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# Restraining Police Use of Lethal Force and the Moral Problem of Militarization

SHANNON BRANDT FORD\*

*I defend the view that a significant ethical distinction can be made between justified killing in self-defense and police use of lethal force. I start by opposing the belief that police use of lethal force is morally justified on the basis of self-defense. Then I demonstrate that the state's monopoly on the use of force within a given jurisdiction invests police officers with responsibilities that go beyond what morality requires of the average person. I argue that the police should primarily be concerned with preserving public safety. As a consequence, police have additional moral permissions to use lethal force. But this also means that the principle of restraint is inherent to the policing function and therefore police are obliged to go to greater lengths to avoid killing. I concede that the just use of police force can be made difficult in extreme situations such as a mass riot. In such cases, police should take proportionate actions necessary to protect the lives of inhabitants by restoring order, which might include calling on military support. I conclude with a cautionary note opposing militarization of the policing role.*

**Keywords:** police, militarization, self-defense, lethal force

## Introduction

Police use of lethal force is a contentious topic. Police shootings in the US, for example, have been one of the touchstone issues contributing to the widening political divide there. One might believe that one way to reduce police shootings is to strictly apply a self-defense paradigm. This paradigm says that police officers

should only use lethal force when it is necessary to fend off an unjust immediate deadly threat to themselves or to the lives of other innocent parties. For example, the police are permitted to shoot an attacker who lunges at them or an innocent person with a knife, but they shouldn't shoot an unarmed suspect fleeing the scene of a crime. This perspective can overlook the police duty to proactively protect the public from dangerous criminals, however. The unarmed suspect fleeing the scene of a crime might be someone who

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has just committed a mass shooting and is running away, having dropped his weapon. In this case, the police do not have the option to ignore their obligation to “serve and protect.” Police officers have a job to do. They cannot simply allow the unarmed shooter to escape. Furthermore, the self-defense paradigm can also end up demanding less restraint in using lethal force than we should expect from police. For instance, in a situation where we might conclude that it would be justifiable for the average person to shoot someone who threatened them with a knife, we should expect the police to demonstrate more restraint in the way they confront the knife-wielder.

Here I defend the view that there is a significant ethical distinction between justified killing in self-defense and police use of lethal force. This is the case, I argue, because police have a state-sanctioned institutional telos to preserve public safety. The consequence of this distinction is that although police officers have additional moral permissions to use lethal force, they are also obliged to go to greater lengths to avoid killing. First, I examine the view that the police use of lethal force is morally justified by the same considerations that justify

the use of lethal force by ordinary persons who are not police (or similar institutional actors<sup>1</sup>). According to this argument, police are only morally permitted to use lethal force to defend themselves or others from an immediate deadly threat. Against this view, I argue that it is necessary for police to be more proactive in the use of force. I suggest that the state’s monopoly on the use of force within a given jurisdiction invests police officers with responsibilities that go beyond what morality requires of the average person. Next, I specify the special responsibilities that apply to police use of lethal force. I argue that the police should primarily be concerned with preserving public safety and that the principle of restraint is inherent to the policing function. Finally, I explore the limitations of the policing paradigm. In particular, I acknowledge the difficulty of effective policing during a mass riot. I argue that the police should take the proportionate actions necessary to restore order so as to protect lives. Such proportionate actions might entail calling for the support of military force, but I conclude with a cautionary note opposing militarization of the policing role.

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## Lethal Force and Policing

### *Police and the Immediate-Threat Condition*

Do police officers receive an authority to use lethal force by being part of a policing institution? If so, when should the police use it? We might believe that the police have precisely the same set of moral

responsibilities in using force that everybody has; that being a police officer makes no difference morally speaking.<sup>2</sup> For instance, Gabriella Blum and Philip Heymann argue that the standard self-defense paradigm in a law enforcement context implies that killing an individual is

allowed only in the very limited circumstances of self-defense (where a person poses an immediate deadly threat to the defender) or defense of others (where a person poses an immediate deadly threat to the lives of others).<sup>3</sup> The implication of this perspective is that there cannot be *any* other circumstances where the police can be justified in using lethal force. The police are never justified in shooting a fleeing felon or someone in the act of committing a crime, for example, if the suspect is not, at that moment, posing an immediate deadly threat. From this point of view, any difference we might see in how the police use lethal force compared with the average person results from the inherent danger of policing. Police are more likely to confront potentially deadly threats than the average person because this is an important part of their role. In comparison, the average person might choose to avoid dangerous situations. What looks to be a moral distinction in the police use of lethal force is simply a function of the police requirement to be in more life-threatening situations.

There are, however, problems with the conclusion that the police use of lethal force is *only* morally justified in self-defense or the defense of others. We can describe plausible cases where a suspect does *not* meet the condition of being an immediate unjust deadly threat and yet the police are still morally obliged to use lethal force. For example, let us imagine a situation where Olivia is carrying a bomb in a backpack which is rigged to explode when her GPS recognizes she has reached a particular set of coordinates, in this case the busy town square of the

city of Walterville. Let us also assume the police have very good intelligence detailing the bombing operation after capturing the planner of the operation. The police know the identity of the bomber, the intended target and the fact that the bomb will detonate when Olivia reaches the location (but only when it reaches that particular location). They also know that the only way to trigger the bomb is through the GPS device that is part of the bomb and that Olivia is otherwise unarmed. Furthermore, they have established that Olivia is traveling to the city on motorbike and is a day or more away from her target and so have set up a number of checkpoints to apprehend her. It is at one of these checkpoints, on a rural back road, that a lone police officer – Peter – recognizes the bomber. Consequently, he draws his handgun and orders Olivia to dismount the motorbike, put her hands on her head, and lie face-down on the ground. But instead of following Peter's directions, Olivia attempts to flee on the motorbike (with her backpack). Peter has reason to believe that she is unlikely to be stopped again and so he shoots her in the back and kills her.

