

Police Brutality of Offenders Should be Maintained in Cases of Arrest, Questioning, and To Keep General Law and Order.

By Mr. Courtney Smith

Good evening ladies and gentlemen. It is with the greatest humility that I rise to perform the mammoth task of proposing the moot, be it resolved, that *Police brutality of offenders should be maintained in cases of arrest, questioning, and to keep general law and order.*

This task is especially difficult in an age where:

...Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is [seen as] the foundation of freedom, justice and peace in the world... [It is the general view within reasonable societies, that] disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind..., the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has [therefore] been proclaimed as the highest aspiration of the common people...⁴⁷⁷

Simply put, those who oppose police brutality are likely to do so on the grounds that such action by the police - which is in fact part of the executive arm of government - runs contrary to the various constitutions and international treaties that prescribe what is acceptable conduct towards citizens. The resulting conclusion therefore would be that brutality is absolutely a breach of the very laws that this state arm is sworn to enforce.

Throughout the course of this presentation however, I will attempt to outline three areas that support the maintenance of certain levels of 'brutality' during arrest, questioning and the

⁴⁷⁷ Taken from the Preamble of the Universal Declaration of Human Rights (1948).

keeping of general law and order. These areas include the historical context and evolution of policing, the constitutional and other legal justification for police actions that may be construed as brutality, and the Ethical dilemmas that increasingly serve to justify the same actions.

A lot will turn on the definition of ‘police brutality’ as well as the level of force that police officers are in fact authorized to use in the lawful exercise of their duties and the pursuit of legitimate law enforcement objectives. From this we will see that notions of ‘discretion’ and ‘reasonableness’ are critical to this debate since police officers are generally authorized to use somewhat brutal force which is “reasonable and necessary to resolve incidents; to protect themselves or another from physical harm; to restrain or subdue a resistant individual; or to bring an unlawful situation safely and effectively under control.” (U.S. Department of Justice, 2002)⁴⁷⁸

It is this final authorization of use of force – bringing unlawful situations effectively and safely under control – that leaves the door wide open for actions that appear to be brutality. But what really constitutes brutality?

Adler, Mueller and Laufer (2006) define police brutality as “the use of *overwhelming* force against persons, frequently suspects, who are deemed not to respect the power of the police”. But the immediate question here has to be, is there a difference between overwhelming force and excessive force? In other words, isn’t the very authority for police to use force a license to ‘overwhelm’ those that run afoul of our society’s rules in an attempt to bring them under control? Heydon (2005, p. 35) suggests that there are inherent paradoxes in what has become the primary aim of policing, vis a vis the duty to ‘maintain law and order’. Citing Gerth and Wright Mills (1970, p.180, 294), Heydon comments that in asking police to maintain law and order, we have in fact,

⁴⁷⁸ Cited in Adler, Mueller and Laufer (2006, p.216)

according to Weber's power, "handed over our right to coerce citizens to the police force".

The paradox lies in the fact that "pressure is exerted on members of the police force to maintain law and order in our society. Yet the same society must place heavy restrictions on the manner in which order might be maintained." (Heydon 2005, p. 36)

It is this paradox that gives rise to certain police actions being lambasted in the public domain in what is largely an attempt to preserve the particular society's status as a reasonable, civilized society. These actions include, but are not limited to extrajudicial killings, beating of detainees, inciting prisoners to beat certain classes of prisoners, and using teargas and other debilitating chemicals to disperse crowds.

By now it should be clear that the answer to the question posed cannot be an absolute one. There are certain situations in which overwhelming, though not excessive, force has to be used to maintain the greater good of a lawful and orderly society. From a Caribbean point of view, with our citizens taking an 'anti informer' and 'anti Babylon' approach to crime fighting, as well as the stark reality of repeat offenders and their reign of terror on communities, the police are left alone to find innovative ways of keeping law and order without much help from the citizens who entrusted them to perform this task. The police should therefore be allowed to use the reasonable and overwhelming force that they were trained to use, during arrest and questioning against those offenders that pose a consistent threat to law and order.

I now invite you to consider the following situations. They are a recollection of actual crimes committed within the Caribbean and represent examples that were gleaned during my stint as a news reporter in 2006-2007. During this time, off the record interviews with certain police officers, as well as personal observation of police activity, revealed the police's response to

these crimes. Of course, certain details have been changed to protect the identities of those concerned, and in one of the cases, the actual response has been replaced by another officer's suggested response, vis a vis, what he would have done if he was in that particular situation.

Scenario One: A reputed murderer has been charged several times. He has never been convicted of murder because he consistently kills anybody who dares to agree to testify against him. He brings guns into the community and indoctrinates young boys to follow his murderous example. He has just been acquitted of murder for the tenth time since all the eye witnesses were conveniently shot dead the night before the trial. The police corner him in a dark alley. He is unarmed but they shoot him repeatedly and plant a gun on his person.

