

Book Review: Franklin E. Zimring, *When Police Kill*. Cambridge, MA: Harvard University Press. 2017. ISBN: 9780674972186 (Hardback). 320 Pages. \$35.00.

Reviewed by Justin Nix¹

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Franklin E. Zimring's *When Police Kill* provides an in-depth look at police use of deadly force in the United States. Historically, police killings have not been viewed as a national phenomenon, but rather, as Zimring suggests, unconnected "individual dramas" between officers and civilians which are the responsibility of local police departments. The shooting of Michael Brown in Ferguson changed this, as evidenced by the fact that the monthly number of stories published by *The New York Times* and *The Washington Post* containing the keywords "killings by police" or "police lethal force" increased more than eightfold thereafter. While there has been much debate surrounding the existence of a "Ferguson Effect" (see e.g., Pyrooz et al., 2016; Rosenfeld, 2016; Wolfe & Nix, 2016), there is no doubt the incident generated national concern about police killings.

Because it previously had not been a national concern, the extent of police killings in the United States remained unknown for decades. Zimring discusses three governmental efforts to collect data on police killings (i.e., the National Vital Statistics System [NVSS], the Uniform Crime Report's Supplemental Homicide Reporting system [SHR], and the Bureau of Justice Statistics' Arrest-Related Deaths program [ARD]), and points out each of their shortcomings in turn. Scholars have long

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argued that government data are incomplete (Fyfe, 2002), but a recent capture/re-capture analysis by the Bureau of Justice Statistics, along with new crowdsourced and media-compiled data (e.g., FatalEncounters.com, FiveThirtyEight.com, *The Guardian*, and *The Washington Post*), indicates that government data undercount the annual number of killings by about half (see also Williams et al., 2016). Whereas the annual number of civilians killed by police officers was thought to be around 500, the true number appears to be greater than 1,000.

Zimring then carefully examines 551 police killings documented by *The Guardian* during the first six months of 2015. Three patterns with respect to the characteristics of the decedents are noteworthy. First, males made up 95 percent of the sample of police killings, despite only accounting for about 49 percent of the US population (and 80 percent of violent crime arrests; see 2015 UCR). Second, the racial breakdown of the sample largely resembled the US population, with two exceptions. Black suspects accounted for 26 percent of police killings, but only 12 percent of the US population (however, they accounted for 36 percent of violent crime arrests; see 2015 UCR). There were no Asian suspects in the sample of killings, despite their comprising about 5 percent of the US population (and 1.5 percent of violent crime arrests). Third, upon comparing the age distribution of arrestees (using 2012 UCR data) to the age distribution of civilians killed by police, Zimring finds that they do not align with one another. While there is ample evidence that the “age-crime” curve peaks early in life and declines substantially after the twenties (Farrington, 1986; Hirschi & Gottfredson, 1983), the same cannot be said about the age distribution of civilians killed by police. Indeed, persons over thirty comprised nearly two-thirds of police killings during the first half of 2015.

Upon considering the police activity that precipitated the killings, Zimring finds that 72 percent of civilians killed following disturbance calls were over thirty, while only 54 percent of “criminal justice killings” (i.e., arrest in progress, crime investigation, or crime in progress) were of a civilian over thirty. Likewise, there were racial differences when he grouped the killings by police activities. Although non-Hispanic whites and blacks each comprised a similar proportion of criminal justice killings (roughly 40 percent), non-Hispanic whites accounted for 65 percent of “non-criminal justice killings” (i.e., disturbance, traffic), whereas blacks accounted for only 20 percent of these killings. Because disturbances do not have a large impact on arrest figures, Zimring concludes:

The tendency of both police and observers to assume ... police use of force is closely associated with violent crime and criminal justice should be modified in significant ways to accord for the disturbances, domestic conflicts, and emotional disruptions that frequently become the caseload of police officers (p. 56).