Now it should be clear that a bomber in the presence of police and civilians who is about to detonate a bomb that will kill both police and civilians can justifiably be shot dead by police. If Olivia were within close proximity to her destination, then shooting her would be morally justified on the basis of self-defense and the defense of the lives of others. This is so because, as Seumas Miller suggests, "the threat is immediate, known with a high degree of certainty to be

actual, and [...] there is no method of successful intervention other than that of shooting dead the bomber."<sup>4</sup> But a problem arises with a self-defense justification, argues Miller, when the threat is not immediate (and/or when known with lower degrees of certainty).<sup>5</sup> In the case I have just described above, Olivia is still at least a day or more away from reaching the location of her target. The threat she poses is not immediate in the sense that a significant amount of time will elapse while she travels to the location of her target and she does not pose an immediate threat to Peter or any nearby bystanders. In our case, we know that Olivia is harmless to the police officer, and so Peter is not defending himself from an immediate threat.<sup>6</sup> Furthermore, the bomber is also not an immediate threat to others when confronted by Peter. Olivia only becomes an immediate deadly threat when she reaches (or is close to enough to reach) her intended target. So, according to the standard self-defense paradigm, Peter should not shoot the bomber. But it would be negligent of Peter in his role of police officer to let Olivia escape and allow the risk that she reaches her intended target in Walterville.

In response to this imaginary case, it might be argued that the problem raised here is a definitional one. The threat posed by Olivia does not meet the immediacy condition for the standard self-defense justification, strictly speaking, but perhaps we can get around it by describing the threat she poses as imminent. According to Onder Bakircioglu, "imminent" means the attack must be so close that the defender cannot wait any longer. A specific threat is

going to occur, but it allows for the passage of time. In contrast, immediacy means that the threat will occur at once.<sup>7</sup> So although Olivia does not pose an immediate threat to Peter (or to nearby bystanders), she might be described as an imminent threat to the people of Walterville because she is in the process of traveling towards them, and she is likely to reach her target if she is not intercepted. The threat is imminent in the sense that we can specify a deadly weapon (the bomb), an intentional actor (Olivia), and a target (Walterville's centre square).

But a second real-life scenario demonstrates why the police use of lethal force still remains distinct from the standard self-defense paradigm. In 1983, a London police officer (from the Diplomatic Protection Group) shot and wounded a would-be assassin, attempting to escape following an attack on the Israeli Ambassador in London.<sup>8</sup> The assassin had fired one shot, striking the ambassador in the head. At this point his gun jammed. The assassin was then pursued by a police officer who, after shouting a warning, fired one shot, wounding the assassin, who was then arrested. At the ensuing trial of the would-be assassin, it was suggested that the police officer had used unreasonable force in shooting the defendant to make the arrest. Although the judge noted, "it would be unlawful for a police officer to shoot a suspect to prevent him escaping" he also concluded that, "the law is not so stupid as to forbid a police officer *in such circumstances* to resort to the ultimate remedy of shooting a gunman."<sup>9</sup> So, according to this judge, in some circumstances it is justified for a police officer to shoot a

dangerous criminal who is *not* an imminent threat. In this case, the criminal was a dangerous would-be assassin attempting to flee the scene of his attack and escape arrest.

These two examples suggest that police are *not* bound by the same *immediate threat condition* that is required by the standard self-defense and defense-of-others paradigms.<sup>10</sup> We expect police to use lethal force in more situations than just those where they confront an unjust immediate deadly threat. If this is true, then either we are demanding that police act wrongly when they use lethal force against a non-immediate threat, or we need an alternative explanation for why they are morally justified to do so. Given that it is morally incoherent to demand that police officers act wrongly in performing their standard duties *qua* police, the need is pressing to seek a moral justification for why it is that police can use lethal force outside the self-defense or defense of others paradigms.

### ***Monopoly of Force***

Within the liberal democratic political tradition, the state's monopoly on the use of force within a given jurisdiction has evolved in such a way as to invest police officers, as its representatives, with state-imposed duties and exceptional permissions to use lethal force. A police service derives its moral and legal authority to use force from the state (or similar political community) and, for this reason, we give police a monopoly in using force within their jurisdiction. This conventional understanding of the state's monopoly on coercive force is described by Max Weber in the following way:

*A state is that human community which (successfully) lays claim to the monopoly of legitimate physical force within a certain territory, this territory being another of the defining characteristics of the state. For the specific feature of the present is that the right to use physical violence is attributed to any and all other associations or individuals only to the extent that the state for its part permits this to happen. The state is held to be the sole source of the right to use violence.<sup>11</sup>*

