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Ethical Constraints on Taser Use by Police

John Kleinig

Abstract

Though the development of non-lethal law enforcement technologies has improved police capacity to take control of situations with fewer injuries all round, it has also created opportunities for their overuse. This paper refocuses the issue of taser use from lives saved to unnecessary force, and calls for greater attention to the latter.

Introduction

Recent developments in intermediate (or non-lethal) force technology have enabled police officers to assert their control over situations in ways that, consistent with legitimate consideration of officer safety, reduce the likelihood of serious injury to their targets and innocent bystanders. Some sort of balance needs to be struck that keeps the risks faced by officers acceptable while minimizing injury and trauma to those being brought under control. This is because the purpose of such forcible interventions is not to punish but only to control; the former is the business of the courts. The new technologies are intended to be responsive to the varied circumstances in which officers may find themselves, often providing “niche” tools for situations that require a more nuanced response than a baton or side arm can provide.
Embedded in such developments is a significant ethical problem – one that has sometimes led to the outlawing of certain low tech intermediate force devices such as saps or rubber truncheons. Because many high tech means of exercising intermediate force inflict acute pain (and/or have other acute effects) but with a low probability of long-term injury, opportunities for their misuse are heightened, and officers may find themselves tempted to employ a particular means in circumstances in which it is unnecessary or inappropriate. In the case of various electroshock devices, such as stun guns and tasers, this has been a particular problem, one that is exacerbated by the fact that death has occasionally been associated with their use.

My purpose here is to review this general ethical problem confronting intermediate force through the prism of taser use, detailing some of the relevant factors to be taken into account and providing some suggestions for addressing the problem. Although each technological development will have its own characteristics and challenges, I am hopeful that the broad ethical underpinnings of the present discussion will be transferable to other technologies, both new and old.

Tasers

Tasers are devices designed to disable a person by means of short, repetitive, electric pulses that are dispensed through electrodes fashioned as barbs and attached to insulated wires. Usually shaped like a handgun, the taser darts are propelled by compressed nitrogen (or air) and can be deployed at a distance of
15 feet (4.6m) or, in some recent models, 25 feet (7.6m), with longer range (and wire-less) models in development. The charges, each of 50,000 volts and set to last about five seconds, have a relatively low wattage. Early versions in the 1970s operated on 5 watts but those that are currently used by law enforcement generally operate on 26 watts of power. Charges above 14 watts cause uncontrollable contraction of muscle tissue, along with intense pain and exhaustion. Although more than one company manufactures taser devices, most are produced by Taser International, an Arizona-based company that actively markets them to over 7,000 (nearly half) U.S. law enforcement agencies as well as to agencies in a number of other countries. Over 250,000 tasers have been sold, a little more than half to law enforcement agencies and the remainder to private citizens for personal self-protective use. They are also being deployed in Iraq.

The problems

Although the manufacturers of tasers strongly and aggressively argue that they are non-lethal weapons, a sizable number of deaths have been associated with their use. The manufacturers claim – with some justification – that these deaths have occurred because of other factors, such as illicit drug or alcohol use or “excited delirium,” though that would not ipso facto serve to exempt them from a significant causal role, unless it could also be argued – with somewhat less justification – either that the person who died would have died anyway because of the other causal factor or that tasering represented the least use of force available without unacceptably endangering police. Given that the circumstances under which tasers might be expected to be used are often those
in which a person is “disturbed,” those who use them ought to take into consideration that those on whom they are to be used are more likely to be subject to those factors that would render them especially vulnerable to a fatal outcome. Such a possibility should also be taken into account when developing policies and rules for taser use.\textsuperscript{vii}

Even if some deaths are attributable to taser use – there will of course be some risk of that with every intermediate force device – their proponents argue that what needs to be considered is how many more deaths would have occurred had “the alternative” – a handgun – been used instead. That, undoubtedly, is a critical question to ask, and one should not cavil at the lives that would otherwise have been lost. But the question as presented is not the only question, and it masks another. An alternative question concerns how often police could and should have used a less dramatic display of force had tasers not been available. Although tasers may substitute for more aggressive tactics, officer (and bystander) safety might not have been unacceptably jeopardized had they used less aggressive tactics. A critical question, one that we will need to confront, concerns the level of risk (not mere inconvenience) to which it is acceptable to expose officers.

