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Where and when police resort to the use of force is a subject of ongoing debate, particularly in relation to the management of persons with a mental illness. This Briefing Paper outlines police use and abuse of force through comparative analysis of police practice in the United States of America (US) and Australia. The author identifies both the similarities and differences in approach by Australian and US police to the use of force, and available techniques. The findings of this research project note that persons who are intoxicated or suffering from a mental illness are the most vulnerable to excessive use of force, and further research is warranted into police practice and use of force options.



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Comparative Perspectives on Police Use of Force: A US and Australian Synopsis of Research, Law and Policy

Ms Lucy Schyf

Overview

This briefing paper summarises and compares policy and practice on police use of force in the United States (US) and Australia. It reviews the research, legal and policy definitions of use of force, histories and prevalence in the US and Australia, and strategies to avoid excessive use of force. The paper also examines the use of excessive force on persons with mental illness. It concludes that use of force is a major issue in 21st Century policing, undermining public confidence in police and attracting critical scrutiny by the media, politicians and police themselves.

Defining Police Use of Force

Police in both Australia and the US play a significant role in enforcing the law, preventing crime and maintaining order in society. Officers are legally authorised to use force in specified circumstances, are educated in the use of force, and face many situations during their careers where force is considered appropriate (Terrill, 2007, p.108). However, in some circumstances, police abuse these powers by applying excessive force against individuals. Referred to as 'police abuse of force', this concept can be defined as excessive or unnecessary force pursued against an individual that exceeds the level deemed acceptable under the law (Stenning et al, 2009, p.99; Terrill, Leinfelt & Kwak, 2008, p.61).

Examples of police 'abuse of force' include: yelling, pushing, grabbing or tackling; the inappropriate use of capsicum spray or taser charge; excessive attacks with a baton or other object; high-speed vehicle pursuits; use of deadly force; the threat of potential use of force; and the extent by which police apply force (dis)proportionately to the offence (Terrill et al, 2008).

Discretion is an important aspect in police use of force decision-making. Of all personnel in the criminal justice system, police have the greatest opportunity to exercise discretionary judgment (Wortley 2003, p.2). Police discretion is defined as the capacity possessed by a police officer to select a decision from a range of possible actions (Young, 2011, p.4). To avoid escalation, police may legitimately choose not to exercise force (although lawfully permitted), and instead resort to a safer strategy of negotiation (Wakefield and Fleming, 2009, p.85).

Comparative Historical and Legal Perspectives on Police Use of Force in Australia and the United States

The US and Australia developed professional police forces in the nineteenth century with the same objectives – to prevent crime, keep the peace, and bring criminals to justice (Alpert, Dunham & McDonald, 2004, p.39). Police abuse of force in Australia has resulted in deaths from police vehicle pursuits, fatal shootings in Victoria, racial riots in Sydney, physical assaults, and use of capsicum spray and tasers (Baker, 2009). Similarly, in the US, excessive use of force cases such as the Rodney King beating and subsequent riots have instigated increased civilian oversight on police (Prenzler, 2009).

Concern about excessive force in both Australia and the US has tended to focus on police mistreatment of marginalised or minority groups, such as indigenous people, the unemployed, protestors, young persons and ethnic minorities (Baker, 2009). In Australia, indigenous people are over-represented in the criminal justice system and thus more susceptible to abuse by police, a trend also noted in the US, where police officers have tended to be more violent towards ethnic and racial minorities and Indian native tribes (Terrill et.al, 2007). As a result, legislative amendments have been introduced in both countries addressing policing practices in relation to minority groups (Hass and Orthmann, 2009).

Officers are required to make split-second decisions in uncertain, rapidly changing circumstances, where reasonable and necessary force may be applied. The legal criterion for deploying force includes “necessity” - that the use of force, and the amount of force used, is required in a particular situation; that it be “reasonable” – that is, to make an arrest, to restrain suspects, or for self-defence (of the officer or others); and occur in circumstances where the officer is required to prevent the commission, continuation or repetition of an offence, apprehend the person, prevent the escape of a person (Queensland Criminal Justice Commission, 2000; refer Table A). Deadly force may be reasonably necessary in the defence of life, or to arrest dangerous suspects.