Scenario Two: An alleged serial child molester cannot be charged since there is no concrete evidence against him. Young girls complain about being molested but since their stories cannot be corroborated, he walks freely. An annoyed police woman takes him into custody, and places him in a holding cell with several other prisoners. She announces that he is a child molester and rapist, thus inciting the prisoners to beat him severely. He is released from custody without being charged. Needless to say, there have not been any additional complaints against him.

Scenario Three: A routine traffic stop turns deadly when a speeding motorist runs over a police officer in an attempt to escape the speed trap. He is eventually caught after a high speed chase. He does not resist arrest, but brags that his father is a lawyer and would get him off scotch free. It turns out the car was stolen and being used to transport drugs across the country. The arresting officer handcuffs him and slams his head against the patrol car before taking him off to the police station for 'further questioning'.

Scenario Four: A con artist robs an elderly woman of her weekly pension. The police arrest him and take him in for

questioning. He is generally rude and uncooperative, so he is handcuffed and placed to kneel in a corner of the police station, occasionally slapped on his head and taunted about what will happen to him if he is placed in the lock up. He eventually tells the police where the money is hidden, it is retrieved and he is released without any charges pressed.

In all these scenarios, the police exerted some level of 'brutal' treatment to the offenders who were, without a doubt, disrespectful of the police's authority and by extension the rule of law in the land. But are these police responses outside the realm of what is deemed to be acceptable or reasonably justifiable? Or were their actions in keeping with the sworn duty to keep general law and order?

These questions lead us to consider the historical context of the police force's function as well as the evolution to keep up with a dynamic set of criminal elements. One thing is certain, the police, in whatever forms they have historically held, have always been the buffer between the lawless and the lawful citizen. Vigilante groups have historically performed the role of keeping the peace, and by most accounts they were successful. More recently, a zero tolerance approach to crime, taken by a modern, well equipped, well trained police force has been hailed as the reason behind "the drastic drop in crime experienced recently in New York City" (Adler et al, 2006, p. 176) Here in the Caribbean, we can relate to this experience. Jamaicans can remember the law and order that existed when the hard line police officers like Renato Adams, Isaiah Laing and Cornwall 'Bigga' Ford were roaming the streets virtually unfettered. We will also remember the chaos that reigned in Spanish Town a few days after Senior Superintendent Adams was removed from frontline duty. Barbadians may remember 'Rat' Brown, Vincentians can speak of 'Red John' and 'Bouncer', while St. Lucians turned to 'Robo Cop' for protection- These were police officers that did their duty to maintain law and order by showing that they were not afraid to exercise their discretion to use force when necessary.

What is the point of all this? It is simply to establish that a police force that has a tough edge will be in a better position to maintain law and order if only through the fear it drives into potential offenders. A police force that refuses to use its coercive powers is inviting more danger to its operations than is necessary by creating the impression that they are a soft target and that they are incapable of and unwilling to maintain law and order.

Police work has always been dangerous since police “intentionally put [themselves] in the middle of violent or tragic situations daily... exposing [themselves] to brutality, violence and hatred in order to resolve situations so that others will not be injured”. (Trautman 2005, p. 181) Police officers are therefore encouraged at the academy to take lessons from the death of police officers who were too trusting, or did not exert their authority to good measure.

Surely these officers are taught in the academy the importance of maintaining control over their temper (Adler et al 2006, p. 214), “but there are many things that cannot be learned in the classroom. The practical, realistic strategies and techniques that follow usually are learned only through years of experience.”(Trautman 2005, p.199) under normal circumstances, a policeman who calmly exercises his discretion to apply brute force may well be deemed to have exercised such right in a reasonable manner. Once he does so during a fit of rage however, he may well be deemed to have acted unreasonably. This has to be learnt whilst on patrol since the issues on the beat are never as clear cut as presented in the academy’s classrooms.

In practical situations, it is usually the police officer’s willingness to use overwhelming or brute force against an offender that determines whether he or she lives to patrol another day. Trautman (2006, p. 205) points to close range shoot outs as one such example, where the “difference between life and death is measured in fractions of a second.” Here, the police officer who is overly concerned with not exerting overwhelming force in

apprehending this offender usually ends up dead. In such situations, the major concern has to be to stop the harmful conduct as quickly as possible.