Although removal of the taser darts may sometimes require medical assistance, and they have occasionally caused scarring and injuries to neck blood vessels, eyes, and genitalia, only rarely have the barbs caused serious or permanent damage.\textsuperscript{vii} The speed at which they are propelled (170ft/sec=51.8m/sec) is
somewhat less than that of a paintball, and so they often lodge in clothing without penetrating the skin. This, however, does not prevent them from delivering their charge. In more recent models, an inbuilt directional laser assists their user’s aim.

The main alternative source of injury comes from trauma caused when the target twists or falls to the ground. There is probably a reason for conducting some kind of medical inspection whenever a taser is used, and a number of departments do this as a matter of course, especially if they use tasers almost exclusively on people who appear to be mentally disturbed.

In my opinion, the most serious problem confronting tasers, and one that is exacerbated by the relative lack of evidence that they cause serious injury, concerns overuse. Although those who defend their use correctly note that police shootings have declined since tasers became widely available, they have ever more frequently become a tool of choice in law enforcement. Accurate figures concerning their use is probably not possible to obtain, though a 2005 GAO Report suggested that they had been used some 70,000 times in law enforcement situations. As I see it, the problem is ultimately a human and ethical one, partly no doubt a problem of training, but more particularly one of wise and ethical judgment.

*The ethical terrain*
Immobilization with a taser is a very unpleasant experience, and so it has been a common—though not universal—practice for police who are issued with tasers to be zapped as part of their training. It is thought that this might help to moderate their use. However, the fact that its effects wear off, coupled with the passage of time, is likely to dull the experience of officers who have been tasered—and thus render slightly hollow their protestations to those who have just been tasered that they know what it is like. More important, though, are contextual factors, both in the short run and longer term. There is a big psychosocial difference between being zapped as part of a training program and being zapped because an authority figure (about whom one may already have a negative opinion) chose that particular means to assert his control over a situation. A further difference will be constituted by one’s sense of its justness or appropriateness—of whether one had it coming or the officer was overreacting. (Of course, even if its use is justified in a particular case there will be some who will think it was used inappropriately. Officers may just have to live with that. Policing is not a popularity contest.)

In some cases the difference in perspective provided by training and enforcement may be aggravated by deeper historical associations. Just as, in the United States, the use of police dogs to bring fleeing African-Americans under control may have resonations of tracking escaped slaves or Bull Connor’s anti-civil rights tactics, so tasers may be psychically linked with electrically charged cattle prods (or hotshots) that were also used to disperse civil rights demonstrators. Such events need not have been part of the immediate experience of those who are tased; it is necessary only that they be part of their
ongoing cultural consciousness, reinforced by the remnants of racism (for perceptions may be aggravated by concerns about their discriminatory use).

Although there is generally significant social support for the police, that support is delicate and can be easily eroded by actions that seem patently inappropriate. The use of tasers simply as a matter of convenience – as a way to cut short a verbal confrontation or even one that could reasonably require more direct physical intervention (say, carrying or applying an escort hold or joint manipulation on a passively resistant demonstrator) – will not be perceived or remembered as a wise or justified exercise of police authority.

Police departments need to develop understandings about when tasers are to be legitimately used, to embody such understandings in their taser use policies (which ought to be part of broader use-of-force policies), and then to integrate such understandings into their training programs, reminding officers of the extent to which the ultimate conduct and experience of their work is dependent not simply on their capacity to bring some sort of closure but also on the public legitimation that their authority requires – their “social contract.”

The issue of officer safety

Concern for minimizing the harm needed to take control of a situation should take into account not only the person who is (or those who are) the immediate object of police attention along with any innocent bystanders but also the
officers themselves. On the one hand, there is a cultural tendency for police to take excessive risks in responding to some social situations; at the same time, there is a tendency to overreact, particularly to what is seen as dissembling or apparent refusals to submit to police authority (arguing the toss, or passive resistance).

Police have legitimate safety concerns and ought not to be required to place themselves at “unnecessary risk.” The critical issue is to determine what constitutes unnecessary risk. Unnecessary risk is not “no risk.” Risk (to police) cannot be eliminated and attempts to remove it entirely are likely to burden others unduly. At the same time, those who enter police work recognize that they must assume risks that civilians can legitimately avoid. The problem is to develop criteria or operational strategies for making determinations of reasonable and unreasonable risk. Unfortunately, most police departments have not adequately confronted this issue, and officers are left to make their own unassisted judgments, to express the prevailing police-cultural norms, and to suffer the scrutiny of hindsight.

