Reading Obama's Policing Task Force Report in Jerusalem

History, Accountability, and the New Geo-Governance in U.S. and Israeli Policing

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The origin of policing as a legitimate government function can be traced to a sort of global acquiescence to the fact that order, premised on rule of law, was a requirement for the establishment of society. In exchange for the validation and enforcement of private property rights (broadly construed as "order"), residents in nascent civilizations were willing to give up some of their individual liberty, namely their ability to make autonomous decisions without fear of consequence. This commonly accepted narrative, however, overlooks a central premise inherent in the social contract: those who own the most property receive the largest benefit. Laws have generally been crafted and enforced to serve the interest of elites. This problem continues to plague policing well into the twenty-first century.

Across the globe, public administration is in the midst of a significant shift. Traditional bureaucratic hierarchy and centralization have given way to lateral networks that seek to optimize service provision and provide the flexibility to respond to contextual and regional demands.[1] Government agencies, including police agencies, are forced to share information and formulate strategy with other agencies from multiple levels of government in multiple jurisdictions. Neat, orderly boundaries have become fuzzy and responsibility for successful policy implementation is contingent on interdependent, coordinated action from fluid participants in a network of governance. Simultaneously, governments face unprecedented problems (from combatting terrorism and limiting the international drug market to regulating internet commerce) for which typical approaches are wholly inadequate, wasteful, or hopeless. Routine approaches premised on incremental decision-making oriented to the status quo are becoming

less viable. Given its prominence in the public eye, policing is an area of public administration in which these attempts to adapt are particularly observable. In this essay, I offer an assessment of the readiness of U.S. and Israeli police agencies to operate in this new environment. I then leverage literature from criminal justice, political science, public administration, organization theory, and area studies to share some general considerations that policing agencies might make in planning to adapt to their new reality.

Economics and Race in U.S. Policing

Much has been written to suggest that the U.S. criminal justice system is an extension of the eighteenth-century sociopolitical power dynamics that gave rise to the U.S. Constitution as supreme law of the land. Some scholars, such as Charles Beard, argue that the chief purpose of the Constitution was, and continues to be, the protection of the economic interests of elites.[2] This view is substantiated when one considers that the multiple flaws of the Articles of Confederation were largely allowed to continue unabated until an uprising by debtor farmers threatened to destroy debt records to free themselves from the control of elites.[3] While of the first ten amendments to the Constitution at least five directly relate to the rights of accused criminals (the right to avoid testifying against oneself, the right to a speedy and public trial by a jury of one's peers, the right not to be cruelly or unusually punished, and so on), exercising these rights has often been contingent on access to financial resources and formal education. Of course, elite status in the United States is not only linked to wealth and education, but deeply intertwined with race. At the time of the ratification of the Constitution, most African Americans were enslaved and were not eligible for citizenship.[4] Further, policing in the early United States grew out of a tradition of "protecting the property" of slave owners, that is, of coercing and disciplining the enslaved.[5]

After the U.S. Civil War, three additional constitutional amendments were added to abolish slavery and grant citizenship and voting rights to formerly enslaved African Americans and their descendants. The realization of full citizenship and voting rights, especially in the South of the United States, was blocked for a century, from 1865 to 1965, by a series of discriminatory laws and regulations collectively known as Jim Crow laws.[6] These included selective poll taxes, "grandfather clauses" that granted the vote only to citizens whose grandfathers were free, and all but impossible "literacy" tests that forced respondents to memorize entire portions of several governing documents. Formal and informal codes enforced public segregation, denied African Americans access to various rights and services, and restricted their travel, among other injustices.[7] A full century after the end of the Civil War, the Civil Rights Act of 1964 and Voting Rights Act of 1965 became law, but discriminatory practices continue, especially in the South, where attempts to limit access to voting persist.[8]

Even after the passage of civil rights legislation, critical theorists such as Michelle Alexander point to a disconcerting series of practices that they collectively label the

