

## Stunning Revelations That May Shock You To Death

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The word "torture" generally evokes images of medieval techniques that inflicted levels of pain and suffering upon a person that were so excruciating and inhumane, people shudder at the thought of these brutal acts. Nonetheless, current methods of torture do exist, and are used for the precise purpose they were utilized for throughout ancient history: social control. Historically, authoritarian governments employed the most painful torture techniques as a deterrent against those considered deviant or to crime and to instill fear into the rest of society by displaying torture victims' mutilated and scarred bodies, thereby psychologically controlling civilians (Darius 2007). Torture has evolved into a frightening form in Canada currently, one where physical marks are minimal, if not absent, and deaths occur, while society is continually disempowered by the delusion that citizens are assured adequate protection. Citizens have been convinced that they are protected from the government and their agents through a misappropriating of the concept of rights. Everything torture represents - intimidation, abuse of public trust, extraction of false confessions, the willful disregard of officials - is contrary to the manner in which a democratic society is allegedly supposed to function. The illusion that Tasers are safe has allowed police officers to use these torturing devices to gain compliance from their victims while undermining the legitimacy of the Charter of Rights and Freedoms and the Criminal Code of Canada. This essay will scrutinize how the criminal justice models, the notions of crime control and due process, have given the illusion that Canadian society functions as a democratic legal system. Secondly, the use of force principles in the Criminal Code of Canada and the effects of Tasers will be examined, and lastly, the excessive use of force according to the Charter of Rights and

Freedoms, along with Canadian examples of individuals who have been inappropriately tasered will be analyzed.

Since Tasers have been introduced into Canada in 2001, thirty-one deaths have occurred at the hands of the police due to their inappropriate, excessive, and lethal use (Amnesty International 2007), while over 330 have died in the US in the same timespan (Amnesty International 2008). More disturbingly is the fact that the Tasers in these cases were deployed even though most of the victims were not armed and posed “no serious risk either to themselves or others present” (Amnesty International 2007). Furthermore, the large majority of the victims were subjected to prolonged and multiple shocks, in conjunction with restraint holds, physical force, and/or pepper spray (Amnesty International 2007). Tasers are not being employed to save lives by substituting their use to bullets; thus far, they have been utilized in routine arrest situations at the first hint of minor resistance, and, in situations where lethal force would not have even been contemplated prior to 2001 (Amnesty International 2007). The excessive amount of inappropriate Taser use against those who do not pose a serious threat, especially people with mental health issues, people with disabilities, those who are intoxicated, children, and non-compliant individuals, is unjustifiable and unpardonable (Amnesty 2007).

### **Criminal Justice Models**

Herbert Packer, a legal scholar, described the two variations of how criminal justice is administered. The aims of both models differ substantially. The crime control model reflects conservative values and aims to regulate criminal behavior, whereas the due process model mirrors liberal values and aims to deliver justice by supporting the rights of individuals.

The most important function of the criminal justice system in the crime control model is the repression of criminal conduct, accomplished by the police keeping a tight restraint in order to maintain control within society (Packer 1997). Thus, the crime control model functions to maximize the number of criminals stopped and brought to justice. For the crime control model, legal controls must not hinder information collecting procedures, high conviction rates, or police support. Therefore, police should have broad discretionary powers while conducting an investigation, search, and/or arrest, in order to attain greater efficiency and speed, while legal technicalities that obstruct officers while performing their duties should not exist (Packer 1997). Thus, the crime control model allows for situations where police officers can legally use deceptive and manipulative practices, such as tricking a suspect into coming to the station to be arrested, or deceiving a suspect during interrogation by applying mental and/or physical pressure (Packer 1997). Crime control strategies:

may include targeting high crime areas, increased patrols and traffic stops, profiling, undercover sting operations, wiretapping, surveillance, and aggressive raids and searches designed to break the back of criminal activity[...] certain individual rights must be sacrificed for the common good.” (Perron n.d)

In order to achieve the expected high conviction rate, this model requires that attention be paid primarily to the efficiency with which the criminal process operates. Once a person enters the criminal justice system, their case should move swiftly along towards a disposition, resembling an “assembly-line conveyor belt,” churning out case after case, with the emphasis being on quantity as opposed to quality (Packer 1997). Once the accused is arrested and charges are laid, they are in effect presumed guilty because of the assumed highly reliable fact-finding ability of the police and prosecutors (Packer 1997).