Although this is not the place to offer such a policy, police who are considering how to bring a situation under control should take into account what is at stake in asserting their authority; they should determine their parameters; review their options; make assessments of the level and likelihood (and not merely possibility) of risk to which different options will expose them; and so on. Because risk assessments cannot be made in an algorithmic fashion but will
always involve judgment, it is prudent to accompany policies with case examples and commentary that exemplify wise and poor judgment.

Although I have been speaking of risks to officer safety as though they are monolithic – risks to physical safety – police officers operate in a world that carries other risks to safety as well, and these too must be factored in police decision making. Besides the physical risks, there are legal, administrative, and political risks.\textsuperscript{xii} They may not be ethically determinative, but we should not deny their ethical relevance. In deciding how to proceed, an officer confronting a resistant female will want to take into account the risk that bodily contact will be interpreted as and become grounds for a sexual harassment suit.\textsuperscript{xii} Along with that will be concerns about administrative repercussions if a complaint is lodged or the target is in some other way a problematic one (the person is old or disabled). At the same time, officers cannot leave out of account the political significance that will be accorded their acts. Although technology may offer clean and aseptic ways of controlling situations, its use may also impact on public perceptions in ways that should be taken into account. We are usually more comfortable about two officers wrestling a refractory person to the ground than the sight of them tasering the person. Tasering seemingly violates dignity in a way that wrestling into submission does not.

\textit{Developing a taser use policy}

With respect to a taser-use policy, at least two areas of concern need to be addressed:
(1) The first and most important concerns the situations in which taser use should be considered. Although most police agencies have use-of-force policies, they sometimes fail to indicate the circumstances under which the use of tasers ought to be considered tactically appropriate. This may be because the policies in question were drawn up prior to the introduction of tasers; on other occasions, though, use-of-force policies remain vague about applicable tactics. Even among policies that incorporate reference to tasers, there is no consistency, some agencies pitching their permissible use very low on the resistance scale, others requiring a much more active level of resistance to authority and even limiting their use to certain personnel.iii

Many U.S. law enforcement agencies make use of what is referred to as a use-of-force continuum, in which different kinds of situations are paired with appropriate kinds of responses. The following example from the Oregon Department of Police Safety Standards and Training (DPSST) is representative of many:xiv

(Insert Table 1 here)

In this policy, the use of tasers is considered allowable even when there is only passive resistance to an officer. That is problematic, not simply because it may be more dramatic and forcible than the situation requires, but also because of what it socially conveys. In a recent case, considerable controversy was caused
by an incident in which University of California campus police tasered an Iranian-American student who lacked appropriate identification at the library entrance, refused to leave, and then passively resisted attempts to get him to leave.\textsuperscript{xv} He did not pose any obvious danger to police (or others), but his passive resistance inconvenienced them. Even if, in these days of heightened concern about terrorism, there may have been some anxiety about a terrorist incident, tasering would not have been a wise move in such a case. For had the student been a suicide bomber, the electric shock might have detonated any explosive.\textsuperscript{xvi} But an equally critical concern – to which I will return – was the social impact (political risk). Leaving aside the reportorial bluster, it appeared that the police had overreacted and that the student was being cruelly and publicly humiliated even though police had every reason to remove him.

The use-of-force continuum is helpful as a “framing” device, but should always be accompanied by explanatory materials that enable law enforcement personnel to get a feel for the gradations of circumstances and how they are matched to gradations of force. Consideration should be given not only to scenarios in which the increased use of force might be ethically legitimated but also to scenarios in which situations are defused by other means, thus making less force necessary to accomplish legitimate police purposes. Patience is not an unimportant virtue in police work, even if police have the authority to command and enforce their commands.
(2) The policy ought also to give consideration to populations for whom taser use would generally be inappropriate, even if the level of resistance is active and vigorous – for example, young children, pregnant women, old people, the disabled, and those who are already constrained by handcuffs.

The point may not be to forbid the use of a taser in every such case. However, because using tasers is likely to impact on public confidence in the judgment of police and of the officers who use their tasers in such cases – in which the balance of power seems strongly on the police side – such officers should be expected to establish that they acted appropriately. In some sense of course that is true in every case in which tasers are used. A virtue of modern tasers is that they usually have an inbuilt data port that allows one to ascertain how often the taser was used, including date, time and duration of its operation. Here, provided it is monitored, the technology is crafted to make misuses less likely.