This definition presumes that a state effectively controls and manages conflict within the physical territory over which it has sovereignty. Police institutions are given responsibility for the coercive side of this state function within the jurisdiction given to them by a state.<sup>12</sup> As we will see below, this is not to say that policing work is wholly or even largely coercive; policing involves a wide range of non-coercive functions. But police are authorized to use coercive means as part of their day-to-day role that are largely impermissible for other segments of society. These means include arrest, imprisonment, intrusion, and use of weapons (such as tasers, teargas, and handguns). In this way, a professional police service provides important benefits to society. One way that a professional police service benefits society, for instance, is by dealing with the day-to-day conflicts that occur between the inhabitants living within a particular jurisdiction. Without a good police service to justly manage conflict, persons with a grievance might well conclude that it is better to take justice into their own hands. In a situation where people are forced to pursue their own ideas of justice, we are likely to see increased levels of violence and disorder, which is broadly detrimental to the functioning of

society and everybody within it. So for the general benefit of peacefully managing conflict, it is an important responsibility of the police to resolve incidents that might potentially involve physical violence. A police monopoly on the use of force means that police have responsibilities in relation to coercion that other jurisdictional inhabitants do not have. An example is the right to one's property and the proper course of action should a property dispute arise. In a society with an effective police service, we expect jurisdictional inhabitants to refer the matter to the police if they believe something of theirs has been stolen. We do not allow the property owner to take back the property by force, as might be the case in a society that does not have a police service. Instead, we give the police exceptional powers to use coercive methods necessary to perform their duties.

### *Force as Purpose*

The police monopoly on the use of force leads some authors to conclude that the purpose of the police is to *use force*. A leading proponent of this view, Egon Bittner, argues that the purpose of the police is to protect the state by enforcing the law. The heart of the police role, he believes, is the need to address all sorts of human problems where the solution requires, or might possibly require, the use of force.<sup>13</sup> Roger Dunham and Geoffrey Alpert agree with Bittner that the police represent and implement the government's right to use coercion and force to guarantee certain behaviors from its citizens. They believe that the ultimate right to use force is

what makes police unique and what allows the police to function successfully.<sup>14</sup> P.A.J. Waddington argues that policing is the exercise of the authority of the state over the civil population. He suggests that this authority is based on the monopoly of legitimate coercion. Police command people to do something, and, if they do not comply, then the police force them into compliance.<sup>15</sup>

It is a mistake, however, to conclude that the use of force defines the *ends* of the police. For one thing, a policing institution that is primarily focused on using force is more likely to be misused as a coercive instrument of the state. The concern here is that the police are used to serve the interests of the government in power at the expense of the interests of the broader community they are meant to serve. As Robert Reiner suggests, "policing may be inescapably political, but it need not be politicized." By this, he means that policing should preserve "the minimal conditions of civilized and stable social existence from which all groups benefit, albeit differently."<sup>16</sup> Reiner agrees that the police are the domestic specialists in the exercise of legitimate force, when it is necessary to regulate and protect the social order.<sup>17</sup> But he highlights the tensions in modern policing between a focus on law enforcement and the more proactive community policing philosophy.<sup>18</sup> Seumas Miller, John Blackler and Andrew Alexander also point out that force is not the only (or even preferred) option available to the police. Unlike persuasion or rational argument, they suggest that force itself is a morally undesirable thing.<sup>19</sup> The police use a variety of methods in

preference to force in their day-to-day work. These measures include negotiation, rational argument, and appeal to societal values before they use force or threaten to use force. A focus on the use of force also does not help us differentiate the police

ends from other institutions empowered by the state to use lethal force, such as the military. In short, the exclusive focus on police means (coercive force) ignores the crucial question of the ends (or telos) of policing.

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## The Policing Paradigm

### *Public Safety and Police Restraint*

If we agree that it is not enough for police to be mere enforcers of the law (or coercive instruments of state authority), then we should clarify what institutional role policing serves. Part of the moral purpose of the police is that policing exists to realize a common good. Miller argues that this common good is best described as protecting the moral rights of each and all of the members of some jurisdiction. Police, he suggests, jointly contribute to the aggregated rights protection of members of the community because they have a joint right to such protection.<sup>20</sup> Although police institutions have other important purposes that might not directly involve the protection of moral rights, according to Miller these turn out to be purposes derived from the more fundamental purpose of *protecting moral rights*. By making the protection of moral rights their objective reference point, he suggests that the police should be able to use their constabulary independence and discretionary power most appropriately.<sup>21</sup> In contrast with Miller's protecting-moral-rights account, however, John Kleinig argues for a *social peacekeeping account* of policing. This means the role of the police is to ensure or restore peaceful order.<sup>22</sup> Kleinig

suggests that the police are no longer seen merely as the protector of individual life, liberty, and property: they are now also an agency of government that can fulfill various social service functions, including crisis management and order maintenance.<sup>23</sup> He argues that the purpose of policing is not merely restricted to enforcing (i.e. making sure that others do not interfere with an individual's life, liberty, and property).<sup>24</sup> His peacekeeping perspective shifts the focus of the police from coercive force to authority. That is, Kleinig says the police are "given authority to direct, organize, control, respond to, and investigate situations so that social peace may be maintained or restored."<sup>25</sup> He then argues this includes the authority to resolve situations disruptive of social peace by using force, but only when other strategies fail or are inappropriate.<sup>26</sup> Kleinig's subordination of coercive force to the end of a peaceably ordered social environment is a welcome move because it means the police role becomes less about pacification and more about building social cohesion, trust, and cooperation. According to Miller, however, it still leaves open the question of *whose* peaceable order the police are called to ensure or restore. His concern is that the



social peacekeeping account of policing does not rule out the potential for a repressive police state to enact laws that violate human rights. For this reason, Miller suggests that police work ought to be guided by moral considerations and not simply by legal ones. Miller claims that Kleinig's focus on peacekeeping leaves the way open for authoritarian policing in the name of social pacification. He argues that the constraint provided by some form of objective morality is required.<sup>27</sup>

