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Debate

Dreams of Accountability, Guaranteed Surveillance: The Promises and Costs of Body-Worn Cameras

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Introduction

Even prior to the widespread adoption of police-worn body cameras, video has played a role in illuminating evidence of policing misconduct and fatal shootings, including bystanders' cell phone cameras, dashboard-mounted cameras, and CCTV surveillance. But among these recording devices, it is body-worn cameras that have garnered national attention as instruments that would facilitate accountability and improve police-community relations as a whole. Proponents claim that body-worn cameras combine features that previous forms of video recording only possessed piece-meal: a high level of mobility, chain-of-custody, and the capacity to capture audio-visual data continuously. Unlike cell phone-produced footage, which relies on the presence of a bystander willing to record the scene of an incident, body-worn cameras would eliminate the need for fortuitous happenstance by recording continuously and approximating the field of view of police officers on the ground in day-to-day activities. But it is this same feature of constant surveillance that has sparked concerns from civil rights groups about how body-worn cameras may violate privacy. The intimacy of body-worn cameras' presence—which potentially enables the recording of even mundane interpersonal interactions with citizens—can be exploited with the application of technologies like facial recognition; this can exacerbate existing practices that have historically victimized people of color and vulnerable populations. Not only do such technologies increase surveillance, but they also conflate the act of surveilling citizens with the mechanisms by which police conduct is evaluated. Although police accountability is the goal, the camera's view is pointed outward and away from its wearer, and audio recording captures any sounds within range. As a result, it becomes increasingly difficult to ask whether one can demand greater accountability without increased surveillance at the same time.

Crafting better policies on body-worn camera use has been one of the primary avenues for balancing the right of public access with the need to protect against this technology's invasive aspects. However, no universal policies or norms have been established, even on simple issues such as whether officers should notify citizens that they are being recorded. What is known is that body-worn cameras present definite and identifiable risks to privacy. By contrast, visions of accountability have remained ill-defined, and the role to be played by body-worn cameras cannot be easily separated from the wider institutional and cultural shifts necessary for enacting lasting reforms in policing. Both the privacy risks and the potential for effecting accountability are contingent upon an *ongoing process of negotiation*, shaped by beliefs and assumptions rather than empirical evidence.

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Assessing the stakes

Evaluating how well expectations measure up against the realities of body-worn camera program implementation is difficult, particularly given that there are about 18,000 local and state police agencies in the United States (Reaves 2011). There is a wide range of local variables such as departmental policies and resources, existing police-community dynamics, and data policy policies and laws. And yet there is little attempt to assess the efficacy of most new technologies in the diverse policing ecosystem.

While surveillance and privacy implications should not be trivialized, they must be placed within a hierarchy of other concerns. In already heavily surveilled communities, body-worn camera footage could be a boon to citizens' complaints, whereas in less-surveilled communities they might provoke new privacy concerns. The trade-off may be less desirable when additional surveillance practices are incorporated. Moreover, for people experiencing homelessness or who do not have adequate access to private spaces outside of the home, the line between public and private space may be blurred and as a result, even the mundane recording of public space can be invasive. Malkia Cyril of Center for Media Justice has also noted that people of colour historically have been significant targets of law enforcement and government surveillance, and practices applied to these populations have tended to be forerunners to the expansion of surveillance (McLaughlin 2016). Body-worn cameras may facilitate long term changes to the nature of policing, such as the expansion of low-level arrests to meet quotas because officers are more inclined to follow procedure while being recorded on the job, or the use of footage to coerce individuals to take plea bargains even where video evidence is not definitive (e.g. ODS Consulting 2011: 10).

A focus on surveillance and privacy has also distracted from contending with tradeoffs occurring on a more basic level, such as the "crippling" monetary costs of storing massive amounts of video data (Miller et al. 2014: 32); of processing footage requests from the lawyers, journalists, and the public; the labor involved in redacting sensitive information; and the initial costs of contracts with body-worn camera distributors which, as critics have pointed out, are in many cases excessive as a result of departments rushing into no-bid deals, neglecting to test vendor options, and failing to anticipate unexpected costs (Frosch and Elinson 2016). The degree of investment into body-worn camera programs should be weighed against other possible uses of personnel and resources for effecting police reform (e.g., better training, internal auditing, or stronger disciplinary sanctions against police misconduct).

