Over and Under-Policing: Thoughts on Remedying Shooter Bias

Author : Camille Nelson

Date : October 11, 2017

Cynthia Lee, Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training, 79 **Law & Contemp. Probs.** 145 (2016).

Using the fatal shooting of Laquan McDonald by Chicago police officer Jason Van Dyke as the starting point, this article seeks to address the common articulation of fear by police officers in the wake of such fatalities. Initially highlighting the question of why an unarmed teenager who did "not appear to be threatening anyone" (P. 145) was shot a total of sixteen times, Professor Lee addresses the data, which are officially underreported, on the number of fatal shootings that occur annually in the United States. Despite the lack of official data, the article notes that, "nongovernmental sources … indicate that the actual number of persons killed by police is probably double [the reported figure of 420 fatal encounters with police annually.]" (P. 146-47.)

Turning to focus on the disparate number of Black individuals who are shot and killed by police, Prof. Lee notes that, despite constituting only six percent of the U.S. population, "Black men accounted for approximately forty percent of the total number of unarmed individuals shot and killed by police." (P. 149.) This is the central problem that Lee seeks to address. She makes two proposals, which are based on the failures of perception that often take place in such encounters.

In embracing the concept of "threat perception failure," (*Id.*) Lee offers an explanation for the degeneration of these encounters between police and civilians. Threat perception failure refers to the misperception that takes place when an officer erroneously shoots an unarmed person, having assumed that they were armed. Lee references Prof. Fridell, who states that, because of embedded societal stereotypes of Black criminality, such failures occur more frequently when the "police-citizen encounter involves a Black suspect than when it involves a White suspect." (P. 150.) This theory, in turn, logically becomes the underpinning for Lee's first proposal of enhanced police training. Importantly, while consciously held stereotypical views also exist, Lee is careful to point out that "the shootings are not necessarily the result of conscious racism." (*Id.*)

In digging into the social science research on race and police shootings, Lee states that, "this research demonstrates that most individuals are quicker to see a weapon when dealing with a Black suspect than when dealing with a White suspect." (*Id.*) Lee points out that police officers are better able to decide when, and when not, to shoot. This is important to her thesis, as it suggests that police officers can be trained to decrease such threat misperceptions. Lee proposes that police departments tackle this head-on by increasing and improving their efforts to reduce the incidence of the shooting of unarmed suspects, and, importantly, address the bias inherent in these killings.

Lee's second proposal is that police forces mandate (ongoing) martial arts training for all officers, which requires more than the typical forty-four hours of self-defense training, as "without regular and sustained practice of such techniques, a police officer is unlikely to be able to effectively use those techniques if and when needed on the street." (P. 150, 166.) Lee makes this suggestion partly due to research that indicates that, with training, police officers can reduce their racial biases, as well as improve their decision-making accuracy when shooting (un)armed suspects.

We also learn later in the article that in studies "[p]olice officers also showed less racial bias than civilians in the ultimate decision to shoot." (P. 156.) She reminds us that "studies have shown that repeated exposure to Black and White suspects when race is not a diagnostic cue as to whether the suspect is holding a gun results in less biased and more accurate decisions about when to shoot." (*Id.*) In addition to providing healthy outlets for stress and improved

psychosocial well-being, given officer articulation of fear as a driving factor in such shootings, Lee suggests that enhanced training in martial arts would increase the level of police confidence, so that they would not feel the need to resort to lethal force in volatile situations. (P. 151.)

Professor Lee lays out the pervading stereotypes that are either consciously or unconsciously held by most Americans associating Blacks with criminality and dangerousness. In doing so, she emphasizes that such bias has little to do with one's ideology around race and racism; rather, "even the most egalitarian-minded individuals are quicker to associate Black faces with negative words and White faces with positive words." (*Id.*)This research tracks the shooter bias research as well, insofar as "most people exhibit racial bias with respect to the decision whether or not to shoot a suspect." (*Id.*) This decision is interwoven with notions of officer confidence, their sense of commanding respect from the suspect, as well as threats to gendered conceptions of masculinity. (*See* P. 159, referencing the work of Phillip Atiba Goff and L. Song Richardson, and Frank Rudy Cooper.)