Despite some disagreement, Miller's protecting-moral-rights account and Kleinig's peacekeeping account both put emphasis on enhancing the moral agency of police officers in order to preserve public safety. Miller wants police to use their constabulary independence and discretionary power more appropriately by making the protection of moral rights their objective reference point.<sup>28</sup> Likewise, Kleinig wants police officers to become better moral agents. He suggests that "having regard to the values we associate with peace, a climate of trust in which our human selves may flourish in community with others" provides the basis through which "both police and community might be brought together in a joint and mutually supportive enterprise."<sup>29</sup> The protection of "social peace" and "moral rights" both express a concern with the state's obligation to preserve public safety. An important obligation of states is to respond to threats facing jurisdictional inhabitants and to minimize the need for private rescue. Hobbes refers to this as "the procurement of the safety of the people," which means protecting jurisdictional inhabitants from actions that directly endanger human life. Although a

state's duty to preserve public safety certainly entails "bare preservation," according to Hobbes it also includes "other contentments of life, which every man by lawful Industry, without danger, or hurt to the Commonwealth, shall acquire to himself."<sup>30</sup> Within a state's jurisdiction, the police are the institution generally sanctioned to perform this role. David Bayley and David Weisburd, for instance, suggest that in most countries it is the police who bear primary responsibility for maintaining public safety.

Consequently, I argue that the primary end of the police is to preserve public safety. If we believe that police have a monopoly on the use of force within the state, then we should expect police officers to be armed (or maintain the institutional capacity to be armed). But if it is also true that police are primarily concerned with *preserving public safety*, then they are also required to adhere to a minimum-force principle. This is clearly reflected in the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. According to Principle 5:

*Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:* (a) *Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;* (b) *Minimize damage and injury, and respect and preserve human life;* (c) *Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;* (d) *Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.*<sup>31</sup>

This is an important distinction between police and the military. Police should use the least amount of force necessary to perform their duties, and they should have a

particular concern with avoiding uses of force that endanger the safety of the public. Kleinig points out, for instance, that most police departments adopt some form of a “continuum of force” policy that matches situations with considerations of proportionality.<sup>32</sup> P.A.J. Waddington and Martin Wright suggest that the amount of force used in a given situation is judged as disproportionate when it is sufficiently excessive in comparison to the resistance offered by a subject of police compliance.<sup>33</sup> And Miller and Blackler suggest that police officers are required to communicate clear warnings, expose themselves to more risk and demonstrate adherence to the escalation of force model.<sup>34</sup> If we conclude that police should adhere to a principle of minimum use of force then, at most, we should want police officers to carry small arms (other than specialized units), use them sparingly, and prefer the use of non-lethal weapons (or even no force at all).<sup>35</sup> In short, the principle of restraint is inherent to the policing function.

### *Police Duties*

If, as I argue, it is true that the police institution has a state-sanctioned telos to preserve public safety, then police officers take on duties in using lethal force that do not apply to non-police. It is these special duties that give police exceptional moral permissions for using lethal force that only apply to them. We know that such police obligations exist because we can describe cases where a police officer should be sanctioned for failing to perform his duty where the average person should not. For example, we generally do not

expect a bystander who observes a theft in a store to be punished for failing to confront the thief (even if we might disapprove of the bystander’s inaction and expect her to at least report the crime). But in a situation where the bystander is a police officer, we expect them to intervene and enforce the law against theft. All things being equal, a police officer who did nothing about the theft is acting wrongly and deserves to be sanctioned. As we have seen above, of particular concern to the police are criminal activities that are a serious threat to public safety, especially activities that endanger the lives of persons residing within a given jurisdiction. This means the police are obliged to confront a person (or group of persons) who are doing serious criminal harm (or likely to do serious harm) to persons within their jurisdiction.

Hence, it is a duty of police to *confront serious criminal threats to public safety*. This means police officers have an obligation to prevent a suspect from doing serious criminal harm to members of the public. Preserving public safety means saving innocent lives. The police aim to confront a threat to public safety in order to arrest the perpetrator. Confronting the threat to public safety in this way has a dual purpose. It both prevents future harm, and it brings the suspect before a court of law to determine her culpability for any crimes committed, where she is punished if found guilty. It is better to have a designated police service to forcefully confront criminal harm than to leave such confrontations to other types of groups. On the one hand, we do not want this role to be performed by civilians when it suits

their personal interests. That path leads to unaccountable lynch mobs with widely varying subjective standards of justice. On the other hand, we also do not want to put this responsibility in the hands of the military or other state institutions who have different institutional ends. The police provide a necessary service for society by confronting criminal threats to public safety in a way that is neither personally interested nor wholly coercive.

A second duty of the police is to *accept greater risks to their personal safety* than the average person. In a situation where a victim's life is threatened by an unjust attacker, Cecile Fabre argues that a third party is morally obliged to intervene if it is necessary to rescue the victim. But if the act of rescue is likely to be very costly or very risky to the life of the third party, she suggests, then the obligation to rescue disappears.<sup>36</sup> This calculus is not the same for police. A police officer's duty to forcefully intervene is stronger than that of the average person because jurisdictional inhabitants have given up some of their rights of self-defense so that the police can do their role more effectively. It would be wrong for jurisdictional inhabitants to give up legitimate rights of self-defense if police officers were not in some way duty-bound to forcefully intervene in threatening situations. This duty to accept greater risks does not cancel a police officer's right to defend himself, however. Miller and Blackler argue that a police officer is still morally entitled to kill another person if that person is trying to kill, maim, or otherwise threaten the life of the officer.<sup>37</sup> But police should be more willing to expose

themselves to risky situations. For example, imagine a scenario where an angry drunk man is making loud threats to harm people in a public place. He has not made a move to attack another person, but he is yelling abuse and threatening to attack anyone who goes near him. In such a situation, the right thing to do for a bystander is to call the police and stay out of harm's way. In contrast, the police are duty-bound to confront the angry man because he is posing a threat to public safety. Where we normally expect the average person to move away from danger, sometimes it is the police officer's duty to head towards it.

