the Western nations of the world; non-Western nations have militarized their police forces to some degree to combat their own particular threats, thus creating a “world risk society” for these nations as well.

The following section provides an in-depth exploration of policing in the People’s Republic of China and how China created its policing capabilities to combat threat. As a final preliminary matter before entering this discussion, because of the revolutionary nature of the current global political climate, Beck proposes that revolutions of government demonstrate the social power of threat that nations feel. Giddens adds that people no longer respect authoritarianism in nondemocratic societies. Thus, today, authoritarian national leaders understand and sense this loss of respect and will do whatever necessary, using their militarized police forces, to prepare for the risk of revolution, stemming from other world revolutions.

A. The People’s Republic of China and the Umbrella Revolution

The Arab Spring began in Tunisia and subsequently spread to other nations in Northern Africa, including Egypt. The toppling of Egypt’s longstanding regime, along with those of Tunisia and Libya, placed the Chinese national government on high alert for the possibility of revolution against the Communist regime, especially inside Hong Kong. Historically under British control, Hong Kong is an area which has not been fully immersed in Maoist ideology and thus remains more autonomous from government control when compared to other areas. The latest showing of political dissent arose from the news that Hong Kong residents would soon only be able to vote for government office candidates that were pre-approved by Beijing and Hong Kong Communist leaders. Hong Kong citizens took to the street to protest this monumental election power-snatch only to be met by state riot police, who approached the largely peaceful crowd with pepper spray and tear gas. Such a showing of political dissent is not uncommon in

127. See Beck, World Risk Society, supra note 8, at 66.
128. See Giddens, supra note 7, at 72.
132. Id.
133. Id.; see also, e.g., Malcolm Moore & Simon Parry, Heavy-Handed Policing Ignited Hong Kong Protests, Telegraph (Sept. 29, 2014, 1:30 PM), http://www.telegraph.co.uk/
China; even more disturbingly, showings of police militarization in China are the historical norm.

The Umbrella Revolution, as this recent political protest came to be known, represents the constant threat that the People's Republic of China faces and why, in large part, the Chinese government militarized their police forces in the regime's infancy. Upon the Communist takeover, the Chinese police acquired a political mission: using any and all means to defeat enemies of the state. Moreover, relatively new changes in Chinese culture and to the nation's constitution after Mao's death transitioned China into a nation that actively suppresses dissent against Communism while maintaining a market economy, thus attempting market reform while censoring dissent.

After Mao's demise, Deng Xiaoping assumed command over China and realized the need for swift modernization. Thus, Deng and subsequent Chinese premiers embarked on modifying the Chinese Constitution and updating the government. Because of these efforts, China now possesses a "state capitalist" economy, mixing socialism with capitalism. However, the people sensed this shift in economics and enjoyed their new success in business; they began and continue to voice their opposition to the remnants of the Maoist Chinese government.

134. KAM C. WONG, CHINESE POLICING: HISTORY AND REFORM 97 (2009). Mao oversaw the police's framing and ensured that policing would contain a militaristic mentality. See id. at 99.

135. See ANDRADE, supra note 121, at 45.

136. See id. Beginning in July 1980, liberalization was in full swing, and Deng also modified the use of weapons and tactics by agents of the Ministry of Public Security. See id.; see also WONG, supra note 134, at 157. Wong states that Deng's modification to policing in China shifted "law and order" into the forefront of policing duties, above preserving the government's power. See id. at 164. However, as seen today, the police still enforce internal laws and investigate counterrevolutionaries. Id.

