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Debate

Lights, Camera, Redaction... Police Body-Worn Cameras: Autonomy, Discretion and Accountability

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Body-worn cameras are the modern equivalent of the police notebook.
(Queensland Police Minister, cited in Doorley 2014)

The sun beats down on a hot and sticky afternoon in Oklahoma City, September 2015. A police officer fitted with a body-worn camera is giving chase to a man who has allegedly robbed a general store armed with a knife. The assailant runs into dense grassland and falls to the ground. The pursuing officer incapacitates him with a Taser, following which another officer kneels on him and secures his hands behind his back with handcuffs. Several further officers arrive at the scene. As the man lies face down on the ground, “Turn it off,” comes the whispered order from the handcuffing officer. The assailant succumbs to a black leather boot to the neck as the officer wearing the camera turns his back on what’s happening, thus preventing the scene from being fully captured. Audible cries are heard from the restrained assailant but the majority of the remaining footage is not of the altercation, but rather, the surrounding trees and grassland.¹

Introduction

Technological devices with audio and visual capabilities have played a long and active role in policing. However, recent years have seen a dramatic rise in the range and sophistication of technologies being integrated into routine police work. Closed Circuit Television (CCTV) was first installed in London in the 1960s, later becoming mobile as redeployable cameras were introduced to chase crime hotspots around the city (Taylor and Gill 2014). In the late 1980s in-car video cameras, or ‘dash cams’, were trialled in the US, becoming mainstream in the early 2000s in a bid to tackle alleged race-based traffic stops and to restore public confidence in the police. But mobility was really integrated with audiovisual police technology with the introduction of police-worn body cameras, or ‘cop cams’. Having argued elsewhere against the rapidly expanding use of surveillance cameras, in particular CCTV (cf. Taylor 2010a, 2010b), due to a range of factors, including; lack of effectiveness, poor return on investment, erosion of civil liberties, and their potential impact on societal practices relating to autonomy, privacy, trust, freedom of movement and expression of identity, in this contribution to the debate I argue that police body-worn cameras are fundamentally different. If operated under suitable procedure and guidance frameworks, they can instigate more positive interactions between the police and public. There are suggestions, for example, from initial

¹ The footage can be viewed here: <https://www.youtube.com/watch?v=3E2FBGBSSnk>.

studies that “police body-worn-cameras reduce the prevalence of use-of-force by the police as well as the incidence of citizens’ complaints against the police” (Ariel et al. 2015: 531) supporting the view that counterveillance technology can be “used as deterrents and controls upon officers’ behaviour” (Manning 2003: 85).

There is little doubt that, globally, police relations with the public, and particularly minority groups, have been fraught with tensions; accusations regarding excessive use of force, prejudicial treatment, and abuse of power are common. Conversely, false accusations are sometimes bestowed upon police officers. Body-worn cameras provide an important means of documenting hitherto obfuscated interactions between the police and members of the public. This can bring many benefits such as increased accountability and transparency. However, the positive role they can play hinges on one thing—police autonomy in their operation—that is, choosing what and when to record. The ability of officers to ‘edit on the fly’ fundamentally undermines any potential benefits the cameras introduce. That is why avoiding opportunities for redaction, “the censoring or obscuring of part of a text for legal or security purposes” (Oxford English Dictionary 2016) is key to implementation.

Police Body-Worn Cameras in the United States and Australia

Police body-worn cameras have received a lot of attention in recent years. Following a number of fatal shootings of unarmed men by police in the US (notably Tamir Rice, Walter Scott, Eric Garner, and Eric Harris), in 2015 President Barack Obama pledged funding to roll out body-worn cameras across US states. Captured on mobile phone cameras, the images of these incidents were decisive in exposing that the killings were unjustifiable, and as such, led to greater demands for police to wear body cameras. In response, presidential candidate Hilary Clinton stated that “every police department in the country” should have cameras to “improve transparency and accountability and help good people on both sides of the lens” (cited in Brandom 2015). Similarly prompted by concerns of “indirect racial profiling”, a Manhattan court ruling in 2013 ordered officers from the New York Police Department to wear cameras when conducting stop and search in a bid to improve fairness and transparency (Goldstein 2013).

