

The Use of Tasers in Canada

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The word "torture" evokes images of the medieval times for most, which is why many do not see that it is still used today by the authorities for the same reason it was used in ancient times, social control. Historically, the most painful torture techniques were used on their victims, so that they could display their mutilated and scarred bodies to the rest of society. Authoritarian states used this as a deterrent and to invoke fear into society; psychologically controlling civilians (Darius, 2007). Our democratic society has watched torture evolve into a frightening form, one where marks are absent, deaths occur, and our society seems to be powerless due to the illusion that we are protected and have rights, which has been fabricated for us. Everything torture represents - intimidation, abuse of public trust, extraction of false confessions, the blind eye of officials - is contrary to the way democratic societies are supposed to work. But "clean" torture, leaving few marks and practiced behind closed doors, is permitted. The illusion that tasers are safe has allowed officers to use these torturing devices to gain compliance while undermining the Charter of Rights and Freedoms and the Criminal Code of Canada. This essay will look at the principles for use of force by the Criminal Code of Canada, the effects of tasers, the excessive use of force according to the Charter of Rights and Freedoms, and lastly how the criminal justice models have given us the illusion that we live in a democratic society.

Twenty deaths have occurred at the hands of the police after their inappropriate use of tasers since their introduction into Canada in 2001 (Gazette 2007). In 2007 there

was at least fifteen investigations looking into the use of tasers being deployed when there was “no serious risk either to themselves or others present” (Amnesty 2007). They are often used in routine arrest situations at the first sign of minor resistance, and in situations where lethal force would not have even been contemplated, considering that the victims were unarmed themselves. The large amount of inappropriate use of tasers against those who do not pose a serious threat, especially the mentally ill, intoxicated, children, and non-compliant individuals, is unjustifiable and unpardonable (Amnesty 2007). The criminal justice system on the other hand, has proven that due process is merely an illusion manifested by the government while crime control is rampant (Amnesty 2007 and Roach 1999). The victims deaths are not being directly linked to the abuse of tasers, and the police officers who are using the devices are not being punished for their actions. These officers have used multiple and/or prolonged taser discharges, some in conjunction with other enforcement tools and/or restraint holds as well. In 2005, the Canadian Association of Chiefs of Police stated that “police officers need to be aware of the adverse effects of multiple, consecutive cycles” (Amnesty 2007:17). A statement made to ease society. Even though the death toll is continually rising, tasers are still considered non-lethal weapons and are used “as a routine force option to subdue non-compliant or disturbed individuals who do not present a danger to themselves or others” (Amnesty 2007:9).

USE OF FORCE

The Criminal Code of Canada has established four principles for police officers to follow in regards to their use of force:

1. Officers exercising force must be performing a duty they are required or authorized to do.

2. They must have reasonable grounds.
3. They may use only so much force as is necessary under the circumstances.
4. They are responsible for any excessive use of force. (Griffiths 2007:124)

There is not one of these principles that has not been broken repeatedly, they are not authorized to torture people nor do they have reasonable grounds. Police are only to use force in order to gain control and compliance of an individual and then are only authorized to use “one higher level of force than that with which they are confronted” (Griffiths 2007:124). The level of force used by police officers in regards to tasers is at a much higher level than one above, yet, to date all police officers have been acquitted even when their actions have been caught on tape or seen by witness’.

The 50,000 volt, “non-lethal” device can be used two ways, either fired from a short distance or as a stun gun that can only be used when it is placed directly on the individual. The very fact that tasers have a stun gun mode and have the capacity to inflict repeated and extended shocks at the push of a trigger confirms that they are designed to torture rather than simply catch perpetrators. Tasers deliver a lot of volts, but very few amps, designed to go through clothing and skin, debilitating the individual. The high voltage ensures that the pulse will reach its target, and the very low amperage is suppose to keep it from doing any lasting damage. The charge pulses for five seconds yet will continue as long as the trigger is deployed (Engber 2006). “The current causes involuntary muscle contraction and extreme pain. The victim completely loses control over their body and falls to the floor until the current stops” (Bollyn 2006:3). The injury inflicted by the electric shock depends on the interaction between the volts and amps, the area and the duration of contact (Engber 2006).

Tasers in conjunction with certain restraint procedures and/or pepper spray has proven to be lethal and yet are still being used. Simply using the hogtying restraint on a person puts pressure on the chest and has resulted in “positional asphyxia” causing death. Most of the US has banned this restraint, but not in Canada. Many others have been pepper sprayed in conjunction with taser use, which again has caused many deaths in the U.S and Canada. These two procedures affect the respiratory system, when accompanied by a debilitating shock, the end result can be fatal (Amnesty 2004).