137. See XIANFA art. 11 & 15. (1982) (China). Article 11, § 1 states, "Individual, private and other non-public economies that exist within the limits prescribed by law are major components of the socialist market economy." XIANFA art. 11. The amended Article 15 states: "The state has put into practice a socialist market economy. The State strengthens the formulation of economic laws, improves macro adjustment and control and forbids according to law any units or individuals from interfering with the social economic order." XIANFA art. 15 (amended 1988). These two particular articles have given rise to dissent after Deng's modernization movement.

which then suppresses any dissent through the use of its police forces.\textsuperscript{139} Demonstrations gained further steam due to the Arab Spring.\textsuperscript{140} Chinese police forces include the People’s Armed Police, which is housed under the Ministry of Public Security.\textsuperscript{141} The People’s Armed Police, created in 1983, derives part of its force directly from the People’s Liberation Army and is treated equally alongside the Army.\textsuperscript{142} With over one million officers, this particular force’s status and importance in China has increased dramatically since Tiananmen Square; in fact, the Central Military Committee appointed the People’s Armed Police as the first mobilized force if domestic upheaval is afoot.\textsuperscript{143}

Against this backdrop, clearly, the People’s Republic of China constitutes a world risk society because of the constant risk its government faces from vocal dissenters. As Beck articulates, the social power of threat of revolution, especially in authoritarian societies, currently plagues several nations of the world.\textsuperscript{144} For example, the Arab Spring resulted in the collapse of many authoritarian regimes, causing stirs amongst other similarly situated nations to react to these revolutionary changes.\textsuperscript{145} Indeed, Giddens observes that some nations’ efforts to democratize their governments have stalled,\textsuperscript{146} and when citizens become invigorated and ready to protest, the governments are ready to flex their muscles to quell any possibility of insurrection.

Here, the move to modernize caused constitutional change, which led to further protest in China because of the clash between various constitutional articles. For example, Article Thirty-five of the Chinese Constitution claims that Chinese citizens enjoy freedoms such as speech

\begin{thebibliography}{9}
\bibitem{139} See Jacques deLisle, Security First? Patterns and Lessons from China’s Use of Law to Address National Security Threats, 4 J. NAT’L SECURITY L. & POL’Y 397, 399 (2010). The author claims that the Chinese legal order regarding the political state remains completely Leninist during times of perceived or actual dire peril. \textit{Id.} at 398. Such perilous activities toward the state include threats to national security, social order, and the regime’s ability to control its people and ensure its hold on power amidst incidents of mass protest. \textit{Id.} at 399. The national government recently passed several new laws providing authority to contain and eliminate “rebellion, riots, large-scale serious criminal violence, terror attacks, and other situations imperiling national security.” \textit{Id.} at 407. The author argues that these new measures are superfluous because there already is enough Chinese law dealing with threat containment. \textit{Id.} at 407–08.
\bibitem{140} See Bellin, \textit{supra} note 129, at 127.
\bibitem{142} People’s Armed Police, \textit{supra} note 141.
\bibitem{143} \textit{Id.; see also, e.g.,} WONG, \textit{supra} note 134, at 161.
\bibitem{144} See BECK, WORLD RISK SOCIETY, \textit{supra} note 8, at 66.
\bibitem{145} Bellin, \textit{supra} note 129, at 127.
\bibitem{146} GIDDENS, \textit{supra} note 7, at 71–72.
\end{thebibliography}
and demonstration, similar to the U.S. Constitution's Bill of Rights.\textsuperscript{147} However, Article Twenty-eight allows the State to suppress counterrevolutionary activities and penalizes activities that endanger public security or disrupt the socialist economy.\textsuperscript{148} While Chinese citizens can protest, seemingly any protest that does not embrace revolutionary (i.e., Communist) values and rhetoric may be suppressed by the police. Statistics indicate that many mass incidents occur, and police normally respond to these, especially the larger incidents, with force comparable to the Umbrella Revolution.\textsuperscript{149}

After examining the changing Chinese constitutional scene, where many Chinese are speaking out and protesting against Communist rule, the move to militarize the police is the easy answer for the national government. By providing the police with the authority to use heavy-handed tactics to stop a future rebellion, the government owns their risk, thereby attempting to stop future issues with risk and threat. Clearly, world police forces underwent a vast shift in policing via the law to face whatever threat each faces in the foreseeable future.

