

Reflection essay on police discretion

[Government](#), [Military](#)



Discretion is defined as the authority to make a decision between two or more choices (Pollock, 2010). More specifically, it is defined as “ the capacity to identify and to document criminal and noncriminal events” (Boivin & Cordeau, 2011). Every police officer has a great deal of discretion concerning when to use their authority, power, persuasion, or force. Depending on how an officer sees their duty to society will determine an officer’s discretion. Discretion leads to selective enforcement practices and may result in discrimination against certain groups of people or select individuals (Young, 2011).

Most police officer discretion is exercised in situational situations with individuals (Sherman, 1984). Discrimination can lead to legal problems for an officer of the law. If discrimination due to an officer’s use of discretion results in a violation of due process it is a violation of the law (Young, 2010). Due process is the constitutionally mandated procedural steps designed to eliminate error in any governmental deprivation of liberty, life, or property (Pollock, 2010). One of the main concerns with using discretion is the possibility of it leading to a violation of due process by racial profiling.

Types of Negative Police Discretion Racial profiling occurs when a police officer uses a “ profile” as reasonable suspicion to stop a person with the intent to obtain consent to search their belongings (Pollock, 2010). These stops are usually traffic stops and the officer is looking to obtain consent to search the individual’s automobile. The “ profile” used is based on race. In these cases, an officer is using their discretion to target minority groups because they believe they are involved in criminal activities.

The concern with using this profile is that racial stereotyping of minority groups will lead police to crack down on minorities more than on other groups. While police see the action of racial profiling as a normal police tactic, minority groups see the actions as racist (Young, 2011). Although most studies on police officer discretion is focused on racial profiling, it has also been shown that officers patrol hot spots. Hot spots are areas known to have a high rate of criminal activity. Focusing on hot spots is an officer's discretion, because they are ignoring other areas that could potential produce criminal activities.

All surveillance and enforcement efforts are focused on the “ hot” area. Not only are officers ignoring other areas, but they have determined those areas are not as important as the hot spot. Hot spots can prove to be problematic if the criminal activity located in the hot spot before it was being patrolled is moved to a new location. The new location is prone to no police surveillance because all resources are focused on the old hot spot (Mastrofski, 2011). Discretion and the Use of Force Police have the uncontested right to use force when necessary to apprehend a suspect.

If the force exceeds that which is necessary it is defined as excessive force and is illegal. An officer's discretion on use of force is a based on judgment. They do not know if a judge will later rule an instance of use of force as excessive or not. There is a fine line between what is considered acceptable force and what is considered excessive force. All an officer can do is use their training to determine what is and what is not excessive force for the given circumstances (Pollock, 2010). The use of force is highly resistant to change, even after the Rodney King incident.

Rodney King was a subject of police brutality. He was repeatedly beat with a baton by Los Angeles police officers, while other officers stood by watching without attempting to stop the excessive force. The pattern of excessive force may be so ingrained in some police department cultures that it remains unaffected by other high profile excess force cases, such as the Rodney King case. This pattern is termed the “ culture of force. ” The culture of force is also subject to an officer’s discretion. The culture of force is detrimental to a department.

The Los Angeles Police Department in the 1980s and 1990s would act on a tip and destroy homes by breaking toilets, ripping sofas, and spray painting “ LAPD Rules! ” on the walls. These acts by the Los Angeles Police Department prove the culture of the department will have an influence on the individual officer (Pollock, 2010). Police departments have use-of-force policies that specify when force may be used and the proper level of force to be used under given circumstances. Most departments use a continuum-of-force approach that allows proportional force to the suspect’s resistance.

The level of force by an officer increases in direct response to escalating resistance of the suspect. Policies such as this one have been put into place following many humiliating acts of excessive force. The policies are in place in an attempt to prevent future acts of excessive force (Pollock, 2010). Studies on Police Discretion National studies on police behavior have failed to adequately address the issue of police discretion. Due to the lack of important research data, analysts have developed suggestions on how to improve an individual officer’s discretion by educating the entire department on proper use of discretion.

The current suggestions are focused on officers in higher ranks developing an educational program for their department addressing areas of needs they have observed. They are the eyes of the department, and it is their job to know what their officers' needs entail. Each department will have different needs based on the ethical viewpoints of their individual officers (Mastrofski, 2011). A study on police discretion conducted in Canada was implemented to try to eliminate negative police discretion. The study first mandated that all reported violations of the law be recorded.

