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## Zick on Public Protest and Ferguson

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## Zick on public protest and Ferguson

*The following post is by [Timothy Zick](#) (William & Mary), the author of [Speech Out of Doors](#) and the leading expert on public protest and the First Amendment.*

Many thanks to Howard for inviting me to weigh in on the events in Ferguson, Missouri. I'll probably add just a few posts to his excellent commentary, depending on how things develop.

The conflict in Ferguson has presented a free speech moment – or series of moments. In addition to the much-discussed protests (more on that below), there have been several other First Amendment issues and concerns: [advocacy of civil disobedience by some protesters](#), [arrests for unlawful assembly](#), allegations that [prior restraints](#) have been used, [arrests and abuse of the press](#), occupation of public places, [use of “free speech zones,”](#) and concerns about the propriety of Ferguson police officers [wearing bracelets](#) that express support for Officer Wilson. In short, there has been no shortage of First Amendment controversies following Michael Brown's death.

Of course, the protests themselves have occupied center stage. The media are attracted to conflict, and the conflict is important. Once again, we have seen the delicate balancing of tolerance and respect for public assembly and speech with the need for order and public safety playing out in real time. And once again, the results have been disappointing – or worse. As I argue in my book, [Speech Out of Doors](#), a variety of legal and non-legal forces have combined to challenge traditional protests and other public modes of contention and dissent. Howard has thoughtfully posted on some of the problems associated with the militarization of public places and escalated force protest policing (e.g., [here](#) and [here](#)). Chapter 7 of my book examines militarization at various public events, including national party conventions, presidential inaugurations, and world summits. Militarization has been on the rise, in part owing to post-9/11 federal dollars flowing to local police departments. As Ferguson shows, local police forces across the nation are now equipped with the tools of militarization. Some have used surveillance, shows of force, and other military tactics in policing local events.

Of course, the possession of military-style equipment does not guarantee the use of escalated force. Police forces can and do act with appropriate restraint. Some of Howard's commenters have asked about evidence for the link between militarization and protester responses. Social scientists have carefully studied protest policing, and they have argued in favor of a “negotiated management” style in part owing to the costs of escalated force policing. Of course, there is historical evidence that escalated force leads to violent confrontations – the 1968 Democratic National Convention in Chicago, the WTO debacle in Seattle in 1999, and recent national party conventions in Boston, New York, and elsewhere. Sure, some protesters at these events were looking for violence. And sure, sometimes police need to respond with force. But as Howard's posts suggest, one of the problems with militarization is the attitude it sends about public protests and public places. As a mindset, militarization can exacerbate and even invite conflict. This was one reason many police departments abandoned escalated force policing. It's come back, in the form of militarization. I'm skeptical that we can keep arming police to the hilt while expecting them to exercise restraint in the face of angry and emotional crowds. When officers divide streets into military-style grids and gird for battle, even peaceful protesters and reporters are at risk. To be clear, there is no excuse for lawless behavior by protesters. Nor is criticism of militarization meant to suggest “anything goes” protest policing. Balance, proportionality, and forbearance are required. But too frequently of late, these things have been in short supply at public events.

To their credit, Ferguson officials have tried everything from personnel changes to personal apologies in an effort to calm the public and preserve rights to peacefully protest and assemble. Nevertheless, today there is a sense of foreboding in the press and on the blogs (including this one) about what will happen next. [Last night's arrests](#) of

protesters outside a barricaded police station may be a harbinger of things to come, in Ferguson and elsewhere.

Posted by Howard Wasserman on November 20, 2014 at 05:18 PM in [Constitutional thoughts](#), [First Amendment](#), [Law and Politics](#) | [Permalink](#)