The Law in Australia: Reasonable Force

The law in Australia comprises case law (common law) and statute. There are differences amongst the jurisdictions, but harmonisation is promoted through policy guidelines (Wakefield and Fleming, 2009). Generally, these laws suggest that the use of force should be used only as a “last resort,” when considered appropriate and necessary (Baker, 2009).

Australian use of force law is governed by general powers (see Table A) and specific police powers (see Table B). These are broadly consistent across the states.

The Law in the United States: Reasonable Force

Unlike Australia, the US has an entrenched Bill of Rights, the first ten amendments to its Constitution limiting the authority of US federal government and congress. The Bill of Rights has shaped the law relating to police powers at the state level, with the US Supreme Court often invoking the 4th Amendment to limit police powers, which states “People have the right to secure their belongings, persons, houses, papers and effects, against unreasonable searches and seizures” (Alpert et.al, 2004; p.21). As a result, the US Supreme Court plays a significant role in setting standards for policing, asserting that the use of force at arrest must be acceptable and reasonable by taking into account three measures: the “severity of the crime, whether the suspect poses a threat to the safety of the officers or others, and whether he/she is actively resisting or attempting to evade arrest” (Alpert et.al, 2004, p.21). Civil actions alleging police use of excessive force may also be brought against police under a variety of state laws (Klockars, 1995, p.14).

Situational Causes in Police Use of Force

Numerous studies on the nature and frequency of police use of force indicate officers often rely on tactics at the lower end of the force spectrum, including actions such as grabbing or restraining (Terrill et al, 2007). In both the US and Australia, situational factors include encounters with members of different racial, ethnic, religious and socio-economic groups; age and gender; and individuals under the influence of alcohol and/or drugs, or with

a mental illness. In addition, the impact of negative public opinion towards police use of force has been noted.

Extensive research in the US regarding police use of force has also identified factors in police-citizen encounters contributing to the likelihood that police will use force, including levels of violence and weapon-carrying within the community, and vague definitions in domestic laws that classify acceptable and unacceptable police practices (Adams, 1995; Jefferis, Butcher and Hanley, 2011; Worden, 1995).

There is a lower prevalence of police use of force in Australia, partly due to the general under-reporting of incidents. This has instigated recent changes to reporting practices in Australian policing agencies nationally (Terrill et.al, 2007). In addition to the situational factors on police use of force noted above, Australian research has identified dangerous and demanding situations (e.g. police shootings, racial riots, vehicle pursuits) and positive or negative impacts upon visitors and international tourists as important issues (Baker, 2009).

Strategies Assisting Frontline Police, Preventing Excessive Force

Public concern in the US and Australia has led to legislative amendment and changed policing practices on use of force in recent years. Police training across Australia has been altered, with the introduction of new restraint technologies (taser, capsicum spray) intended to minimise the use of force (Dalton, 1998). In the US, similar efforts to control police abuse of force have consisted largely of employing less lethal devices such as capsicum spray, tasers and handcuffs (Klockars, 1995, p.29). The threat of criminal or civil action has also impacted on officer behaviour, and introduced attempts to reduce the abuse of force (Klockars, 1995, p.29).

Both countries recognise that use of force data collection informs operational safety training, assists with monitoring trends and is an early warning sign of excessive use of force by individuals (Office of Police Integrity, Victoria, 2009; Terrill et.al, 2009). Systematic research on the use of force is a relatively recent addition to the broader policing literature. In both Australia and the US, such attention is warranted as excessive