The results of the study had effective but temporary results. There were more records of assaults, robberies, thefts, and mischief. However, the study had no effects on reports of burglaries and car thefts. It is estimated that during the one year study police recorded 13, 000 extra crimes. Although there was an increase in records, detection and reporting rates remained the same. The extra recordings were determined to be ineffective because the community reported that they did not notice a difference in the policing styles (Boivin & Cordeau, 2011). Ethical Dilemmas in Police Discretion

Ethical dilemmas are “ situations in which it is difficult to make a decision, either because the right course of action is not clear or the right course of action carries some negative consequences. ” Ethical dilemmas entail the individual struggling with personal decision making, and sometimes results in a personal dilemma. Departmental policy can lead to personal dilemmas as well if it means going against an individual officer's ethical system beliefs. This can lead to the officer seeking a change in law to match their own personal views on the issue (Pollock, 2010).

Utilitarianism is “ the ethical system that claims the greatest good is that which results in the greatest happiness for the greatest number. ” Utilitarianism therefore argues racial profiling is ethical because the “ end” of drug interdictions justifies the “ means” of harassing and inconveniencing the group. An argument against this justification is that when an officer uses racial profiling in decision making, the officer’s motives obscured. They do not concentrate on what is important for investigations. Behavior is what is important, not demographics (Pollock, 2010).

Ethical formalism states that “ the only thing truly good is a good will. ” This ethical system does not agree with the idea of racial profiling. According to Pollock, it would mean that everyone should be stopped in the same way, so everyone would have to agree to be stopped numerous times every week. Since society most likely will not all agree that everyone should be stopped the same, racial profiling would not be an accepted practice in the ethical formalism system (Pollock, 2010). It is difficult to apply ethical systems to the use of deadly force and tasers. This is because each situation involving the use of force is different.

At times an officer may benefit from the use of a taser, but other times the use, or threat of use, of a deadly weapon is more effective. Officers may argue that tasers do not always benefit the suspect because tasers do not always stop people. Departmental policies usually overrule ethics in the use of force. This is because officers have a duty of protection, so if they can accomplish their task without hurting the individual their duty would require the lesser use of force. Every officer has a duty to prevent crime. If they feel

an individual is a criminal based on race, then formal policies are going to conflict with their ethics.

In other words, if an officer believes racial profiling is an effective method of policing their ethics are going to conflict with formal policies. An effective method to correct this conflict has been to educate officers on evidence that proves stopping minorities based on their race are less likely to result in criminal activity than stops based on behavioral-based criteria. Even with education, an officer's ethics can still prevail over evidence learned in training. This is because the officer's ethical standards still tell them racial profiling is more effective (Pollock, 2010).

Training to Eliminate Unethical Police Discretion Practices Efforts to eliminate racial discrimination in the police culture are in the form of new officer recruitment and training and taught through patrol work. These measures are taken to eliminate negative discretion, such as racial profiling, by developing better relationships with the community regardless of the racial composition. The goal is to make police-citizen interactions more frequent, varied, and dispersed throughout the community (Mastrofski, 2011). A suggestion was made on how to police hot spots by Mastrofski.

He suggested that instead of having officers stationed in hot spots with full personal discretion on how they police the area, they should be told how long to patrol the area or told what tactics to use in the area. This will eliminate complete personal discretion by the officers patrolling the hot spot areas. The time limit of policing the hot spot is to reduce the amount of neglect other areas in the community experience due to the policing of hot spot areas. The goal of this plan is to continue with the crack downs in hot

spot zones without neglecting other areas in the community (Mastrofski, 2011).

Conclusion Although this research paper focused on the negative effects of police discretion, there can also be positive effects. Things such as giving offenders of minor traffic violations less of a punishment or giving first time youth offenders less of a punishment to let them learn from their mistakes are examples of what can be termed positive police discretion. However, what is considered positive discretion to one person could be negative discretion to another. Every person has their own opinions about how police discretion should be handled.

Some may think police should not be entitled to use discretion and every department should have policies the officers should follow instead. Other people may like that police have the use of discretion which could lead to a warning for a minor traffic violation instead of a fine. The topic of police discretion in relation to ethical dilemmas is also a heated debate. Since people have different ethics; every police officer will patrol a little different. It has been suggested that police departments educate their officers to be more uniform in their policing.

Not only would this eliminate some of the negative discretion practices officers may have developed, it would also put all the officers on the same page with the way the department would like to have the community policed (Mastrofski, 2011). The concept of police discretion is a large topic of conversation among researchers. The problem I see with the topic of conversation is there is not a lot of research done on the actual affects of the

individual discretion of each officer compared to a department that has been educated in following policies more than personal discretion.

In fact, from what I saw there is not much research on the effects of discretion at all. It seems like it is a topic that is overlooked when researching the effectiveness of a department. I feel like before more solutions are found on how to correct the problem of discretion, more research needs to be done on how discretion plays a role in every day policing. Until this research is conducted, all the articles published are on theories of discretion causing problems, and all of the solutions mentioned are methods to correct a problem that has not even been proven to be an issue yet.