"New Jim Crow."[9] The New Jim Crow thesis argues that felon disenfranchisement, a common U.S. practice, disproportionately affects African American males, the largest demographic group in the nation's prisons despite the fact that they account for less than 7 percent of the nation's population.[10] Proponents of this thesis contend that the Reagan-era "War on Drugs," along with mandatory minimum sentencing for convicted offenders, have silenced the political voice of African American males. Concerns go beyond voting rights, however, and include other dimensions of citizenship. While the Sixth Amendment guarantees a right to a fair trial by a jury of one's peers, convicted felons are unable to sit on juries. Moreover, because jurors are often called from voter registration lists and driver's license records, juries reflect these groups' demographic skewing toward the affluent and the white.[11] Thus, African American criminal defendants are less likely to enjoy this right than, say, white male defendants.[12]

These practices also serve to undermine the potential for a representative bureaucracy.[13] Due to hiring restrictions, these factors have limited the ability of police departments and other government institutions to be descriptively representative.[14] This hampers the ability of police and the communities in which they serve to engage in constructive interactions based on shared experiences, understandings, and language,[15] and may help account for some of the miscommunication central to police relations with African American residents and communities.[16]

Shared Problems of U.S. and Israeli Policing

Policing in Israel also occurs against a bloody backdrop of apartheid, immediately salient for Palestinian residents.[17] Colonial occupation of Palestine has been the norm for the past century, but the creation of the state of Israel in 1948 introduced a new legal order that privileged citizenship rights for Jews, including those displaced from elsewhere who made their way to the new nation, despite territorial and political claims of native Palestinian residents.[18] Palestinians live, in many respects, as second-class citizens if they are considered citizens at all.[19] Israeli police units are rarely representative in their demographic make-up, and Palestinian protests are common.[20] Abuses by Israeli police against Palestinians are reported daily and include allegations of teargassing infants, using unjustified force on mentally ill women, and provoking violent reactions for merely displaying a Palestinian flag in Jerusalem.[21]

As in the United States, more than one demographic group is likely to experience oppression at the hands of the police.[22] In the United States, Hispanic migrants and citizens have been targeted by law enforcement for unjust policing tactics, while Ethiopian Israelis and others have made claims of abuse against Israeli police.[23] According to journalist Yonah Jeremy Bob, "many U.S. and Israeli cases of over-policing, cover-ups, and weak prosecution of police involve elements of police racism."[24]

Further, both the United States and Israel share a dubious record when it comes to the detention of, and use of force against, minors.[25] In Israel, the focal point of this phenomenon

is the detention of Palestinian children. According to Defense for Children International, Israeli forces detain approximately 500 to 700 Palestinian youths aged 12 to 17 years old annually. Between 2008 and 2017, the average number of children detained per month ranged from 192 to 375, most of them detained for throwing stones. More disconcertingly, 1,800 children have been subjected to deadly force in occupied Palestine since 2000.[26] In the United States, youth detention has drawn scrutiny from scholars, politicians, and activists. Most recently, the detention of undocumented immigrant children by U.S. federal agencies, in cooperation with local law enforcement agents, garnered widespread attention.[27] Ongoing research suggests that children in these detention facilities do not have access to adequate healthcare or post-detention casework services.[28] Human Rights Watch asserts that conditions in the detention facilities, such as exposure to dangerous levels of cold, rob these detainees of dignity.[29] The use of detention facilities for children with U.S. citizenship, especially the emergence of private, for-profit corporations as agents of incarceration, have also raised concerns.[30] In 2015, a Florida grand jury ruled that the Highlands Youth Academy, run by security firm G4S, exposed youths to appallingly unsafe and unsanitary conditions to bolster their four-million-dollar profit margin.[31] Other agents of law enforcement and criminal justice, particularly judges, have been mired in scandal for sentencing youths to incarceration in for-profit detention centers.[32] Police use of force against children is also a concern in the United States. The shooting of twelve-year-old Tamir Rice by Cleveland, Ohio, police officers in 2014, for example, raised a number of questions about police use of force against minors.[33]

Racial and socioeconomic dimensions are also important in order to understand police – and, more broadly, criminal justice and carceral – engagements with children in both the United States and Israel.[34] The childhood experience of undignified detention and excessive force may likely implant in children a pessimistic view of police as agents of the public trust, an impression that could continue as they age into adulthood and begin to consider their role as citizens in holding government actors accountable. This erosion of trust only exacerbates tensions between police and the communities they serve, especially communities that have historical experience of oppression and marginalization.

