From the Legal Literature: Automating Police

Francesca Laguardia
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AUTOMATING POLICE

I. INTRODUCTION

The movement to defund police has gained new momentum in the wakes of the killings of George Floyd and Breonna Taylor. While some activists focus only on reducing funding for and corresponding uses of police forces, others suggest fully abolishing police and building something entirely new. At a minimum, however, the movement calls for a reduction in spending on police departments, investment in social programs and resources that reduce crime, reducing the role of police and replacing them (in many situations) with social workers and community involvement, and reducing spending on military equipment for police forces.

Opposition to this call tends to focus on the risk of increased crime if police budgets are cut and there are fewer police on the street. Police officers and others argue that increased police presence is responsible for decreases in crime rates, which will reverse

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4 E.g., Ray, supra note 1; Sharkey, supra note 1; Siegel, supra note 2.

5 E.g., Sharkey, supra note 1.
if police departments are defunded. There has been a consistent stream of research supporting this idea, although the issue is far from settled.

But even if it is true that police presence deters crime, there remains the question of whether it must be police that are present, as opposed to community representatives, cameras, or other forms of technology. The impact of increased police officers appears to be a deterrent effect associated with increased certainty of arrest. This suggests that automated measures—such as surveillance cameras, red light cameras, and other digital policing methods—may lessen


9 Raymond Paternoster, How Much Do We Really Know about Criminal Deterrence, 100 J. CRIM. L. & CRIMINOLOGY 765, 789–94 (2010).
the need for police interaction; indeed, calls to replace police presence with digital substitutes have been appearing for several years.\textsuperscript{10}

In the renewed push to decrease the number of social functions performed by police (in order to limit police interactions that might turn violent), the question of automating policing intensifies. In June, for example, the Los Angeles City Council heard a proposal to automate traffic enforcement in order to reduce unnecessary (and often biased) interactions between police and the public.\textsuperscript{11} Additionally, proponents for defunding police regularly point to Camden, New Jersey, as a model for the positive results that severe limiting of police functions can have.\textsuperscript{12} Notably, Camden’s policing innovations largely relied on automating police functions.\textsuperscript{13}

But the size of the digital surveillance apparatus created to reduce interactions with police in Camden has led to criticisms and resent-

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\item \textsuperscript{11} David Graham-Caso, Los Angeles Council Tackles “Driving While Black,” SANTA MONICA DAILY PRESS (Jul. 04, 2020), https://www.smdp.com/los-angeles-council-tackles-driving-while-black/193824; Indeed, the Chief of Police for Lansing, Michigan, recently sent out an internal memo stating that police officers should not stop drivers for “regulatory violations such as, cracked windshields, loud exhaust, inoperable license plate lamp, cracked taillights, dangling ornaments, and window treatments” in an attempt to “eliminate[e] any aspect, inferred or otherwise, of bias-based traffic policing practices.” Memorandum from Chief of Police Daryl Green on New Guidelines for Traffic Stops 1 (July 12 2020), https://www.lansingmi.gov/DocumentCenter/View/10271/New-Traffic-Stop-Guidelines-


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ment from residents. The digital developments Camden relied on included “121 cameras that monitor the entire city; 35 ShotSpotter microphones to detect gunshots; automated scanners that read license plates; and SkyPatrol, a mobile observation post that can scan six square blocks with thermal-imaging equipment.” Critics suggest that such developments lead to residents feeling “they are more ‘watched’ than protected by the police,” and that an inability to fight automated tickets and other sanctions undermines residents’ feeling that the system is fair or legitimate.

In this manner, digital policing methods subtly but ominously hang over the debate on defunding police and reducing their physical presence in communities. As in all industries, automation is a popular method by which to respond to budget deficits (as might exist if police are defunded). The simultaneous push to reduce funding and reduce police contact easily lends itself to increases in digital policing methods, as well as the criticisms attendant to them such as those now present in Camden. Yet, despite the increasing prevalence and intensity of automation in modern policing, and despite its hovering like a sword of Damocles over the head of the defunding debate, the implications of automating policing have received relatively little attention.

Elizabeth Joh, Professor at U.C. Davis School of Law, has stepped in to begin closing this gap. In her article, The Consequences of Automating and Deskilling the Police, she highlights the seep of automation into policing and some of the ramifications of that progress. She primarily focuses on the ramifications to police of-

14 JPI, RETHINKING, supra note 8, at 30–32; McQuade, JACOBIN, supra note 13; McQuade, THE APPEAL, supra note 13; Megenian, supra note 11.