USE OF FORCE POWERS IN AUSTRALIA

Table A: General Powers Governing Use of Force

		Authorised Person	Mental State	Circumstance	Extent Of Powers
Cth	<i>Crimes Act 1914</i> subs3ZC(1)	a person	-	in the course of arresting a person for an offence	must not use more force, or subject the other person to greater indignity, than is <i>necessary</i> and <i>reasonable</i> to make the arrest or to prevent the escape of the other person after the arrest
ACT	<i>Crimes Act 1900</i> subs221(1)	person	-	in the course of arresting another person for an offence	shall not use more force, or subject the other person to greater indignity, than is <i>necessary</i> and <i>reasonable</i> to make the arrest or to prevent the escape of the other person after the arrest
NSW	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> s231	police officer or other person who exercises a power to arrest	-	to make the arrest or to prevent the escape of the person after arrest	may use such force as is <i>reasonably necessary</i>
NT	<i>Criminal Code Act</i> s27	any person (not explicitly stated)	does not intend to cause death or serious harm	to lawfully execute any sentence, process or warrant or make any arrest	the application of force is justified provided it is <i>not unnecessary</i> force, and it is not such as is likely to cause death or serious harm
Qld	<i>Police Powers and Responsibilities Act 2000</i> subs615(1)	police officer, and anyone helping the police officer	-	attempting to exercise a power under this or any other Act against an individual	it is lawful to use <i>reasonably necessary</i> force to exercise the power
SA	No Statutory Powers Common Law Applies	-	-	-	-
Tas	<i>Criminal Code Act 1924</i> subs26(1)	any person	-	the person is justified or protected in the execution of any sentence, process, or warrant, or in making an arrest	it is lawful to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest
Vic	<i>Crimes Act 1958</i> s462A	a person	believes on reasonable grounds it is necessary	to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence	may use such force <i>not disproportionate</i> to the objective (to prevent the commission, continuance or completion of an indictable offence)
WA	<i>Criminal Code Act Compilation Act 1913</i> s231	a person, and any person lawfully assisting him	-	the person is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest	lawful to use such force as may be <i>reasonably necessary</i> to overcome any force used in resisting such execution or arrest

Table B: Specific Police Powers Governing Use of Force

		Authorised Person	Mental State	Circumstance	Safeguards	Extent Of Powers
Cth	<i>Crimes Act 1914</i> subs3ZC(2)	a constable	<i>believes on reasonable grounds</i> that it is necessary to protect life or prevent serious injury or that the person cannot be apprehended in any other manner	in the course of arresting a person for an offence	if attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender	may do anything that is likely to cause the death of, or grievous bodily harm to, the person
ACT	<i>Crimes Act 1900</i> subs221(2)	police officer	<i>believes on reasonable grounds</i> that it is necessary to protect life or prevent serious injury or that the person cannot be apprehended in any other manner	in the course of arresting a person for an offence	if attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender	may do anything that is likely to cause the death of, or grievous bodily harm to, the person
NSW	-	-	-	-	-	-
NT	<i>Criminal Code Act</i> s28	police officer	reasonably <i>believes</i> that the person may commit an offence punishable by life imprisonment	when lawfully attempting to arrest (or assist) a person who may commit an offence punishable with life imprisonment and has taken flight	has been called upon to surrender and has been allowed a reasonable opportunity to do so	the application of force that will or is likely to kill or cause serious harm is justified provided it is <i>not unnecessary</i> force
Qld	<i>Police Powers and Responsibilities Act 2000</i> s616	police officer	reasonably <i>suspects</i> the person has, is or will commit an offence of life imprisonment	a person has, is or will commit an offence of life imprisonment; or has committed it and attempted to escape	the police officer must, if practicable, first call on the person to stop doing the act	the police officer may use force likely to cause grievous bodily harm to a person or the person's death
SA	-	-	-	-	-	-
Tas	<i>Criminal Code Act 1924</i> s30	police officer, and any person lawfully assisting	the person is <i>suspected on reasonable grounds</i> of having committed a specified crime (treason, piracy, murder, rape, arson, burglary, endangering life)	when lawfully arresting a person with or without warrant, and the person sought to be arrested takes to flight in order to avoid arrest	the person has been called upon to surrender	it is lawful to use such force (which is intended or is likely to cause death or grievous bodily harm) as may be <i>reasonably necessary</i> to prevent escape
Vic	-	-	-	-	-	-
WA	<i>Criminal Code Act Compilation Act 1913</i> ss233, 235	A police officer or a person assisting	the person is reasonably <i>suspected</i> of having committed an offence punishable with life imprisonment	a person is being lawfully arrested for an offence of life imprisonment and attempts to avoid arrest; or has been arrested for an offence punishable by more than 14 years	the person is called on to surrender	it is lawful to use such force (which is intended or is likely to cause death or grievous bodily harm) as may be <i>reasonably necessary</i> to prevent escape

use of force cases have a significant adverse impact upon public attitudes towards police (Alpert et.al, 2004; Reisig, McClusky Mastroski and Terrill, 2011)

Use of Force Models

Police use of force can be graded in terms of severity. In the US, this is referred to as the 'force continuum,' a concept used by many police departments for determining the standard by which police practices can be measured, evaluated and modelled (Terrill, 2007, p.111). Its aims are to provide officers with specific guidance on how to respond to certain forms of resistance by suspects, and indicates when an officer may escalate to the next level of force application, where a suspect either fails to comply with directions or increases the level of resistance (Terrill, 2007, p.111; Williams, 2002, p.14).