Defining the scale and scope of accountability

To assess the extent to which body-worn cameras have improved police accountability, it is necessary to identify from where such expectations developed. While many agencies already had body-worn camera programs in place, body-worn cameras gained widespread public support after the shooting of Michael Brown in August 2014. As a result, the type of accountability initially envisioned concerned the most egregious form of police misconduct—specifically a nationwide pattern of deadly shooting of young black men. Efforts to indict Darren Wilson, the officer who killed Brown, became mired in a prolonged public debate over the disputed circumstances of the shooting, where no cameras had been present (Friedersdorf 2014). Since then, a wider range of claims about body-worn cameras has emerged: that footage can exonerate officers of false accusations (Gass 2015), serve as a management or training tool (White 2014: 10), and be used to conduct audits (The Constitution Project Committee on Policing Reforms 2015: 4).

Governance and enforcement structures need to be in place for body-worn cameras to serve as a catalyst for accountability. Where footage has been successful in setting in motion a prosecutorial process, it has been through the work of journalists and citizens making public records requests, paired with protests and activism. This is exemplified in one of the first instances in which body-worn camera footage was used to pursue a murder charge against a police officer (Rojas and Kolb 2015). In January 2015, two Albuquerque police officers fatally shot James Boyd, a mentally-ill homeless man. The helmet camera of one officer

served as the primary evidence in pursuing the charges (Associated Press 2015). However, several circumstances affected how the footage came to serve as evidence in the first place. Foremost, the evidence alone did not catalyze the move to prosecute the two officers. The police chief had ruled the shooting justified (McKee 2014), and it was only after the footage was requested and uploaded to YouTube—which prompted significant local protests—that a more formal investigation was initiated (Berman 2015). Public calls for accountability were further energized when the Department of Justice released a report based on an investigation that found that Albuquerque police officers "too often use deadly force in an unconstitutional manner" (Berman 2014). Such cases illustrate how the accountability process is triggered only when the right configuration of social, political, and institutional conditions are in place. It is difficult to separate out what is attributable to body-worn cameras and what has been the result of wider political and cultural shifts in how policing institutions legitimize and account for their actions.

Policies that govern police use of body-worn cameras partially frame accountability, but the explosive developments that spurred the widespread adoption of body-worn cameras harken back to the enduring efforts required to achieve institutional reform. Yet, "best practices" are unclear and contested (e.g., whether officers should be allowed to review body-worn camera footage before writing incident reports). Such uncertainties over best practices highlight a central tension around body-worn cameras: that evidence gained from footage is only meaningful through a process of interpretation in relation to the law and institutional standards. This is a process that cannot be resolved on the level of camera use policy because it is not a procedure to be codified, but a matter of defining the limits of legitimate police conduct. Interpretation of visual evidence, for example, is needed to distinguish excessive from acceptable use of force.

Body-worn camera footage alone does not necessarily serve as truthful testimony either. In one case, five Florida police officers chased down and arrested a suspected drug dealer (Balko 2016a). What can be deciphered from the relevant body-worn camera footage is that there was a physical altercation, and officers repeatedly ordered the man to stop resisting arrest. But video from a nearby security camera, showing a different angle of the incident, proved that the man had yielded entirely to the officers from the start; the officers proceeded to physically beat him regardless. This case of brutality was not immediately evident because the officers had lied in their police reports, claiming the suspect had resisted arrest, which plausibly conformed to the body-worn camera footage (Balko 2016a).

Much of the potential of body-worn cameras as a tool of accountability remains unrealized. One initiative in this direction has been the work of Jennifer Eberhardt at Stanford University, who has partnered with the Oakland Police Department to create tools for risk management, and to assess potential racial biases in police stops by reviewing the department's body-worn camera audio data. Audio data can be used to analyze individual officers' motivations for making stops (BondGraham 2015). The choice to focus on audio recording in this research also demonstrates how the visual dimension of body-worn cameras, which arguably poses greater privacy risks, may be unnecessary to achieve accountability if audio data is available. However, whether such potential towards accountability is realized depends on the resources and willingness to implement it and the politics of change at a local and regional level.

