
Administrative Evil and the Use of Deadly Force in Law Enforcement

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Police agencies in the United States have in modern times put themselves forward as being service-first organizations. The community-oriented policing (COP) paradigm begun in the 1980s represented a shift in approach as the field of law enforcement transitioned from the professionalism era. Evidence-based and intelligence-led policing tout data-driven decision-making on deployment of resources, and Goldstein's problem-oriented policing (POP) provides the conceptual frame to use the data to identify problem or crime causation. A reality of any former or current model of policing is the occasional need to use force to control or restrain people. Couched in expansive defensive tactics curricula and use of force graphic continua, are force responses including deadly force that are triggered by factors including an officer's fear for his or her life or the lives of others. Does the use of deadly force generally rise to the level of systemic or "administrative evil" as contemplated by Adams and Balfour- possibly unintended but evil, nonetheless? African Americans are killed by police out of proportion to their presence in the U.S. population. This article uses the construct of administrative evil to analyze available data on the current trend of killings and contemplate the role of society in masking these outcomes.

Keywords: administrative evil, Black Lives Matter, implicit bias, lethal force, moral inversion, procedural justice, social justice, surplus population, technical rationality

Adams and Balfour (2014) have applied the concept of administrative evil to large issues including those of historic import. Administrative evil occurs when administrators and employees perform their roles and functions, unaware they are causing a significant harm (Adams & Balfour, 2014). The author asserts the centrality of public administrators in this mode of doing things right that may not be the right things to do. Beyond the misunderstanding between efficiency and effectiveness is the consequence of causing real harm. Policies of deadly force usage may be examined through this lens of doing things right. Adams and Balfour assert a culture of technical rationality that may lead public employees in a mindless, or at least

compartmentalized, marching to the sound of a Weberian drum as the one best way to respond in circumstances calling for some use of force. Adams and Balfour posit that until time has passed, administrative evil may be difficult to recognize because by its nature it is 'masked' by employees unaware they are doing 'evil,' (Koven, 2011; Tschudi, 2008).

Pragmatism has often masked harm throughout history without resorting to a defense of utilitarianism and the arguable legitimacy of the greater good. But what of the "creep" of organization mission to be efficient in actions and effective to broad mandates? Contemporary examples within criminal justice inform the analysis that systemic practices, if not official policies, may unwittingly cause harm. The Black Lives Matter movement, as well as police organizations themselves, have called sharp attention to various practices of American police, not the least of which is the use of lethal force. The public and government officials must grasp the normalizing nature of various practices intertwined with a societal structure built to benefit some, while perpetuating disadvantages for minority groups. Such surplus populations (Shelden and Brown, 2000) that may be disproportionately harmed, might be seen more clearly from a distance, and by using the administrative evil lens.

The defining characteristic ascribed to police by some has been the ability and authority to use force against fellow citizens (Bittner, 1970). But the ability to use force is subsumed by the necessity to use discretion. The agency of the American officer is constrained by the U.S. Constitution, statutory law, case law, state or district regulations, department policies and procedures, the training an officer receives, personal factors of life experience, and individual ethics and morality, which all can be filtered in an instant through the event-specific context of perceived threat, and the psychological and biological reactions to that potential danger.

The use of force by police in Western democratic societies remains a central issue in assessing government legitimacy. The construct of administrative evil is another perspective to inform officials of how a necessary policy implemented by well-intentioned officers, in a society that enables the process, may ultimately do avoidable harm. Steinmetz, Schaefer and Henderson (2017) assert that, "Police operations appear to focus on containment of urban people and problems rather than resolving the structural forms of oppression that have shaped these spaces" (p. 76). Vitale

(2018) asserted that, “The culture of the police must be changed so that it is no longer obsessed with the use of threats and violence to control the poor and socially marginal” (p. 221). Accepting *arguendo*, the structural issues in society fall to the many to reform, the hope would be that new police methods follow. If, however, the public, elected officials, and government entities view police use of force as rightfully quashing and quelling dangers and disorders, a minority objection may be largely ignored. Such moral inversion within the structure of U.S. society is the unseen forest of harm obscured by the focus on the police as trees. As Adams and Balfour have contrasted historic evil with modern administrative evil, “the latter is less easily recognized as evil” (2014, p. 4).