In Australia, police administrative guidance and directions follow 'Operational Procedures Manuals' (OPM). For example, the OPM in Queensland outlines the situational use of force model, where the use of force must be, "authorised, justified, reasonable, proportionate, appropriate, legally defensible and tactically sound and effective" (Queensland Crime and Justice Commission, 2000, p. 3). When deciding on the type of force to use in different circumstances, the person's physical attributes, incident location and possible injury to the officer, suspect and others should be considered (Queensland Crime and Justice Commission, 2000, p. 3).

Use of Force on Mentally Ill Persons

Research suggests that police tend to act coercively toward persons with mental disorders (Johnston, 2011, p.127) While, in general, there has been an increased use of taser guns and other forms of physical force to obtain compliance by suspects, a disproportionately high number of these cases occur against people with a mental illness (Crime and Misconduct Commission, 2011a). For example, specialist officers in Victoria used tasers in 83 incidents, 85% of which involved a person with a mental illness (Crime and Misconduct Commission, 2011b). In comparison, a US study on official police use-of-force reports found that mentally disordered persons were 37% more likely to experience minor force and 57% more likely to experience serious force than those who were not deemed "mentally impaired" (Johnston, 2011, p.131).

Rather than inducing compliance, the effects of taser use can instead increase the level of agitation, strength and mental disturbance of individuals, leading to even greater escalation in police use of force techniques (Crime and Misconduct Commission, 2011b). Unfortunately, scant attention has been given to the relationship between mentally disordered individuals and police use of force (Johnston, 2011, p.127).

Legislation Governing Use of Force Against Persons with Mental Illness

General powers governing use of force in Australia have been set out in legislation stipulating that force is lawful as long as it does not intend to cause death or serious harm, and only if it is believed to be necessary on reasonable grounds. Additionally, specific police powers indicate that police may use force as long as it is believed on "reasonable grounds that is necessary, to protect life of prevent serious injury (e.g. *Crimes Act 1914* (Cth); *Crimes Act 1900*, (ACT); *Police Powers and Responsibilities Act 2000* (Qld); see also Table B).

US legislation is similar in that each state also holds the power to apprehend individuals who are apparently mentally disordered and believed to be at risk of harming others (Commission for Public Complaints, 2008). Most legislation allows apprehension and use of force to take place when the apparently mentally disordered individual is "acting in a manner likely to endanger the safety of others" (Commission for Public Complaints, 2008).

Summary

In conclusion, police use of force is difficult to define conceptually since there are many different occasions and contexts justifying its application. Significant policies and procedures have been adopted in Australia and the US aimed at controlling police use of force, including use of force models and oversight mechanisms, and both countries enforce similar legislative standards through codes of practices. While the prevalence of police use of force is relatively similar in both systems and departmental policy, Australian police appear to be less accustomed to using force, though this may reflect limited reporting of use of force incidents, signifying a knowledge gap in Australian research.

It is clear, however, that both the US and Australia need further research on the

necessary, reasonable and lawful uses of force. The situational factors triggering police use of force are similar in both countries, with the main cause being drunk and intoxicated suspects, and the challenges faced by police in the management of mentally ill persons within the community. Police use of excessive force continues to attract attention from the media, politicians, community, and the police themselves. Thus, future developments should involve improving police responses to incidents through training, increasing use of less-lethal weapons, and deployment of specialist police officers to deal with potentially violent offenders. Continuing research and further comparative analysis of US and Australian use of force would assist in enhancing future policing practices and reducing the potential for excessive use of force.

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This Briefing Paper highlights research undertaken by Lucy Schyf, a Griffith University Criminology and Criminal Justice (CCJ) undergraduate student, during her professional placement with CEPS in the Use of Force project. Lucy commences her CCJ Honours program in 2012.

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