V. PROPOSED SOLUTIONS AT ALL LEVELS OF THE GLOBE

Each nation facing militarization of their police forces by law because of global risk faces an immense challenge in the future: the decision whether to continue with this choice or to revert to another method of policing. Although many nations face this global risk conundrum, the threats facing each affected nation may be different, necessitating different legal solutions.

First, from a philosophical standpoint, historical evidence should drive the law behind police militarization. Rather than deciding what possible risks face the nation and enacting militarization legislation to combat these alleged risks (which may or may not be realized), nations should examine what currently or formerly plagues it before devising

\begin{itemize}
\item \textsuperscript{147} XIANFA art. 35. Article 35 states, “Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.” XIANFA art. 35; accord U.S. CONST. amend. I.

\item \textsuperscript{148} XIANFA art. 28. Article 28 states, “The State maintains public order and suppresses treasonable and other criminal activity that endanger State security; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities . . .” XIANFA art. 28.

\item \textsuperscript{149} See Ministry of Public Security, supra note 141. The source indicates that hundreds of thousands of mass incidents occur each year due, in large part, to the liberal definition of “mass incident.” Id. Mass incidents may include numbers from ten people to thousands. See id.
\end{itemize}
legislation to combat the issue.\textsuperscript{150} By examining the past, nations would understand the primary risks they face before expending time and resources combating real or perceived threats. Therefore, for example, if terrorism threatened a nation’s security in the present and past, legislation that is future-oriented but originates as a reaction to the past and present may be better tailored to meet the needs of that nation. Thus, if the police are militarized in some fashion, the militarization may be more narrowly tailored to the specific needs of the problem rather than excessively shifting in anticipation of threats.

After examining the United States’ gradual shift towards police militarization, one possible solution is to begin reinforcing the Posse Comitatus Act, giving increased shrift to its plain language. By interpreting the Act’s language in the broadest sense, the military would be prohibited from taking part in any law enforcement activities in any way. Thus, equipment and training could no longer be provided by any branch of the military. Clearly, this solution would help cure the United States’ militarization movement, but this solution may not be practicable. For example, if threats to security involve heavy weaponry, the government would not want officers to confront this situation as everyday police but rather as a paramilitary unit.\textsuperscript{151} Therefore, the most realistic solution to America’s police militarization is to continue the 1033 program with specified limitations. Instead of allowing law enforcement agencies to request any and all equipment it may want without much review, an extensive review mechanism could be statutorily created, paying particular attention to factors such as size of the agency’s jurisdiction, population and crime statistics of the jurisdiction, and the agency’s current capabilities of facing common threats. To provide further legal credibility, any and all prescribed factors should be written into the statute; more particularly, a provision stating that each statutory factor must be considered on the record provides a presumption of full consideration to the particular agency’s needs weighted against the need to limit the militarization movement.

\textsuperscript{150} See generally GIDDENS, supra note 7 (identifying globalization as a cultural force that brings larger risk and uncertainty and urging nations to respond to the demands of a global age).

\textsuperscript{151} See Fisher, supra note 24, at 5. Fisher states that the Columbine High School shooting drastically increased the desire for militarized policing. \textit{Id.} There, SWAT officers did not enter the school as quickly as they should have. \textit{Id.} In fact, officers entered two hours after the shooting began. \textit{Id.} First-responding patrol officers were untrained in paramilitary policing techniques; Fisher claims that, had these officers been properly trained in a paramilitary fashion, the shooting could have been mitigated. \textit{Id.}
This overall statutory remedy, in some variation, would surely "put teeth" into the Posse Comitatus Act.\textsuperscript{152} However, for nations such as the People's Republic of China, which face risks from internal societal dissent stemming from the government itself, a comprehensive solution lies with the government: a full constitutional overhaul, providing the people with increased power.\textsuperscript{153} By overhauling the constitution of the challenged government, the basic threat of mutiny posed by the nation's society may be lessened because it will be appeased. Because, however, this solution is quite unlikely to occur naturally, a remedy that permits the challenged government to remain in power is desirable: to delineate specific situations where militarized policing is necessary. Instead of sending in the paramilitary police, such as the People's Armed Police, when demonstrations occur, a lighter method of control could be undertaken in certain situations. For example, during peaceful demonstrations such as the Umbrella Revolution, police should not resort to tear gas to disperse the crowd unless it becomes unruly and riotous.\textsuperscript{154} Two-fold risk prevention occurs in this scenario: the people feel increased freedom to demonstrate and voice their views on possible changes, while the government may not be actively challenged in violent ways.

