

Asking the Right Questions about the Killing of Breonna Taylor¹

Normal Accidents

Because the components of systems are interconnected, the failure of one can lead to the failure the system. A broken fuel pump stops an automobile. The failure of several components simultaneously can lead to catastrophes. In *Normal Accidents*, Charles Perrow shows how high-risk systems such as nuclear power plants are likely to fail even when they include multiple redundancies and fail-safe systems.² In such complex systems, it makes little sense to put all the blame on the control room operators for the 3-Mile Island Meltdown.

Instead of singling out only the cops shooting the guns in Breonna Taylor's apartment for indictment, perhaps we should ask what went wrong in the system. Yes, the officers at the scene may share responsibility for the death, if good professional judgment would have prevented them from breaking and entering the apartment. But how did it happen that a squad of police officers forced open the door of her apartment at 12:30 in the morning? Is that normal? Is it routine? Is it part of the way the system of public order and protecting public safety operates? Should it operate that way?

Several commentators, including some defenders of the police, have characterized the killing of Breonna Taylor as a tragedy. Tragedies, like the *normal* accidents Charles Perrow discusses and those told in plays by Sophocles, Aeschylus, and Shakespeare have a sense of inevitability about them. Oedipus will kill his father and marry his mother no matter what he does to avoid his destiny. Hamlet will die in Act V no matter what the participants in the story do, Hamlet himself included.

Is this what we mean when we say that the shooting death of Breonna Taylor was a tragedy? When seen through the lens of systems analysis, the answer may well be yes. One could argue that a system of conduct and a chain of events were put in place and set in motion well before Breonna Taylor was born that led to her death and that will likely lead to the injury, wrongful incarceration, and death of others if radical changes are not made.

The State's Police Power and Municipal Police Departments

The police power is the ability of a social system to obtain compliance with its customs, norms, and rules. Social systems have a wide variety of resources and means for obtaining compliance including honor, belief systems, peer pressure (this works both in the direction of compliance and deviance), leaders who have followers, oaths and pledges, ideology, religion, conversation, philosophical argument (legitimacy of the

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² Charles Perrow, *Normal Accidents: Living with High-Risk Technologies* (Basic Books, 1984).

customs, norms, and rules; legitimacy of means of compliance), retaliation, threats, divine approval and divine retribution, punishment of others (general deterrence), and physical force.

Social systems come in all sizes and degrees of complexity. Families are social systems. So are groups, associations, corporations, municipalities, states, and nations.

Municipal police departments are social systems that exercise certain aspects of a town or city's police power as delegated by the state, principally the need to protect residents from predation and violence.³ Along with a few other agencies, municipal police departments are authorized to carry weapons and use physical force in the work of obtaining compliance with the federal, state, and municipal laws and ordinances. This does not mean, however, the physical force is or should be the only or the best means of obtaining compliance. Most political scientists and experts in criminal justice would likely say that physical force should always be the *last* resort, when nothing else will work to prevent immediate harm or to effect an arrest.

The questions raised by the shooting death of Breonna Taylor fall into two groups:

Operational and Systemic Issues.

Operational questions concern how the Louisville Police Department and related agencies (the court) functioned in this case before the fact of her death. How well did the actors in this drama comply with the customs, norms, and rules already in place that govern the issuance and execution of warrants?

Systemic issues are about the department's internal governance system, including what it allows, what it requires, and what it prohibits.

What are the customs, norms, and rules?

Are they likely to increase, decrease, or have little effect on the probability of injury, wrongful search, or death as in the case of Breonna Taylor?

No municipal police department constitutes a self-contained social system that is sealed off from other social systems, including the state and federal governments. But each has its own distinct culture, that is, its own set of customs, norms, and rules in addition to those mandated by the state. If these are ill-suited to the just and proper exercise of the state's police power, then replacing the existing Chief with another – indeed, replacing the entire force with other people – is not likely to improve the administration of public safety.

³ Other agencies of the state's police power include the courts, the department of corrections and other agencies charged with administering specific laws--e.g., fish and wildlife, environmental protection, tax collection, occupational safety and health.

Operational Questions

What was the probable cause articulated in the affidavit for the warrant?

Why did the officers apply for a no-knock warrant?

Was the information in the affidavit accurate?

Did the officer(s) who prepared the affidavit do so honestly? (police perjury)

What was the process of approving this warrant within the Louisville PD?

It has been reported that the affidavit supporting the warrant was based on stale information. If this report is true, why was this warrant approved within the Louisville PD?

What judicial review of the warrant application occurred?

Did the judge carefully consider the warrant?

Did the judge notice that the language purportedly justifying the no-knock warrant was identical to the warrants for four other locations?

Did the judge ask any questions before signing it?

Did the judge focus on or discuss the stale information?

Why was the raid on Breonna Taylor's apartment planned for 12:30 in the morning?

Why did the squad conducting the raid not include the officers who prepared the affidavit for the warrant?

Why did the supervising officers allow 5 officers, who had been part of a botched raid on an innocent family in 2018, to participate in this raid?

How do the affidavit, warrant, and process of execution compare with other search events in the Louisville PD? In other municipal police departments?