A third duty of the police is to *exercise restraint*. By exercising restraint, I mean that the police should demonstrate greater reluctance to use lethal force than the average person acting in self-defense when personally threatened. The police use of lethal force should be restrained in this way because the additional powers vested in the police put them in a position of public trust. The political community bestows upon police officers the special responsibility to use lethal force on their behalf. Furthermore, the police should be held accountable for any uses of lethal force. This means that police use of lethal force should always be scrutinized by a fair process that impartially applies the appropriate principles of justification. According to Simon Bronitt, this requires a clear understanding of the principles for good police decision-making and certainty over the legal powers of police to use force.<sup>38</sup> Accountability does *not* mean treating police as political scapegoats whenever there is a lethal

force incident, however. We should not expect police to do the difficult work of confronting dangerous criminals only to then disown them whenever there is a shooting incident. Police officers are not expendable instruments of state to be scapegoated whenever there is a politically sensitive incident to address. In short, the police have a set of “special” obligations conferred upon them by the state, which directs them to intervene to protect life and prevent serious harmful crime within their jurisdiction.

### *Police Permissions*

Having argued that the police have a number of duties connected to their roles, I now outline how these obligations impact the moral permissibility of police action. These are the special permissions to use lethal force when it is necessary to address a serious threat to public safety. Without such exceptional permissions, it would be unreasonable for police officers to carry out the state-imposed duties outlined above. First, the police are morally permitted to *initiate physical conflict*. That is, a police officer is permitted to confront a suspect or offender even when the interaction is likely to turn violent. Since police officers are duty-bound to confront threats to public safety, they must be permitted to use lethal force in some situations when they could otherwise reasonably retreat. It follows that if a police officer has a duty to confront threats to public safety, including potentially violent ones, then it is permissible for him to do so. This moral permission is unlike the standard morality of self-defense where the average person is obliged to take

reasonable measures to avoid a violent confrontation. Reasonable measures are not costly or risky to the defender, and they include escape from the situation and/or seeking police intervention. So the average person is expected to retreat (or help others retreat) from a potentially deadly confrontation when escape is a reasonable option. In contrast, Simon Bronitt and Miriam Gani argue that the police are permitted to confront and arrest a person they have grounds to suspect of a serious crime. This also permits them to use force when a suspect is not compliant.<sup>39</sup> In addition to authorizing use of force to make an arrest, Bronitt and Gani point out that legislation typically confers on police special powers to use force in a range of situations. These include powers to: enter onto property/premises to prevent crime and disorder; protect property; execute warrants and other court orders; conduct forensic testing (including the forcible taking of blood or tissue samples); prevent suicide; and suppress riots and disorder.<sup>40</sup> So the police are obliged to confront serious threats to public safety and this permits them, in some cases, to use proportionate force.

Second, the police are morally permitted to use lethal force to *prevent the escape of a dangerous criminal*. This includes both armed suspects and unarmed fleeing felons who pose a serious threat to public safety. Miller argues that in the case of an *armed suspect* a police officer is morally permitted to shoot that person if he is rightly and reasonably suspected of the crimes of serious rights violations, is attempting to avoid arrest, is armed and using those arms to avoid arrest, and if

the only way to prevent the suspected offender from escaping is to kill him.<sup>41</sup> Miller also argues that a police officer is morally permitted to kill a *fleeing felon* if that person (whether armed or unarmed) is rightly and reasonably suspected of the crimes of killing, maiming, or otherwise threatening the selfhood of some third person(s), is attempting to avoid arrest, and if the only way to prevent the suspected offender escaping is to kill him.<sup>42</sup> So where a convicted felon escapes custody, the police are permitted to use lethal force to prevent escape. In both cases, the police have a duty to preserve public safety. If it is not possible for the police to apprehend a dangerous criminal who poses a serious threat to public safety, then it is permissible for them to use lethal force to prevent his escape. A police officer who failed to prevent the escape of such a dangerous criminal, because she refused to use lethal force, might be liable for the harm the criminal then goes on to do.

Third, police are permitted to use lethal force against a *criminal conspirator who intends to cause serious harm to public safety*. A criminal conspirator is a person who is knowingly engaged in (and necessary to the successful carrying out of) a criminal enterprise. For example, let us return to our imaginary case above where Olivia has planned a bombing attack on the innocent people of Walterville. She draws up plans for the bombing, she acquires the necessary components, she makes the bomb, she plants the bomb, and finally she triggers the bomb. The police have a duty to prevent such an attack on innocent civilians, which includes killing Olivia if this is necessary. And we saw that the police *might not* have to

wait until Olivia is on the verge of triggering the bomb to be justified in shooting her. The police would be justified in using lethal force against such a conspirator at any stage of her plan if arresting the bomber was not possible or the risk to police personnel (or innocent bystanders) was unreasonably high. This use of lethal force also includes cases where one person does not pose a direct threat to public safety by themselves but rather constitutes an integral element of a joint action that, with others, poses a serious threat to public safety. For example, think of not just one bomber alone but a group of four people who plan to execute a bombing together. They initially meet together and agree to go through with the bombing. Their plan is for one person to acquire the necessary components, the second person then makes the bomb, the third person plants the bomb and the fourth person triggers the bomb. A police officer is permitted to use lethal force against any one of the conspirators if this action is necessary to prevent the bomb being detonated and killing or seriously injuring members of the public. Again, arrest must either be impossible or unreasonably risky to the police involved (or other innocent bystanders). Furthermore, the conspirator must be knowingly complicit in the goal of the conspiracy and play a necessary role in its success or otherwise.