Furthermore, the accuracy of guilty pleas should not be an area of inquiry for judges (Packer 1997) and appeals should be “kept to a minimum” to avoid cluttering up the system with more trials (Walsh and Hemmens 2008:48). Therefore, the Crime Control model promotes a quick and efficient legal system that does not get wrapped up in lengthy and complicated cases. Due process on the other hand takes a different approach. The most important function of the criminal justice system in the due process model is to provide fundamental fairness under the law; therefore, presumption of innocence reigns, and the defendants' rights should be focused upon (Packer 1997). Police and judicial powers are restricted by lengthy procedures in order to prevent official coercion or unfairness to citizens, while criminal justice authorities are held accountable in order to uphold the rights set out in the Constitution. This ensures fairness and consistency throughout the justice process (Packer 1997). In this model, the process of criminal justice should resemble an “obstacle course,” with procedural safeguards incorporated within it, to ensure that the innocent are protected and that the guilty are convicted. This insures that reliability and integrity in the legal process are not corrupted by speed and efficiency (Packer 1997). Furthermore, due process is based on legal guilt, one that is proven by the justice system, and therefore, a presumption of the innocence of those accused. Legal procedures should be followed by the system in its fact-finding of guilt even if this means that guilty individuals are freed due to legal technicalities, (Packer 1997; Walsh and Hemmens 2008) as due process is concerned with the process of criminal justice, not with the outcome (Walsh and Hemmens 2008). The due process model also does not allow the Crown attorney lawyers to be deceptive, and everything

that is done is held to the strictest degree of legal efficiency and openness with the court and the defense attorney (Packer 1997).

The idea that it is the political climate and level of social unrest in a country that determines which model the criminal justice system is following at any given time fails to examine the issue critically. The criminal justice system has proven that due process is merely an illusion manifested by the government, enabling and legitimizing the crime control ideology to run rampant (Amnesty International 2007; 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 laws enshrined in the Constitution are vague, increasing the authority of the police and prosecutors through broad discretionary powers (Roach 1999). So far, the deaths of those who have died from being tasered have been attributed to a condition called ‘excited delirium,’ taking the focus away from the excessive use and abuse of Tasers in each case. Therefore, the police officers deploying these torturing devices have not been held accountable for the lethal results of their actions (Amnesty International 2007). ‘Excited delirium’ is an adrenaline overdose, where the heart races excessively, due to a mental health issues or drug use, until it finally ceases to beat (NBC 2006). However, this condition was believed to be extremely rare prior to the use of Tasers by police, leading certain groups to question its very existence as a syndrome, and generating fierce debates among psychiatric circles (NBC 2006).

Most of the officers responsible for deploying these devices have used multiple and/or prolonged Taser discharges, while some were also used in conjunction with other enforcement tools and/or restraint holds (Amnesty International 2007). Taser deaths have continued to occur, regardless of the warning given by the Canadian Association of Chiefs of Police in 2005, which stated that “police officers need to be aware of the adverse effects of multiple, consecutive cycles” (Amnesty International 2007:17). Despite the unceasingly rising death toll, 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 International 2007:9).

#### Use of Force

The Criminal Code of Canada has established four principles for police officers to follow regarding the 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 and Cunningham 2007:124)

These four principles have repeatedly been broken in police’s use of Tasers as police officers are neither authorized to torture people, nor have they had reasonable grounds to deploy them in the first place. Force is only to be used to gain control and compliance of an individual, and then officers are only authorized to use “one higher level of force than that with which they are confronted” (Griffiths and Cunningham 2007:124). The level of force used by police officers discharging Tasers, however, has been much higher than one

level above that they have been confronted with in such circumstances. Yet, to date, every police officer involved in a Taser death has been acquitted, even when their unjustifiable actions have been caught on videotape or witnessed by civilians.

### Taser Effects

This ‘non-lethal’ device administers 50,000 volts into a human body and can be used two ways, either fired from a short distance away, or as a stun gun, whereby it is placed directly on the individual, and has then the capacity to torture by inflicting repeated and extended shocks at the push of a trigger. By delivering a large amount of volts, but very few amps, Tasers physically debilitate the individual by sending an electrical signal through their clothing and skin, which overrides the central nervous system, and controls the skeletal muscles, causing involuntary muscle contractions (Fish and Geddes 2001). The high voltage ensures that the Tasers pulse will reach its target, and the very low amperage is *supposedly* to keep it from doing any lasting damage (Fish and Geddes 2001). The current pulses for five seconds, but it continues as long as the trigger is deployed (Engber 2006). When the device is shocking an individual, they fall to the floor until the charge ceases, while experiencing extreme pain as they completely lose control over their body (Bollyn 2006). The injury that is inflicted onto the body by the electric shock depends on the interaction between the volts and amps, the area of contact on the body, the distance between the darts, and the duration of contact (Engber 2006; Fish and Geddes 2001). Furthermore, the energy produced by the Taser “can cause heart attacks, blood clots, and long-term damage to vital organs” (Bollyn 2006:13).