The use of census data as a “benchmark” (i.e., denominator) for police behavior has been criticized by scholars (e.g., Nix et al., 2017; Walker, 2001), but as Zimring points out, arrest data may not be appropriate either. Without an appropriate benchmark, it is difficult to make sense of the observed demographic differences in police killings.

Zimring then turns his attention to the weapon possessed by civilians and the number of officers involved in each of 479 fatal shootings documented by *The Guardian* during the first six months of 2015. Surprisingly, only 60 percent of the civilians killed possessed a gun or a weapon that resembled a gun. According to FBI *Law Enforcement Officers Killed & Assaulted* (LEOKA) data, over 90 percent of officer deaths by assault are the result of gunfire – so why, Zimring wonders, are only 60 percent of civilians killed armed with a gun? If in fact the police use deadly force in response to imminent danger, and if the percentage of fatal assaults on officers caused by a weapon is a reasonable proxy for the dangerousness of the suspect’s weapon, one might expect 90 percent or more of police killings to involve a suspect with a gun (or something that resembles a gun). Zimring further delves into this issue later on, but for now, the number of officers present during the shootings provides some additional insight. Among the 317 instances for which he could determine the number of cops involved, nearly 35 percent involved just one officer. And these killings by single officers were *nine times* more likely to involve an unarmed civilian than killings with multiple officers present. Thus, single officer shootings appear problematic because they are far more likely to involve an unarmed civilian (see Selby et al., 2016:79-81).

The next step of Zimring’s analysis was to consider the “amount” of deadly force officers used (i.e., the number of shots fired). This information was only reported in 161 shootings, so he turns to more complete data on critical incidents documented by the Chicago Police Department from 2007 to 2013. The advantage of doing so is that Chicago’s data includes non-fatal shootings (which still qualify as deadly force, see Fyfe [1978:32]) – allowing him to determine whether there are unique factors associated with civilian fatalities. Not surprisingly, he finds that as the number of wounds inflicted by a shooting increases, so

too does the fatality rate. In Chicago, civilians who sustained only one wound during a police shooting died 20.8 percent of the time, while civilians who sustained multiple wounds died 51.4 percent of the time. Zimring submits that one feasible way to reduce civilian casualties, based on these findings, is to reconsider training police to “shoot to kill” by firing numerous rounds in situations that might not necessitate it.

Zimring then moves on to a much thornier analysis: he compares killings *by* and *of* the police in the US to other nations, including Germany and the United Kingdom. Such comparisons are challenging because unlike in Germany and the United Kingdom, there are tens of millions of handguns in the United States (Hepburn et al., 2007), and the odds of being murdered with a firearm are far greater than other high-income nations (Gabor, 2016:8). As such, US police are cognizant that anyone they confront might be in possession of a firearm. It comes as no surprise, then, that there are far more killings of and by the police in the United States than Germany or the United Kingdom. Still, there is much to be gleaned from the careful comparisons that Zimring makes.

For instance, US police officers are 35 times more likely to be fatally assaulted than German police officers – and approximately 35 times more likely to use deadly force. On its face, this suggests there is strong relationship between officers’ risk of being killed and likelihood of using deadly force. Two German police officers were fatally assaulted from 2008 to 2012, and three UK police officers were fatally assaulted from 2010 to 2014. Four of these five assaults were shootings (the fifth was a bombing). Thus, even in these two countries where guns are far less prevalent, police officers do not get killed by knives, blunt objects, or personal force (e.g., fists or feet). Zimring contemplates:

Knives and blunt objects and personal attacks do not threaten the lives of police officers on either side of the Atlantic. Yet they produce lethal responses from American police hundreds of times a year. Why is this? (p. 87)

Recall that only 60 percent of civilians killed by US police in the first half of 2015 were armed with a gun or what appeared to be a gun when the officer shot. We now know that the police kill upwards of 1,000 civilians each year. Thus, as many as 400 civilians are killed annually who are *not* brandishing a gun. This is “a vast reservoir of lives to be saved,” according to Zimring, and can be accomplished without risking the lives of officers. The German and UK data suggest that failure to kill

civilians armed with knives or blunt objects does not increase officers' risk of death.