Why did the officers execute the warrant in plain clothes?

Why did they not bring a *SWAT* team with them complete with an ambulance and medical team when doing so is standard procedure when executing no-knock warrants?

Systemic Questions

If an automobile factory consistently produced cars that occasionally started up on their own, leading to death and serious injury, it would seem silly to blame the cars. “Bad car. Don't do that again.” If coal-fired power plants pollute the air, does it make sense to blame the worker who loads the coal into the furnace?

Systemic problems require systemic solutions.

Many people in cities across the country have started asking what is wrong with our public safety systems:

Why are they so frequently embroiled in incidents of death and destruction?

Why do they end up paying millions of dollars to resolve civil lawsuits?

Is there something about these systems and the way they function that is causing such problems?

Have norms and practices governing the exercise of the state's police power developed throughout Anglo-American history that affect how today's municipal police go about their work?

If so, what are the historical roots of contemporary policing?

In what ways and to what extent are contemporary municipal police departments inextricably intertwined with the vestiges of slavery and *Jim Crow* segregation in the United States?

And how do those vestiges lead to and enable tragedies and other malfunctions of our public safety system?

To what extent and in what ways is the contemporary structure of municipal police departments influenced by the interests of money?

To what extent does capital's need for a pliant and compliant low-wage force made up of subjugated, harassed, and humiliated black- and brown-skinned workers affect the structure and functioning of municipal police departments?

To what extent and in what ways is the contemporary structure of municipal police departments influenced by the means and strategies employed in the US Government's history of subjugating, exploiting, expropriating, and exterminating Native Americans?

At what levels do the problems show up?

Is violent, oppressive, and racist policing an outgrowth of the nature of the policing function or more a consequence of how they have evolved in the United States?

Is solving the problem simply a matter of identifying and correcting one or two components of the system, like replacing a defective alternator on an automobile? Or is something more radical required.

Is it a leadership question? Will getting a different commissioner or police chief solve the problems?

Are the laws governing police deficient (or non-existent)?

What about instituting better training?

Is it all of these things?

In what ways did the unwritten norms, customs, and rules--the moral content--of the police department and the various subordinate social systems in it (Administrative Services Division, Community Engagement Unit, Major Crimes Division, Media & Public Relations, Special Investigations Division, Special Operations Division, Training Division, and Criminal Interdiction Division) contribute to the chain of events leading to the death of Breonna Taylor?

For example, are testilying and other forms of perjury so commonplace that they are allowed, perhaps encouraged, or even required in day-to-day police work?

What role did the criminalization of marijuana and other drugs at federal and state levels play in the creation of the policing practices that lead to the breaking and entering of a private home at 12:30 in the morning?

What is the incentive system in the Louisville Police Department and how does it operate?

For what do officers get rewarded?

For what punished?

What incentives may have motivated police officers to organize this raid?

What incentives may have motivated the supervisors, officers, prosecutor, and judge to make the choices they made?

Does Kentucky have a comprehensive state law that establishes the purposes and functions of municipal police departments, delegates specific authority and power to them, and lays out a framework for how they are to perform their duties and be held accountable?

If not, is the absence of such a comprehensive state law connected with the decision to conduct the raid or the ways in which it was carried out?

Stated more generally, what ways, if any, does Kentucky have of assuring that the operation of police departments and the work of units and officers is subject to the Rule of Law? Are there deficiencies here?

If so, how, if at all, do those deficiencies relate to the eventual death of Breonna Taylor?

Municipalities are confronting a fundamental question:

Is it possible to eliminate oppression, racism, and excessive force from police departments through reform?

Or is necessary to conceive and build a radically new form of using the state's police power to achieve public safety?

Did the system fail and, if so, why?

Just like a nuclear power plant has redundancies and fail-safe check points designed to prevent catastrophic failure, our public safety system is set up with a long list of checks that should prevent the shooting of innocent citizens such as Breonna Taylor, Tamir Rice, and Ahmaud Arbery. The 4th Amendment prohibits unreasonable searches and seizures. Senior officers in the chain of command should review and approve requests for warrants by line officers. To obtain a warrant, the police must articulate probable cause in the warrant application. A judge must review the warrant and can interrogate the officer or prosecutor who signed the application. And, finally, the officers executing the warrant should assess its accuracy and reasonableness before conducting the search or seizure and they should assess the reasonableness and sufficiency of actions at the scene with respect to the risk of harm and the necessity of use of force.

Given all these points of protection against improper or excessive use of force, why did an innocent Breonna Taylor end up dead? Why are so many other people, disproportionately people of color, the victims of excessive force, improper stops, harassment, and humiliation at the hands of governmental agents of peace and justice?

Why do false arrests occur?

Why do police stop and harass black and brown people in numbers that far outweigh stops of white people?

The Police Governance Project will explore these and other questions. It will be a collaborative effort, involving the contributions of citizens, organizations, police departments, police officers, politicians, legislators, religious leaders, community leaders, business leaders, behavioral scientists, historians, and scholars to solve one of the most challenging social problems of our time – how to effectively organize, channel, and control the exercise of the state's police power for the welfare of all.

If you want to get involved, contact Mike Palmer, mike@lrm.ai.