Tasers, in conjunction with certain restraint procedures and/or pepper spray, have been proven lethal; however, they are still being used simultaneously. Simply using the hogtying restraint on a person puts pressure on the chest, and has resulted in “positional asphyxia” causing death (Amnesty International 2004). Most of the US has banned this restraint, but not Canada. Many other victims have been pepper sprayed in conjunction with a Taser charge, causing many deaths in the U.S and Canada (Amnesty International 2004). These two procedures, hogtying and pepper spraying, affect the respiratory system, and when accompanied by a debilitating shock, can be fatal (Amnesty International 2004).

#### Excessive Use of Force and the Canadian Charter of Rights and Freedoms

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 International 2007:9)

The inappropriate use of Tasers ignores, breaches, and violates the Canadian Charter of Rights and Freedoms. The police officers and judges that have been involved in the cases to date regarding the misuse of Tasers have been openly operating under the crime control model ideology. Tasers are a perfect device according to this model, as they produce efficiency and success with a high number of arrests. The presumption of guilt is based on the reliability of the fact-finding accuracy of the police, rather than through the courts, as the officers decide the individual’s guilt before arriving at the scene. This is evidenced by their haste in subduing victims, by unrightfully torturing and/or killing

them under the crime control model, even though, as will be exemplified further on, most have not even broken the law.

The Canadian Charter of Rights and Freedoms supposedly functions to protect citizens from the government and their officials. Allegedly, this Charter is what differentiates our “democratic” society from authoritarian societies. However, for this to be a valid statement it would need to be a requirement that is followed, which in fact it is not. The Canadian Charter of Rights does not bind criminal justice actors, no more than the Criminal Code of Canada does; instead, the illusion that they are binding has been created and reinforced.

On a daily basis, police officers, prosecutors, and judges are consistently omitting the following sections of the Charter. Section one declares that “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 section has been abused in every case to date 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 responsible were primarily found guilty

of “unnecessary exercise of authority,” however, an ensuing internal police investigation was conducted, clearing both officers (Amnesty International 2007). This exemplifies how police are criminalizing people for their thoughts, beliefs, and opinions rather than for their actions. Smith was used as a public fear tactic in order for the police to gain compliance and social control by inducing fear into the other protestors, reflecting the purpose of torture utilized in the medieval ages.

Section seven of the Canadian Charter of Rights and Freedoms asserts “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). Furthermore, section nine affirms, “Everyone has the right not to be arbitrarily detained or imprisoned” (Department of Justice 1982:3). These two sections apply to every individual within Canada, including non-citizens. The right to life has consistently been breached when police officers have used excessive force resulting in death by inappropriately tasing victims, thereby abusing their power. Unable to speak English, Robert Dziekanski was detained in a Vancouver airport in 2007 (CBC 2007). After ten long hours of passing through immigration and customs checkpoints at the airport, four police officers arrived, and rather than providing a translator, they administered a Taser gun charge within 24 seconds of their encounter (CBC 2007). Despite Dziekanski immediately falling to the ground, the officers tasered him four more times, while simultaneously kneeling on his chest in order to handcuff him (CBC 2007). The officers tasered a fearful man to death, regardless of the fact that he was securely locked in a room, and did not present a danger to the officers, the public, or himself (CBC 2007). This brutal, excessive, and lethal use of force by the police should not be

conceivable in a democratic society. The right to liberty is supposedly a protection mechanism for citizens, from the government and its representatives, by setting limits on their power. Instead of protecting its citizens, the criminal justice system has protected the officers responsible for these unnecessary deaths by not holding any officers accountable for their actions (Amnesty International 2004; Amnesty International 2007).

Section eleven guarantees “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). As stated earlier, the presumption of innocence is a normative and legal rule, however, this rule has been conspicuously absent for those who have been tasered to death by the police, as the victims were considered guilty by the faulty fact-finding reliability of the police.

The last section to be omitted is section twelve, which declares, “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment” (Department of Justice 1982:3). Being subjected to multiple and consecutive Taser cycles constitutes torture and can be lethal (Bollyn 2006). Furthermore, Amnesty International (2004) has 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 society’s most vulnerable, who pose no threat to themselves or others, is unacceptable in a supposedly free and democratic society. During a strip search, an officer beat and tasered a fifteen-year-old Edmonton boy in 2004 (Amnesty International 2007). In court, the judge was appalled at the officer for abusing his powers and charged the officer with assault with a weapon. However, a year

later a provincial judge acquitted the officer, deeming his actions were reasonable due to the boy's deception about concealing a weapon (Amnesty International 2007). It is interesting to note the reactions of the judges, in the first case when the media was following the events, the judge was appalled and reprimanded the officer, whereas the reaction of the second judge, when the media was absent, was not alarmed at his behavior whatsoever. It is also thought provoking that this pattern repeats itself in every case to date, which involves police deploying Tasers excessively.