Nuances in Accountability

Frustration with individual police officers as well as the abstract aggregate "police" are often couched in terms of an equally abstract term: accountability. This term is often used, colloquially and in scholarly research, as a dichotomous phenomenon whose presence is panacea and absence is poison. In practice, accountability is an incredibly fluid concept whose form changes with the respective lenses of observers.[35] Primarily, the perception of accountability is about the relationship of any decision or behavior to the expectations of an observer, which, given that expectations vary from person to person, and especially considering covariation in demands and roles, cannot be taken as objective or universal.[36] Romzek and Dubnick's matrix of accountability streams proposes

four general kinds of accountability: (1) accountability to organizational rules and orders from supervisors (bureaucratic accountability); (2) accountability to existing case law and court decisions (legal accountability); (3) accountability to expertise-based training and expectations of one's profession (professional accountability); and (4) accountability to the demands of political oversight and residents in a service provision jurisdiction (political accountability).[37]

These considerations (bureaucratic, legal, professional, and political) may likely conflict with each another; more significantly, conflicts often occur *within* each stream. Political accountability is often the most complex. In any setting, the goals and values of elected officials are rarely congruent with the goals and values of appointed or merit-based bureaucrats. Time horizons, beliefs about resources adequate for a given task, and (especially) specific outcomes desired tend to vary between each set of actors.[38] Moreover, promises made during an electoral campaign and even after reaching office can often be so grandiose and imprecise that even the most willing bureaucrat would have difficulty fulfilling them.[39] Policing is no stranger to this dilemma, as the elimination of crime – a common political campaign promise, whether explicit or implicit – will never be achieved. Professional training, rules, and laws also temper the ambition of politically-minded police officers due to the fact that the profession itself is the police officer's livelihood. Many feel that the twentieth century's emphasis on bureaucratic and professional accountability came at the expense of political accountability and the responsiveness of police and other public officers to their service community's expectations and demands.[40]

The historical-institutional and political contexts of particular enforcement areas can often be immediately salient to a police officer, shaping the particular forms of accountability to which he or she feels beholden.[41] In the United States and Israel, these contexts can help understand current concerns with policing. A recent example of the powder-keg nature of political accountability is the accusation that Major General Yoram Halevy, police commander of the Jerusalem District, held private conversations with Israeli prime minister Benjamin Netanyahu without the knowledge of his superior, Commissioner Roni Alscheich.[42] While Halevy denied that these conversations took place, the accusations alone are believed to have created internal friction between Halevy and Alscheich, diverting attention from the many accountability concerns emerging each day in Jerusalem.

Unlearning as a Learning Strategy

The Jerusalem District Police (JDP) is one of the oldest police departments in Israel. With this longevity comes hallmarks of bureaucratic persistence: iron-clad policies, institutional memory and records to guide decisions, and integration into the service community. Despite the advantages of such long-standing institutional fixtures, there are also some very real consequences. In particular, long-standing agencies have a tendency to look backward in making decisions about current problems.[43] This can, in a more benign

consequence, lead to the commitment of resources to ineffective implementation efforts. In more serious cases, this rearview-mirror tendency can cause an organization to be wholly unprepared for unforeseen or non-routine problems, resulting in the application of routine solutions that are not only wasteful but also have the potential to make problems worse.[44]

This point is especially relevant when an agency has been inculcated with negative affect toward a particular demographic group in its jurisdiction. Philip Zimbardo's famous Stanford Prison Experiment was shocking because of the relatively short amount of time in which those in authoritative positions (guards) began to engage in the systematic dehumanization of those in subordinate positions (prisoners).[45] Palestinians have lived in prisonlike apartheid conditions, subject to consistent dehumanization for seven decades; one can only imagine how tightly this negative affect is knotted in the JDP's informal organization. This point is important in considering that police-community interactions that result in negative outcomes or the unnecessary use of deadly force are often blamed on "bad apples" who have somehow slid undetected through an agency's evaluative system. Thus, the problem is cast as the result of one rogue, unprincipled individual whose termination will rid an otherwise effective and efficient organization of excessive force or bias. Zimbardo, citing his famous Stanford Prison Experiment and the more recent cases of prisoner abuse by United States soldiers at the Abu Ghraib detention facility in Iraq, suggests that the problem is much deeper. Zimbardo suggests that the evils we see are not the result of bad apples (individuals) or even bad barrels (organizations), but result from the fact that the overall system in which enforcement agents operate is tainted. These systemic elements have the potential to turn moral everyday people into agents of evil, a process that Zimbardo refers to as "the Lucifer Effect."[46]

