

# Was the police response to the Boston bombing really appropriate?

*Radley Balko*

We're now more than a year out from the Boston Marathon bombing of 2013. The studies, reviews, and after-action reports have been written. Politicians and other public officials have held hearings, cast blame and pontificated on the lessons they have learned. There have been calls for more monitoring of foreign travelers; better information-sharing among federal, state and local government police agencies; and the inevitable demands for more security, more surveillance and generally more government power to prevent similar attacks in the future. There have been ponderous searches for answers that inevitably end up with public agencies simultaneously deflecting blame and jockeying to inherit the authority and funding from those agencies that inevitably do get blamed.

But there's an important component missing from all the reports, testimony and lesson-learning: an assessment of whether the government response after the bombing was appropriate, democratic and consistent with the principles of a free society.

[As the Atlantic reported last year](#), we haven't seen a lockdown and an occupation of an American city on the scale of what happened in Boston after the marathon since the Watts riots — not in Oklahoma City after the Murrah Federal Building bombing in 1995, not in Atlanta after the 1996 bombing in Centennial Olympic Park, not in D.C. during the 2002 sniper attacks, not after a series of pipe bombs went off in federal courthouse in San Diego in 2008, not during the dozens of instances in which a mass killer or serial killer was still at large. In Boston, 19,000 National Guard troops moved into an American city, not to put down a civil uprising, quell riots or dispel an insurrection, but to search for a single man. Armored vehicles motored up and down residential neighborhoods. Innocent people were [confronted in their homes at gunpoint](#) or had guns pointed at them for merely [peering through the curtains of their own windows](#).

In the end, Dzhokhar Tsarnaev wasn't found by Guardsmen, a commando team or a police officer in an armored vehicle. After the shelter in place had been lifted, he was spotted by a resident of Watertown who saw something unusual in his back yard and called the police. Only then did SWAT teams respond to apprehend the suspected bomber. (More on that later.) For such a massive show of force, the fugitive was captured in a pretty conventional manner.

A few weeks after last year's Boston Marathon, [I asked some questions](#) about the government reaction to the bombing:

... for the sake of argument, let's assume that there was nothing untoward, unconstitutional or heavy-handed about the police response in Boston, or in Watertown specifically. Perhaps this was an exceptional event, one worthy of one of the largest police responses in American history. If that is indeed the case, we need to establish some fire lines, or

else risk allowing the exceptional to become routine. If Boston is going to become a precedent, it needs to be a precedent for future Bostons and only for future Bostons, so we aren't locking down entire towns or cities every time a high school kid uses a glass jar and some Drano to blow up a few mailboxes. (For an example of how the "shut it down" reaction is catching on, [see New York City this week](#), where city officials shut down the subway for an hour to catch a man suspected of stealing necklaces.)

So what exactly made Boston different from the D.C. sniper attacks or the bombing in Olympic Park? It wasn't the body count. It wasn't that the suspects were especially well-armed. They appear to have had one gun between them and made bombs from supplies that can all be obtained legally. It doesn't appear that they were any more vicious, indiscriminate or bloodthirsty than prior fugitive bombers or mass shooters. (Which isn't to say they weren't all of those things — only that there's little evidence they were worse than killers other cities have dealt with differently.)

Were the heavy-handed door-to-door searches and lockdown in Watertown justified by the belief that Tsarnaev was holed up in that particular neighborhood? Are we okay with the tactics because they were geographically limited and only lasted for about a day? What if Tsarnaev hadn't been found for another week? How large a section of a city are we comfortable locking down in such a manner, and for how long a period of time?

I'd add a couple more questions that are perhaps a bit more controversial: Is it even *possible* to prevent attacks like these while still retaining the principles and privileges of an open society? Might a better approach be to merely accept that exercising the freedoms we cherish requires accepting a certain amount of risk?

As terrorism goes, the marathon bombing wasn't all that unusual, or even exceptionally destructive. (It should go without saying, but I'll state it anyway: Arguing that the bombing wasn't exceptionally destructive in the context of other terror attacks, or the other risks we face on a daily basis, isn't meant to dismiss or diminish the real harm done to the victims of the bombing and their families.)

