



## Episode 1,172: The Problem With Government Police

Guest: Tate Fegley

**WOODS:** You've done quite a few pieces on police, and it got to the point where, when I put out a request for what are some topics and guests I should have, I had somebody say, "Why the heck are you not having Tate on to talk about all his work on police?" And I looked and I thought, *How is this happening under my nose and I haven't followed it enough?* So very good, interesting stuff.

Let's start with the most controversial — well, it's hard to say what's the most controversial, because if you talk about privatizing police, I guess that would also be controversial. But let's situate what you've been writing in the context of the ongoing debate about police in our society, because of course there's the "Back the Blue" signs that we see in a lot of places by people who support the police, and then on the other hand, you have people who say that the police are using excessive force, and of course from our point of view we'd say they don't face a market test and this is also a major problem. And you've done some stuff on the general question of the war on cops, and there's been some argument that there is a war on cops out there and that we see this reflected in, let's say, the killings of policemen or the general cultural attitude toward the police and whatever. What's been the result of your investigation into that question?

**FEGLY:** Well, I think the most difficult part of that question is how do we define a war on cops. So you mentioned that one potential measure could be felonious killings of police officers or assaults on law officers, and so one of the things I looked into was just looking at the measures of these things. And the basic picture of what we find is that there's nothing recent really to suggest that there's any type of war on cops happening in terms of law enforcement officers being targeted in terms of the aggregate numbers. So then considering one of the foremost proponents of the war-on-cops narrative, Heather McDonald, looking at her book, she doesn't really focus so much on these questions of violence against police officers, but more of the rhetoric. And of course this is something that's hard to measure, but ultimately what it seems her argument really comes down to in defending the police is really that cops aren't as racist as people seem to think, which seems entirely different than there being a war on cops. So I guess from my perspective, the search continues for evidence that there is in fact a war on cops.

**WOODS:** Now, there's plenty of stuff that we could say about police that I think a mainstream audience could listen to and nod their heads, and there are things people on the progressive side of things could listen to and nod their heads, and we will get to that. But my libertarian listeners come first, and I want to dive deep into this question of police and what might policing look like in a free society. We would have policing in the same way that we

have private security guards now and by and large we don't have a problem with that. So what do you think it looks like, given that it is somewhat speculative — not entirely, but somewhat speculative — what's the model of policing? What does the system look like in a market society as opposed to what we have now where it's monopolistic and government-provided?

**FEGLEY:** I think one thing that might be underemphasized by those speculating on what a private system of policing looks like is, in terms of what we do see from private policing in our current world, is how much it's bundled with other services. So as many point out about Disney World or the mall, that policing services tend to be provided as a package with these other things, and I think there's too much focus on this model that we have of city police departments instead being provided by a private provider. I imagine that — well, of course we don't know without a full market system in the provision of policing, but I imagine that we would see a lot more of this type of bundling, whether it's with a housing association or other services that people enjoy.

**WOODS:** I think, by the way, that's how a lot of public goods problems would be resolved in a free society, is that you would bundle them all together. When I had Fred Foldvary on many, many episodes ago, he gave the example of a hotel. When you go to a hotel, you don't separately buy the elevator service; it comes bundled in with your experience in the hotel. And likewise, you don't pay for the lobby or the lighting and whatever. These things are all bundled in. And so we would figure out in the market what makes sense to bundle and how the different arrangements would work, and that more or less solves these problems that non-libertarians throw at us as if they were intractable, like there's no way we could resolve this.

How would private policing — let's just go right into a matter of current controversy. How would private policing help in the situation where you have many black people who feel like the police are hostile to them and they can point to some cases that clearly are pretty gruesome-looking to the average observer? How does that get changed under a private system and why?

**FEGLEY:** Well, I think the most obvious difference is that private police would have to be voluntarily paid by their customers, which is something that's not the case for government police. And I think some potentially fruitful examples that I recently wrote about was in regards to the Starbucks case in Philadelphia. And a point I was trying to make here was that, if we compare the response of Starbucks when it faces this public backlash after its use of the police to arrest two African American men who had been at the Starbucks without purchasing anything, were asked to leave and refused to do so — and, well, critics say this was probably racially motivated due to the fact that this is a common thing of people sitting within a Starbucks and just enjoying the atmosphere without purchasing anything.