15 McQuade, THE APPEAL, supra note 13.

16 JPI, RETHINKING, supra note 8, at 30, 32.

17 Elizabeth Joh, The Consequences of Automating and Deskilling the Police, 67 UCLA L. REV. DISCORSE 133, 156 (2019) (“Technological solutions have looked increasingly more attractive as ‘force multipliers’ to police administrators faced with layoffs and cutbacks.”).


19 Joh, supra note 17.

20 Joh, supra note 17, at 140–46.
ficers’ skill sets,\textsuperscript{21} as well as the implications for the deference police officers receive in criminal procedure doctrine.\textsuperscript{22} She only briefly touches on the implications of changing the social relationship between police and communities.\textsuperscript{23} Written well before the murder of George Floyd and the protests that ensued, Joh’s description of these changes is almost wholly negative. In the current context readers must ask—are there also positive aspects to these changes that have been ignored up until this point?


Joh begins by clarifying and highlighting the areas in which policing is likely to be replaced by automation.\textsuperscript{24} As she points out,

most police patrol is . . . trivial, noncriminal, and boring. The average police officer rarely fires his gun. Arrests are infrequent. [Most police work involves] directing traffic, responding to accidents, resolving disputes with non-legal methods, addressing matters of homelessness and mental illness, and sometimes just driving around.\textsuperscript{25}

These tasks lend themselves to automation through options such as automatic license plate readers and even robot security guards which currently “record information and relay possible threats,” but may soon carry electric shock weapons and options such as “weapons detection [and] facial recognition technology.”\textsuperscript{26} Police involvement in traffic stops and traffic accidents may no longer be necessary once self-driving cars are in use.\textsuperscript{27} In fact, self-driving cars may cut down police work by transporting arrestees and even “testing . . . for alcohol or drugs, scanning for weapons, conducting records checks for outstanding warrants, reading the arrestee Miranda rights, and even arranging for defense attorneys, arraignments, and bail payments.”\textsuperscript{28} Most ticketing for traffic offenses can likely be completed through cameras, license plate readers, and automatic billing.\textsuperscript{29} And corporations are already exploring the pos-

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\item\textsuperscript{21} Joh, supra note 17, at 146–48.
\item\textsuperscript{22} Joh, supra note 17, at 149–53.
\item\textsuperscript{23} Joh, supra note 17, at 159–60; 161–66.
\item\textsuperscript{24} Joh, supra note 17, at 136, 140–46.
\item\textsuperscript{25} Joh, supra note 17, at 138–39.
\item\textsuperscript{26} Joh, supra note 17, at 139.
\item\textsuperscript{27} Joh, supra note 17, at 141.
\item\textsuperscript{28} Joh, supra note 17, at 141, 142–43.
\item\textsuperscript{29} Joh, supra note 17, at 141–42.
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sibility of automating police paperwork through transcription from
police body cameras.\(^{30}\)

Joh also points out that the very action of developing suspicion is
being taken over by predictive artificial intelligence, which lessens
both the number of people needed to find and analyze evidence and
the number of people the police need to interact with (as they focus
their attention on “hot spots”).\(^{31}\) Even the use of lethal force may be
automated eventually, as we are seeing in the military context.\(^{32}\)

The positive aspects of this development, according to Joh,
include “lower crime rates, greater transparency through data gather-
ing, and less unnecessary police violence,” as well as the possibility
of a shift in the doctrines of reasonable suspicion and probable
cause.\(^{33}\) But, she cautions, it will also almost surely result in “deskilling,”
as police lose their ability to perform tasks that are increasingly
performed by machines instead.\(^{34}\) Moreover, police are likely to lose
employment opportunities,\(^{35}\) which is likely to result in hostile and
adversarial relations with police unions.\(^{36}\)

Expanding on these ideas, Joh first turns to criminal procedure.
She recounts the history of the professionalization of policing, which
culminated in the U.S. Supreme Court’s recognition of (and defer-
ence to) police “expertise.”\(^{37}\) As Joh notes, a great deal of the broad
deference that is accorded to police in the areas of determining
probable cause and reasonable suspicion is based on the idea that
police have special training, experience, and knowledge due to their
profession.\(^{38}\) If suspicion is automated through algorithms that trawl
through social media and other connections to compile a list of
suspects, and police merely read that output, how can this claim of
expertise remain?\(^{39}\) This may be a significant and positive change

\(^{30}\) Joh, supra note 17, at 142.