Others have written on administrative evil enacted across diverse domains of public policy (e.g., Ghery, 2006; Dillard & Ruchala, 2005, 2011; Jurkiewicz, 2015; Benton, 2017). In criminal justice, the “War on Drugs” resulted in disproportionate arrest of African Americans and asymmetric sentencing for powder and crack cocaine. “Stop and Frisk” was afforded protection under the theoretical rubric of Broken Windows theory, but has long been documented as a tactic disproportionately used with African Americans (Cooper, 2018). The same has been true for racial profiling in traffic stops (Engel & Calnon, 2004; Meares, 2014) and subsequent policies to address such practices (Miller, 2009). Policies of the system are bound with, but not the same as, agency level procedures on the use of force. An examination of the use of lethal force through the lens of administrative evil provides a recognized perspective for consideration of adverse outcomes on African Americans, and perhaps others.

What we know about the use of force

The legal authority to use force, including lethal force, is entrusted to law enforcement agencies acting within the scope of their duties. U.S. policing is performed very much in step with the social contract. The British foundation of policing by consent is more overt and provides an opportunity for comparison as a country with routinely unarmed police (Squires & Kennison, 2010). For much of the time since organized police departments have existed in the U.S. the public has been unaware of the frequency

of force usage. Various groups, including Black Lives Matter, have criticized what often seems like unfettered killings of citizens by those sworn to protect them.

Statistically, however, the threatened or actual use of force in public-police interactions is a small percentage of total officer citizen contacts. From 2002-2011, an average of 44 million people aged 16 or older had contact with the police each year (BJS, 2015). Self-report data has several inherent problems, but force usage does not appear to be frequent. There is no national database or standard format among the 18,000 or so law enforcement agencies for reporting force, though the various forms and policies generally share similar elements (IACP, 2012; Hough & Tatum, 2012). The FBI's Uniform Crime Report (UCR) gathers the voluntary data of some categories of reported crime and law enforcement activity, but this method too is challenged by incompleteness and data.

Official efforts at use of force data collection have focused on lethal use of force. Progress has been slow. The nature of the U.S. dual system of federalism, among other reasons, has been a roadblock to improve efforts to collect data (McEwen, 1997; Fridell, 2017; Hickman & Poore, 2016; Campbell, Nix, & Maguire, 2017). And while Congress mandated more than twenty-five years ago that the Department of Justice collect data on excessive force, the onus on the FBI and Bureau of Justice Statistics (BJS) was to coax voluntary reporting from agencies. Such gathering of numbers and rates of lethal or non-lethal force by law enforcement has lacked an acceptable level of overall accuracy. The BJS, through the National Crime Victimization Survey (NCVS), surveys a sampling of people about interactions they have had with police in that year (DOJ, 2018). The FBI developed the National Use of Force Data Collection implemented in 2017. Designed in partnership with various agencies and organizations, this effort also relies on voluntary contributions by agencies, with an expanded scope to gather information on firearm discharges at someone, with or without resulting injury, and death or serious bodily harm inflicted by an officer arising out of a "response to resistance" (UCR Crime Data Explorer, 2020). The National Vital Statistics System (NVSS) of the Centers for Disease Control and Prevention also compiles some information on deaths caused by law enforcement and reported as such on state death certificates (National Center for Health Statistics).

Though centralized national data collection has long been called for, there has been recognition that the foregoing data challenges as well as others limit the use of the existing data (Shane, 2018). Selectively reported and “terribly incomplete,” data hamper efforts to use the information effectively, according to a ProPublica analysis in 2014 (Gabrielson, Sagara, & Jones). The November 2019 briefing report to the United States Commission on Civil Rights noted:

Accurate and comprehensive data regarding police uses of force is generally not available ... No comprehensive national database exists that captures rates of police use of force. The best available evidence reflects high rates of use of force nationally, and increased likelihood of police use of force against people of color, people with disabilities, LGBT people, people with mental health concerns, people with low incomes, and those at the intersections of these groups. (Highlighted Finding of Executive Summary, p. 4)

The Washington Post newspaper’s project begun in 2015, attempts to chronicle information about incidents involving those shot and killed by police. They describe the list as “based on news reports, public records, Internet databases and original reporting”. The number used by the Post for 2020 was 989, 2019 was 999, for 2018 991, 2017 was 987 people. The Post’s 2018 compilation tabulates 940 as male, 734 armed with a deadly weapon (74%), 132 with “other,” and 26 with a “toy weapon”. There were 237 who showed signs of mental illness, and the other 750 were listed as “no or unknown” mental illness. For those people whose race was known, 459 were white; 223 were Black; 179 Hispanic; 44 were classified other; and 82 unknowns. The known 23% Black is disproportionate to the roughly 13.4% of the U.S. population (U. S. Census, 2020).