What *was* unusual was our reaction to the bombing, which was in large part driven by how we learned of the attack. The first several hours unfolded by way of horrifying videos and images captured on cellphones and the social media timelines of witnesses, victims and responding government agencies. In that sense, it was unlike anything we had ever seen. The drama and horror played out in near real-time, as Twitter and Facebook churned up graphic photos of missing limbs, panicked runners and spectators, and heroic first responders.

Public officials, then, were reacting as much to the public reaction to the threat as they were to the threat itself. The point here is not to cast blame on them or demand that they be punished. Everyone in Boston that day was operating on instinct, adrenaline and emotion. Most excesses could be forgiven. What's less forgivable is the complete lack of interest among politicians, police and national security officials in exploring *whether* any excesses were committed.

Looking back, it not only seems likely that the response was excessive, but it's also likely that it did little to aid the manhunt or make Boston safer.

“Don’t approach the subjects. Wait for backup.”

That was the terse reply to Watertown police Officer Joe Reynolds from a dispatcher when he radioed that he was tailing a black SUV.

But Reynolds would soon learn that waiting for backup was not an option. When he followed the SUV onto Laurel Street just before 1 a.m. on April 19, 2013, the driver stepped out and began shooting and flinging bombs, setting off a lethal, chaotic chain reaction that would end the days long manhunt for the Boston Marathon bombing suspects.

When backup did arrive, the resulting firefight exposed a sobering truth about law enforcement. Sometimes too many guns and officers are worse than too few . . .

With police dispatchers throughout the region now involved in marshalling a response, soon cops, state troopers and federal agents — representatives of more than a dozen separate agencies in all — began descending on Laurel Street.

Some of the officers were already part of the investigation, or had been dispatched. Others “self deployed,” meaning they were volunteers, unknown men with guns who arrived unannounced in the middle of a shootout. By the end of the shootout, there was even a National Guardsman in tan fatigues and helmet on nearby Mt. Auburn Street.

“The cavalry came,” said [Watertown Police Chief Ed] Deveau. But no one was leading the charge . . .

In effect, the suspects ended up at the center of a ring of cops on Laurel Street between Dexter and School streets during the 20-minute firefight, and the bullets that were fired at them often hit near the officers on the other side.

“Certainly not a good idea,” said [Boston Police Commissioner Edward] Davis. “They see somebody shooting, so they fire at them. That’s their training.”

Police training dictates that officers consider several key factors when making the decision to fire their weapons. They must assess the danger posed to bystanders, residents and fellow officers, they should know the position of fellow officers and they should stop to reassess the situation if they can, rather than simply continuing to pull the trigger.

But on Laurel Street, rounds flew into parked cars and police vehicles and chewed up fences and trees. A round entered the home of Andrew Kitzenberg on the north side of the street and lodged in a chair. Another ripped through the exterior wall of Adam Andrew and Megan Marrer’s house and landed on their living room floor.

More than a dozen officers suffered minor injuries during the mayhem, but none was believed to have been wounded by the suspects. The only serious wound was suffered by Richard Donohue, a transit cop with the Massachusetts Bay Transportation Authority, who was hit in the groin by

a police bullet and began to bleed profusely.

In the end, the two suspects had one gun between them and probably fired no more than 10 bullets. [In his testimony](#) before the Senate Homeland Security Committee, Davis credited federal funding for equipment such as armored vehicles, robots and other gear. That gear “allowed us to take Dzhokhar Tsarnaev into custody alive.” But that doesn’t jibe with what actually happened when the police apprehended Tsarnaev. Again from NBC:

The commander on scene was able to deploy the tactical team and establish a perimeter, says the report, but his control was only partial because there were so many extra, “self-deployed” bodies arriving.

A member of one SWAT team tried to take up a position on a rooftop, only to find that a member of a different SWAT team was on the same roof. After an argument, neither man would budge.

At around 7 p.m., a voice on the police radio issued a warning, “There’s a perp in the boat trying to poke a hole in the liner, a perp in the boat. Live party who may be trying to object out, live party in the boat confirmed.”

