

Review

Democracy for the few: How local governments empower cops at citizens' expense

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This article shows how political elites empower police officers at the expense of those they purport to serve. In the process, the actions of political elites and police officers serve to weaken democracy rather than strengthen it, thus undermining the widely promulgated ideal that the United States government is a government of the people, by the people and for the people.

Key words: Police officers, citizens, democracy and government.

INTRODUCTION

All societies are governed by a set of rules, laws, customs and mores and they form the parameters that dictate what people can or cannot do, what is acceptable behavior and what is not.

Since as James Madison wrote in the Federalist Paper No. 51, "men are not angels", it is expected that citizens will at times step outside the boundaries of what is considered acceptable behavior, even break the law.

By contrast, government agents are expected, theoretically at least, to be beyond reproach. In other words, they are held to a higher standard. Many such professionals take an oath whereby they swear to act in the best interest of the people, uphold the law, be vigilant seekers of the truth and above all, always be honest. Certain government actors, because of the nature of their profession, inspire trust and evoke legitimacy. Hence, when they are accused of committing an infraction; one's first reaction is to rationalize or explain away the crime or blame the victim. Both government actors as well as some citizens express disbelief, as if in a state of denial. The onus is on the aggrieved to prove without a shadow of doubt that the government actor is guilty of the crime that the citizen alleges. This is especially true of the citizen-police officer relationship. Police use of excessive force against civilians is a common practice. However, few complaints of police brutality by citizens are taken seriously by police officials. This explains in part, why many citizens forego filing a complaint, because they believe it fruitless to do so.

No one is above the law, is a phrase often bandied about in law enforcement and criminal justice circles. Yet,

police use of excessive force against civilians is a common practice in the United States. Since relatively few complaints of police brutality are investigated, few of the officers against whom a complaint had been lodged are ever reprimanded. Although not stated, but nevertheless implied, a police officer's life is valued more highly by the state than the life of an ordinary citizen. This tacit understanding is in conflict with the American Democratic ideal that "all men are created equal." In the Declaration of Independence it says:

"All men are created equal, that they are endowed by their creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness; to secure these rights, governments are instituted among men, during their just powers from the consent of the governed . . ."

Despite what the Declaration of Independence says, all men are not created equal nor are all men afforded the same rights. For years, police officers have trampled upon citizens' rights with impunity. Citizens have little recourse against police officers who violate their rights as guaranteed not only by the Declaration of Independence, but also by the Bill of Rights and the U.S. Constitution. Even when police misconduct is captured on video tape, redress for the aggrieved remains elusive. Again, it is the rare occasion when a police officer is reprimanded or brought up on criminal charges for using excessive force against a civilian. And despite the long sordid history of police misconduct in America; rather than institute

measures that safeguard citizens against extra legal force, the state create laws and bend existing ones with the expressed purpose of empowering police officers at the expense of its citizens.

In a democracy, to what degree is the state responsible for ensuring the safety and well-being of its citizenry? Those who live under democratic rule expect that the state (local, state and federal) will provide them with certain protections, offer avenues for redress and guarantee a level of equality and freedom unparalleled in any other form of government. What citizens do not expect is that the government will empower police officers at their expense, especially given the enormous power that police officers have historically wielded over American citizens. There is arguably no state actor that citizens are more likely to encounter on a daily basis than a police officer. Moreover, because police officers are Americans' most powerful street-level bureaucrats, it is not surprising that some might find it difficult to resist abusing the authority to which they have been granted.

POLICE-CITIZEN RELATIONS IN AMERICA: A BRIEF HISTORY

In America, it is a widely accepted, but unfortunate reality that the police-citizen relationship is governed by an asymmetrical status norm whereby the police officer is the boss and the citizen is the subordinate. Richard and John (1975) argue that those who reject this norm are more likely to experience police use of excessive force than those who adhere to this tacit understanding (Sykes and Clark, 1975). The operative words here are "more likely." Being cognizant of this asymmetrical arrangement in no way guarantees that one will escape the wrath of a police officer, especially if that person is African American, however it minimizes (to some degree) one's chances of being victimized by an overly aggressive police officer. While people of all races have undoubtedly been the victims of police use of excessive force, it is believed that African Americans are disproportionately targeted by police officers. A study by Lersch and Feagin (1996) supports this widely held belief. After content-analyzing several newspapers over a two year period, the authors found that in the 130 cases of police use of excessive force that were reported, 113 (86.9%) of the victims were Black, and 104 (92.85%) of the officers involved were white. The historical relationship between Blacks and the police has been adversarial at best and volatile at worst. The number of Blacks killed by police officers over the years has done little to alter Black peoples' view of law enforcement. For example, between 1920 and 1932, white police officers were responsible for more than half of all African American murders in the South and sixty eight percent of Blacks killed in other parts of the U. S. (Myrdal, 1944). In American Dilemma, Swedish sociologist Myrdal (1944) argued that the U.S.