Secondary sources lack consistent definitions of force usage, generally have no discussion of encounter rates between police and demographic groups, and are challenged by the reporting procedures of 18,000 separate police agencies. Yet lacking centralized governmental figures of lethal use of force, the Washington Post compilation currently stands somewhat in the stead of a central database on lethal force. This allows some level of examination of similarities and differences across events. The Post arrives at a figure of around 1,000 deaths per year in force usage incidents (2018). Of that figure, around 60% involved people with firearms. The U.K. newspaper The Guardian, tallies all fatal encounters, not just shootings, with police.

This has received renewed attention with deaths that did not involve the use of a firearm, such as that of George Floyd in Minneapolis.

Race and lethal force

Much discussion concerning police use of lethal force in the United States centers on incidents where African American males have been killed by shooting. Statistics reveal a disproportionate number of African Americans (largely males) killed by police. As we analyze lethal interactions, it is also important to carefully examine rates of all types of encounters between police and citizens. In considering lethal force incidents, some advocacy organizations impute malicious practices and behaviors which create a barrier to balanced examination of lethal uses of force. While advocacy and other groups serve an important function of accountability, there is also some evidence that when the monitoring by external government units such as the U.S. Department of Justice and media stops, bad behavior may resurface (Scott, 2017).

The ongoing dilemma of public relations between police and segments of their public (read as minority) may be seen as a societal struggle to truly embrace a diverse population and then ensure that law enforcement agencies inculcate values throughout all parts of the organization. That deadly force is used disproportionately against African Americans and Hispanics vis-à-vis whites, is known (Durán and Loza, 2016; Willits & Makin, 2017). Less clear is a single narrative of why. The event is confounded by subject, officer, and context. Fyfe (1981) noted that even Black officers used deadly force more often against Black citizens. Surprisingly perhaps, research shows that when situational factors are controlled for, the role of race is not always clear (Jetelina, Jennings, Bishopp, Piquero & Reingle Gonzalez, 2017; Menifield, Shin & Strother, 2018; Klinger, Rosenfeld, Isom & Deckard, 2015; Shane, Lawton & Swenson, 2017).

Harvard economist Roland Fryer (2019) examined public data to analyze whether racial differences appeared in police use of force. Fryer identified non-lethal force usage against Blacks and Hispanics to be about fifty percent more likely, but that for lethal force outcomes there were “no racial differences in either the raw data or when contextual factors [were] taken into account” (p.1). Do these various findings support

a conclusion that no problem or issue exists in the experience of African Americans and lethal force usage? Certainly, the answer is no. What is less certain is how societal attitudes toward minorities in America impact how various demographic segments of the population are disadvantaged or harmed, and the need to examine the many dimensions of the problem (Jones, 2017). The major police executive organizations in the United States continue to address these matters in guiding documents. One such group, the Police Executive Research Forum (PERF), listed 'police use of force,' and 'Racial bias and other bias in policing, including "implicit" bias,' as key issues in its report on constitutional policing (2015).

An important aspect of workplace policies and behaviors is the reality that each of us is influenced in various ways by unconscious or implicit biases. Formed by the information we constantly take in over the life-course, bias may impact everything from recruiting, to hiring, training, and guiding work performance within the culture of the agency (Oberai & Anand, 2018). At the organizational and societal levels, the social construction of criminality and, perhaps unconscious at times, is the criminalization of identity vis-à-vis African Americans (Gaynor, 2018). Gaynor asks: "If, as a field, public administration believes that it should facilitate effective, efficient, and equitable outcomes, then how can it justify state-sanctioned oppression and injustice?" (p. 367).

Legal and Administrative Controls

The National Consensus Policy on Use of Force (Dziejma & De Sousa, 2017) was written in collaboration among 11 law enforcement leadership and labor organizations. The document was prepared in an effort to provide guidelines for the use of deadly and less-lethal force by law enforcement agencies. These groups of law enforcement leaders and labor used research and the contributions of subject matter experts from within law enforcement to develop commentary and policy recommendations around force usage. Within the discussion paper that accompanies the policy, an important component is understanding "reasonable use of force" as incorporating the totality of the circumstances known to the officer at the moment he or she acts (IACP, 2020, p. 2).

