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Introduction

At a critical moment in American policing, we have embraced body-worn cameras as a tool of police reform and accountability. After the 2014 fatal shooting of Michael Brown in Ferguson, Missouri, as well as other controversial deaths of African-Americans at the hands of officers, American police have drawn intense public scrutiny (Lauter and Pearce 2015). While some proposed police reforms in response to these deaths have been controversial, lawmakers, police chiefs, and activists alike have supported police adoption of body-worn cameras (Elinson 2015). Of seventy large U.S. police departments recently surveyed, ninety-five per cent responded that they had or were in the process of adopting body-worn cameras (Maciag 2016). In May 2015, the U.S. Department of Justice announced the availability of \$20 million for local police departments to adopt these cameras (Berman 2015). Without a doubt, police body cameras “are here to stay” (Hermann and Weiner 2014).

But this rapid adoption has come with a cost. Before 2015, only four states had passed any laws regarding police body-worn cameras; by 2015, a majority of them had done so (NCSL 2015). Yet a February 2016 study found that only nine states had any explicit guidelines on how body-worn cameras should be used (Urban Institute 2016). Body-worn cameras collect video data—lots of it—and as a result, civil liberties groups and scholars have raised questions about increased government surveillance. But the potential use of these cameras as surveillance tools, while an important concern, ignores an equally pressing problem.

In our big data age, “seeing, monitoring, and recording the digital footprints is quite different from sharing, releasing, revealing or publicizing the data” (Harcourt 2015). Police body camera policies must address not only concerns about surveillance, but also data control. The absence of clear data control policies will result in confusion, both for the police and the public, about who has access to see, share, and delete data produced from body-worn cameras. And without strong presumptions in favor of sharing the data with the public, the reform, accountability, and legitimacy potential of body worn cameras will go unfulfilled.

Who controls the data?

The regulation of new police surveillance technologies—of which body-worn cameras are only one example—must address data control: the conditions of its production, analysis, storage, and access. Pervasive data collection of personal information, whether by government agencies or private companies, is already a reality for most Americans. Third parties use that data, once collected, to make decisions

about our consumption, health, employability, and creditworthiness. Even the police rely on data collected in private databases. In this way, the information produced by police body cameras joins the data trails already surrounding us. And body-worn camera adoption by the police will likely only be a precursor to other public officials (e.g. teachers) and private actors (insurance adjustors) following suit (Maciag 2015; Mims 2015). Matters of responsibility, innocence, and liability will depend on who controls the data that can answer these questions. Thus the “data fate” (Marx 2012) of the information produced by these cameras will influence the use of this technology well beyond policing.

What are the conditions of data production?

The very design of a police body-worn camera can influence the resulting data (Kaste 2015). Seemingly mundane questions of equipment design and cost can shape the information produced. These important questions, however, are dictated by private companies, not public agencies. In the case of surveillance technologies, the police are purchasers and consumers of third party products (Joh 2016: 38). Two manufacturers, Taser and VieVu, dominate the police-worn body camera market (Mearian 2015). As a result, only two companies wield disproportionate influence over the design of police body-worn camera data collection and control.

Start with the recording decision. If a camera is only subject to manual control, key discretionary decisions about when and why to record are left up to the individual officer. A failure to record may be the result of accident, stress, or deliberate misconduct. An affirmative decision to record might be a legitimate attempt to enhance accountability or, worse, to humiliate or invade privacy felt in an intimate setting like a home. Any of these outcomes are possible when the recording decision is left to the individual officer. We could remove that uncertainty through design (Stroud 2015). A different type of camera could take the recording decision away from the officer altogether, by livestreaming the video images to the agency data-center (Li 2014).

Next, a body-worn camera that records secretly does little to foster trust in the police and may increase public suspicion. A requirement that police provide a verbal warning leaves notice up to officer discretion. A better alternative or supplement would be “visceral notice” by design (Calo 2012), such as a blinking red light, when a camera is recording. Eliminating secret recording may increase notice, but with other mixed results. Knowledge of a police body camera in operation may discourage some people from coming forward or inhibit how they speak to the police. Yet a camera that can operate in “stealth mode” may also foster public mistrust. These design details affect the ultimate production of the data, and yet few have recognized their significance. Moreover, if these design elements influence data production, the input should come from the public, and not only corporate interests and the police.

How will the data be stored?

Those police departments that have already adopted body-worn cameras report that vast amounts of data result from even limited amounts of camera use. By one estimate, some large police departments are producing more than 10,000 hours of video data a week (Sanburn 2016). This amount of data created is often beyond the capacity of most conventional police departments to store themselves.