In sum, the police are morally permitted to use lethal force against a person who is not himself (or persons who are not themselves) immediately an unjust deadly threat. It is not justified for the average person to kill another person who might be an unjust deadly threat in the future, even in

cases where the attack is likely. In contrast, the police are permitted to confront these types of potential threats, which include necessary uses of lethal force. Since the police have this special responsibility to preserve public safety within their jurisdiction, they are duty-bound to intervene when they suspect that a person is a serious threat to public safety. The preferred police intervention is always arrest of the suspect. But in cases where the suspect of a

serious crime either resists arrest or flees, the police have a duty to use lethal force when it is the only reasonable option for preventing the escape of the suspect and he is: (a) a serious threat to public safety because he has committed a serious crime such as murder, maiming, or other crimes against the selfhood of persons, and/or (b) is armed and has demonstrated the willingness to do serious harm to members of the public.

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## **Limits on the Police Paradigm**

### ***Police Jurisdiction***

The policing paradigm outlined above has its limits, however. First of all, it is limited by police jurisdiction. The police derive the necessary powers to perform the policing role from the state, which has the authority to exercise legal jurisdiction over criminal acts within a (mostly) geographic area. In other words, the policing paradigm exists in tandem with policing jurisdiction. Police are duty-bound to preserve public safety within their jurisdiction; this is the source of their additional moral permissions (and restraints) when it comes to using lethal force. When police officers are outside their jurisdiction, they are no longer duty-bound to preserve public safety *qua* police. Instead, they revert to the standard moral justifications based on self-defense. There can be a problem, however, when police have a duty to preserve public safety from a serious criminal threat but cannot use standard policing methods to reach the perpetrators. This is the issue of extra-jurisdictional policing; that is, the fulfillment of policing obligations

outside the police jurisdiction. For instance, Mark Maxwell suggests that it might be that a criminal conspirator is immune to arrest for much of the time that he is preparing for an attack, perhaps because he is operating in an area of the world where policing is weak or non-existent.<sup>43</sup> The problem in this type of case is the inadequacy of using normal policing methods and capabilities for dealing with the conspirators involved. Bronitt et al. point out that international terrorism in particular creates a context in which legal systems have struggled to determine the legitimate boundaries on the use of force to prevent violent acts.<sup>44</sup> One option for the police is cooperation and/or agreements with other police jurisdictions. A second option is creating international policing jurisdictions. This includes either the establishment of an international policing agency (e.g. INTERPOL) or specifying an international jurisdiction for a national policing agency (e.g. FBI). A third option is to use military force in lieu of police capabilities.

But this approach is generally high risk, involves equipment and training well beyond standard police capabilities – such as the use of strategic airlift and special operations forces – and contributes to the problem of militarization (which I describe in more detail below).

### *A State of Emergency*

A second limit for the policing paradigm is the use of lethal force during a state of emergency where law enforcement is no longer effective. According to Larry May, a state of emergency occurs when a government temporarily changes the conditions of its political and social institutions in response to a particularly serious large-scale emergency, such as a natural disaster, war, or rioting. Due process constraints on government officials, such as *habeas corpus*, might be temporarily suspended.<sup>45</sup> Again, the type of emergency that concerns us here is one that has such a serious impact on society that the existing police capabilities are not sufficient to enforce the law and preserve public safety. In such cases, it might be necessary to call in the military to assist police in dealing with the emergency. Here the military supplement and enhance the capabilities of the police. The goal is political stabilization and a return to effective law enforcement. But a risk is the likelihood that soldiers will act with less restraint than police officers because they are trained and equipped to fight wars rather than to arrest suspects.

The main reason to permit the use of lethal force in a state of emergency, either by police or the military, is to address the threat posed

to innocent lives. When a mob is violent or in an uncontrollable frenzy, suggests Jyoti Belur, it might be necessary to resort to the use of lethal force. But then, he suggests, it must be used in a controlled, precisely targeted and methodical manner.<sup>46</sup> The priority should be the preservation of lives, but this is not the only issue confronting police. Mass rioting also leads to the widespread destruction of property, and some people will take advantage of the disorder to engage in looting. Consequently, force might be necessary to halt looting and restore order. Shooting rioters who are intent on criminal activities that do not involve violence against persons, such as looting and vandalism, seems like an overly harsh and heavy-handed response. Yet the chaotic way that riots can unfold suggests that the police need to use effective force to prevent the overall situation from deteriorating into something that becomes life threatening. We could say that looting, while not necessarily a threatening activity in itself, contributes significantly to conditions that are life threatening. In this case, the police have a duty to take the proportionate actions necessary to protect the lives of inhabitants by restoring order. These necessary actions include using the means available to them. Whether or not lethal force is used, police officers (or soldiers) who find themselves caught up in a riot are clearly faced with a difficult choice either way.<sup>47</sup> What we can say with certainty, however, is that restoring order is a police responsibility and that the presence of unauthorized armed vigilantes or militia groups is likely to make the violence of a riot far worse.