Tsarnaev was pushing a long, thin object up through the boat covering. The object later turned out to be a fishing gaff, which Tsarnaev may have been trying to use to push up the tarp so he could see out.

But one of the snipers on the roof saw the object and began shooting. It sparked a round of what is known as “contagious fire,” where other officers with their fingers on the trigger began peppering the boat with bullets.

The commander began shouting for the officers to cease fire, but the fusillade went on for 10 seconds. Hundreds of rounds were expended.

When the shooting stopped, order was restored. The FBI’s hostage rescue team used a robotic arm to pull the wrapping off the boat. Flash grenades thrown at the craft were meant to stun Tsarnaev, and he was urged via bullhorn to surrender.

In other words, it was really only through dumb luck (or poor aim) that Tsarnaev was taken alive. And as it turns out, he was unarmed. The proliferation of SWAT teams across the country [has in large part been due](#) to federal anti-drug grants, federal giveaways of military equipment and Department of Homeland Security anti-terror grants. And in Watertown, there were clearly *too many* SWAT guys at the scene, not too few.

We’re now a year out. I’ve read all the government reports and congressional testimony about the bombings, or at least all of the reports that I can find. And there’s hardly any serious contemplation of these issues at all. The Federal Emergency Management Agency’s [“Lessons Learned”](#) report, for example, rightly praises the first responders in the minutes and hours after the bombs went off but makes no mention of the subsequent manhunt and lockdown. [A joint report](#) by the inspectors general of the Department of Justice, the CIA and the Department of Homeland Security focuses only the intelligence and communication gaps that may have allowed the bombing to happen. (Though no report that I’ve read states that

the bombing could have been prevented.)

One common theme in the post-bombing testimony and reports is praise and pleas for continued funding for existing preventative security measures. [In testimony](#) before the Senate Committee on Homeland Security and Government Affairs, for example, Massachusetts Undersecretary for Homeland Security and Emergency Management Kurt Schwartz touted the city's SWAT teams, surveillance systems and bomb-detection teams, and stressed the importance that all these programs receive continued funding to prevent future attacks. Perhaps these programs *should* be funded. But it seems odd to cite an incident these programs failed to prevent as the reason we need to keep funding them.

To the extent that that the post-Boston reports and statements from government officials do reference the response, it has usually been to lavish effusive praise, not thoughtful reflection or constructive criticism. Schwartz, for example, heaped accolades on Massachusetts Gov. Deval Patrick, Boston Mayor Thomas Menino and the various state and city police agencies.

Their decisions were informed by, and reflected public safety concerns, needs, and objectives. Their positive working relationship was based on trust, respect, and a commonality of purpose and mission, and it fostered such decision making and opportunities for bold "out of the box" decisions such as Governor Patrick's decision to deploy the National Guard into Boston on April 15th to support law enforcement efforts, and issue the April 19th shelter in place request for Boston, Watertown, and four other surrounding cities . . .

The public heeded requests and directions from Governor Patrick, Mayor Menino and public safety leaders, including the unprecedented request on April 19th . . . Businesses heeded this request as well, and remained closed for an entire business day.

Responding to a public crisis with brute force and by shutting down entire neighborhoods isn't really "out of the box," nor is it "unprecedented." It's how authoritarian and other non-democratic governments have always responded to crisis. That doesn't necessarily mean it was wrong here. Again, the troubling thing here is the failure to see even the *possibility* that the reaction might have gone too far or that Tsarnaev could possibly have been found and apprehended with less intrusive, less drastic, less militaristic measures.

[In its report](#) "The Road to Boston: Counterterrorism Challenges and Lessons From the Marathon Bombings," the House Homeland Security Committee provides a timeline of the manhunt after the bombing, but no analysis of whether the tactics were appropriate. Instead, the report faults the *public* for not offering more assistance to law enforcement officials when they asked the residents of Boston for help in the days after the bombing. The report then suggests more concentrated efforts to get citizens to turn one another in to authorities.