\(^{31}\) Joh, supra note 17, at 143–45.

\(^{32}\) Joh, supra note 17, at 145.

\(^{33}\) Joh, supra note 17, at 147–48. Joh further explores the possibility of a sea
change in criminal procedure doctrine. Joh, supra note 17, at 149–51.

\(^{34}\) Joh, supra note 17, at 146–48.

\(^{35}\) Joh, supra note 17, at 149, 154, 157.

\(^{36}\) Joh, supra note 17, at 157.

\(^{37}\) Joh, supra note 17, at 149–50.

\(^{38}\) Joh, supra note 17, at 150–51. For philosophical and constitutional critiques
of the move toward predictive policing, see Jackson Polansky & Henry F. Fradella,
Does ‘Precrime’ Mesh with the Ideals of U.S. Justice? Implications for the Future of

\(^{39}\) Joh, supra note 17, at 151.
since, as Joh notes, the amount of deference accorded police has been the subject of a great deal of criticism.  

Joh discusses the reorganization that might be expected to come from police automation. She suggests that small police agencies might rely heavily on automated systems while retaining a core group of officers and administrators as systems operators. The result would be very thinly staffed agencies . . . large urban departments may also embrace replacing many of its people with machines, but . . . [p]olice automation may increase the overall policing presence in cities. When the activity of policing becomes cheaper through technology, police presence may grow exponentially.  

This warning of exponential growth in police presence is the only nod that Joh gives to the general U.S. dislike of the concept of a surveillance state.  

Joh also discusses the structural forces that are likely to lead to this broad reorganization of police departments, based on innovations in technology. These structural forces include budgets and the public responses to racial bias (creating the dynamic discussed in the introduction to this review). But while Joh acknowledges that a great deal of momentum in digital policing comes from a desire to lessen opportunities for racial discrimination, her discussion of these issues is momentary. She focuses instead on the possible repercussions of the digital surveillance state (as discussed below).  

Along with the questions of general deskilling, as possible negatives Joh highlights the ethical implications of the impending use of lethal force by machines. She briefly refers to the moral considerations, and general incomprehensibility, of allowing lethal decisions to be made by machines. This issue may be rectified, she suggests, by keeping a human decisionmaker “in the loop.” She notes, however, that even this may not fix the problem, as the military experience shows humans have become deskilled, “increasingly dependent on . . . machines . . . lack[ing] the ability to perceive all the factors the machine observes, react as quickly as a machine does, or even determine whether an error is being made.”  

Finally, Joh turns to the issues highlighted by the Camden

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40 Joh, supra note 17, at 150.  
41 Joh, supra note 17, at 157.  
42 Joh, supra note 17, at 155–60.  
43 Joh, supra note 17, at 155.  
44 Joh, supra note 17, at 149, 155.  
45 Joh, supra note 17, at 145, 152–54, 156–57.  
46 Joh, supra note 17, at 156.  
47 Joh, supra note 17, at 156.  
48 Joh, supra note 17, at 156–57.
example, which she refers to as “desocialization of the police.”\textsuperscript{49} When such a large portion of policing is overtaken by automation, the police lose the opportunity to engage in community policing, because police-public contacts decrease.\textsuperscript{50} Losing these interactions may also result in a decrease in police legitimacy, and sanctions that stem from machine decisions may be looked at suspiciously, as they can be difficult to understand or debate with.\textsuperscript{51} For all these reasons, Joh warns us to be careful about automating police work.

III. Conclusion

Joh offers a useful window into the ongoing process of automation of policing, its causes, and several of its risks and benefits. She does not, however, directly engage with some of the larger positives and negatives of the process—such as the legitimate interest in reducing police contact in overly policed areas, and the larger aversion to overwhelming surveillance. Hopefully, as the debate surrounding the future of policing continues, this issue will also be carried into the broader realm of legal scholarship, so that these vital concerns can be explored and considered before the process of automation takes off on its own.

\textsuperscript{49}Joh, supra note 17, at 159.

\textsuperscript{50}Joh, supra note 17, at 161–62.

\textsuperscript{51}Joh, supra note 17, at 162–63.