### *The Problem of Militarization*

A third limit on the policing paradigm is the maintenance of the police/military distinction. The English-style police model emphasizes the importance of the distinction between the police and the military. The objectives of this style of policing, suggests Jude McCulloch, are to protect life and property, prevent crime, discover crime, detect the perpetrators of offences and preserve the peace. In contrast, he suggests, soldiers prepare to wage war, kill enemies and destroy their property.<sup>48</sup> Not all countries have such a strong institutional distinction between the police and the military. France's Gendarmerie, for example, has a paramilitary function. But the clear separation maintained in the English model is morally grounded in the notion that it prevents police from adopting a mindset in which they believe they are "fighting a war" against the same people they are supposed to protect.

It is true that the police and military have a few things in common. Peter Kraska and Victor Kappeler, for example, point out that the police and the military are "the state's primary use-of-force entities, the foundation of its coercive power."<sup>49</sup> Furthermore, Jerome Skolnick and James Fyfe note that both organizations wear uniforms, use specialist language and codes, are overwhelmingly male and operate within a strictly hierarchical setting. Like soldiers, they suggest, police officers are part of an institution that is organized into a hierarchy where orders from superiors can have a greater impact on their actions than the law.<sup>50</sup> Despite these

commonalities, however, the purpose of the police is distinct from the purpose of the military. Police are supposed to enforce the law and preserve public safety within a legal jurisdiction, but this is not the role of the military. In reflecting on the police/military distinction, Paul Sieghart suggests that "the job of the soldier is to kill the Queen's enemies in war-time; that of a policeman is to protect the Queen's subjects in peace-time."<sup>51</sup> Police, like soldiers, are permitted to use lethal force in the course of their duties, but injuring and taking life are nevertheless fundamentally in conflict with the police duty to protect life.<sup>52</sup>

Obviously, the police should not shirk their duty to use lethal force to protect the safety of the public when it is necessary. But the temptation to militarize the policing role is an ever-present moral problem. Of particular concern is the risk that the police become a repressive tool of the state. The political philosopher John Rawls held that in developing the principles of domestic justice, a state should not use an army against its own people. Instead, it should use the police to keep domestic order and a judiciary and other institutions to maintain an orderly rule of law. This is very different from the institution that is needed to defend against aggressive states, he suggested.<sup>53</sup> A second specific moral concern involves the move away from standard policing methods to increasingly embrace military approaches. Police militarization, suggests Peter Kraska, is the process whereby civilian police increasingly draw from, and pattern themselves around, the tenets of the military paradigm. He describes this as "the



process of arming, organizing, planning, training for, threatening, and sometimes implementing violent conflict to militarize means adopting and applying the central elements of the military model to an organization or particular situation.”<sup>54</sup> The military ethicist George Lucas Jr. points out that the military have a “warrior mindset,” which means soldiers instinctively think that their job is to “kill people and break things.”<sup>55</sup> The risk here, then, is that the police take on the warrior mindset of the military and act with less restraint than they should. In contrast, the police should adhere to a principle of minimum force. In other words, police should use the least amount of force necessary to protect the public. Jude McCulloch, for example, says that police use of force should be to overcome resistance to arrest or to protect life.<sup>56</sup> A third moral concern with police militarization is the extensive harm caused by military-grade weapons and technologies. Military-grade weapons and technologies are designed to maximize the destruction of enemy combatants. Weapons with such highly destructive properties include high-powered automatic rifles, grenades, tanks, ships, fighter

aircraft, high explosives, precision-guided missiles, and so on. The purpose of overwhelmingly destructive weapons is to achieve a particular political effect on an adversary. So the state using this kind of technology against its own citizens necessarily raises troubling questions. For example, in 2016 the Dallas police used a bomb robot to kill a man – Micah Johnson – who had shot five police officers. Their decision, along with images of police outfitted in riot gear and other heavy-duty equipment during protests against police brutality across the US, set off a storm of debate about the militarization of law enforcement in the US. These protests highlighted the belief that police institutions should be kept clearly distinct from military institutions.<sup>57</sup> As we have seen, the police have a responsibility to confront a serious criminal threat to public safety. But incremental moves towards police militarization – such as using a remote-controlled robot to detonate an explosive – increase the risk of disproportionately harmful outcomes. If we want to maintain a police system that preserves public safety, we need to proceed with caution.

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## Conclusion

Police officers have special permissions to use lethal force, based on their state-imposed duties, which are derived from their purpose to preserve public safety. Hence, the police use of lethal force goes beyond warding off an immediate threat, in some cases, because police have a duty to preserve public safety within their jurisdiction. Since the police

have such a state-imposed responsibility within their jurisdiction, they are duty-bound to intervene when they suspect that a person is a serious threat to public safety. But it also means that the principle of restraint is inherent to the policing function and therefore police are obliged to go to greater lengths to avoid killing. The preferred police

intervention, after all, is to arrest the suspect. This model for the just use of police force can be made difficult in extreme situations such as a mass riot. In such cases, police might be forced to take more drastic measures to restore order and thereby protect the lives of jurisdictional inhabitants. These measures might include

utilizing military force for the duration of an emergency. But such militarization of policing should not be accepted as a permanent feature of police institutions. Instead, policing ought to always default to a standard that emphasizes the minimum use of force necessary for police to effectively preserve public safety.