has a history of using law enforcement to keep Blacks subdued and subjugated, dating back to slavery. For generations, the formal, officially approved role of police, both in the South and often in the Northern "free" states was that of oppressor-keeping slaves in their place and capturing and returning runaways to their owners and later, enforcing Jim Crow segregation laws (Murphy and Wood, 1984). A most telling study of police behavior in the 1960s by Paul Takagi revealed that 51% of the people killed by police officers were Black even though Blacks made up less than twelve percent of the total population. Another study of the use of fatal force by police conducted in the 1970s found that Blacks were seven times more likely to be killed by the police than Whites (Pinkney, 1984). A study in the 1980s concluded that Blacks were nine times more likely than Whites to be killed by police (Nelson, 1985).

Perhaps, the most contemporary publicized act of American police use of excessive force against an African American occurred in Los Angeles in 1991. In March of that year, the horrifying images of four white police officers savagely pummeling and kicking Rodney King (after a high speed chase) saturated print and television news coverage, both nationally and internationally. The officers delivered 56 blows, fracturing King's eye socket, smashing his cheekbone, causing facial nerve damage and a broken leg. Upon seeing the video footage of the incident, the then President George H. W. Bush called the beating "sickening."

While these findings and examples may be dated, developments of the past twenty years or so suggest that little has changed. For example, in 2001 Timothy Thomas, a young man with a history of minor run-ins with the law, was killed by police officers in Cincinnati, Ohio, making him the fifteenth Black male killed by police officers in that city over a five year period. Interestingly, no whites were killed by Cincinnati police officers during that same time frame. That Blacks appear to bear the brunt of police misconduct does not mean that Whites have not experienced their share of police harassment or extra legal force; they have. Some of the more noteworthy incidents in the past forty years include the beating of white youth by Chicago police officers outside of the National Democratic Party convention in 1968; the manhandling and beating of gays and lesbians by police officers at the Stonewall Inn (a Manhattan bar) in 1969; and the arresting, tear-gassing and dragging of white protesters through the streets who had convened to protest the World Trade Organization meetings in Seattle in 1999. Again, while African Americans may be disproportionately victimized by rogue cops, police brutality is a phenomenon that transcends race.

HYPOTHESIS

In light of this, the author argue that the government

creates laws and/or bends existing ones, with the expressed purpose to, not only empower police officers, but to disfranchise the very people that police officers are sworn to serve and protect.

PUBLIC PERCEPTION OF U.S. POLICING

There is a feeling among many citizens, particularly those of color who believe that government offers few safeguards against police misconduct, and that government officials do not take citizen complaints against police officers seriously. This sentiment is not entirely without merit. For example, of the more than 10,000 complaints made against police officers in Chicago between 2002 and 2004, only 19 resulted in meaningful disciplinary action. Said University of Chicago Law Professor Craig Futterman says “the way in which the Chicago Police Department investigates police abuse is a joke . . . if the CPD investigates civilian crime in the same way it investigates police abuse, they will never solve a case.”

Over the past several years, citizens have begun using cell phone cameras as a way of safeguarding themselves against extra legal force by police officers. This newfound sense of efficacy has resulted in a higher level of accountability on the part of not only police officers, but other government officials as well. Later, the study will show that this relatively recent and proactive form of political participation [the use of cell phone cameras to protect oneself against rogue cops) is in keeping with those rights, values and ideals found in the Declaration of Independence, and the Bill of Rights and the U.S. Constitution.