Much may be said about the need for organizational agility, adaptation, and learning in the twenty-first century, but the real challenge presents itself in the need to *unlearn* beliefs and behavioral patterns. This need has catalyzed discussion in the United States regarding the disproportionate incarceration of African American males and discriminatory treatment of Hispanic citizens and residents.[47] Another global concern, of particular relevance in the United States and Israel, is the trend toward militarization of local police agencies and their officers. Scholars such as Seth Stoughton argue that the ubiquitous use of military-style uniforms, weapons, and tactics by local police has fundamentally altered these units' organizational cultures and values, causing them to see themselves as warriors in a battle against the residents in the areas in which they work.[48] As a testament to concerns about this trend, the Durham, North Carolina, city government recently banned any joint training efforts with Israeli police agencies due to the militarism found in Israeli police agency training materials.[49]

Increasing militarism stands in stark contrast to the views of Robert Peel, considered by many to be the father of modern professional policing. Peel reminded police officers and their supervisors of nine key principles to guide decisions and behaviors.[50] Peel describes the very existence and basic function of local police as "an alternative to the repression of crime and disorder by military force." He goes on to propose that the primary base of legitimacy for police agencies is rooted in "*public approval* of police existence,

actions, behavior, and the ability of the police to secure and maintain *public respect*."
This, he argues, can lead to greater cooperation from the public and negate the need to
use "physical force and compulsion in achieving police objectives." Peel urges police
officials to engage in fair and equitable service provision without favoritism and, with
almost incredible prescience, suggests that individual police officers should prioritize
"ready offering of individual service and friendship to all members of society without
regard to their race or social standing, by ready exercise of courtesy and friendly good
humor." Perhaps most powerfully, Peel encourages police officers to

> at all times . . . maintain a relationship with the public that gives reality to
> the historic tradition that *the police are the public* and that *the public are
> the police*; the police are the only members of the public who are paid to
> give full-time attention to duties which are incumbent on every citizen in
> the intent of the community welfare.[51]

While revisiting Peel's principles from 1829 may seem counterintuitive, they might
serve as a catalyst for reinventing twenty-first-century police practices and help agencies
become active learning organisms whose adaptation to unforeseen global and local
challenges will lead to greater success. This sentiment is at the heart of the report issued
by the President's Task Force on Policing in the Twenty-First Century, commissioned by
former U.S. president Barack Obama. The task force, comprised of police executives, legal
scholars, and social activists, offered recommendations in the form of six imperatives,
described as "pillars" in the report.[52] First among these pillars is the need to develop
trust and legitimacy among service recipients in a police force area. Here, legitimacy
is derived from community perceptions of fair and just service provision and adoption
of a "guardian – rather than a warrior – mindset."[53] The task force encourages police
departments to focus on "procedural justice as the guiding principle for internal and
external policies and practices to guide their interactions with rank and file officers and
the citizens they serve."[54]

    The purpose of seeking legitimacy from those an agency serves is ultimately the
establishment of trust. This trust will enhance the social capital of police, which can,
in turn, lead to open discussions with members of the public and information sharing.[55]
Thus, the second pillar of twenty-first-century policing deals with policy and oversight.
Specifically, the task force encourages police agencies to design policies "reflective of
community values and not lead to practices that result in disparate impacts on various
segments of the community."[56] These policies, the task force proposes, will come to light
through collaborative discussions and greater community involvement. This pillar, too,
suggests that the "us versus them" mentality that accompanies a militaristic mindset be
replaced by an organizational ethos premised on greater transparency and cooperation
between law enforcement agencies and their respective service communities. The third
pillar discusses the leveraging of technology and social media to aid in community
engagement or outreach efforts.

Pillar four expresses a desire for law enforcement agencies to allow community members to "co-produce" public safety by incorporating them into planning as well as implementation efforts. Here, values and priorities may be expressed and ultimately become goals and objectives for strategic planning initiatives. The task force goes on to suggest that:

> Communities should support a culture and practice of policing that reflects the values of protection and promotion of the dignity of all – especially the most vulnerable, such as children and youth most at risk for crime or violence. Law enforcement agencies should avoid using law enforcement tactics that unnecessarily stigmatize youth.[57]

The Israeli police could take this pillar to heart in their efforts to "co-produce" public safety and engage in law enforcement efforts that do not stigmatize vulnerable groups, and youth in particular.