One of several important decisions regarding the use of force by police issued by the U.S. Supreme Court effectively ended the lawful use of lethal force except in cases where the “officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others” (Tennessee v. Garner, 1985, p. 1). The Supreme Court transitioned the analysis of police force usage cases from strictly due process to the lens of government seizures, noting “excessive force in the course of arrest, investigatory stop, or other ‘seizure’ of a person are properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard” (Graham v. Connor, 1989, p. 386).

A mechanism available to the federal government is that of pattern-and-practice lawsuits and resulting consent decrees to provide correction, guidance, and oversight to local level police agencies (Scott, 2017). Again, concerns relate to whether policy and practice changes will “stick” once the consent decree monitoring ends. The U.S. Civil Rights Commission urged the President in 2018 that “The Department of Justice should return to vigorous enforcement of constitutional policing, including pursuant to 42 U.S.C. § 14141 and use of consent decrees as necessary where constitutional policing standards are not being upheld” (U.S. Commission on Civil Rights, 2018). Feedback from federal suits, individual lawsuits brought to address perceived constitutional violations, and the decisions of various courts are part of the mechanism that can inform policy revisions in public agencies.

Because most of the 18,000 separate law enforcement agencies in the U.S. have fewer than fifty personnel, scheduling ongoing training is daunting. Officer standards of training and hiring are controlled state-by-state. In-service training of officers almost always includes annual training in when and how to use deadly force. The moderating effect of well-trained and educated supervisors on subordinates’ use of force decisions has been documented (Lim & Lee, 2015). Ethics training may surface only during initial academy training in a block of perhaps only a few hours (Wyatt-Nichol & Franks, 2009).

In the use of force, clear and restrictive policies have been found to reduce force usage generally (Terrill, 2010; Terrill & Paoline, 2013; Bishopp, Klinger & Morris, 2014), and deadly force specifically (White, 2001; Mastrofski, 2004). Concern also arises from some research that shows bias not to shoot Black suspects during training simulations

perhaps out of concern for consequences (James, Vila & Daratha, 2012; James, James & Vila, 2016) while other research shows a bias to more quickly (but correctly) shoot armed Black targets (Sadler, Correll, Park & Judd, 2012), indicating a need to continue training efforts across a range of aspects of potential shooting situations. In fact, the Supreme Court decision *City of Canton v. Harris* (1989) provided that liability may attach to a city or county if they failed to train their employees. As this brief discussion points out, the context of force usage is an important consideration. Stoughton, Noble, and Alpert (2020) point to four possible frames for evaluation or consideration: “the constitutional standard, the state law standard, the administrative standard, and the community expectations standard” (p. 9).

As with previous technological iterations such as pepper spray, electronic control devices such as TASER, nets, sticky spray, spike strips, water and acoustic devices, and all the rest, the body-worn camera (BWC) is now held out by some as the panacea to rein in inappropriate force. BWC differs from the list of preceding options by being a techno-public monitor to counter the Ring of Gyges that Plato contemplated on the hand of the unjust. Some research finds that force usage can correlate with the immediacy and degree of resistance by a subject, which is also revealed by BWC to influence the force duration or intensity (Willits and Makin, 2017). An absence of administrative controls and reviews, lack of an active public media, and feeble accountability imposed by external agencies could certainly make fertile ground for consequence-free behavior. As law enforcement administrators and researchers take time to consider the various aspects of BWC implementation (including privacy concerns, cost, review and use of footage, etc.), the growing recognition is that body-worn cameras do not in and of themselves “solve” a perceived legitimacy gap with the public (Adams & Mastracci, 2017; Terrill, 2016; White & Fradella, 2018). The public expects transparency, including the release without delay of any available footage regardless of context or consequences. An overwhelming majority of the public supports having police wear cameras (“Police Body Cameras”, 2020). How BWC policies are implemented may be reactionary or well thought-out, but people must be aware that such cameras do not fully depict the lived experience or complete perception of the individual officer in the setting and in the moment.

Individual Officer Agency

The decision-making process of a human officer is affected by how he or she perceives the instant situation, and the cognitive and physical responses or reactions to the signals in the environment mediated by his or her training and experience (Hine, Porter, Westera, Alpert & Allen, 2018). The mistakes that people make daily may have some consequence, but not as dramatic or tragic as when deadly force is used in error. But officers also choose not to use deadly force in many instances where they lawfully might have (Pinizzotto, Davis, Bohrer & Infanti, 2012). Officers often make this non-use decision at great risk to themselves or possibly others when the law does not require an officer to be injured or killed (Patrick & Hall, 2017). The physiological ability of an officer to respond to an armed subject is fraught. Repeated experiments reveal the lag-time experienced in identifying and reacting to an armed threat (Blair et al., 2011; Hough, 2017).