To meet these needs, private companies offer data storage services—sometimes the very same companies that supply the cameras. This third party storage is costly: in fact, it is often the most expensive part of police body-worn camera programs. Profit margins are much higher for video storage than they are for the cameras themselves (Mearian 2015). Indeed, data storage costs are sometimes cited as a reason why police departments may be reluctant to adopt body-worn cameras at all (Ryan 2016). Thus data storage costs may be an unrecognized factor that influences decisions about which kinds of incidents officers will record in the first place.

No matter where police body-worn camera data is stored, there remain questions of when data should be deleted. Here the values of privacy and accountability may lie in tension. The few states that have addressed body-worn camera video storage limits have generally erred on the side of limiting video storage unless it is involved in a criminal investigation (Urban Institute 2016). Shorter storage times means there is less data (of the innocent as well as the guilty) available for inspection and analysis. Yet longer data storage periods may enhance public accountability if it means that the public—citizens, journalists, and researchers—can access video that can illuminate individual cases as well as general policing practices.

How will the data be processed?

In the age of big data, digital information once collected may be endlessly analyzed, sifted, and sorted for different purposes (Mayer-Schönberger and Cukier 2013: 122). Facebook sends targeted advertising to its users based on their posts. Tinder, the dating app, now matches its users to presidential candidates (Opam 2016). The data captured by police body-worn cameras will likewise be subject to the same analysis and reuse.

The data collected by body-worn cameras could be subjected to various software applications that would further law enforcement interests, not accountability concerns. Body-worn cameras could incorporate license plate reader or facial recognition technology. Adoption of these technologies raises distinct questions of police discretion and policy. To what ends should a body-worn camera equipped with facial recognition technology be used? Most people will probably agree that the police should be able to identify those suspected of “serious” crimes, but is there a lower limit? Should police be able to use these cameras to identify, for instance, those persons delinquent on property taxes (Clift 2015)?

How will the data be shared?

Body-worn cameras have been touted as tools of police reform, but if the resulting data is secret, reform is impossible. Consider the fatal shooting of 17-year-old Laquan McDonald, shot 16 times by Chicago Police in 2014. Even after journalists raised repeated questions about the circumstances of the shooting, the city refused to release the video of the shooting for 13 months, until forced to by a judge’s order. Cook County State’s Attorney Anita Alvarez had taken no action in the case until, on the day of the video’s release, she announced first degree murder charges against Officer Jason Van Dyke for his role in McDonald’s death (Glenza 2016). Within days, Mayor Rahm Emanuel fired Police Superintendent Garry McCarthy. Heavily criticized for her inaction until the release of the video, Alvarez lost a primary challenge shortly thereafter (Davey 2016). As the McDonald case shows, it is data control as much as collection that will matter in the use of police body-worn cameras.

Yet departments around the U.S. have not yet developed clear policies about data sharing. Some departments have adopted internal policies restricting public access to body-worn camera video, while some state and local governments are considering legislative measures to do the same (Hermann and Davis 2015). Nearly every state has law enforcement exemptions to public records requests; these may be invoked to bar most public access to data created by police body cameras (Urban Institute 2016). At the other end of the spectrum, the Seattle Police Department has posted videos taken during its body-worn camera pilot project on YouTube, with sensitive images blurred (Kravets 2015).

National questions, local responses

Most of the wide variation in data control policies can be explained by the highly decentralized nature of American policing. Instead of a national police force, American policing is represented by the approximately 18,000 state and local agencies that assume responsibility for policing (Bureau of Justice Statistics 2011). Consequently, it is nearly impossible for uniform policies to be imposed upon such a large number of distinct police departments. And for some, that variation is desirable. The President’s

Task Force on 21st Century Policing, for instance, emphasizes that the implementation of new technologies, including body-worn cameras, “should remain a local decision to address the needs and resources of the community” (President’s Task Force 2015: 35).

Will the surveillance and privacy implications of police body-worn cameras be worth any increase in accountability? The answer, as I have suggested here, depends greatly on questions of data control. While systematic monitoring alone can affect one’s behavior, equally important are unresolved questions of how any resulting data is stored, analyzed, and shared. Collected data presents the danger of an endless surveillance loop: monitoring that results in data that justifies even more monitoring. And as this response has suggested, these questions will apply with equal force to every new technology the police adopt to collect information.

Who has power over “controlling the data flows” is the ultimate political question that attends body-worn camera adoption by the police (Harcourt 2015). Yet in the rush to respond to calls for greater police accountability, many American police departments lack consistent, clear, or—in some cases—any, formal policies regarding how to control that data. Without clear limits, body-worn cameras may become just another tool for law enforcement rather than a mechanism for police accountability.

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