The fifth task force pillar reinforces the need for training, especially training that can be offered by experts in one's service jurisdiction who are capable of preparing officers to deal with specific contextual nuances and features of the police force area.[58] Finally, the sixth pillar encourages frequent evaluation of officer wellness and safety so that officers get the support they need and the "bad apple" problem may be eliminated.

Promise and Pitfalls with Representative Bureaucracy

While developed largely in isolation from broader public administration literature, the task force report shares ideas and normative demands that many public administration scholars have advocated for all service provision areas.[59] Namely, the report emphasizes the benefits of viewing service recipients as citizens, rather than as cases or customers. Here, in addition to coproduction of policing services, considering the views of citizens might remind all parties involved who, in fact, pays for policing and to whom police officials are ultimately accountable.[60] This change in perception may also serve to create more inclusive policing approaches that do not simply favor the interests of social elites.

Recent research on elected law enforcement officers in the United States and the United Kingdom suggests that these officials are more likely than their appointed counterparts to describe those they serve as citizens rather than customers and to make appeals based on voter preferences.[61] In essence, elections serve to shift the dominant form of accountability toward political accountability rather than bureaucratic or professional accountability. Emphasis on bureaucratic and professional accountability served broadly to displace the overarching goals and missions of many public agencies, encouraging adherence to professional expectations or organizational rules and orders for their own sake.[62] This can lead to an even greater chasm between law enforcement practices and their perceived political legitimacy, especially among oppressed or historically underrepresented groups.[63]

The task force's logic of community engagement in decision-making seeks to reverse this trend.

Moreover, the report's recommendations can be more fully realized when paired with imperatives to forge a more demographically representative bureaucracy and to give social values a role equal to traditional bureaucratic values such as efficiency or economy in guiding public administrators' decisions.[64] In the wake of many questionable uses of force, particularly deadly force, law enforcement agencies such as the Ferguson, Missouri, Police Department have been admonished for the lack of minority representation in their ranks. Many, Ferguson included, have responded with programs in an attempt to attract, recruit, and retain officers from diverse backgrounds.[65] While these efforts are in their nascent stages, evidence suggests that the ability of a minority officer to understand the "subject positions," or life experiences and challenges, of a minority service recipient can lead more rapidly to the development of consensus between police and residents.[66] More promising, such mutual understanding and agreement on desirable outcomes has the potential to minimize the use of force, especially deadly force, in police-citizen interactions.

While a more representative bureaucracy may help deescalate police-community tensions, we must not expect this alone to suffice. Even a bureaucratic agency whose employees mirror the service population in key demographic characteristics was likely created by legislation written and codified by social elites. In essence, representative bureaucracy and broader community engagement efforts serve merely as invitations to participate in a game whose rules marginalized or oppressed groups still have very little say in creating or enforcing. Short of large-scale changes, this is likely to remain a concern for those seeking full integration of police and community perspectives.

The ubiquity of confirmation bias, a process by which the lens of current experience is filtered to produce an expected image of a situation regardless of the facts, among bureaucratic actors remains another barrier to unlearning and adaptation.[67] Confirmation of prior beliefs and attitudes goes hand in hand with the incremental, rearward-looking decision-making tendencies common to policy making and implementation. In short, bureaucracies are designed to engage in routine decision making, where present problems are treated with past medicine. Facilitating and ensuring a successful transition to a forward-looking process of developing non-routine solutions to non-routine problems is the central puzzle of public administration scholarship and practice in the twenty-first century.

Finally, in discussing barriers to police reform and reorganization efforts, a note regarding the controversial practice of police discretion is in order.[68] Those who practice discretionary decision making often explain that they are compelled to do so because even the most precise rules and orders are not sufficient in guiding decisions in certain ambiguous situations.[69] Lawmakers and top managers in police organizations may not have the time or ability to focus on specific situational nuances inherent in the day-to-day work of frontline officers.[70] Still, unchecked discretion serves to nullify rules and provide street-level bureaucrats such as police officers with so much latitude in interpreting laws that they come to occupy the role of legislators in their own right.[71] These competing problem

areas are like the ghosts of twentieth-century public administration that haunt scholars, elected officials, and managers into the twenty-first century.

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