Interestingly, the research based on participant studies indicates that the same shooter bias that negatively impacts Black people positively impacts white suspects. Specifically, Lee points out that, "[w]hen participants were given less time to decide whether to shoot, they mistakenly shot unarmed targets more often if they were Black than if they were White. Participants also mistakenly decided not to shoot armed targets more often when those armed targets were White than when they were Black." (P. 154.)

This latter point is very important and is deserving of further study. Not only does such racially biased policing over-criminalize, and hence disparately punish Black suspects, it also privileges, through a halo effect, White suspects, thereby further undermining both police and community safety. Both stereotype-laden errors render us less safe – for Black suspects this consequence can be lethal; in terms of White suspects, police and society are rendered more vulnerable as we are under-protected from those who might pose a threat.

Lee also addresses research that challenges the majority of shooter-bias literature as unrealistic, given that "there is a big difference between pressing a button labeled 'don't shoot' and not pulling the trigger of a gun in one's hand." (P. 155.) This literature asserts "[t]he natural inclination is not to act particularly under conditions of uncertainty or personal moral dilemma." (P. 155, citing Lois James, Stephen M. James & Bryan J. Vila, *The Reverse Racism Effect: Are Cops More Hesitant to Shoot Black Than White Suspects?*, 15 **Criminology & Pub. Pol'y** 457 (2016).) Lee counters by questioning the assumption of non-action when danger is perceived, and when the tendency towards self-preservation likely kicks in. Importantly, Prof. Lee points out that, because research shows that

> [R]ace plays some role in the decision to shoot, proposals for reform should seek ways to reduce the possibility of racial bias impacting the police officer's decision to shoot, as incorrect shooting decisions can harm not only unarmed Black civilians who are mistakenly perceived to be armed and dangerous, but also police officers who may be too slow to perceive when a White suspect is armed.

(P. 160.)

Hence Lee's proposals for implicit bias and martial arts training. I think that it is important to highlight that the second proposal is equally important, as we tend not to interrogate the inner life of police officers. Lee seeks to make the decision-making process better not only through police training recognizing external factors, i.e., the accurate recognition of weapons in the hands of suspects, regardless of race. She also suggests that through enhanced martial arts training we can better support police officers, not just physically through improved strength and body conditioning, but just as importantly through the meditative aspects of martial arts, which improve mental and emotional well-being, relieve stress, enhance calmness, decrease panic, improve confidence and intuition, and thereby improve "an officer's ability to accurately assess the dangerousness of a given situation." (P. 166-68.) Interestingly, Lee also suggests that police officers should embrace the underlying philosophy of karate to "never … initiate an attack in real life. Karate is supposed to be used defensively if, and only if, one is attacked. This is why virtually all the kata, or forms, in karate

start with a block, not an attack." (P. 169.)

Lee's article comes at a time in our nation when the topic of race and policing is frequently discussed, but is nonetheless deeply polarizing. In addition to preventing the loss of Black lives, Lee adds a concluding argument for those disinclined to engage with the implicit bias rationale. She reminds us that "problematic shootings by police cost taxpayers millions of dollars in settlements arising from civil lawsuits. ... The need for reform of policing practices ... transcends race. Almost half of all individuals shot and killed by police each year are White." (P. 171.) The second point, "that the need for reform transcends race, is race neutral," further underscoring Lee's intervention in support of weaponless martial arts training. (P. 172.)

I am grateful to Lee for engaging in this conversation. It is an important contribution to the national conversation around police shootings. I hope it will assist us in moving towards better outcomes in this respect, meaning greater safety for all involved, both suspect and officer.

Cite as: Camille Nelson, *Over and Under-Policing: Thoughts on Remedying Shooter Bias*, JOTWELL (October 11, 2017) (reviewing Cynthia Lee, *Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training*, 79 **Law & Contemp. Probs.** 145 (2016)), https://equality.jotwell.com/over-and-under-policing-thoughts-on-remedying-shooter-bias/.