While recent debates have been largely dominated by US events, my current research focuses on Australia. Although it is too early to report on findings from the study,² the use of body-worn cameras by the police is growing increasingly prevalent in parallel with other countries. First trialled in Western Australia in 2007, the use of body-worn cameras has now gathered traction in most Australian states and territories. Victoria has been trialling body-worn cameras since 2012, and the NSW police announced in May 2015 they had invested \$4 million to roll out body-worn cameras to frontline police officers. Despite the significant expenditure, absence of empirical evidence regarding impact and effectiveness, and, in some states, little guidance or protocol regarding usage, the adoption of cameras has continued with pace. The cameras have been largely popular with frontline staff, so much so that there have been reports of police officers purchasing their own personal wearable cameras to record their activities and interactions, downloading and storing the resulting images at home (Doorley 2014). This raises considerable issues regarding the quality and impartiality of this footage, admissibility in court, and the interoperability of systems and associated software; not to mention huge privacy and data protection breaches.

² The project, *Surveillance technologies and crime control: Understanding offenders’ perspectives on police body-worn cameras and CCTV*, is funded by a Criminology Research Grant (Emmeline Taylor, Murray Lee, Matthew Willis and Alexandra Gannoni). Over 800 police detainees have been interviewed following arrest about their experiences and perceptions of police-worn body cameras, alongside a range of other topics.

Accountability, Autonomy and Police Discretion

Purely from an accountability perspective, the ideal policy for body-worn cameras would be for continuous recording throughout a police officer's shift, eliminating any possibility that an officer could evade the recording of abuses committed on duty. The problem is that continuous recording raises many thorny privacy issues, for the public as well as for officers...

(American Civil Liberties Union 2015: 3)

Fair and appropriate use of police-worn body cameras hinges on an officer's autonomy to turn the cameras on and off and it is a complicated issue. Currently, there is huge variation across jurisdictions regarding the level of discretion officers have in deciding what and when to record. There are two important practical issues here—one is that the technology favoured by some police jurisdictions had a limited battery life that could not record for the entire duration of an officer's shift and so discretion was, at least initially, predicated on this. Second, recording an entire shift produces a massive amount of data that requires considerable processing and storage, the sheer volume of which could hamper the ease of retrieval. As such, police officers could legitimately choose not to record an incident, thus negating the claim that police-worn body cameras, for example, increase fairness and reduce use of force. Illustrating this, a report on body-worn cameras in the Phoenix (US) Police Department reports that “analysis of the camera meta-data indicated that only 13.2 to 42.2 percent of incidents were recorded” (Katz et al. 2014: 3). Similarly, a report by Denver's (US) Office of the Independent Monitor (2014) found that numerous incidents where officers punched or used stun guns on suspects were not recorded; less than half of the 45 use-of-force incidents involving on-duty officers were recorded because the cameras were either turned off or experienced technical problems.

The intersection of technology and human behaviour is highly complex and unpredictable, but a camera that can be switched off, or wilfully turned away from a police interaction with an assailant without consequence, cannot increase accountability or reduce poor policing practice. I argue that the default position should be that police-worn body cameras record continuously. This largely resolves four main issues: officers forgetting to resume recording when interacting with the public, officers being taken by surprise or events unfolding rapidly and so are not recorded, the activation of the camera aggravating the situation, and the wilful switching off to avoid capturing misconduct. If this position were to be accepted, it opens up an avenue for greater interrogation into how cameras are used during police operations. It could be presumed that if a camera is switched off during an altercation, with no reasonable justification, then it represents the deliberate destruction of evidence. It could also be presumed that the images, had they been recorded, would have been unfavourable to the police officer involved. However, there are some important issues that must be taken into consideration if police officers are given little discretion as to when and what to record. I elaborate three such concerns in particular below.