RECENT HIGH PROFILE CASES OF POLICE BRUTALITY

With the use of cell phone camera, citizens are now putting police officers on notice. If they engage in excessive force their antics may be broadcast around the country and in some cases the world, making it difficult for police officers (once back at the precinct) to explain away the bumps, bruises, broken bones and gunshot wounds that some people suffer at the hands of police officers. One of the most recent and widely known cases of police brutality caught on camera occurred on New Year's Eve, 2009 in San Francisco, CA. That evening, a Bay Area Rapid Transit police officer shot Oscar Grant, 22, as he lay on his stomach while it appeared that three officers were either searching him or attempting to handcuff him. In the meantime, several onlookers used their cell phone cameras to film the incident. Footage of the incident showed Grant squirming as the officers tried to restrain him. Seemingly frustrated, one of the officers pulled out his firearm and shot Grant in the back. The

officer maintained that he mistakenly pulled out his firearm when he intended to reach for his Taser gun. Grant died a short time later. During the ensuing trial the officer was convicted and sentenced to jail. Another disturbing incident occurred in Chicago, Illinois in 2007. A Chicago police officer was videotaped beating a female bartender in the presence of witnesses. Many believe he never would have been charged, let alone convicted, if not for the video footage. Stacey Bell, who witnessed the beating of his brother, Ronald Bell by police officers in a Chicago suburb in April 2010, understands the power of cell phone cameras. Bell, said he doubts the police officer would have been charged with felony, aggravated battery and official misconduct without the video, which showed Officer James Mandarino hitting Ronald Bell 15 times after a traffic stop (More Police Brutality Caught, 2010). Mandarino was also seen firing a taser at one of the passengers and then hitting Ronald Bell, who was on his knees with his hands on his head. Without the video said Stacey Bell: “I believe it would have been six witnesses against an officer and it would have been a different story” (More Police Brutality Caught, 2010).

CELL PHONE POLICING: SHOULD IT BE ALLOWED?

There is no doubt that cell phone camera surveillance of police officers is exposing behavior that some police officers have gotten away with for years. Proponents of cell phone policing maintain that the use of cell phone cameras to monitor police is helping hold law enforcement accountable. Some officials have created laws and/or bent existing ones making it illegal to film police work, in effect, rendering citizens powerless when it comes to protecting themselves against unwarranted police violence. For example, the Commonwealth of Massachusetts is a “two-party” consent state, which means that when a conversation is recorded all parties involved must give their verbal consent to the recording, otherwise it is considered illegal there because the officer did not consent to the audio recording. The state of Massachusetts is one of twelve two party consent states; the others are Illinois, Maryland, California, Connecticut, Florida, Nevada, New Hampshire, Pennsylvania, Vermont, Delaware and Washington.

Opponents of cell phone policing argue that the potential to be caught on video can interfere with police work, a point not entirely without merit, especially if the person filming is positioned such that he or she inhibits the officer's movement. Some police officers say cell phone surveillance makes officers hesitant to do their jobs for fear of being overly scrutinized (Corley, 2010; More Police Brutality, 2010). Critics of police officers point out that many police cruisers are mounted with video cameras, yet this development has not appeared to hinder police work. The difference, however, is that the police have control of the footage recorded by the

camera-equipped cruiser. Put bluntly, police officials, have been known, to edit footage that show officers mistreating pedestrian and motorists. The use of cell phone cameras minimizes this possibility. Still others say that incidents caught on tape can misrepresent police work; that things are not always, what they seem.

Prohibiting the use of cell phone cameras to film criminal activity on the part of the police is in conflict with the ideals and values of a democracy, which is a government for the people, by the people and of the people. Moreover, the Declaration of Independence reads:

“That whenever any Form of Government becomes destructive of the ends, it is the right of the People to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness. Prudence, indeed will dictate that Governments should not be changed for light and transient causes But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security”.

They appear not only to support a citizen’s right to live a life free of extra-legal force, but also the idea that citizens are duty-bound to end longstanding abuses of power.

OBSERVATION

Rights contained in the 1st, 2nd, 4th and 14th amendments of the Bill of Rights and the U.S. Constitution also seem applicable here. Those rights include: All citizens are entitled to the freedom of assembly; the right to keep and bear arms; the right to be secure in one’s person, houses, papers and effects, against unreasonable searches and seizures; and finally that no state shall make or enforce any law, which shall deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction, equal protection under the laws.