In 2005, Howard Hyde, who was diagnosed with paranoid schizophrenia, was arrested and tasered in Halifax while experiencing a state of psychosis. Following a domestic dispute in 2007, he was once again arrested during such a state (Maxam 2007). While Hyde was being fingerprinted in a secure police station, he attempted to flee only to be subjected to more electrical shocks, this time, ending his life. Hyde's sister stated that he bolted from the officers, as he was in fear for his life, since the shocking he had received two years prior had left him petrified of the police and Tasers. Hyde believed that the electric shocks had weakened his heart (Maxam 2007). The actions of the officers in this case were beyond excessive use of force, considering that the man was arrested, searched, and in a secure police station at the time. At the very most, a simple tackle from a police officer would have sufficed, as he was not capable of leaving the building and had no weapons on him; there is absolutely no justification for any higher level of force to have been used. Conspicuously, the videotape from the police station was not angled properly and did not capture the fatal incident, and the internal belief is that the officer followed the proper procedures (Maxam 2007).

Police shocked a forty-two year old restaurant owner, Greg Garley, while he was unconscious. The officer claimed that he was attempting to revive Garley, while the presiding judge validated the officer's actions by stating that it was merely a "lack of judgment" (Amnesty International 2007). Edmonton police tasered 20 year old Dustin Guy, after being arrested, handcuffed, and in custody by two officers in 2004. The officers claimed to have only tasered the man twice in the arm, yet Guy's father recounts that his son's entire back was covered in burns. The police officers in this case were also dismissed with a warning for not submitting the proper paperwork for deploying the Taser (Amnesty International 2007).

Claims from police officers and agencies deploying Tasers, assert that they are a substitute for firearms and other enforcement tools, in effect saving lives. Yet, research shows that they are used as a time saving technique by officers to arrest presumed perpetrators, since the "use of lethal force – or even batons – would never have been justified" (Amnesty International 2004:1). Not only are Taser deaths not being directly linked to their use, as mentioned previously, the police officers involved are not being held accountable for their actions. In the completed cases documented by Amnesty International, every officer has been exonerated and found not to have violated any of the official policies, even though some of the judges stated that the officers did use excessive force (Amnesty International 2004; Amnesty International 2007). This blatantly ignores the Criminal Code of Canada by justifying the officers' actions.

Superficially, it seems that the crime control model ideology is at work in Canada, however, the common ground issues have not been adhered to, raising a considerable amount of doubt. The polarity of the Crime Control and Due Process Models are not

completely separate, as the minimally agreed limits expressed in the Constitution, the common ground issues, have not been adhered to (Packer 1997). These common ground issues include the legislature defining criminal conduct not police officers; suspects being legally informed of their rights by the police; the right to counsel if accused of a crime; and their right to speak and be heard in a court of law (Packer 1997).

### Conclusion

Not a single police officer that committed these crimes were held accountable, therefore, the notion of efficiency and fairness were not attained. The victims did not have the opportunity to exercise their right to be viewed as innocent until proven guilty, as they were presumed guilty without justification by the police officers that acted as judge and jury. Furthermore, a judge's authority validated all the officers' actions. "Due process is for crime control" (Roach 1999:688) sums up what has occurred in regards to the Canadian criminal justice system, and furthermore, how society has been disillusioned into believing that citizens are protected by the law. The very fact that prison populations increased dramatically when due process restrictions were initially put onto police and prosecutors is evidence that society has been misled (Roach 1999). Rather than speaking for social control, reform discussions have been addressed in the other direction, creating an illusion that serves that control (Roach 1999). The situation in Canada is truly fearful, we have a criminal justice system that allows and justifies police officers having unlimited power, however, an illusion has been created using multiple judges. The due process and crime control models can be seen playing their deceptive game in terms of the police officers that are first convicted for their excessive use of force, only to be then acquitted by another judge behind closed doors. The first

time the media covers the entire story, it creates relief and a feeling of justice for society. Yet, months later, when the police appeal the charge, the media is not present and the charges are dropped, with the police officers maintaining their position within the criminal justice system.

Democracy is the illusion, authoritarianism is the hidden reality. It is parallel to the present form of torture, as it is not seen and therefore does not exist. When police are not held accountable for their actions, there are no repercussions, and therefore believe that they have the authority to decide who is guilty and who is innocent. The police officers decisions are usually based on prejudices, leading to the targeting of minorities, creating victims that are fearful because they are considered guilty before a crime is even committed.

The unlimited power that the police have attained has corrupted them, whereby some believe torturing people, based on their own personal presumption guilt, is acceptable. The question that remains is, if the legal system endorses this behavior, whom does one call when they are the victims of police abuse?

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