EXCESSIVE USE OF FORCE

Using powerful electro-shock weapons against those already restrained; disturbed, intoxicated but non-dangerous individuals; unruly children and people who are non-compliant but who do pose a probably threat of serious injury to themselves or others, is an excessive use of force which may constitute torture or other cruel, inhuman, or degrading treatment. (Amnesty 2007:9)

The inappropriate use of tasers is ignoring, breaching, and violating the Canadian Charter of Rights and Freedoms. The police officers and judges involved in the cases to date are openly operating under the values of the crime control model. Tasers are a perfect device in this model since they allow efficiency and success with high number of arrests. The presumption of guilt based on the reliability of the fact-finding accuracy of police and prosecutors is definitely seen, since it would seem as though the officers have decided the person guilty before arriving, due to the quickness of people being subdued. Due process has vanished it seems since the presumption of innocence is a legal and normative law but yet this “law” has not been present (Griffiths 2007). People are being unrightfully tortured and/or killed, even though many have not even broken the law.

The Canadian Charter of Rights and Freedoms is suppose to protect civilians from the government and their officials. It is believed that the charter is what differentiates our “democratic” society from the authoritarian societies. For this to be a validating statement it requires that it is followed, which in fact it is not. Police are not bound by this charter, just as they are not bound by the criminal code, but they do create the illusion that they are.

The following sections of the charter are ones that are consistently omitted by police, prosecutors and judges on a daily basis. Section one states “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (Department of Justice 1982:1). This has been abused in all of the cases where police have used excessive force since the limits used have not been reasonable and therefore cannot be justified. Section two states that:

Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication
- c) freedom of peaceful assembly; and
- d) freedom of association. (Department of Justice 1982:1-2)

During a peaceful protest outside the Ottawa immigration office in 2005, Paul Smith was tasered after being handcuffed. The two officers were found guilty of “unnecessary exercise of authority”, but an internal police investigation cleared both the officers (Amnesty 2007). Police are criminalizing people for their thoughts, beliefs, and opinions. These freedoms have previously been breached in regards to child pornography, it was used as an entry point, and now is open to abuse. Mr. Smith was

merely used as a fear tactic in order for the police to gain compliance and induce fear into the other protestors, as was done in the medieval times.

Section seven states “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” (Department of Justice 1982:2-3). Also section nine “Everyone has the right not to be arbitrarily detained or imprisoned” (Department of Justice 1982:3). This applies to all people within Canada including non-citizens. The right to life has consistently been breached as police officers abuse their use of tasers on victims where death has resulted. Robert Dziekanski died within seconds of being tasered by officers at the Vancouver airport in 2007. He only spoke Polish and therefore was not aware of the reason why he had been detained. After eight long hours three police officers arrived, rather than providing a translator after the grueling 24 seconds they spent with him, he was tasered multiple times and died. This was captured on video, Robert was agitated, but in no way or form presented a danger to the officers ([Frauenfelder 2007](#)). Is this behavior of officials one that should be seen in a democratic society?

The right to liberty protects individuals from government to a certain extent, and sets limits for government so that it cannot abuse its power and interfere with the lives of its citizens... The right to security of person deals with the privacy of the body and its health....it protects against significant government-inflicted harm (stress) to the mental state of the individual. (Wikipedia n.d:1)

The people who have died and their families have not received any form of protection, the only protected ones have been the officers.

Section eleven states that “Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an

independent and impartial tribunal” (Department of Justice 1982:3). The presumption of innocence is a normative and legal rule which these victims did not have, for they were considered guilty by the fact-finding reliability of the police which is so strong that even when they are caught on video they are exonerated. Lastly, section twelve states that “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment” (Department of Justice 1982:3). A medical expert has informed AFP that Taser energy can cause heart attacks, blood clots, and long-term damage to vital organs. Amnesty International (2004) reported that the force used by police officers “violated international standards prohibiting cruel, inhuman, or degrading treatment, as well as international guidelines on police use of force” (p.9).

The use of tasers against these individuals who pose no threat to themselves or others is unacceptable. When societies most vulnerable are being abused by the people who are suppose to protect them it leaves one to wonder how free and safe our society really is. In 2004, a fifteen year old Edmonton boy was threatened to be beaten and tasered by an officer. During the strip search, the officer did just as he had said. In court the judge was appalled at the officer, for abusing his powers. He was then charged with assault with a weapon. A year later he was acquitted by a provincial judge who stated that the officers’ actions were not unreasonable since the boy had lied about having weapons, a knife, in his possession (Amnesty 2007). It’s interesting to note how the officers’ actions were appalling for the first judge and then justified by the second judge. It is also thought-provoking that this pattern repeats itself in every case to date which involves tasers and the excessive use by police.

Howard Hyde, a diagnosed paranoid schizophrenic was arrested and tasered in Halifax in 2005 during a psychotic state. In 2007 following a domestic dispute, he was once again arrested during such a state. As he was being fingerprinted he tried to flee the police station only to be subjected to more electric shocking which ended his life. His sister stated that he ran because he was in fear for his life. The taser shocking two years prior had left him petrified of the police believing that it had weakened his heart. This was beyond excessive use of force, considering that the man was arrested, searched, and in the police station. A simple tackle from a police officer would have sufficed; there is absolutely no justification for any higher level of force used. Surprisingly the camera was not angled properly, and the internal belief is that the officer followed the proper procedures (Maxam 2007).