Finally, international institutions should involve themselves in the prevention of global police militarization. Multiple nations have created institutions, such as the United Nations, to assist each other with global issues. Having been established as a global phenomenon, police militarization is another global challenge many nations face. If the United Nations created a committee, panel, or study committed to finding solutions to police militarization, surely the global threats causing this militarization would be analyzed and eventually controlled. Simply put, for a global phenomenon such as global risk that causes police militarization, a global body dedicated to solving this issue provides the best means of global mitigation and prevention.

\textsuperscript{152} Hill & Beger, \textit{supra} note 23, at 35. Hill and Beger argue for a complete overhaul of the Posse Comitatus Act; this overhaul would prohibit both the transfer of military equipment and training to civilian law enforcement. \textit{Id.} However, Fisher appears to suggest that some militarization is necessary because of certain threats that communities face today, such as school shootings or hostage situations. \textit{See generally} Fisher, \textit{supra} note 24, 4–8 (discussing the Columbine High School killing spree as a catalyst for the militarization of police).

\textsuperscript{153} See Giddens, \textit{supra} note 7, at 75. Giddens believes that a deepening of democracy is needed where authoritarian power is being threatened. \textit{Id.}

\textsuperscript{154} See generally Rauhala, \textit{supra} note 131 (police sparked outrage when they resorted to the use of tear gas on pro-democracy protestors).
CONCLUSION

Risk and threat are both as old as time; however, in today’s globalized world, risk and threat can arise from global issues. As Giddens and Beck observe, modern nations participating in the global field look to the future to decide on how to contain risk as it presents itself rather than examining the past. This shift combined with various globalized threats produced the global shift towards police militarization; different world governments enacted legislation to permit this shift so as to contain or prevent the risk each faced. In the United States, the undermining of the Posse Comitatus Act with various statutory exceptions and court decisions in response to the transnational drug threat militarized the police. Of course, the United States merely wished to stop this threat, but now, SWAT teams carry out ordinary search warrants. Thus, this movement may have spread further than originally anticipated.

Examination of other nations, include those of Western Europe, demonstrate that many possess a paramilitarized police force, most notably through their respective gendarmes. These Western nations maintain and use these forces much like American SWAT teams are used, to quell civil unrest and in other specialized, highly violent situations. Finally, an examination of the People’s Republic of China indicates that its police force has always maintained a political element, one that seeks out and eliminates risk and threat directed at toppling the Communist regime. With the recent topplings of several Arab authoritarian governments during the Arab Spring, the Chinese have actively used the law to continue to militarize their police, primarily the People’s Armed Police, to stop any possible insurrection.

Several solutions exist. Statutorily, nations such as the United States and China should attempt to limit the flow of militarization to their police forces. A deeper philosophical solution would be to only militarize the police for risk that is known due to its manifestation in the past or in the present. With this done, it may be that Giddens’s and Beck’s theory regarding risk societies being forward-viewing will cease to hold truth.

However, these solutions, at least to one renowned criminologist, will not come to pass. Victor Kappeler believes that piecemeal federal legislation and a continuing 1033 program is what the future holds. While investigations over this militaristic shift occur in the United States, citizens prize security in the face of risk and threat, thus permitting the continuation of this shift. Sadly, Alexander Hamilton’s

155. See Telephone Interview with Victor Kappeler, supra note 138.
prophetic statement regarding threat survives today and, viewing Kappeler's prediction, will continue to be true well into the twenty-first century.\textsuperscript{156}

\textsuperscript{156} The Federalist No. 8, at 45 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). Hamilton stated: "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates." \textit{Id.}