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## Notes

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1 "'Police' refers to a particular kind of social institution," suggests Robert Reiner, while "'policing' implies a set of processes with specific social functions. 'Police' are not found in every society, and police organizations and personnel can have a variety of shifting forms. 'Policing,' however, is arguably a necessity in any social order, which may be carried out by a number of different processes and institutional arrangements." Reiner, *Politics of the Police*, 4.

2 In many countries that are not liberal democracies, police are understood very differently than in, for example, countries with a Common Law jurisprudential culture and a broadly liberal political culture. Here I am concerned with the English-style police model, which emerged from Sir Robert Peel's London Metropolitan Police in the nineteenth century, and is used in the United Kingdom, the United States, Canada, Australia and New Zealand.

3 See Blum and Heymann, "Law/Policy Targeted Killing," 146.

4 Miller, *Terrorism and Counter-Terrorism*, 99.

5 See *ibid.*

6 The main risk to the police officer is that he inadvertently triggers the bomb by shooting the suspect.

7 See Bakircioglu, "Right to Self-Defence," 156.

8 See Squires and Kennison, *Shooting to Kill?*, 85.

9 *Ibid.* My emphasis.

10 The purpose of the immediacy requirement in such circumstances is to balance the defender's right not to be killed with the requirement to take reasonable measures to avoid the deadly confrontation.

11 Weber, "Profession/Vocation of Politics," 310–11.

12 Police jurisdiction here refers to the physical domain where police officers are legally authorized by the state to employ special powers of law enforcement, including arrest, search, seizure, and so on and so forth. In other words, a police jurisdiction is the domain over which the police have the legal authority to enforce the law on behalf of the state. Consequently, the concept of "jurisdiction" is fundamentally important for fully understanding the police role and the limits on police authority.

13 See Bittner, "Police in Modern Society," 44.

14 See Dunham and Alpert, *Critical Issues in Policing*, 3.

15 See Waddington, *Policing Citizens*, 30.

16 Reiner, *Politics of the Police*, 33.

17 Reiner, "Policing a Postmodern Society," 675.

18 *Ibid.*, 681.

- 19 See Miller, Blackler, and Alexandra, *Police Ethics*, 47.
- 20 See Miller, *Moral Foundations of Social Institutions*, 245.
- 21 See *ibid.*, 248.
- 22 See Kleinig, *The Ethics of Policing*, 28.
- 23 See Kleinig, *Ethics and Criminal Justice*, 54.
- 24 See Kleinig, *The Ethics of Policing*, 29.
- 25 Kleinig, *Ethics and Criminal Justice*, 57.
- 26 See *ibid.*
- 27 See Miller, *Moral Foundations of Social Institutions*, 247–8.
- 28 See *ibid.*
- 29 See Kleinig, *The Ethics of Policing*, 29.
- 30 Hobbes, *Leviathan*, 231.
- 31 United Nations, “Basic Principles.”
- 32 Kleinig, “Uses of Police Force,” 91.
- 33 See Waddington and Wright, “Police Use of Force,” 487.
- 34 See Miller and Blackler, *Ethical Issues in Policing*, 80; see also Kleinig, “Uses of Police Force,” 91.
- 35 Non-lethal weapons do not completely replace the need to use lethal force because they create their own set of problems for the proportionate police use of force. For example, Kleinig points out that police are now more likely to use (or threaten to use) tasers to ensure conformity rather than engaging in the harder work of persuasion. “Uses of Police Force,” 91.
- 36 See Fabre, “Mandatory Rescue Killings.”
- 37 See Miller and Blackler, *Ethical Issues in Policing*, 80.
- 38 See Bronitt, “Rethinking Police Force,” 74.
- 39 See Bronitt and Gani, “Regulating Reasonable Force,” 157.
- 40 *Ibid.*
- 41 See Miller and Blackler, *Ethical Issues in Policing*, 81.
- 42 See *ibid.*, 80.
- 43 See Maxwell, “Rebutting the Civilian Presumption,” 37.
- 44 See Bronitt, Gani, and Hufnagel, *Shooting to Kill*, xiii.
- 45 See May, “Targeted Killings and Proportionality,” 27.
- 46 See Belur, *Permission to Shoot?*, 4.
- 47 Miller and Blackler make the suggestion that deterrence of criminal behavior during a state of emergency might be moral justification for the police to use lethal force against actions such as looting. According to Miller, a police officer who is duty-bound to enforce the law might be morally entitled (and perhaps morally obliged) to kill a person if: (a) that person is rightly and reasonably suspected of a type of crime which is so widespread in an existing state of emergency as to constitute a serious threat to fundamental rights of citizens; (b) deadly force is the only available deterrence in the circumstances of this particular state of emergency; (c) that person is attempting to avoid arrest; (d) the only way to prevent the suspected offender from escaping is to kill him/her; (e) perpetrators of the type of crime in question have been warned that they will be shot dead under conditions (a), (c) and (d); and (f) the policy specified in conditions (a)–(e) has been adopted as a limited policy for a specific delimited period. See *Ethical Issues in Policing*, 81.
- 48 See McCulloch, *Blue Army*, 16.
- 49 Kraska and Kappeler, “Militarizing American Police,” 2.
- 50 See Skolnick and Fyfe, *Above the Law*, 138–9.
- 51 See Sieghart, “Harmless Weapons,” 841.
- 52 See *ibid.*
- 53 See Rawls, *The Law of Peoples*, 26.
- 54 Kraska, “Militarization and Policing,” 503.
- 55 Lucas, “Postmodern War,” 296.
- 56 See McCulloch, *Blue Army*, 17.
- 57 See Kozłowska, “American Police Like Soldiers.”

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