The single most effective way to stop a shooter is by firing directly into the mid chest region since the damage to vital organs would reduce the perpetrator's power. (Trautman 2006, p. 206), but too often, whenever this occurs, there are outcries alleging police brutality, with the single most frequent comment being that the police could have fired at a leg or an arm to stop the perpetrator. As a society, we need to remember that "the bad guys do not follow rules during a street fight" (Trautman 2006, p. 210), police officers are therefore placed at a disadvantage with all these superficial rules governing their otherwise legal reaction to a life threatening encounter.

Concerning repeat offenders, The Uniform Crime Reporting Program (2000)⁴⁷⁹ revealed that offenders, with prior and sometimes multiple arrests and convictions for violent offenses, were responsible for the deaths of most police officers killed in the line of duty in the United States. In light of this and similar reports, shouldn't the police then be allowed to 'overwhelm' these offenders during arrest and interrogation to obtain valuable intelligence, safety for the force's complement and eventual the offenders' conformity to society's rules? It is here that I am prepared to make the concession, in accordance with Shuy's (1998)⁴⁸⁰ suggestion that 'physical encouragement' to speak during interviews with suspects are not necessarily the most effective and should therefore be reserved for more uncooperative offenders.

For Shuy, "a conversational style encourages suspects to produce confessions spontaneously". If however this approach fails, and there are lives at stake, shouldn't the option of slapping

⁴⁷⁹ Cited in Trautman 2006, p. 189

⁴⁸⁰ Cited in Heydon 2005, p. 174

the information out of the offender be readily available? We should here remember that torture is never allowed under any circumstance and be careful that we do not step over the thin line between overwhelming the offender to the point that he gives the information, and torturing it out of him.

This brings us to the point of what police officers are empowered and or required to do according to the respective constitutions and other legal provisions. Police officers in the Royal Barbados Police Force, as with other police forces, are required to take an oath of office before being appointed police officers. The oath required by Section 14 of the Barbados Police Act reads:

I, _____ do hereby swear by Almighty God and do hereby solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors and that I will faithfully serve Her Majesty the Queen, Her Heirs and Successors during my service in the Royal Barbados Police Force; that I will subject myself to all Acts, orders and regulations relating to the said Force now in force or which may from time to time be in force and will discharge all the duties of a police officer according to law, without fear or favour, affection or ill will...

A similar oath exists in Guyana and Jamaica, with the oath in the latter country adding in Section 4 of the Constabulary Force Act 1935 that the police officer must swear to:

...[S]ee and cause Her Majesty's Peace to be kept and preserved and ... prevent, to the utmost of [his/her] power, all offences against the same...and that while [the officer] shall continue to hold the said office [he/she] will, to the best of [his/her] skill and knowledge, discharge all the duties thereof faithfully, according to law...

Police officers are trained to shoot, and otherwise subdue people using specialist equipment, hand to hand combat maneuvers, as well as chemical substances. They are also bound by oath to use these brutal means to enforce Her Majesty's Peace.

What moral authority do we have, to after asking them to swear an oath, blatantly ask them to break the said oath for our convenience?

But what is meant by keeping the peace? The Barbados Police Act 1961 declares in Section 4 that:

- 4. The Force shall be primarily employed for*
- (a) the maintenance of law and order;*
 - (b) the preservation of peace;*
 - (c) the protection of life and property;*
 - (d) the prevention and detection of crime; and*
 - (e) the enforcement of all laws and regulations with which it is charged.*

Additionally, the written constitutions provide for the protection of certain fundamental rights and freedoms, such as the right to life, and the right to freedom from cruel and unusual treatment or punishment. However, inherent in these rights are limitations that ensure that "...Enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."⁴⁸¹ Police officers are therefore charged with balancing the rights of an offender with the rights of other citizens. It may become necessary in establishing this balance to limit the rights of an offender but it is universally accepted that these limitations should not be more than is 'reasonably justifiable in a democratic society'.⁴⁸² These provisions are uniform throughout the West Indian Constitutions and apply to all forms of police and other state action. A lot is therefore pinned on the police officer's reasonable judgment.

Let us consider the most permanent form of action – the use of deadly force. Constitutionally persons are guaranteed their right to life. The Barbados Constitution 1966 echoes the provision as stated in the other Regional Constitutions. It goes further to state the limitation on this right to life in Section 12(2) adding that:

A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such

⁴⁸¹ Barbados Constitution 1966 S. 11(d).

⁴⁸² S 13 (4)(d) Constitution of St. Lucia

*extent and in such circumstances as are permitted by law, of such force as is **reasonably justifiable-***

- (a) for the defence of any person from violence or for the defence of property ;*
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or*
- (d) in order lawfully to prevent the commission by that person of a criminal offence,*

or if he dies as the result of a lawful act of war.