Unfortunately, no one stepped forward. This failure to take responsibility ultimately cost lives, and the Committee recommends efforts to strengthen and expand DHS' "If you See Something, Say Something" campaign . . . Ensuring that Americans are alerting their local police or Federal authorities to suspicious behavior or other potential indicators is an important step in preventing terrorist attacks . .



. {M}embers of a local community are the individuals best placed to identify potential terrorist threats. Toward that end, nationwide efforts to combat radicalization . . . should receive similarly increased scrutiny to evaluate efficacy.

It's worth noting that most residents of Boston supported the police and government reaction during the manhunt, and by pretty significant margins. [One poll](#) put Boston residents' support for the police and government reaction at 86 percent. That isn't surprising, and it also doesn't necessarily mean the response was appropriate. We instinctively put our faith in government to protect us in times of crisis, even when those crises are the result of the government's failure to protect us. We regret it later. Shortly after the Sept. 11, 2001, attacks, [Gallup polling found](#) that 47 percent of the public was willing to sacrifice its civil liberties for security. Within two years, that figure was down to 33 percent, and by 2012, it was at 25 percent. Those figures show why it's dangerous to pass new policies when the public is fearful and emotional, and why politicians are particularly eager to do exactly that. (See the Patriot Act.)

The danger here is that the Boston response tightens the ratchet and becomes the default response to similar crises in the future. For example, we've already seen other examples of wanton, indiscriminate gunfire from cops during manhunts for fugitives suspected of killing cops, most notably the two incidents in the Los Angeles area in which police officers [shot up vehicles](#) occupied by innocent people during the search for Christopher Dorner.

You can find a good example of all of this in how we respond to protest in America. Back in 1999, Seattle police were on high alert in anticipation of the city hosting the World Trade Organization conference. Because a few similar economic and free trade summits in Europe had erupted into riots, Seattle Police Chief Norm Stamper prepared his officers for the worst, providing them with hours and hours of riot and crowd control training. He was an early adapter of what he called "Darth Vader" gear for his force — the heavily militarized riot suits. The WTO protests *did* erupt in riots. But subsequent reviews and reports by Seattle government agencies found that the unrest was probably caused by a police force that was too on-edge, that employed tactics that were too aggressive and confrontational, and that began responding to rumors and innuendo rather than what was actually happening in front of them.

Unfortunately, that isn't the lesson other cities and police agencies took from the WTO riots. The lesson they drew was that any major protest can quickly become violent, at any time. So the Seattle approach is now the template in most cities. There's a good argument to be made that sending cops to a protest expecting violence is a good way to *ensure* that violence actually occurs. (And there are police chiefs [who make this very argument](#).) In other words, over-preparing for protests to turn violent may actually be undermining public safety, to say nothing of the disastrous effect on free expression and the First Amendment.

Today, [Stamper calls his handling](#) of the WTO riots the worst mistake of his career — not just because of what happened in Seattle, but because the tactics he used have become the norm (pardon the pun), a development that he says he finds heartbreaking.

If we don't force a discussion about the tactics used in the aftermath of the Boston bombing, we risk allowing those tactics to become the norm. If you aren't bothered

by what that could mean for civil liberties, consider this: Such tactics not only don't deter terrorists, but they also may actually encourage them. Financial analysts estimated that the one-day shutdown of Boston [cost the local economy \\$250 to \\$333 million](#). It seems safe to say that the aim of terrorists like the Boston bombers is far more expansive than to kill a handful of people with a couple of pressure cooker bombs. "Terrorism" by definition is meant to inflict harm well beyond the crime itself. The aim of a terrorist is to use mass panic and fear as multipliers — to bait us into inflicting exponentially more harm on ourselves than he could ever do himself.

In shutting down Boston and bringing up the National Guard, we let the bombers inflict hundreds of millions dollars more in damage than they possibly could have inflicted on their own, not to mention the less calculable harms, like the temporary suspension of the Fourth Amendment. If we let Boston become our default response to these kinds of attacks, we essentially give future terrorists a blueprint for how to shut down a major American city. We'll then have helped create a Tsarnaev legacy that easily transcends the events of the 2013 Boston Marathon, and one far more potent than the two suspects could ever have imagined.

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