Consideration ought also to be given to the subtle effects of discriminatory perceptions, lest tasers be more readily used on some than on others because of an embedded belief that, say, people of color are inherently more dangerous than others. Obviously, this does not mean that disparate use is ipso facto discriminatory, for it may be that people of color are more often actively resistant to police authority. However, even were such a conclusion established, it might counsel special care, since the social phenomenon of “black
refractoriness” would itself almost certainly have its roots in a demeaning history of racism.

A well-formulated and detailed use-of-force policy that anticipates the contexts in which different levels of force might be called for and the variety of risks involved, along with training that helps to focus on good judgment, are important ingredients in the wise deployment of tasers. Ultimately, though, as with so much else in police work, individual officers need an active sense of themselves as bearers of a public trust committed to providing a better public service than those for whom they provide it could do on their own.

Professionalism, as the IACP Code of Ethics reminds us, requires a commitment on the part of individual officers to take “every reasonable opportunity to enhance and improve [their] level of knowledge and competence.” That touches not only their understanding of and facility with tasers but also their understanding of and facility with alternatives that may reasonably be employed. 

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holds the Charles Sturt University Chair of Policing Ethics in the Centre for Applied Philosophy and Public Ethics (Canberra, Australia).

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Although Taser has become a trademarked name of Taser International, the term and device pre-existed the company that makes most of them. I use the lower case form to refer generically to such devices. The name is an acronym derived from *Tom Swift And His Electric Rifle* (one of Victor Appleton’s Tom Swift books).

Unlike earlier versions that relied more on pain to bring a situation under control, current versions depend more on the effects on muscular control. In the case of “excited delirium,” this can be a critical difference.

The more powerful models are sold exclusively to law enforcement agencies and the military.

The reports that have been given prominence are several produced by Amnesty International, the most recent one being “Amnesty International’s Continuing Concerns about Taser Use,” AMR 51/030/2006 (March 28, 2006) <http://web.amnesty.org/library/index/endamr510302006>; and a series of reports in the *Arizona Republic*, including Robert Anglen, “Taser Tied to “Independent” Study that Backs Stun Gun”, *Arizona Republic* (May 21, 2005) <http://www.azcentral.com/arizonarepublic/news/articles/0521TaserDOD21.html>. A U.S. government (NIJ) investigation into deaths following police taser use was announced in mid-2006. It is often argued, however, that even if some deaths may be partially caused by taser use, the figures and causality are overblown. See below, n. 5.


Indeed, in cases of ‘excited delirium’ states, they may advise that – if possible – medical personnel be called before taserin takes place.


Readers may wish to test themselves with items and videoclips from this web site attached to the *Palm Beach Post*: ‘Tasers: Are Officers Too Quick to Fire?’ (Antigone Barton, et al.) <http://www.palmbeachpost.com/localnews/content/news/special_reports/tasers/>. In cases such as the one recorded here, it is also important to move beyond the actions of particular police officers – whatever one may think of them – to departmental policies and training.

I am grateful to William F. McCarthy for a very illuminating discussion of the importance of taking these other risks into account.


Although some U.S. departments have rushed to equip most of their patrol officers with tasers, the NYPD restricts their use to supervisors and specially trained officers and also limits such use to those who appear to be mentally disturbed.


I am enormously grateful for the challenges and corrections provided by Brandon del Pozo and William F. McCarthy as I prepared this essay.

Table 1

<table>
<thead>
<tr>
<th>Level of Force</th>
<th>Method of Force</th>
<th>Level of Resistance</th>
<th>Threat</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI Deadly</td>
<td>Any force readily capable of causing death or serious physical injury</td>
<td>Lethal</td>
<td>RESISTIVE</td>
</tr>
<tr>
<td>V Serious Physical Control</td>
<td>Neck Restraint Impact Weapon Focused Blows Mace (CN/CS)</td>
<td>Ominous</td>
<td></td>
</tr>
<tr>
<td>IV Physical Control</td>
<td>Hair Takedown Joint Takedown Digital Control Joint Come-along Pressure Points Electronic Shin Device Temp. Restraints</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>III Physical Contact</td>
<td>Escort Position Directional Contact</td>
<td>Verbal</td>
<td>Undecided</td>
</tr>
<tr>
<td>II Verbal Communication</td>
<td>Direct Order Questioning Persuasion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I Presence</td>
<td>Display of Force Option Body Language/Demeanor Identification of Authority</td>
<td>None</td>
<td>Complying</td>
</tr>
</tbody>
</table>