Surveillance implications and costs to privacy

If accountability is the primary justification for camera adoption, how should individual and social costs be weighed and assessed in relation to the unknown benefits? It is important to distinguish between necessary trade-offs built into the purpose of the technology itself, and trade-offs that are contingent upon conscious policy decisions and technological design, and have no corresponding accountability gains. A necessary trade-off is made when footage is either released or withheld from the public. A contingent trade-off is the potential integration of facial recognition technology, which can track identities of

individuals in public demonstrations or protests, and justify stopping individuals whose faces match crime databases. At present, these possibilities remain tentative (RT International 2013), but few departments have placed formal limits on using biometric technologies (Leadership Conference and Upturn 2015).

In their routine use, body-worn cameras capture a wide array of people and activities as police officers move through public and private spaces. Vulnerable populations like undocumented migrants, homeless individuals, and crime victims are at greater risk for privacy-specific harms, and stand to benefit more from greater anonymity. Additionally, recording certain situations can be invasive if released publicly, such as domestic violence or assault. Some states have begun to address these concerns by passing bills that create exemptions to public records laws, which bar the release of images produced in settings like private homes, schools, or hospitals (e.g., Rosica 2015).

Redaction techniques, such as blurring, can be used to cover sensitive information, but the footage must be clear enough that anyone viewing it can have an adequate sense of what is depicted. The Seattle Police Department, for example, has posted heavily blurred and audio-free videos to a YouTube channel, and invited the public to request specific segments, which are then redacted through targeted methods (Glenza 2015). But the footage may be so blurred in the redaction process that it renders it difficult to meaningfully decipher what is depicted to determine which segments to request (Marshall 2015). Furthermore, emerging techniques such as gait recognition may enable future re-identification of people in blurred footage (RT International 2012).

"Second-generation" body-worn camera models are now designed with features such as accelerometers, which activate recording when they sense an officer is running; camera activation initiated by the opening of police car doors and other triggers; the option of audio-only recording modes; and geo-fencing that triggers activation when an officer enters a predefined geographic space (Utility 2014: 7). These options can limit the extent to which footage is unnecessarily captured, but they also assume that police deviance only occurs in circumscribed scenarios, such as exiting a cruiser. The promise of body-worn cameras has largely been predicated on the idea that *continuous* recording would make it impossible for police officers to cover up or misrepresent their actions. But in addition to selective recording, there is a trend, tracing back to dashboard-mounted cameras, of police tampering with equipment. In Chicago, it was found that eighty per cent of dashboard-mounted videos were missing audio due to "officer error" and "intentional destruction" (Balko 2016b). It may be possible that body-worn camera models can be installed with features that raise alerts in the event of tampering, thus avoiding the same setbacks that have reduced the efficacy of dashboard cameras. But the underlying problem is that simply regulating *when* recording occurs may undermine accountability while only slightly mitigating the risks to privacy.

Conclusion

Accountability has been the rallying motivation behind the introduction of body-worn cameras. But this momentum has not been accompanied by a corresponding vision for what accountability as a process should look like, or what structures are necessarily put in place to support that process. As a result, body-worn cameras have already been at the center of the same protracted disputes over interpretation and authoritativeness as the dashboard camera and citizen video recording footage that have been capturing police incidents for decades. The difference from the latter is that video data remains in the often-guarded hands of law enforcement. Whether footage is released at all becomes, in large part, contingent upon the state of local and national public records laws and the degree to which citizens and journalists are committed to exerting pressure on police departments to make body-worn camera footage available.

Whether body-worn cameras evolve into another instrument for surveilling marginalized populations depends largely on what can be done to curb and define the limits of its use early on before it becomes entrenched. In this regard, regulation through policy and technological design is a more viable and

effective means for preventing the misuse of body-worn cameras than it is for ensuring that footage itself is given due weight as a form of evidence that drives concrete action against police misconduct. Presently, the trajectory laid out by body-worn cameras towards greater surveillance is clear, if not fully realized, while the path towards accountability has not yet been adequately defined, let alone forged.

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