And I'd say you can bet that Starbucks will be very careful in terms of its corporate policy in terms of how it will use the police in the future regarding these types of things where it's unclear that the Philadelphia police, who actually performed the arrest, will face any type of cost from this. And so I'd say obviously the biggest difference is, in terms of the profit motive that private individuals face in having to continually garner the interest of voluntarily-paying customers, unlike government police.

**WOODS:** I think sometimes we assume that in order for there to be private police, we'd have to already have reached anarchocapitalism. We'd have to already have smashed the state's

monopoly on the use of force. But you point out in one of your articles that this is actually not right, that we could even imagine even with the state maintaining that monopoly that you could still have a diverse array of services for policing. And that I think is what's hard for people to envision, so what exactly would that look like? I mean, of course we have it now. As you say, with Disney World, they have some company that — I'm sure there's stuff going on with Disney security that would be very interesting to know about that I as a patron never even see. And we see it in the shopping mall and this and that, but how could that work in my neighborhood?

**FEGLEY:** Right. So one example — I know you had Dale Brown of Threat Management Center previously on your show.

**WOODS:** Yeah, great.

**FEGLEY:** And one of the services he provides, in addition to his corporate clients, is to neighborhoods. And I believe they contract through some type of homeowner's association to provide these types of services. So I think the collective action problem that economists often cite regarding why it's impossible for individual homeowners to contract for policing services because of the positive externalities, that there would be too much free-riding, really isn't the case. I think that the non-excludability of policing services is much overstated. And so yeah, I don't think this would be much of a problem for you as a homeowner in terms of obtaining these services on the market.

**WOODS:** The thing is, let's say I didn't have to worry about a government — I mean, there are things I don't want government doing but that I do want to have done, and let's say, if I were talking about crime prevention, generally what I want is I don't necessarily — it's not so much that I want a private company to come in and nab the criminal once he's in my house, although that would be nice. It's more that I don't want him getting in my house in the first place. And I think with a private company, given that I could switch to another company any time I want to — any time I find that that company is engaged in practices that I don't like or they're too intrusive or they're skulking around my house too much, I can just get rid of them and get a new one, whereas I couldn't do that with the government police because there's no choice with the government police.

So in other words, there are things that I'm okay with a private company doing because I maintain the ability to choose to go in a different direction at some point. So the trouble, it seems to me, is that a private company could do more to prevent crime because I wouldn't really mind if the private company is kind of looking around, if I give them permission to look around on my property and stuff. But I feel like with the government police, this would be viewed — In other words, practices that I could accept with a private company would be viewed as civil liberties violations if carried out by the police. I don't know if I explained that well.

**FEGLEY:** Yeah, I think you make a really good point here. It's reminiscent of Robert Higgs and his ratchet effect regarding how, when government grows, it's very hard to shrink it back to where it was previously, and so once you allow government the ability to intrude on your private space, it's really difficult to get them back out of it, whereas as you mentioned with a private company, if you find you don't like that type of intrusion, you can switch providers.

**WOODS:** You have a theme in some of your writing about how much policing we need. And this is really important. This is where your economics training is really going to serve you well, because I think a lot of people, especially law-and-order conservatives think: the more the better, because we think that's generally true of anything. But I've tried to say that even when you have an unambiguous good like customer service, it's not true that the more customer service you have the better, because all the customer service people you're drawing have been drawn away from some other thing that they could do, and maybe we value that higher than we value customer service. Or after a while, I mean, what more could I do with customer service? I could give everybody a massage, and then people would start not liking that.

At some point, even something that you perceive as being an unambiguous good, you can have too much of because it necessarily comes at the expense of something else that you're going to begin to value more as you get more of the customer service or whatever it is that you have a surplus of. So how does that translate into policing?

**FEGLEY:** Right. I think Ludwig von Mises has great insights into this with the points he makes about economic calculation. And while his original argument was about economic calculation in a socialist commonwealth — which I'm sure your readers are familiar with this argument that in the socialist state where the government controls all the capital goods, there's no private property in them and therefore no exchange and therefore no prices, and so even if there are markets in consumer goods, the central planner cannot engage in profit-and-loss calculation and therefore is completely in the dark in how to properly allocate resources.