According to LEOKA, from 2008 to 2013, 268 of the 275 fatal assaults of US police officers were shootings (although see Kuhns et al. [2016:6] for a discussion of LEOKA's shortcomings). In other words, only seven officers were fatally assaulted with something other than a gun over a six-year period. Yet personal force accounted for 250,000 assaults during the same period, and knives and blunt objects accounted for thousands more. These figures suggest guns pose a far deadlier threat to police officers than knives, blunt objects, and personal force. Zimring argues that these figures, combined with those from Germany and the UK, suggest we should reconsider labeling these latter weapons "deadly" (at least when they are used against police officers).

He then goes on to compare and contrast the legacies of Kevlar body armor and the "Twenty-One-Foot Rule" (which posits that someone armed with a knife or cutting instrument can fatally assault an armed officer within a twenty-one foot distance, thus shooting such a person is justifiable). Testing and development of standards for Kevlar vests were supported by the National Institute of Justice, and since their introduction in the 1970s, officer fatalities have declined substantially (see Kaminski & Marvell, 2002:183). This evidence of increased officer safety has encouraged widespread adoption: as of 2008, 70 percent of agencies issue vests to their officers. The Twenty-One-Foot Rule, on the other hand, has not been rigorously evaluated, and there is no evidence that it increases officer safety. This is unacceptable, given that unlike wearing a vest, it is a zero-sum strategy of increasing officer safety (i.e., saving police lives means increasing injuries and deaths to civilians). This comparison of the Kevlar and Twenty-One-Foot Rule legacies leads Zimring to suggest the following: (1) we need statistics and analyses about the *actual* risk posed to police officers from various kinds of violent assaults, (2) the study of threats to officer safety and the use of deadly force by officers must go hand-in-hand, and (3) the federal government should head up these analyses/evaluations, and distribute money to agencies to support their reporting of appropriate data.

While officers' risk of death by assault has declined substantially over the last forty years, SHR data indicate "justifiable homicides" by the police declined just nine percent during the same period. Indeed, between 1995 and 2009, killings of police officers declined by 35 percent, despite almost no change in the number of assaults. Kevlar vests have made police officers harder to kill, and as such, officer deaths have declined even though assaults of officers have not. Upon closer inspection,

Zimring notes that firearms assaults against police dropped by 15 percent during this period – another driving force behind the decline in killings of officers. If police used deadly force only in response to firearms assaults (since assaults with other weapons are far less deadly), we would expect police killings of civilians to have declined by approximately 15 percent during this time. Instead, the *total volume of assaults* appears better suited to predict police use of deadly force. Zimring surmises that “fixed rules and patterns of response,” such as the Twenty-One-Foot Rule, “may persist even when the actual risk of great harm to officers has changed” (p. 115). Zimring has demonstrated that knife assaults of police officers are almost never deadly: two officers were killed with knives from 2008 to 2013, and neither of these incidents involved a suspect charging/lunging from afar. Yet in 2016 alone, US police officers fatally shot 172 civilians who were armed with knives.

Zimring next takes issue with the FBI’s use of the label “justifiable killings by police officers of felons,” especially given the US Supreme Court’s ruling in *Tennessee v. Garner* (1985), which prohibited officers from using deadly force to prevent the escape of a fleeing felon. According to Zimring:

The logical implication of the SHR program is that 1,000 killings a year are simply a by-product of effective policing. In the resultant rhetoric of cost and benefit, black lives really *don’t* matter. And neither do white lives on the wrong side of a police confrontation (p. 125; emphasis in original).