It seems that the constitutions have placed emphasis on the reasonably justifiable nature of these police actions, and are in fact concerned with ensuring that the respective society's reputation is not tarnished by police actions that are "shocking to the conscience"⁴⁸³. A literal interpretation of this provision would give the police officer the right to use deadly force against anyone who tries to escape lawful arrest for any crime – An extremely brutal discretionary option. However, the requirement that the force be reasonably justifiable limits the scope of this discretion to the extent that deadly force may only be used justifiably "where the person seeking to escape apprehension poses a continuing danger to the lives of others." (Kleinig, 1995).

I humbly submit that this requirement for a reasonable justification of police action should be the only shackle on the use of overwhelming force. The actions that police officers are legally authorized to take in arresting, questioning and keeping general law and order are innately brutal, but once executed within reason, the officers in question should not be demonized for their attempts to keep an oath they took for our benefit. According to Kleinig (1995), for the present adversarial relationship between police and the community to be remedied, the wider community must "recognize the interdependence of police work and communal peace, and to see our critical ethical task not simply as one of fault-finding but of mutual support in a joint enterprise from which we

⁴⁸³ Rochin v. California, 342 US 165,72 S.Ct. 205 (1952) Cited in Kleinig (1995)

all benefit". We therefore should not continue the practice of labeling legitimate police actions as 'brutality'.

This existing conflict leads us to now discuss the ethical justification for the police's use of overwhelming force in prescribed situations.

As previously stated, there can never be an absolute answer to the issue of maintaining police brutality in cases of arrest, questioning and keeping general law and order. What is necessary is an evaluation of the assertions surrounding police brutality solely by their practical consequences and bearing on human interests. This moral pragmatism, as advanced by John Dewey, calls on us to treat moral decision making as "highly contextual and [consisting] of an attempt to integrate into a reasonable unity a varied set of moral considerations" (Martin 2001, p. 37). Here, Martin stresses that there must be a certain "creative intelligence and sound judgment based on experience" which allows us to arrive at suitable decisions whenever moral rules conflict with each other. This coupled with a utilitarian approach, advocating for "the most good for the most people, giving equal consideration for each person affected" (Martin 2001, p. 39), should result in a practical solution to the debate on police brutality.

Police are authorized to use force, within reason, to achieve their legitimate ends. How can we, after authorizing this set of actions, turn around and condemn them. This points to a certain hypocrisy within our society which sees us wanting to have our cake and eat it too. There is a crime wave sweeping across the Caribbean with once quiet areas and islands flaring up with violent and drug related crimes. We have, as a region agreed that there needs to be a war on crime, never the less, there is a general failure to really engage in this war. The constant excuses being offered, in the guise of police brutality claims seem to clearly fit into what Martin (2001, 294 & 305) called a "weakness of will that involves a loss of self control in the sense that we fail to guide our acts in light of our values; but does not entail a loss of self control in the sense that we are unable to act otherwise". Caribbean societies are

divided within themselves. Each state knows that a zero tolerance approach to crime fighting needs to be adopted if there is to be an improvement in the crime situation. But the weakness of will leads to a situation in which the respective police forces are restricted in performing their sworn duties by weak individuals within the state who misuse the principles of human rights to hold the majority to ransom. We are no doubt engaged in self deception, evading painful topics, “emotionally detaching ourselves from difficult situations, conveniently acquiescing to social pressures, or using other tactics... [stopping] us from honestly confronting the morally harmful aspects of our lives...” (Martin 2001, p. 289).

The use of force, arrest and interrogation are all innately brutal acts which are designed to proportionately counter brutal, antisocial acts of criminal offenders. The power to employ them has been entrusted to respective police forces that have been trained in their reasonable application and held accountable for their reasonable use. These are vital tools for the keeping of law and order and any attempt to stifle their use could have serious implications for the keeping of the peace.

Of course there are situations in which police brutality can never be justified. But all these instances include situations in which the police exercise their discretion to use force against reason. Of course torture can never be condoned. Similarly, the use of force against citizens who are merely exercising their constitutional rights can never be reasonable. Tear gassing a crowd of peaceful demonstrators, or slapping someone for merely questioning authority or insisting on their rights or arbitrarily arresting persons should never be permissible.

In conclusion, a few things should stand out in our minds as we wrestle with this issue of ‘police brutality. Firstly, that the actions that police have been historically, legally and morally empowered to do are in and of themselves innately brutal in their nature. Secondly, that these ‘brutal’ acts are our civilized society’s response to the brutal and anti social behavior of a minority group of offenders. Thirdly, that any attempt to stifle the police’s

reasonable application of overwhelming force could constitute a weakness of will and societal hypocrisy that will prevent us from addressing the problems facing our societies. We must therefore be open to addressing our moral problems in a way that works out to give us pragmatic solutions in situations when our various rules of morality clash.

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