And I apply this same argument to the provision of policing or really any form of public administration works in which it's kind of the inverse, where police can measure the costs of their inputs because they have to buy labor and capital in the market, but they're not able to measure the value of their output because they don't make voluntary exchanges. Rather, they get their revenue through coercive means like taxation or civil asset forfeiture. And so because of this, because they also cannot engage in profit-and-loss calculation, they can't know the value of their output, however they decide to allocate that, whether it's to solving thefts or preventing other types of crime.

And so in this case, even though yes, we like at least some of the output presumably that police provide, we can't measure the tradeoffs because of this lack of calculation. And so as you point out, this is very much a problem of government policing, that we cannot measure the value of their output and we can't know what tradeoffs we're making by having more public safety, even if it is an unambiguous good.

**WOODS:** And then once we do have it, then deciding how to allocate it: what kind of crimes should they be investigating with how many resources? Now, I can't do that right now because, as you say, there's no profit-and-loss mechanism, but I'll tell you something: I would be willing to bet with 99% certainty that the way they allocate resources now is extremely suboptimal, to put it mildly, that you've got police monitoring streets that are barely used to try to catch speeders while meanwhile the number of murders that go solved is shockingly low. That has to be a bad allocation of resources.

**FEGLEY:** Right, when you think about it from their perspective —

**WOODS:** [laughing] From their perspective, it's not. Right.

**FEGLEY:** Yeah, they respond to incentives. There's not much revenue in solving murders, where there is for catching speeders. There is for finding drug dealers or potential drug consumers who have things to confiscate. And so they respond to the incentives just like everyone else.

**WOODS:** And also, they don't — to some degree, they have to worry about reputation because individual people might wind up on the chopping block, but the whole agency is a monopoly, so whether you like them or you don't like them, they're still going to collect the tax revenue, whereas private firms do have to worry about their reputations, and if they're responsible for using deadly force in a case where it's clearly not warranted, this is going to be a big problem for them. Now, but let me give you an opportunity to answer the kind of argument that a left progressive might make, which would be: that much of what you say makes a great deal of sense, but we know how capitalists are, and what would happen if capitalists do what is in their nature, namely to hire — if they get to choose the police, in effect, that they're going to be using, couldn't they just hire police who will just arbitrarily go around cracking the skulls of troublemakers? Isn't that what we would expect from capitalists? How do we prevent a dystopia like that?

**FEGLEY:** Well, as you mentioned, reputation is a very important thing. As I mentioned, Starbucks, even in their case of a relatively minor case of really enforcing their property rights, that they have to consider what impact this will have among customers who frequent Starbucks, and if they're going to maintain those relationships, they can't just be cracking skulls arbitrarily. And I think a further point that's important is the legal privileges that police officers enjoy through things like their union contracts or through statute, like the state law enforcement officer bills of rights, which protects not only the police department, but individuals from certain outcomes.

Like for example, some of these collective bargaining agreements allow police, after being involved in an officer-involved shooting, to have this cooling-off period for 48 hours or more in which they don't have to give a testimony. This time is ostensibly supposed to be for the purpose of obtaining a lawyer, but it allows them to get their story straight; it allows them to see what's in news reports so that their testimony can be consistent with those. Whereas for the rest of us, any non-police officer, we would be interrogated right away.

And so in addition just to the market incentives, these legal privileges that police officers enjoy make it very hard to see why one would consider a private business, unless they really know nothing about how actual government police operate, to think that they might be more dangerous or less accountable to people than the government police are.

**WOODS:** Can you say something about police unions? Because you have an interesting article suggesting that police unions may have — again, from their point of view, they work very well, but from the point of view of the public, they may have a detrimental effect.

**FEGLEY:** Yeah, so as I mentioned, one of these topics I've been interested in is regarding these protections that police unions are able to get, both through their collective bargaining agreements and through statutes. And as I mentioned, some of these have to do with interrogations or delaying interrogations. Some of them have to do with the interrogations themselves. For example, some police departments must inform a police officer before they investigate him of all the evidence against him. Or in how they conduct an interrogation: they

may only have one interrogator at a time, thus precluding any good-cop/bad-cop routine that we see in movies. Presumably that might be an effective interrogation technique.