Forty-two year old restaurant owner, Greg Garley, was shocked while unconscious. The officer claimed that he was trying to revive him. The judge merely stated that this was a “lack of judgment” on the officers’ part. Edmonton police tasered 20 year old Dustin Guy in 2004, after being arrested, handcuffed, and in custody by two officers. The officers claim to have only tasered the man twice in the arm, yet the father of the man claims that his entire back was covered in burns. The police officers were dismissed with a warning for not submitting the paperwork for using the taser (Amnesty 2007).

Claims from police officers and agencies deploying tasers, state that they save lives as a substitute from using firearms and other enforcement tools. Yet research shows that they are used as a time saving technique for officers to arrest the person in question since the “use of lethal force – or even batons – would never have been justified”

(Amnesty 2004:1). The deaths of victims who have died instantly or shortly after being tasered are also being attributed to a condition called “excited delirium” or “cocaine-related excited delirium”, rather than from the shock of the taser. Not only are the deaths not being directly linked to the use of tasers, the police officers involved are not being held accountable for their actions. In the completed cases documented by Amnesty International, the officers have been exonerated and found to have not violated any official policies, even though the judges did state that they used excessive force (Amnesty 2004 & 2007). The Criminal Code of Canada is blatantly ignored by the criminal justice actors who are justifying the officers actions.

At a quick glance it would seem that the ideology of the crime control model is at work in our country, yet the fact that the common ground is not adhered too raises a considerable amount of doubt. Another issue in terms of the deceased is that due process cannot be applied to these people since they not given a chance to speak in court. The police officers who committed the crimes were not held accountable for their crime, therefore the notion of efficiency and fairness were not attained. Indeed the victims were presumed guilty by the police officers and thus their actions were accounted for. The validating authority was a combination of the legislature and the courts. In Kent Roach’s (1999) article, he states that “due process is for crime control” (p.688). This statement sums up what has happened in regards to our criminal justice system and how society was tricked into believing that we are actually protected under the law. The laws created to give police and prosecutors broad discretionary powers were vague about the limits of police powers, giving them more authority which in turn is following crime control values (Roach 1999).

Crime control is an ideology that appeals to legislators and some judges, as well as a description of how the police and courts operate....Due process....is idealized and publicly consumed version of the law that supports crime control by creating the illusion that accused are treated fairly and have every opportunity to exercise their rights in the due process obstacle course. (Roach 1999:689-90)

The very fact that prison populations increased dramatically when due process restrictions were put on police and prosecutors shows how the wool has been pulled over societies our eyes. In the words of Kent Roach (1999) “It creates illusions, displacing reform talk away from social control and serving as an instrument of that control” (p. 690). The situation in Canada is truly fearful, we have a criminal justice system that allows police officers to have unlimited power, but gives the illusion that they do not.

The due process and crime control models can be seen playing their illusionary game in terms of the police officers who are convicted for their excessive use of force and then are acquitted by another judge. The first time the media covers the entire story, creating relief and a feeling of justice for society. Yet months later when the police appeal the charge, the media was not present and it was dropped. Another interesting thought is that all the while these same police officers have maintained their position within the criminal justice system.

Democracy is our illusion, authoritarianism is our hidden reality. It is parallel to the present form of torture, as it is not seen and therefore does not exist. I am reminded of a quote by William Pitt the Younger, The Earl of Chatham (1783) which sums up our current predicament “Unlimited power is apt to corrupt the minds of those who possess it; and this I know, my lords, that where laws end, tyranny begins (p.1). In other words, when police are not held accountable for their actions, they have no repercussions, and therefore believe they have the right to decide who is guilty and who is not. Based on

prejudices, this leads to the targeting of minorities, creating victims that are fearful because they are considered guilty before the crime is even committed.

It would seem as though the unlimited power of the police has corrupted them to point that they believe torturing people, based on their own personal presumption of guilt, is acceptable. The question that remains is, who do we call when we are the victim of police abuse? The current method only allows us to think that we have been protected, but as this essay has shown, society really is not. The model left to turn to is restorative justice. Through education many can learn, perhaps leading to a change of who is on the boards, commissions, and agencies that oversee police activities. I believe that as long as it is fellow criminal justice actors on the board we will not see a change, just as we see judges excuse officers of their inappropriate use of power. Yet, how could the restorative justice model work in terms of this large scale problem? If one looks at parole hearings as a comparative, two of the three members of the board are criminal justice actors, and only one person from the community. Many people who meet all the requirements and more for parole are still denied on a daily basis. This is due to the fact that the criminal justice actors on the parole boards are not only skeptical of convicts and rehabilitation, their presumption of guilt still rules. It is not about the rehabilitation of the convict or if they are a threat to the community, it is about retribution, whether they believe the person has paid for their actions. After examining the restorative justice model in regards to parole hearings, it is plain to see that the three individuals should be community members only. Retribution is the main focus in parole hearings, it is the community who should decide if the person should re-enter society since it would then truly be a democracy. Using this logic, restorative justice could work in the larger scheme of the criminal justice

system. Therefore, if society, takes the power away from the criminal justice actors, justice, in its truest form, could reign in our country.

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