Police Decision-Making, Discretion and Deprofessionalization

Discretion pervades police work since it involves the continuous exercise of choice or judgement. As such, the concept of discretion and police decision-making has been an enduring feature of debates regarding law enforcement. It has been stated “every level of police work, especially at the micro level, involves choice on part of the police officer” (Finnane 1990: 218). Indeed, it could be argued that the criminal justice system is, by its very nature, premised on discretionary principles at every stage; to investigate, to report, to caution, to charge, to arrest, and so on. In light of this, it has been suggested that sousveillance videoing can lead to police dispensing with professional discretion in favour of a clear-cut application of the law irrespective of context. In other words, police officers knowing that body-worn cameras are recording them might feel restricted in their interpretation and application of the law. Officers might feel inhibited to let trivial things slide or to dispense with a warning through fear of being viewed as overly lenient, or even negligent in their duty to protect the public. Some early studies lend weight to this

hypothesis. For example, Katz et al. (2014) found that the frequency of arrests increased significantly (17 per cent) for those wearing a camera versus a 9 per cent increase amongst those in the control group. If it is the case that body-worn cameras result in officers dispensing with discretion, the police might find themselves overburdened with investigating minor regulatory infringements or outmoded legislation, resulting in punitive and intolerable policing. Furthermore, overly constraining officers from discharging their duties, some argue, leads to “deprofessionalization syndrome” (Stone and Stoker 1979), leading to job dissatisfaction and disaffection.

Privacy of Victims

Police body-worn cameras that constantly record video and audio raise significant privacy issues. They potentially record the everyday conversations and activities of law-abiding citizens that enter the purview of cameras. While they have been encouraged to assist in reducing racial profiling in stop and search, they could produce other types of discrimination, such as being used to intimidate and record in certain localities and over-policed areas. Further, the police can access quintessentially private spaces. Indeed, initial trials of police body-worn cameras are often part of domestic violence taskforces. The Phoenix study (Katz et al. 2014) reported that domestic violence incidents were the most likely to be recorded, comprising 47.5 per cent of all recordings. According to the American Civil Liberties Union (ACLU 2015) some victims of crime, as well as witnesses concerned about retaliation if seen cooperating with police, may have very good reasons for not wanting police to record their interactions. In these instances especially it is legitimate for a victim to ask not to be recorded (or for the officer to volunteer this course of action). The recording of such an exchange between the victim and officer would be sufficient to document the legitimate cessation of the recording.

Operational Difficulties

Initial evaluative work suggests that officers use force less often when they are using body-worn cameras (Ariel et al. 2015). Furthermore, anecdotally, it has been claimed that offenders are less likely to resist or assault police when the cameras are in use but the factors underlying this are largely unknown due to a lack of empirical evidence. In some instances the use of the camera might actually aggravate the situation or make things worse. This may be particularly the case when officers are interacting with mental health consumers, those under the influence of drugs and alcohol, or during sensitive investigations. As such, using the cameras is not always conducive to police operations and may escalate issues. For example, when one police force tried to incorporate body-worn cameras into stop-and-question procedures, citizens who were stopped refused to answer questions while police had their cameras on (Sherman 2013).

Conclusion

Returning to the apropos quotation that opens this discussion, it has been widely assumed that the body-worn camera is simply a modern day functional equivalent of more traditional police data-capturing mechanisms. But this ignores the power of the device to alter the behaviour of the police, public and offenders. Officer autonomy to choose when to turn the camera on and off undermines some of the potential benefits that the cameras may bring.

Cameras could be considered the equivalent of the police notebook, but only if it is accepted that pages of the notebook can be rewritten, edited, modified; even torn out entirely. That is why redaction, or more specifically, limiting the discretion of police officers to select when to record, is critical to ensuring they bring greater transparency, fairness and accountability. Visual recording technology can bring a degree of objectivity, or at least provide some insight into contested events. That said, subjectivities enacted by the view of the camera must also be taken into consideration. The fact that it is the police officer wearing the camera means that the viewer is inclined to see things from their perspective, introducing ‘camera view bias’. As Stoughton outlines, “When video allows us to look through someone’s eyes, we tend to adopt an interpretation that favors that person” (cited in Williams et al. 2016). Clearly, body-worn cameras are not

a panacea, but their implementation means that the police are no longer impervious to scrutiny and exposing police brutality and prejudicial profiling will no longer solely rely on fortuitous videoing by bystanders. It is hoped that through counterveillance, not only will police interactions with the public become more accountable, but behaviours will also be improved.

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