Using Los Angeles as an example, he attempts to show that the financial cost to police departments for shooting civilians is insignificant. From 2000 to 2009, 147 out of an estimated 160 police shootings (or 92 percent) did not result in a claim against the city that produced a payment. The total amount paid in thirteen wrongful death claims was \$6.29 million (or \$629,000 per year from 2000-2009). This amounts to .000534 percent of the Los Angeles Police Department’s (LAPD) \$1.178 billion annual budget. Zimring juxtaposes this negligible financial burden of police killings against that of capital punishment – which has been abolished by many states in part because it is so expensive. Zimring hints it should not be surprising that there has been no sustained effort to reform police use of deadly force, given the low cost for police departments. However, it should be noted that the LAPD’s budget is an extreme outlier. Seventy-five percent of local police departments employ fewer than 25 officers (see Reaves, 2015:3). A wrongful death claim

could generate a far greater financial strain on small agencies that do not have an enormous budget like the LAPD (see Reaves, 2015:15).

In Part II of his book, Zimring offers recommendations for how we can better respond to deadly force after it has occurred. He begins by reiterating the need for better data. There should be a federal law requiring agencies to document and report both killings of and by the police, as well as assaults that substantially injure officers and non-fatal shootings of civilians by officers. This would allow for critical research (e.g., does shooting to kill reduce the risk of police officer death?) and could be supported by a federal budget of \$5 to \$10 million.

He next argues that our reform agenda should not be solely “criminocentric.” Felony convictions for police killings are rare in part because it is difficult to prove an individual officer’s guilt beyond a reasonable doubt – especially because terms that justify deadly force (e.g., “great bodily harm” and “reasonable” fear) are ambiguous. Interestingly, camera footage of police use of deadly force has become more ubiquitous in recent years, and Zimring’s analysis of the last 200 killings in his *Guardian* sample suggests incidents involving camera footage are more likely to produce criminal charges. Accordingly, criminal prosecution may become more common in the future as the cost of body worn cameras goes down and more agencies adopt them.

Zimring then suggests we should abandon “aggregated and non-dynamic conceptions of justification” for police use of deadly force. That is, if an officer shoots a civilian ten times, the entire process is treated as a single incident. Therefore, if the first shot is ruled justified, so too are shots two through ten. Some of these extra shots may not be necessary – and Zimring has shown that each additional wound inflicted increases the civilian’s likelihood of dying. Accordingly, he argues that each shot should be treated as a separate use of deadly force, and evaluated against the dangers the officer reasonably believed to be present each time s/he pulled the trigger. Federal prosecutors should be responsible for prosecuting police shootings, because unlike local prosecutors, they do not rely on the involved local agency for evidence and testimony in their other cases. Among the charges they might consider pursuing are voluntary manslaughter, excessive use of deadly force, and knowingly obstructing a deadly force investigation.

In closing, Zimring provides several restrictive protocols which he believes can eliminate 50 to 80 percent of police killings without jeopardizing the lives of police officers or drastically changing the way they approach their jobs:

1. Do not allow officers to shoot civilians who are not brandishing or shooting a gun.
2. Pause and reassess the need for additional gunfire, if the civilian has not fired (especially if the civilian has been wounded).
3. Clearly delineate when officers are required to stop shooting once they have started.
4. Forbid lone officers to use deadly force unless they are in imminent danger. Require them to call for help before using deadly force.
5. Do not allow officers to shoot at civilians fleeing in a vehicle who have not fired shots and do not have an innocent hostage at risk of death.
6. Do not allow officers to shoot civilians attempting to flee on foot without “credible and specific threat that the suspect will injure or kill if not apprehended” (p. 230).

When Police Kill is a must-read for anyone interested in police use of deadly force. Though some of his analyses should be interpreted cautiously (e.g., using census data to benchmark police killings, comparing deadly force in the US to Germany and the United Kingdom, and wrongful death settlements paid by the LAPD), Zimring is transparent about the limitations of his work, and despite them, has made a significant contribution to the study of police killings. He makes no claim that his recommendations are fool-proof. For instance, there will undoubtedly be circumstances in which lone officers do not have time to call for backup. And what should happen if an officer believes s/he sees a gun, and shoots, only to discover later that it was a knife? Nevertheless, widespread adoption of his recommendations could potentially save hundreds of lives each year – and after all, preserving “the sanctity of all human life” should be “at the heart of American policing” (Wexler, 2016:4).

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