They also have protections like if a police officer has some type of disciplinary record, that this will be expunged after a certain amount of time, and this can be important because a lot of them also enjoy arbitration — or if they are disciplined, either through firing or suspension, they can appeal this disciplinary decision to an independent arbitrator. And almost every time, the arbitrator will consider their previous work history, and if any of these complaints, either sustained or unsustained against them, are not present, this can make the difference between sustaining a firing or reinstating an officer.

And so it's the economic analysis that, well, of course it's obvious why police officers may enjoy this, but politicians may also enjoy this too, in that if we consider these types of protections as a form of compensation similar to how university professors enjoy tenure where, all else equal, you may be able to pay a professor less with the option of tenure, so in that way, politicians like these protections because they are in a sense budget-neutral, but from the police officers' perspective, they are an increase in pay. But these costs really come home to roost later in the form of police officers you can't fire, or they're transferred on to whoever is the victim of this police officer's brutality who can't be fired.

And so the point of that is police unions all serve this purpose — and I also connect this back to the lack of economic calculation, where a competitive policing service may have some type of protections. We could imagine, say, a private university system offering tenure. But those universities offering too many of these non-monetary forms of compensation may be out-competed by those who offer a level of compensation that's more in line with the product they're offering. But again, since police departments are unable to engage in calculation, they can't measure the true costs of these protections, and so they can continue along with these types of protections where a competitive system might not enable that.

**WOODS:** Let me ask you like a big-picture question. The average person listening to what it is that you might recommend may find it radical. Even though they may think all your complaints are justified and your insights are very significant, they still will feel like the devil I know is better than the devil I don't know, and for all its faults, the current system at least works tolerably well to the point where most of us are able to live a fairly civilized existence. So what would you say to them to make them willing to consider the possibility of a radical market approach to this question that they would not consider otherwise?

**FEGLEY:** Well, I think an argument that's been convincing to me is somewhat like John Hasnas' "The Obviousness of Anarchy," in which he points out that we enjoy all these forms of private security or private arbitration already and we just really don't notice it. So in that way, the more we don't notice it I think demonstrates how seamlessly it fits into our life, whereas if you think about the fact that, as often is pointed out, there's three to four times as many private police officers to every public police officer, we almost never hear about them. They're really frankly out of view, whereas probably most of us have had some type of bad experience with a police officer, maybe either in the form of poor service or being unjustifiably stopped or even worse. And so I think it's really kind of, say, a Frederic Bastiat type thing, where it's what we don't see that is what makes us not realize just how well private policing can work.

**WOODS:** What got you interested in this topic originally?

**FEGLEY:** Well, it's interesting. As an undergrad, I had originally studied criminal justice, being interested in perhaps becoming a police officer. And around that time, I had first read Rothbard and decided this wasn't for me and maintained this as a research interest and decided I thought economics was a better route for study and for vocation.

**WOODS:** Well, good for you, and now you can do both things in effect. You can study economics and have economics shed light on the issue of policing. Well, I appreciate your time today. I'm going to of course link to your article archive at Mises.org. You've written I think beyond just Mises, so I'll try and link to in general what you've written on the subject of policing. I'll put that up at [TomWoods.com/1172](http://TomWoods.com/1172). If you're – I don't think you're on Twitter. Is there any other thing you'd like me to link to?

**FEGLEY:** No, I think that'll do.

**WOODS:** Now you see, it just goes to show, by not being on Twitter, you have the time to write all these articles. You notice how I don't write any articles anymore? Because I'm spending my time like an idiot over there on Twitter fighting battles that you are wisely avoiding, and I appreciate that [laughing]. But anyway, it's really great stuff and I'm glad we had a chance to talk, and now the reading assignment for folks listening is to go to [TomWoods.com/1172](http://TomWoods.com/1172) and get clicking and read more of what Tate has to say. Tate, best of luck to you. Thanks so much.

**FEGLEY:** Thank you, Tom.