As stated earlier, prohibiting the recording of police misconduct renders citizens powerless against one of the states’ most powerful actors. For some people, the cell phone camera is their way of arming/protecting themselves and/or others against police harassment. A case could be made that prohibiting the use of cell phone cameras violates one’s first amendment rights. All persons are granted the freedom to assemble, meaning that people are permitted within their right to come together and protest and/or defend a common interest. When a crowd forms to witness what it believes to be a case of excessive force and several of them retrieve their

cell phone camera to document the event, technically they have assembled, perhaps unconsciously or maybe even deliberately (as there is a widely held belief that there is safety in numbers), to protest the police officer’s actions against a common interest. While many Americans probably would not seriously consider carrying a firearm as a means of protecting themselves from police misconduct, some have embraced the cell phone as an empowering tool against police repression.

John Locke, regarded as the most influential of enlightenment thinkers, argued that human nature is characterized by tolerance and reason (Locke, 2007). In some areas of the country, some citizens have for years, tolerated unchecked police brutality, rationalizing that such misconduct is necessary, but unfortunate byproduct of crime prevention. However, as citizens continue to see, read or hear about a long train of police abuse of power, they have apparently concluded on what any reasonable person would, that is if something is not done to check the actions of some police officers, their next victim could be “me.” Given this line of thinking, the use of cell phone cameras to safeguard against police violence is a reasonable response to a longstanding problem.

LIMITATIONS

To what extent cell phone surveillance of police misconduct will help bring rogue cops to justice is difficult to say. To be sure, some convictions have been secured, that otherwise would not have been obtained were it not for cell phone policing. What cell phone surveillance can and perhaps has done is “turned on its head” the idea that the citizen-police officer relationship is an asymmetrical one. This type of inverse surveillance has introduced an element of accountability that heretofore has been absent. Accountability is a cornerstone of a democratic society. Although tax dollars are used to pay police officers’ salaries, many, if not most citizens have historically not sought to hold police officers accountable. Perhaps part of the reason for this is that there have been few mechanisms with which to do so. Civilian review boards exist, but few of them possess any real power. Filing a complaint at the police station is always an option, but few people do so for reasons that have to do with feeling intimidated and/or believing that one’s complaint will not be taken seriously (Burriss, 1999).

Using a cell phone camera to monitor police work is a relatively easy way to participate in the democratic process. Doing so gives people a sense of efficacy; that they can impact what the government does. However, in two party consent states, using cell phones to record police misconduct can be risky. If a police officer spots him or herself being filmed, the officer may confiscate the device, despite the fact that doing so would seem to violate the 4th amendment, which gives a person the

right to be secure in one's person and effects, and protects that person against unreasonable search and seizures. The officer also has the discretion to arrest the videographer. Jeremy Marks is currently serving a seven year sentence for attempting to film an officer who was abusing his authority. Marks videotaped a L. A. Unified School District Officer who slammed a student into the window of a school bus (Knight, 2010). Even in states where filming police work is not illegal, citizen journalists might do well to film at a safe distance and as inconspicuously as possible. Just because there are no laws prohibiting the recording of police in action does not mean that doing so is without its dangers.

There is a due process argument that merits strong consideration. The 14th amendment affords citizens the equal protection of the law. If one believes a police officer has violated his or her rights, it is often his or her words against that of the officer. Video documentation of the encounter is one's best chance of proving one's case. Prohibiting people from using cell phone cameras in this way inhibits their ability to lodge a complaint, to seek the assistance of government as well as to petition the government for redress of grievance. If citizens are prevented (legally or through intimidation) from obtaining visual evidence of police misconduct to document a complaint for fear of reprisal, one could argue that a petition for redress carries little weight.

CONCLUSION

In 2008, there were on average, two and a half mobile phones per household (Bruce, 2008). While that number has not yet surpassed the level, at which televisions can be found in U.S. households (99.9% of all U.S. households have at least one television set (Cummings and Wise, 2005) there is no reason to believe that the number of cell phones will decline anytime soon. Cell phones enable people to empower themselves when dealing with police officers, hence there is every indication that more people will take advantage of this advent in technology to hold public servants accountable. Holding public servants accountable is essential to making them responsive to people's needs and wishes. Ensuring that his or her public servant is working in his or her best interest is a right to which all citizens are entitled; it is inherent in the Declaration of Independence, the Bill of Rights as well as the U.S. Constitution. When lawmakers seek to undermine that right as well as the right to Life, Liberty and the Pursuit of Happiness, their actions are in conflict with the ideals and spirit of a Democracy.

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