In addition to errors in perception and of overreaction, the human officer is subject to the potential pull of personal bias (Mears, Craig, Stewart & Warren, 2017). Explicit bias is manifest in the clear case of improper use of force borne of extra-legal considerations, such as race. Implicit bias is more the focus of an administrative evil analysis as people act or fail to act based on preferences or dislikes they are not conscious of. Adams and Balfour (2014) talk about what occurs “underneath our awareness” (p. 9). Explicit-bias-based actions which can be mitigated by role expectations and training, as well as consequences of rule violations, are relatively clear to see and address. Mental attitude ingrained by the sub-cultural group may thus bring on a type of moral inversion (Adams, 2011). This can raise consideration of group norms including exhibiting toughness and being assertive or aggressive, specifically when facing perceived threat or danger. The ethical and practical balance of discretion is at the forefront for street-level bureaucrats (Lipsky, 2010) such as police officers. It is also paramount to recruit, select, develop, and retain good employees who act as protector-enforcer in the community.

Conclusion

This use of the construct of administrative evil to analyze police lethal force incorporated contemporary police practices, established law, and the structure of U.S. society. What then to conclude about the collective behavior of some 18,000 separate law enforcement agencies with roughly 850,000 individual employees empowered to use force, including and specifically deadly force, in the name of the community? While not a monolithic police service, the functions of police are carried out in a specific society, one that still evinces structural discrimination in many aspects of life. Generalizability of any analysis of police practices is not straightforward. Police legitimacy is established by law but relies on the confidence and support of the community (President's Task Force, 2015). When the community sees a commitment to procedural and social justice by their police, it is a signal to have confidence in the overall operations of the agency. Segments of communities across the country do not see this as a given in their local police. Employees likewise see fairness and organizational justice as enhancing a view of self-legitimacy. Officers do not always have effective leaders and supervisors to provide these critical elements. Stoughton (2020) put it this way: "Police reform lives or dies with first-line supervisors, and agencies need to ensure that corporals, sergeants, and lieutenants are doing the jobs they are paid to do." The perceptions that officers have of the priorities of their supervisors, along with the modelling of desired behavior by those supervisors, continues to exert influence on officer behavior (Johnson, 2010).

The available evidence does not indicate a systemic approach to the use of force. Nor do reports show efficient and mindless killing of the public absent legal and situational circumstances in most cases. Yet some view the policies of police (and other public organizations) as exhibiting administrative racism that may be avoided with conscious and concerted action (Heckler & Ronquillo, 2019). Clear and balanced policies must be the rule of all agencies. Training how and when to use force must be ongoing, with every agency incorporating repeated skill training in de-escalation and tactical disengagement – not just large agencies who can schedule such training relatively easily. First-line supervisors must be an intentional and integral component of that training and expectation setting. Robust review of lethal force incidents must be conducted, including timely feedback to the public. Problematic, is that both criticism of excessive force behavior (Menifield, Shin and Strother, 2018), and training topics,

are predominantly focused on officer-level (Wright & Headley, 2020), with little discernible discussion of macro-level race-influenced attitudes and policies throughout society. Public perceptions of crime and other social conditions can be inaccurate (Shi, Roche & McKenna, 2018). Yet the racial (and political) dichotomy of views of the confidence in police is significant (Pew Research, 2020), and has been brightly illuminated by the killing of George Floyd, an African American citizen, in Minneapolis by a white police officer using an inappropriate restraint technique.

Ultimately the conditions for administrative evil described by Adams and Balfour may be met, and just now unmasked, in their terms, by contemporary events. This, even considering the dispersed and sometimes compartmentalized nature of law enforcement agencies. The ethical character found or not in the structure of law enforcement (or other public) organizations is not neutral. The conscious use of data, transparency and the reduction of bureaucratic barriers, the accountability of documentation and external review, and recruitment and training that integrates ethics in every function are important ways to prevent practices that amount to administrative evil. The structural and historic aspects of U.S. society, while not within the direct control of police organizations, are nevertheless important potential drivers of policies and practices that have unintended negative outcomes. These must become a primary part of the discussion to help ward off administrative evil.

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